

Swartland, South Africa

Informal Trading

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Informal Trading

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Swartland South Africa

Informal Trading By-law, 2016

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Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, the Swartland Municipality enacts as follows:

1. Definitions

In this By-law, unless the context indicates otherwise a word or an expression contained herein shall have the meaning assigned thereto in the Businesses Act, 1991 (Act 71 of 1991) and -

"authorised officer" means -

- (a) a traffic officer appointed under section 3 of the Road Traffic Act, 1996 (Act 93 of 1996);
- (b) a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995);
- (c) a peace officer contemplated by section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977); or
- (d) an official of the municipality authorised to implement the provisions of this by-law;

"best available method" means a method which is practical and necessary for the protection of food against contamination or spoilage, having due regard to local conditions and circumstances whether at food premises or elsewhere, the prevailing extent of established practice and the financial implications thereof;

"foodstuff" means a foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectant Act, 1972 (Act 54 of 1972);

"informal trader" means a person who carries on the business of a street vendor, pedlar or hawker and includes an employee of such a person and shall, for the purposes of this by-law include such a person who trades in a public road or public place;

"informal trading" means the selling of any goods or the supply or offer to supply any service for reward as an informal trader in a public road or public space, but does not include the sale of newspapers only;

"litter" means any receptacle, container or other object or matter discarded, abandoned or left behind by an informal trader or his or her customers;

"municipality" means the Swartland Municipality established in terms of the Municipal Structures Act, 117 of 1998 and includes any political structure, political office bearer, duly authorised agent thereof, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated to such political structure, political office bearer, agent or employee;

"national monument" means a building declared to be a national monument under the National Heritage Resources Act, 1999 (Act 25 of 1999);

"nuisance" means any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to others or their property or which materially interferes with their ordinary comfort, convenience, peace or quietness;

"perishable food" means any foodstuff which on account of its composition, ingredients, moisture content and or pH value and of its lack of preservatives and suitable packaging is susceptible to uninhibited increase in microbes thereon or therein if the foodstuff is kept within the temperature spectrum of 4 °C to 65 °C, excluding vegetables and fruit;

"prohibited area" means any place declared or to be declared under section 6A(2) of the Act by resolution of the municipality to be an area in which street trading may be prohibited;

"property" in relation to an informal trader, means money, goods, articles, a receptacle, a vehicle or any structure;

"public building" means a building occupied solely by the state or the municipality;

"public place" means any square or open space which -

- (a) at any time has been declared or rendered such by the municipality or any other competent authority; or
- (b) have been zoned as public place or public open space in terms of any town planning scheme regulations promulgated by the municipality or any competent authority;

"public road" means any road, street, thoroughfare or any other place, whether a thoroughfare or not, which is commonly used by the public or to which the public has a right of access, and includes -

- (a) the verge of any such road, street or thoroughfare;
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
- (d) any other work or object belonging to such road, street or thoroughfare, footpath or sidewalk; and
- (e) any premises with or without structures thereon, used or set aside as a public parking area or public parking place for the parking of motor vehicles whether or not access to such a parking area or place is free of charge;

"restricted area" means any place in the municipality which has been declared under Section 6A(2) of the Act by resolution of the municipality to be an area in which street trading may be restricted;

"roadway" means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic which is between the edges of the roadway;

"sell" includes selling of goods or the supply or offering to supply a service and also -

- (a) exchange or hire; and
- (b) store, expose, offer or prepare for sale, process or display for sale, and "sale" has a corresponding meaning;

"service" includes any advantage or gain for consideration or reward;

"sidewalk" means that portion of a road intended for the exclusive use of pedestrians and includes a road reserve or thoroughfare which is not the roadway;

"the Act" means the Businesses Act, 1991 ([Act 71 of 1991](#)).

2. Freedom of trade

Street trading is, unless specifically stated otherwise in this by-law and subject to the provisions of this by-law, freely permitted in all public streets and public places in the area of jurisdiction of the municipality.

3. Prohibited conduct

A person carrying on the business of informal trader -

- (a) may not, if the business is carried on in a public road or public place:-
 - (i) sleep overnight at the place of the business; or
 - (ii) erect a structure for the purpose of providing shelter, without the approval of the municipality;
- (b) may not place his or her property on a public road or public place except for the purpose of conducting trade;
- (c) must ensure that his or her property does not cover an area of a public road or public place which is greater than 3m in length or 3m in width, or such greater area as determined by the municipality;
- (d) may not place or stack his or her property in such a manner that it obstructs or constitutes a danger to a person or is likely to injure a person;
- (e) may not obstruct access to a fire hydrant or any other designated facility or area demarcated solely for the use of emergency vehicles and municipal services;
- (f) must on concluding business for the day, remove his or her property to a place which is not part of a public road or public place;
- (g) may not display his or her goods or other property in a building or other private property, without the consent of the owner, occupier or person in control of such building or property;
- (h) may not carry on the business of informal trader on a side-walk adjacent to a church or other place of worship or a building declared to be a national monument;
- (i) must, at the request of an employee or agent of the municipality or any supplier of telecommunication or electricity or other 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;
- (j) may not attach any object by any means to a 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;
- (k) may not make a fire at a place or in circumstances where it could harm a person or damage a building or vehicle or street furniture;
- (l) may not store his property in a manhole or storm water drain;
- (m) may not carry on the business in a manner as to -
 - (i) damage or deface the surface of a public road or a public place or public or private property; or
 - (ii) create a traffic hazard;
- (n) must provide sufficient approved waste receptacles;
- (o) may not carry on the business of informal trader without being in possession of written proof that he or she hired, or was otherwise allocated that stand or area by the municipality in an area set aside by the municipality in terms of section 6A(3)(b) of the Act; and
- (p) may not carry on the business of informal trader in contravention of the terms and conditions of the lease or allocation to him or her of a unit in terms of section 6A(3)(c) of the Act;
- (q) may not obstruct the visibility of a display window on business premises, if the person carrying on business in the business premises concerned objects thereto.

4. Cleanliness and health

- (1) Every informal trader -
 - (a) must keep the area or site occupied by him or her in a clean and sanitary condition;
 - (b) must keep his property in a clean and sanitary condition;
 - (c) must properly dispose of litter generated by his business;
 - (d) may not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
 - (e) must ensure that on completion of street trading for the day, the area or site occupied by him or her for the purposes of trade is free of litter;
 - (f) must, in the case of the sale of foodstuffs, take such precaution as may be necessary to prevent the spilling of fat, oil or grease onto a public road or public place and prevent any smoke, fumes or odours emanating from his activities from becoming a nuisance;
 - (g) must, on request by an authorised officer, move his or her property in order to permit the cleaning of the surface of the area or of the site where he or she is trading.
- (2) The municipality must -
 - (a) ensure that the sites occupied by informal traders are cleaned and sanitised on a regular basis; and
 - (b) ensure that refuse receptacles are emptied on a regular basis in order to facilitate the cleaning of trading sites.

5. Obstruction of pedestrians

An informal trader may not carry on business where it -

- (a) obstructs access to street furniture such as bus passenger benches or shelter or queuing lines, refuse disposal bins and other facilities intended for the use of the general public;
- (b) obstructs access to an entrance to or exit from a building or an automatic bank teller machine;
- (c) obstructs access to a pedestrian crossing;
- (d) obstructs access to a vehicle;
- (e) in any other manner substantially obstructs pedestrians in their use of a sidewalk.

6. Trading near residential premises

An informal trader may not trade in that half of a public road adjacent to premises used for residential purposes if -

- (a) the owner, person in control or an occupier of the premises has objected thereto; and
- (b) an authorised official has made known such objection to the informal trader.

7. Trading near certain business premises

An informal trader may not trade on a sidewalk adjacent to any part of a building in which business is being carried on by a person who sell goods of the same nature or of a similar nature to goods being sold by the informal trader, without the consent of that person.

8. Obstruction of vehicular traffic

An informal trader may not 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 a road traffic sign, marking, notice or sign displayed or made in terms of this By-law, or a marking, notice or road traffic sign displayed in terms of the Road Traffic Act, 1996 ([Act 93 of 1996](#)) or the regulations promulgated there under; or
- (d) it interferes in any way with any vehicle that may be parked alongside such place.

9. Restrictions on dimensions and mass of vehicles

An informal trader may not for the purpose of trading in a public road or public place, park any cart, trolley, trailer or similar vehicle on a sidewalk which exceeds -

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

10. Trading in gardens and parks

An informal trader may not carry on business in a garden or park to which the public has the right of access except with the written approval of the municipality, which approval shall not be unreasonably withheld and may be granted subject to certain conditions.

11. Trading next to public buildings, places of worship and national monuments

An informal trader may not trade on a sidewalk adjacent to -

- (a) a building belonging to or occupied solely by the state or the municipality;
- (b) a church or some other place of worship; and
- (c) a building declared to be a national monument under the National Heritage Resources Act, 1999 ([Act 25 of 1999](#)).

12. Restricted areas

An informal trader may not trade in contravention of conditions determined in an area declared or to be declared in terms of section 6A(2)(a) of the Act to be an area in which the carrying on of the business of informal trader is restricted.

13. Prohibited areas

An informal trader may not trade in an area declared or to be declared in terms of section 6A(2)(a) of the Act as an area in which the carrying on of the business of informal trader is prohibited.

14. Removal and impoundment

- (1) If an informal trader fails or refuses to comply with a written request, the content of which has been explained to him or her, to move or remove his or her property, or leaves such property unsupervised for a period of more than 24 hours, an authorised officer may remove and impound property -
 - (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 informal trading; and

- (b) which he or she finds at a place where informal trading is restricted or prohibited in terms of this by-law and which, in his or her opinion, constitutes an infringement of this by-law.
- (2) Any authorised officer acting in terms of subsection (1) must, except in the case of property that have been left or abandoned -
 - (a) issue a receipt to the person carrying on the business of informal trader for any property so removed and impounded, which receipt must contain the following information -
 - (i) the address where the impounded property will be kept and the period it will be kept;
 - (ii) the conditions for the release of the impounded property; and
 - (iii) that unclaimed property will be sold by public auction; and
 - (b) forthwith deliver any such property to the municipality.
- (3) The owner of property which has been removed and impounded in terms of subsection (1) shall, subject to the provisions of sections 16 and 17, be liable for any expenses incurred by the municipality in connection with the removal and impoundment thereof and the municipality may keep such property until all such expenses have been paid, or deal with such property as contemplated in sections 16 and 17.
- (4) A certificate issued under the hand of the Chief Financial Officer of the municipality or any person authorised thereto shall be deemed to be proof of any expenses that the municipality has incurred in connection with the removal and impoundment of any property.

15. Impounded property register

The municipality must -

- (a) maintain a register containing the information contemplated in Schedule A, which must be available for public inspection at all reasonable times; and
- (b) complete the impounded property register immediately upon the acceptance thereof into the place of safekeeping and storage set aside for this purpose.

16. Storage and disposal of impounded property

- (1) Property removed and impounded in terms of section 14 must be stored in a safe place by the municipality, provided that -
 - (a) vegetables and fruit must be stored according to the best available method to prevent such property to become unsound for human consumption or contaminated; and
 - (b) perishable food must be stored as prescribed in Regulation 8(4)(a) of the Regulations Governing General Hygiene Requirements For Food Premises and the Transport of Food, R962 of 12 November 2012, as depicted in Schedule B.
- (2) Any property removed and impounded in terms of section 14, may after the impoundment thereof be sold in terms of section 17, or in the case of perishable food and vegetables and fruit, be destroyed in consultation with a Health Officer designated in terms of the National Health Act, 2003 ([Act 61 of 2003](#)), provided that the property will at any time prior to its disposal be returned to the owner at the request of the owner and upon submission of proof of ownership thereof.
- (3) In the case of a sale of such property, the proceeds thereof, less any expenses incurred by the municipality in connection with the removal and impoundment thereof, shall, upon presentation of the receipt contemplated in section 14(2)(a), be paid to the person who was the owner thereof when such property was impounded. If such owner fails to claim the said proceeds within three months of the date on which it was sold, it shall be forfeited to the municipality.

- (4) The owner of any property, impounded in terms of section 14, who wishes to claim the return of such property must within a period of 21 days of the date of the impoundment thereof, apply to the Municipality and must present the receipt contemplated in section 14(2)(a), failing which it may be sold in terms of section 17.
- (5) If the owner of any property impounded in terms of section 14, claims the return thereof from the municipality and he or she is unable or refuses to refund any expenses incurred by the Municipality in connection with the removal and impoundment thereof, it may be sold in terms of section 17.
- (6) In the event of the proceeds of any sale of property contemplated in this section not being sufficient to defray any expenses incurred by the municipality in connection with the removal and impoundment thereof, the owner shall remain liable for the difference.

17. Sale of impounded property

- (1) If the owner of impounded property fails to claim such property or pay the prescribed fees as determined by the municipality within 21 days of the impoundment thereof, the municipality must -
 - (a) apply to a competent court for authority to sell the property; and
 - (b) in the application contemplated in paragraph (a), provide the court with proof that an account as contemplated in subsection (2) was lodged with the owner.
- (2) The account contemplated in subsection (1)(b) must include the fees and costs due in terms of this by-law.
- (3) The court, whether the amounts set forth in the account contemplated in subsection (1)(b) are disputed or not, must -
 - (a) summarily enquire into the matter;
 - (b) enquire whether notice was given to the owner of the proposed sale of the property; and
 - (c) make such order as it considers just and equitable, including an order -
 - (i) as to costs; and
 - (ii) on the process to be followed by the municipality in the sale of the impounded property.
- (4) Employees and councillors of the municipality, or a family member, or a close associate of any municipal employee or councillor, may not purchase any property offered for sale in terms of this by-law, either personally or through any other person, directly or indirectly.

18. Vicarious responsibility

An informal trader shall be held responsible for any conduct by his or her employees that constitutes an offence in terms of this by-law, except where he or she satisfies the court that -

- (a) he or she neither connived at nor permitted the act or omission by the employee concerned;
- (b) he or 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 informal trader 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.

19. Exemptions

- (1) The municipality may grant exemption in writing from one or all of the provisions of this by-law provided that the municipality -
 - (a) is satisfied that granting the exemption will not significantly prejudice the principle referred to in section 2; and
 - (b) grants any exemption subject to conditions that promote the attainment of the principle referred to in section 2.
- (2) The municipality may not grant an exemption under subsection (1) until it has -
 - (a) taken reasonable measures to ensure that all persons whose rights may be adversely effected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
 - (b) provided such person with a reasonable opportunity to object to the application; and
 - (c) duly considered and taken into account any objections raised.

20. Appeal

A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act ([Act 32 of 2000](#)) to the Municipal Manager within 21 days of the date of the notification of the decision.

21. Liaison forums

- (1) The municipality may establish one or more liaison forums in a community for the purposes of -
 - (a) creating conditions for a local community to participate in the affairs of the municipality; and
 - (b) promoting informal trading;
- (2) A liaison forum may consist of:-
 - (a) a member or members of an interest group, or an affected person;
 - (b) a designated official or officials of the municipality; and
 - (c) a councillor.
- (3) The municipality may, when considering an application for an approval, or exemption certificate in terms of this by-law, request the input of a liaison forum.
- (4) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative submit an input to the municipality for consideration.

22. Offences and penalties

- (1) A person who contravenes or fails to comply with any of the provisions of sections 3, 4(1), 5, 6, 7, 8, 9, 10, 11, 12 and 13, commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

- (2) It is an offence to:-
- (a) furnish false information to an authorised officer in respect of any issue pertaining to this by-law;
 - (b) to refuse to co-operate with the request of an authorised officer made in terms of this by-law; or
 - (c) to hinder or obstruct an authorised officer in the execution of his or her duties in terms of this by-law.
- (3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.

23. Repeal of by-laws

The Swartland Municipality: By-law for the Supervision and Control of the Carrying on of the Business of Street Vendor, Pedlar and Hawker promulgated under PN 113 of 2005 on 8 April 2005 is hereby repealed as a whole.

24. Short title and commencement

This By-law shall be known as the Swartland Municipality: Informal Trading By-law and shall come into operation on the date of publication thereof in the Provincial Gazette.

Schedule A

IMPOUNDED PROPERTY REGISTER

(Section 15)

An impounded property register must, at least, contain the following information:-

1. Place where property are kept;
2. Date of receipt of property;
3. Number and description of property;
4. Name and address of person who seized the property;
5. Name and address of owner of property (where applicable);
6. Name and address or description of place where property were found;
7. Distance between place where property were seized and the pound;
8. Date of sale of property;
9. Proceeds of sale of property;
10. Name and address of purchaser;
11. Excess amount (if any) paid to owner or Municipality;
12. Receipt number.

Schedule B

(Section 16(1)(b))

FOOD TEMPERATURES

Column 1 Category	Column 2 Type of food	Column 3 Required core temperature of food products that are stored
Frozen products	Ice cream and sorbet, excluding sorbet which is used for soft serve purposes	-18° C
	Any other food that is marketed as a frozen product	-12° C
Chilled products	Raw unpreserved fish, mollusks, crustaceans, edible offal, poultry meat and milk	+4° C
	Any other perishable food that must be kept chilled to prevent spoilage	+7° C
Heated products	Any perishable food not kept frozen or chilled	≥/+65° C