

Cederberg, South Africa

## Street Trading

Legislation as at 22 October 2004

FRBR URI: /akn/za-wc012/act/by-law/2004/street-trading/eng@2004-10-22

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PDF created on 28 June 2024 at 14:25.

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Street Trading  
Contents

Chapter I – Interpretation and freedom of trade ..... 1

    1. Definitions ..... 1

    2. Freedom of trade ..... 2

Chapter II – General supervision and control ..... 3

    3. General conduct ..... 3

    4. Cleanliness ..... 3

    5. Obstruction of pedestrians, display windows, street furniture, etc. .... 4

    6. No street trading in stands or areas which have been let except by the lessee ..... 4

Chapter III – Trading near certain residential and business premises ..... 4

    7. No trading near residential buildings in certain circumstances ..... 4

    8. No trading near certain business premises ..... 4

Chapter IV – Restrictions relating to vehicular traffic ..... 4

    9. Obstruction of vehicular traffic ..... 4

    10. Restrictions on dimensions and mass of vehicles contemplated in regulation 305(2) of the regulations promulgated under the National Road Traffic Act, 1996 (Act 93 of 1996) ..... 5

    11. Restrictions affecting public roads contemplated in regulation 322 of the regulations promulgated under the National Road Traffic Act, 1996 (Act 93 of 1996) ..... 5

Chapter V – Gardens and parks, and verges next to certain buildings ..... 5

    12. No trading in certain gardens and parks, except where and as specified ..... 5

    13. No trading on verges next to certain public buildings, places of worship and national heritage sites, except where and as specified ..... 5

Chapter VI – Restricted areas and prohibited areas ..... 5

    14. Restricted areas ..... 5

    15. Prohibited areas ..... 6

Chapter VII – Enforcement and penal provisions ..... 6

    16. Signs indicating restrictions and areas ..... 6

    17. Removal and impoundment ..... 6

    18. Charges ..... 6

    19. Appeals ..... 6

    20. Constitution of Appeal Committee ..... 7

    21. Procedure at appeal meetings ..... 7

    22. Offences ..... 8

    23. Presumptions ..... 8

    24. Penalties ..... 8

    25. Vicarious liability of persons carrying on business ..... 8

26. Vicarious responsibility of employees .....	9
Schedule A [section 15] .....	9
Schedule B [section 11(2) and (3)] .....	9



# Cederberg South Africa

## Street Trading By-law, 2004

[Published in Western Cape Provincial Gazette 6181 on 22 October 2004](#)

Commenced on 22 October 2004

*[This is the version of this document from 22 October 2004  
and includes any amendments published up to 28 June 2024.]*

### Chapter I Interpretation and freedom of trade

#### 1. Definitions

- (1) In this by-law, unless the context otherwise indicates any word or expression to which a meaning has been assigned in the Businesses Act, Act 71 of 1991, shall have that meaning, and—
- (i) "**authorised official**" means an official of the Council who is authorised to implement the provisions of this by-law;
  - (ii) "**council**" means the municipal council of Cederberg or its duly authorised employee, councillor, committee or agent;
  - (iii) "**foodstuff**" means a foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972);
  - (iv) "**garden or park**" means a garden or park to which the public has a right of access;
  - (v) "**goods**" includes a living thing and any transferable interest;
  - (vi) "**intersection**" means an intersection as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
  - (vii) "**litter**" includes any container or other matter which has been discarded, abandoned or left behind by a person trading or his/her customers;
  - (viii) "**municipality**" the municipality of Cederberg;
  - (ix) "**municipal area**" the municipal area of Cederberg;
  - (x) "**national heritage site**" means a place declared to be a national heritage site under the National Heritage Resources Act, 1999 (Act 25 of 1999);
  - (xi) "**nuisance**" means any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to the person or property of others or which materially interferes with their ordinary comfort, convenience, piece or quiet;
  - (xii) "**prohibited area**" means any place declared or to be declared under section 6A(2) of the Act by resolution of the Council to be an area in which street trading may be prohibited;
  - (xiii) "**property**" in relation to a person carrying on the business of street trading, means any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel, aircraft, article or receptacle used or intended to be used in connection with such business, and includes goods in which he/she trades;
  - (xiv) "**public building**" means a building occupied solely by the State or the Council;

- (xv) "**public place**" means any square, park, recreation ground, open space or beach area which:
    - (a) is vested in the municipality;
    - (b) the public has the right to use, or
    - (c) is shown on a general plan of a township filed in a deeds registry or a Surveyor-General's office and has been provided for or reserved for the use of the public or the owners of erven in such township and includes private property to which the general public or any section thereof has a right of access.
  - (xvi) "**public road**" means a public road as defined in section 1 of the National Road Traffic Act, 1996, but excludes a public place;
  - (xvii) "**restricted area**" means any place in the municipal area which has been declared under section 6A(2) of the Act by resolution of the Council to be an area in which street trading may be restricted;
  - (xviii) "**roadway**" means a roadway as defined in section 1 of the National Road Traffic Act, 1996;
  - (xix) "**sell**" includes supply and also—
    - (a) exchange or hire
    - (b) store, expose, offer or prepare for sale, process or display for sale; and "sale" has a corresponding meaning;
  - (xx) "**services**" includes any advantage or gain for consideration or reward;
  - (xxi) "**sidewalk**" means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996;
  - (xxii) "**the Act**" means the Businesses Act, 1991 (Act 71 of 1991), as amended, and includes the regulations;
  - (xxiii) "**street trade**" means to sell goods or services in a public road or public place, and "street trading" has a corresponding meaning;
  - (xxiv) "**street trader**" means a person who carries on the business of a street trader, peddler or hawker and includes an employee of such person and shall, for the purposes of this by-law, include a person who trades in a public road or place;
  - (xxv) "**trade**" means to sell goods or services in a public road, public place or beach area and "trading" has a corresponding meaning;
  - (xxvi) "**urban area**" means any place in the municipal area which is an urban area as defined in section 1 of the National Road Traffic Act, 1996, and
  - (xxvii) "**verge**" means a verge as defined in section 1 of the National Road Traffic Act, 1996.
- (2) For the purposes of this by-law, a single act of selling in a public road or public place shall constitute street trading.

## 2. Freedom of trade

Street trading is freely permitted in all public streets and public places in the municipal area, subject to the provisions of this by-law.

## Chapter II

### General supervision and control

#### 3. General conduct

A person trading shall—

- (a) not place his/her property on a verge or public place except for the purpose of commencing to trade;
- (b) ensure that his/her property does not cover an area of a public road or public place which is greater in extent than three metres long or three metres in width;
- (c) not place or stack his/her property in such a manner that it constitutes a danger to any person or is likely to injure any person;
- (d) not obstruct access to a fire hydrant;
- (e) on concluding business for the day, remove his/her property to a place which is not part of a public road or public place;
- (f) not display his/her goods or other property on a building or other private property, without the consent of the owner, occupier or person in control of such building or property;
- (g) at the request of an employee or the agent of the Council or any supplier of telecommunication or electricity or other services, move his/her property so as to permit the carrying out of any work in relation to a public road, public place or any such service;
- (h) 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 or any other street furniture in or on a public road or public place;
- (i) not make a fire at a place or in circumstances where it could harm any person or damage a building or vehicle or any street furniture referred to in paragraph (h);
- (j) not store his/her property in a manhole or stormwater drain;
- (k) not obstruct pedestrians in their use of a sidewalk;
- (l) may not, where the business is carried on in a public road or public place, overnight or erect an immovable structure for the purpose of providing shelter at the place of such business.

#### 4. Cleanliness

A street trader shall—

- (a) keep the area or site occupied by him/her for the purpose of such business in a clean and sanitary condition;
- (b) keep his/her property in a clean and sanitary condition;
- (c) properly dispose of litter generated by his/her business;
- (d) not dispose of litter in a manhole, stormwater 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/her for the purposes of trade is free of litter;
- (f) in the case of street trading with foodstuffs, take such precautions as may be necessary to prevent the spilling onto a public road or public place of any fat, oil or grease in the course of conducting his/her business and prevent any smoke, fumes or odours emanating from his/her activities from becoming a nuisance;

- (g) on request by an employee or agent of the Council, move his/her property so as to permit the cleansing of the surface of the area or site where he/she is trading.

#### **5. Obstruction of pedestrians, display windows, street furniture, etc.**

No person shall trade at a place where—

- (a) it obstructs access to street furniture such as a bus passenger bench or shelter or queuing line, a refuse disposal bin or other facility intended for the use of the general public;
- (b) it obstructs the visibility of a display window on business premises, if the person carrying on business in the business premises concerned objects thereto;
- (c) it obstructs access to an entrance to or exit from a building or an automatic bank teller machine;
- (d) it obstructs access to a pedestrian crossing;
- (e) it obstructs access to any vehicle;
- (f) it leaves less than two metres in width of a sidewalk clear for pedestrian use;
- (g) it in any other manner substantially obstructs pedestrians in their use of a sidewalk.

#### **6. No street trading in stands or areas which have been let except by the lessee**

If the Council has let or otherwise allocated any stand or an area set apart or otherwise established for street trading purposes, as contemplated in section 6A(3)(c) of the Act, no person may trade on such stand or in such area if he is not in possession of proof that he has hired such stand or area from the Council or that it has otherwise been allocated to him.

### **Chapter III**

#### **Trading near certain residential and business premises**

#### **7. No trading near residential buildings in certain circumstances**

No person shall trade in that half of a public road adjacent to a building used for residential purposes if—

- (a) the owner, person in control or any occupier of any part of the building facing onto such road has objected thereto; and
- (b) such objection has been made known to the street trader by an authorised official.

#### **8. No trading near certain business premises**

No person shall trade on a verge adjacent to any part of a building in which business is being carried on by a person (other than a department store or supermarket or other supplier of many different lines of goods) who as one of his/her principal lines sell goods of the same nature as or of a similar nature to goods being sold by the street trader, without the consent of that person.

### **Chapter IV**

#### **Restrictions relating to vehicular traffic**

#### **9. Obstruction of vehicular traffic**

No person shall trade at a place where—

- (a) it causes an obstruction on a roadway;
- (b) it limits access to parking or loading bays or other facilities for vehicular traffic;

- (c) it obscures any road traffic sign or any marking, notice of sign displayed or made in terms of this bylaw; or
- (d) it interferes in any way with any vehicle that may be parked alongside such place.

**10. Restrictions on dimensions and mass of vehicles contemplated in regulation 305(2) of the regulations promulgated under the National Road Traffic Act, 1996 (Act 93 of 1996)**

No person shall, for the purpose of trading in a public place, park on a sidewalk any cart, trolley, trailer or similar vehicle which exceeds—

- (a) 1,5 metres in height, 2 metres in length or 1 metre in width;
- (b) 200 kg in mass.

**11. Restrictions affecting public roads contemplated in regulation 322 of the regulations promulgated under the National Road Traffic Act, 1996 (Act 93 of 1996)**

- (1) Subject to the provisions of subsection (2), no person shall trade on a roadway.
- (2) A person may trade inside an urban area on a roadway within five metres from any intersection thereon in the goods or services as set out in Annexure B.
- (3) No person shall trade in goods or services—
  - (a) on a verge in an urban area within five metres from any intersection thereon; or
  - (b) on a verge outside an urban area, outside a stand or area set apart for trading purposes as contemplated in section 6A(3)(b) of the Act.

## **Chapter V**

### **Gardens and parks, and verges next to certain buildings**

**12. No trading in certain gardens and parks, except where and as specified**

No person may trade in a garden, park, public parking area, or public place to which the public has the right of access, whether the carrying on of the business is permissible or not, without the written permission of the council which permission shall not be unreasonably withheld. Such permission may be granted subject to certain conditions such as cleanliness, protection of public health, availability of toilet facilities, the provision of potable water as well as acceptable refuse storage and removal arrangements.

**13. No trading on verges next to certain public buildings, places of worship and national heritage sites, except where and as specified**

No person shall trade on a verge adjacent to any public building, place of worship or national heritage site.

## **Chapter VI**

### **Restricted areas and prohibited areas**

**14. Restricted areas**

No person shall trade in a restricted area outside a stand or area set apart for trading purposes as contemplated in section 6A(3) of the Act.

## 15. Prohibited areas

No person shall trade in any prohibited area. (See Schedule A)

## Chapter VII Enforcement and penal provisions

## 16. Signs indicating restrictions and areas

The Council shall—

- (a) by resolution prescribe signs, markings or other devices indicating—
  - (i) specified hours, places, goods or services in respect of which street trading is restricted;
  - (ii) the boundaries of a stand or area set apart for trading purposes under section 6A(2)(a) of the Act;
  - (iii) that any such stand or area has been let or otherwise allocated; and
  - (iv) the location or boundaries of places where street trading is prohibited; and
- (b) display any such sign, marking or device in such a position and manner as will indicate the restrictions, prohibition, location or boundary concerned.

## 17. Removal and impoundment

- (1) An authorised official may remove and impound any goods, article, receptacle, vehicle or structure which he/she reasonably suspects is being used or intended to be used or has been used in or in connection with street trading, and which he/she finds at a place where street trading is restricted or prohibited in terms of sections 5 to 13 inclusive and sections 15 and 16, and which, in his/her opinion, constitutes an infringement of any such section, whether or not such goods, article, receptacle, vehicle or structure is in the possession or under the control of any person at the time of such removal or impoundment.
- (2) The disposal of any goods, article, receptacle vehicle or structure removed and impounded as contemplated in subsection (1), and the liability of any person for the expenses incurred in connection with such removal, impoundment and disposal, shall be in accordance with the regulations prescribed by the Premier under section 6(1)(b) of the Act.

## 18. Charges

The council shall from time to time fix charges payable to it for the letting of stands or stalls in demarcated areas under its control from where carrying on of the business of street trader is permissible.

## 19. Appeals

- (1) Any person who feels himself aggrieved by a decision of the municipality may appeal against the decision to an Appeal Committee in accordance with the provisions set out herein.
- (2) Any person who feels himself aggrieved by a decision of the municipality shall notify the municipality of his/her intention to appeal against the decision in writing within 10 days of having received notification of the municipality's decision.
- (3) The Chairperson shall notify the aggrieved person of the date, time and place of the meeting of the Appeal Committee at which his/her presence is required within 10 days of receipt of notice of appeal.

- (4) The aggrieved person who has received notice in terms of clause 18(3) shall personally appear at the meeting or appoint a legal representative or any other person to appear on his/her behalf.

## 20. Constitution of Appeal Committee

- (1) The Member of the Executive Council responsible for Economic Affairs may, with the concurrence of the municipality, representatives of the street traders and any other interested person, designate persons as members of the Appeal Committee.
- (2) The Appeal Committee shall consist of a maximum of six members with at least two members from the relevant sector.
- (3) The members of the Appeal Committee shall appoint members to act as a chairperson and deputy chairperson respectively.
- (4) When the chairperson is unable to perform the function of chairperson, the deputy chairperson shall perform the function of chairperson.
- (5) If the chairperson is of the opinion that a particular person is able to assist the Appeal Committee, he/she may co-opt that person for that purpose.
- (6) A person so co-opted shall not be entitled to vote at any meeting of the Committee.

## 21. 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 Committee any document or any other property which is in his/her possession or under his /her control, or
  - (c) be questioned by the committee on the matter before it.
- (4) The Appeal Committee shall review the decision of the municipality and make a finding having regard to the following considerations—
  - (a) whether the decision of the municipality was fair and equitable in the circumstances;
  - (b) the effect of the decision on the ability of the aggrieved person to trade, and
  - (c) whether alternative measures may be adopted to facilitate the continued business of the aggrieved person.
- (5) A decision of the Committee shall be taken by a majority of votes of the members present at the meeting and in the event of an equality of votes, the chairperson shall have a casting vote in addition to his/her deliberate vote.
- (6) The Appeal Committee may after consideration by it of the evidence presented—
  - (a) refuse the Appeal;
  - (b) uphold the Appeal, or
  - (c) take such other steps as it may think fit.
- (7) The Appeal Committee shall as soon as it is practicable—
  - (a) notify the aggrieved person of its decision in writing, and
  - (b) furnish the aggrieved person with written reasons for its decision.

## 22. Offences

Any person who—

- (a) contravenes any provision contained in Chapter II, III or IV of this by-law; or
- (b) fails to comply with any direction conveyed by a sign, marking or device—
  - (i) which indicates a restriction or prohibition in terms of any provision contained in Chapter V or VI of this by-law; and
  - (ii) which has been displayed in the manner prescribed in section 16(b), shall be guilty of an offence.

## 23. Presumptions

In any prosecution of an offence under this by-law, an allegation in the charge concerned that—

- (a) any goods with which a business was carried on were or were not of a particular kind, class, type or description;
- (b) any goods or services were sold;
- (c) any place is situated in a public road or public place or within a particular area;
- (d) any person carried on the business of street trading and in a manner and place alleged;
- (e) any sign, marking or device which indicates a restriction or prohibition contained in any relevant provision contained in Chapter V or VI of this by-law was displayed in the manner prescribed in section 16(b), shall be presumed to be correct unless the contrary is proved.

## 24. Penalties

- (a) Any person convicted under of an offence under section 22 is liable to a fine or imprisonment or to both a fine and such imprisonment;
- (b) In the case of a continuing offence, an additional fine or an additional period of imprisonment or either such additional fine or such additional imprisonment or both such additional fine and imprisonment for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as a result of such contravention of failure.

## 25. Vicarious liability of persons carrying on business

When an employee of a person conducting the business of street trading performs or omits to perform any act which would be an offence in terms of this by-law for that person to perform or omit to perform, that person shall be deemed himself to have performed or omitted to perform the act, unless he satisfies the court that—

- (a) he or she neither connived at nor permitted the act or omission by the employee concerned,
- (b) he/she took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstances fell within the scope of the authority or employment of the employee concerned, and the fact that the said person issued instructions whereby an act or omission of that nature is prohibited shall not in itself be sufficient proof that he took all reasonable steps to prevent the act or omission.

**26. Vicarious responsibility of employees**

When a person carrying on the business of street trading is by virtue of section 22 liable for an act or omission by an employee of that person, that employee shall also be liable therefore as if he were the person carrying on the business concerned.

**Schedule A [section 15]****Prohibited areas**

**Clanwilliam:** Main Road, Visser Street, Voortrekker Street, Old Cape Road, and Graaffwater Road.

**Schedule B [section 11(2) and (3)]****Goods or services which may be traded at intersections**

Newspapers

Flowers