



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

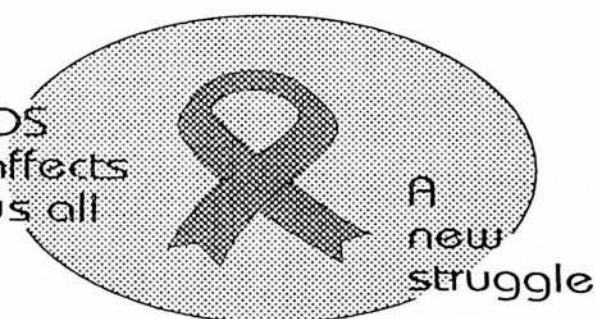
Provincial Gazette Igazethi Yephondo Provinsiale Koerant

Selling price: **R1,50**
Other countries: **R1,95**

BISHOPSTOWN, 17 FEBRUARY 2006
KING WILLIAM'S TOWN,

No. 1489
(Extraordinary)

I have the power to prevent AIDS



Prevention is the cure

**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH



9771682455006

CONTENTS • INHOUD*No.**Page
No.* *Gazette
No.***LOCAL AUTHORITY NOTICE**

56	Local Government Municipal Systems Act (32/2000): Buffalo City Municipality: Street Trading By-laws	3	1489
----	---	---	------

LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 56



BUFFALO CITY MUNICIPALITY

BY-LAW ON STREET TRADING

The Buffalo City Municipality, Province of the Eastern Cape, hereby publishes, in terms of Section 13 of the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000), read with Section 162 of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), the By-Law relating to Street Trading, as passed by the Municipal Council.

000060050

PURPOSE OF THE BY-LAW:

For the supervision and control of the carrying of business of street trading.

PREAMBLE

WHEREAS, it has been a declared policy of the state to pursue an all out war on poverty and unemployment to improve the quality of life of every South African;

AND WHEREAS, it is recognized that there is a need to create an environment in which the carrying on of the business of informal trading is permitted in public streets and public places subject to the rights of all citizens as contained in the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996) and the provisions of the Business Act, 1991 (Act 71 of 1991);

AND WHEREAS, it is recognised that all active participants in the Buffalo City Municipality economy are committed to creating conditions that will make street trading commercially viable and contribute to the economic activity and growth of the Eastern Cape economy;

AND WHEREAS, there shall be a concomitant duty on the informal sector to participate fully in the economic growth of Buffalo City and contribute to the tax base of the Province;

NOW THEREFORE, this by-law is promulgated to facilitate the carrying on of that business and to provide for incidental matters thereto.

1. Definitions

1) In this by-law, except if otherwise expressly provided or unless the context otherwise indicates –

- i) **“approval”** means approval by the Buffalo City Municipality;
and
- ii) **“approve”** has a corresponding meaning,
- iii) **“authorized official”** means
 - a) any official of the Municipality who has been authorised by it to administer, implement and enforce the provisions of this by-law;
 - b) a Traffic Officer appointed under Section 3 of the National Road Traffic Act 93 of 1996;

- c) a Peace Officer as contemplated in Section 334 of the Criminal Procedure Act of 1977 (Act 51 of 1977);
- iv) **"certificate of acceptability"** means authorization issued in terms of Regulation R918 of 30 July 1999 to a person preparing and/or selling foodstuffs;
- v) **"City"** means the geographical area of the Buffalo City Municipality;
- vi) **"municipality service works"** means all property or works of whatever nature necessary for or incidental to any local authority services;
- vii) **"foodstuff"** means foodstuff as defined in section 1 of the Foodstuff Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);
- viii) **"garden or park"** means a garden or park to which the public has a right of access;
- ix) **"goods"** means any movable property and includes a living thing;
- x) **"intersection"** means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act No 93 of 1996);
- xi) **"litter"** includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by a trader or by his or her customers;
- xii) **"mobile trader"** means any person with or without a vehicle going from place to place for the purpose of preparing, serving, displaying, distributing or delivering any goods, including foodstuffs; and includes sale at special occasions, sporting events, or functions under which circumstances special permits must be applied for and issued;

- xiii) **“motor vehicle”** means a motor vehicle as defined in section 1 of the National Road Traffic Act, 93 of 1996;
- xiv) **“municipality”** means the Municipality of Buffalo City established in terms of Section 12 of the Municipal Structures Act 1998 (Act No 117 of 1998) and includes any political structure, political office bearer, municipality or official, committee, duly authorised agents, any employee or service provider acting in connection with this by-law by virtue of a power vested in the Municipality and delegations to such political structure, political office bearer, municipality or official, committee, agents, employee or service provider;
- xv) **“nuisance”** means any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to a person or the property of others or which materially interferes with their ordinary comfort, convenience, peace or quiet;
- xvi) **“pavement”** means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996);
- xvii) **“prescribed”** means prescribed by the Municipality by resolution;
- xviii) **“prohibited”** means the activity is not allowed under any circumstances;
- xix) **“property”** in relation to a street trader, means any article, container, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he or she trades;
- xx) **“public building”** means a building belonging to or occupied solely by the State or the Municipality;
- xxi) **“public monument”** means those monuments and memorials as defined in the National Heritage Resources Act, 1999 (Act No 25 of 1999)

xxii) **"public place"** means any square, park, recreation ground or open space which is vested in the Municipality or to which the public has the right to use or is shown on a general plan of a township filed in the Deeds Register or the Surveyor General's Office and has been provided for the use of the public or the owners of erven in such township;

xxiii) **"public road"** means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996);

xxiv) **"restricted"** means permitted with certain conditions;

xxv) **"roadway"** means a roadway as defined in section 1 of the National Road Traffic Act, 93 of 1996;

xxvi) **"sell"** includes –

- a) barter, exchange or hire out;
 - b) display, expose, offer or prepare for sale;
 - c) store on a public road or public place with a view to sell;
 - d) provide a service for reward,
- and "sale" or "selling" has a corresponding meaning;

xxvii) **"sidewalk"** means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996 (93 of 1996);

xxviii) **"stand"** means a stand on a sidewalk or verge set apart and demarcated by the Municipality as contemplated in this by-law;

xxix) **"static trader"** means any person setting up a stall for the purpose of selling or preparing any goods including foodstuffs from a static location or demarcated stand;

xxx) **"street furniture"** means any furniture, whether movable or immovable, installed by the municipality on the street for public use;

xxxi) **"street trader"** means a person carrying on the business of street trading and includes a person to whom a stand has been leased or allocated in terms of this by-law and any employee of such person;

- xxxii) **“street trading”** means the selling of any goods or the supplying or offering to supply any service for reward in a public road or public place by a street trader;
- xxxiii) **“the Act”** means the Business Act, 1991, as amended (Act No 71 of 1991); and includes the regulations promulgated thereunder;
- xxxiv) **“trading permit”** means the document issued to a street trader by the municipality containing the terms and conditions that apply to a particular trading area;
- xxxv) **“verge”** means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);
- 2) In this by-law, unless the context otherwise indicates, any words or expressions to which a meaning has been assigned in the Business Act, 1991, shall have a corresponding meaning;
- 3) For the purpose of this by-law a single act of selling or offering or rendering of services in a public road or public place shall constitute street trading;
- 4) For the purpose of this by-law, reference to any legislation shall be taken to include the regulations promulgated in terms thereof, if any.

2. **Prohibitions/Prohibited Conduct**

No person shall carry on the business of a street trader –

- a) without a valid trading permit;
- b) preparing and selling foodstuffs without first obtaining a “certificate of acceptability” from the local City Health Department;
- c) at a place or in an area declared by the Municipality in terms of section 6A(2)(a) of the Act as a place or area in which street trading is prohibited;

- d) in a garden or a park to which the public has a right of access;
- e) on a verge contiguous to –
 - i) a building belonging to, or occupied solely by any sphere of Government or Municipality;
 - ii) a church or other place of worship;
 - iii) a building declared to be a Public monument under the National Heritage Resources Act, 1999 (Act No 25 of 1999);
 - iv) any financial institution or bank and includes an automatic teller bank machine;
 - v) trading premises selling the same goods if the occupier thereof has an objection;

unless the carrying on of such business is permitted by the municipality in terms of a agreement or sign erected or displayed by the municipality and in compliance therewith;

- f) at a place where it causes an obstruction in front of –
 - i) a fire hydrant;
 - ii) municipal meter/s and/or meter box/es;
 - ii) an entrance to or exit from a building;
- g) at a place where it causes an obstruction to vehicular traffic;
- h) at a place where it unreasonably obstructs pedestrians in their use of the sidewalk;
- i) on that half of a public road contiguous to a building used exclusively for residential purposes, if the owner or person in control or any occupier of that building objects thereto; and such objection is made known to the street trader by an authorised official.
- j) on a stand or in any area demarcated by the municipality in terms of section 6A(3)(b) of the Act if he is not in possession of written proof that he has hired such stand or area from the municipality or that such stand has otherwise been allocated to him; nor shall he trade in contravention of the terms and conditions of such lease or allocation;

- k) within five (5) metres of any intersection as defined in Regulation 322 of the National Road Traffic Act 1996 (Act 93 of 1996).

3. **Restrictions/Restricted Conduct**

A person carrying on the business of a street trader shall –

- a) not sleep overnight at the place of such business;
- b) not erect any structure for the purpose of providing shelter, other than a structure approved of by the municipality;
- c) not place his or her property on a public road or public place with the exception of his or her motor vehicle or trailer from which trade is conducted, and provided that such vehicle or trailer does not obstruct pedestrian and vehicular traffic movement and complies with the provisions of the National Road Traffic Act, 1996 (Act 93 of 1996);
- d) ensure that his or her property or area of activity does not cover an area of a public road or public place which is greater in extent than 6 square metres (with a maximum length of 3 metres) unless otherwise approved by the Municipality;
- e) ensure that his or her property or area of activity, in respect of a sidewalk, leaves an un-obstructed space for pedestrian traffic being no less than one and a half (1,5) metres wide when measured from any contiguous building to the property or area of activity and not less than one half (0,5) metres wide when measured from the kerb line to the property or area of activity;
- f) not place, on a public road or public place, his or her property in such a manner that it constitutes a danger to any person or property or is likely to injure any person or cause damage to any property;
- g) not place his or her property on a public road or public place that shall not be capable of being easily removed to a place of safety that is not a public road or public place at the end of the day's business;

- h) not obstruct access to a fire hydrant, municipal meter and/or meter box;
- i) not display his or her goods or other property on or in a building without the consent of the owner, lawful occupier or person in control of such building or property;
- j) on request by an authorised official of the municipality or supplier of telecommunication or electricity or other municipality services, move his or her property so as to permit the carrying out of any work in relation to a public road, public place or any such service;
- k) not attach any object by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench, municipal meter and/or meter box or any other street furniture in or on a public road or public place;
- l) not carry on such business in such a manner as to –
 - i) create a nuisance;
 - ii) damage or deface the surface of any public road or public place or any public or private property; or
 - iii) create a traffic or health hazard;
- m) not make an open fire that poses a health or environmental hazard to any person or property or to any street furniture;
- n) not interfere with the ability of persons using the sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
- o) not obstruct access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;
- p) not obstruct access to or the use of street furniture and other facilities designed for the use of the general public;



- q) Not obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996, and regulations made thereunder or any markings, notices or signs displayed or made in terms of this by-law;
- r) not carry on business or take up a position or place his or her property on a portion of sidewalk or public place in contravention of a notice or sign erected or displayed by the municipality for the purposes of this by-law;
- s) not, other than in a refuse receptacle approved or supplied by the municipality, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any litter on any land or premises or any public road or public place or on any public or private property;
- t) on concluding business for the day, remove his or her property, except any structure permitted by the municipality, to a place which is not part of a public road or public place;
- u) not store his or her property in a manhole, storm-water drain, public toilet, bus shelter or tree;
- v) not carry on such business in a place or area in contravention of any prohibition or restriction approved by the municipality in terms of section 6A(2)(a) of the Act.

4. **Leasing of stands**

- (1) Notwithstanding the provisions of any other law the municipality may;
 - a) (i) by resolution set apart and demarcate stands or areas for the purpose of the carrying on of the business of street trading on any public road or public place the ownership or management of which is vested in the municipality or on any other property in the occupation and under the control of the municipality; and

- ii) In like manner disestablish any such stand or area;
- b) by agreement let or otherwise allocate any other stand or area demarcated under paragraph (a)(i) or otherwise established for such purpose;
- (2) any person who intends to carry on a business as a street trader shall, on a form prescribed by the municipality, apply to the Municipality for the lease or allocation of a stand;
- (3) If such application is successful:
 - (a) the applicant shall, in respect of such stand, enter into a lease agreement with the municipality at such rental as prescribed by the municipality;
 - (b) a token shall be issued to the applicant (hereinafter referred to as the "street trader") as proof of the person's right to occupy such stand for the purpose of carrying on business as a street trader;
 - (c) street trader shall, while carrying on business on the stand, retain such tokens on their persons ready for production to any authorised officer who calls for them; and
 - (d) the municipality may, at the written request of the street trader, issue a token to one bona fide employee of the street trader, and the provisions of subsection (c) shall be applicable to such employee mutatis mutandis;
- (4) A person who carries on the business of a street trader on a stand and who is unable to produce a token, as contemplated in subsection 3 (b), shall be guilty of an offence.

5. Cleanliness

A street trader shall –

- a) keep the area or site occupied by him or her for the purposes of such business in a clean and sanitary condition;
- b) keep his or her property in a clean, sanitary and well maintained condition;

- c) dispose of litter generated by his or her business in receptacles provided or approved by the municipality for the public or at the dumping sites of the municipality;
- d) not dispose of litter in a manhole, storm-water drain or other place not intended for the disposal of litter;
- e) ensure that, on completion of business for the day, the area or site occupied by him or her for the purposes of trade, including for these purposes an area bordering such site of 2 (two) metres in every surrounding direction, is free of litter;
- f) take such precautions as may be necessary to prevent the spilling onto a public road or public place or into a storm-water drain, municipal meter or meter box of any fat, oil, grease or corrosive substance in the course of conducting his or her business;
- g) ensure that no smoke, fumes or other substance, odours and noise emanating from his or her activities cause a nuisance or pollution of any kind;
- h) on request by an authorised official or agent of the municipality, move his or her property so as to permit the cleansing of the space of the area or site where he or she is trading or the effecting of the municipality services.

6. **Signs indicating restricted and prohibited areas**

- a) The municipality may, by resolution and in terms of Section 6A(2)(a) up to and including paragraph (j) of the Act, declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited and shall, in compliance therewith, prescribe or make signs, markings or other devices indicating –
 - i) specified hours, places, goods or services in respect of which street trading is restricted or prohibited;

- ii) the location or boundaries of restricted or prohibited areas;
 - iii) the boundaries of a stand or area set apart for the purposes of the carrying on of the business of street trading;
 - iv) the fact that any such stand or area has been let or otherwise allocated;
 - v) any restriction or prohibition against street trading in terms of this by-law;
- b) The municipality may display any such sign, marking or device in such a position and manner as will indicate the restrictions or prohibitions and or the location or boundaries of the area or stand concerned;
 - c) The signs erected in terms of this by-law or any other law shall serve as sufficient notice to a street trader of the prohibition or restriction of the area concerned;
 - d) The signs may be amended from time to time and displayed by the municipality for the purpose of these by-laws and shall have the same effect as road signs in terms of the National Road Traffic Act 1996 (Act No 93 of 1996).

7. **Removal and impoundment**

- 1) An authorised official may remove and impound any property of a street trader –
 - a) which he or she reasonably suspects is being used or is intended to be used or has been used in or in connection with unauthorised or illegal street trading; and
 - b) which he or she finds at a place where street trading is restricted or prohibited and which, in his or her opinion, constitutes an infringement of any such restriction or prohibition;

whether or not such property is in possession or under the control of any person at the time of such removal or impoundment.

- 2) If any impounded property is attached to any immovable property or a structure, and such property is under the apparent control of a person present thereat, any authorised officials of the municipality may order such person to remove the object, and if such person refuses or fails to remove the object, he or she shall be guilty of an offence.
- 3) When any person fails to comply with an order to remove the property referred to in subparagraph 1, any authorised official of the municipality may take such steps as may be necessary to remove such property.
- 4) Neither the municipality nor an official, officer or employee of the municipality shall be liable for any loss of or damage to any property removed and impounded in terms of these by-laws.

8. Appeals

- 1). A person who feels aggrieved by a decision of an authorized official may appeal against the decision to an Appeal Committee in accordance with the provisions set out herein.
- 2) The aggrieved person must lodge his appeal in writing within ten (10) days after having received notification of the authorised official's decision.

9. Constitution of the Appeal Committee

- 1) The Executive Council representatives of the informal traders and any other interested person, designate persons as members to the Appeal Committee;

- 2) The Appeal Committee shall consist of a maximum of five members with at least one member from the street trading sector;
- 3) The process of appeal contemplated in subparagraph 1 and 2 above shall not apply if and when an admission of guilt summons has been issued in terms of section 55 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- 4) The members of the Appeal Committee shall appoint two members to act as chairperson and deputy chairperson respectively;
- 5) When the chairperson is unable to perform the function of a chairperson, the deputy chairperson shall perform the function of a chairperson;
- 6) If the chairperson is of the opinion that a particular person is able to assist the Appeal Committee, he or she may co-opt that person for that purpose;
- 7) A person so co-opted shall not be entitled to vote at a meeting of the Appeal Committee;
- 8) The chairperson shall notify the aggrieved person of the date, time and place of the meeting of the Appeal Committee at which his or her presence is required within 10 days of receipt of the notice of appeal;
- 9) The aggrieved person who has received notice in terms of subsection (7) shall personally appear at a meeting or appoint a legal representative or any other person to appear on his or her behalf.

10. **Procedure at Appeal Meetings**

- 1) The Chairperson shall determine the procedure at the meeting;
- 2) All members shall be present at the meeting of the Appeal Committee;
- 3) Any person present at the meeting may -
 - a) be called upon by the chairperson to give evidence;
 - b) be called upon by the chairperson to produce to the Appeal Committee a document or other property which is in his or her possession or under his or her control; or

- c) be questioned by the Appeal Committee on the matter before (them).
- 4) The Appeal Committee shall review the decision of the local authority and make a finding, having regard to the following:
 - a) whether the decision of the local authority was fair and equitable in the circumstances;
 - b) how the decision will affect the aggrieved person's ability to trade, and
 - c) whether alternative measures may be adopted to enable the aggrieved person to continue his or her business.
- 5) A decision of the Committee shall be taken by a majority of votes of the members present at the meeting and if there is an equality of votes, the chairman shall have a casting vote in addition to his or her deliberative vote.
- 6) The Appeal Committee, having considered the evidence presented, may –
 - a) dismiss the appeal;
 - b) uphold the appeal, or
 - c) take any other steps that it may deem fit.
- 7) The Appeal Committee shall as soon as is practicable –
 - a) notify the aggrieved person of its decision in writing, and
 - b) furnish the aggrieved person with written reasons for the decision.

11. **Offences and Penalties**

Any person who –

- a) contravenes or fails to comply with any provision of this by-law;

- b) fails to comply with any notice issued in terms of this by-law; or
- c) fails to comply with any lawful instruction given in terms of this by-law; or
- d) obstructs or hinders any authorised official of the municipality in the execution of his or her duties under this by-law;

shall be guilty of an offence and liable on conviction to a fine not exceeding R3000 (three thousand rands) or, in default of payment thereof, to imprisonment for a period not exceeding three (3) months.

12. **Vicarious Responsibility of Persons Carrying on Business**

A street trader shall be held liable for any contravention of any provision of this by-law (whether by commission or omission) committed by any person assisting the street trader in the carrying on of the business of street trading, unless such street trader satisfies the court that –

- a) he or she neither connived at nor permitted such contravention; and
- b) he or she took reasonable steps to prevent such contravention provided that the fact that the employer issued instructions prohibiting such contravention, shall not in itself constitute sufficient proof of such reasonable steps).

13. **Presumption**

In any prosecution of a street trader for a contravention of this by-law, the accused person shall be deemed to know the provisions of this by-law and to know that the offence with which he is charged, is a contravention thereof.

04060000

14. **Delegations**

The Council may by resolution delegate to officials of the municipality any authority, duty or function necessary for the implementation or any provision/s of this by-law.

15. **Policy and Procedures**

An authorised official may at the request of the municipality issue out policies and procedures including any tariff of fees and/or fines necessary for the implementation of this by-law.

16. **Repeal of By-Laws**

Any by-laws promulgated by the municipality or any erstwhile municipal council presently comprising an administrative unit of the municipality and pertaining to any matter regulated in this by-law shall be repealed from the date of promulgation of this by-law.

05060000