



ETHEKWINI MUNICIPALITY CONTAINER POLICY

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Abbreviations

CBD - Central Business District

Definitions

Container Trading - Trading in structures including caravans, containers, marquees, trailers and Wendy Houses.

Container Traders - Informal traders who conduct their trade in structures including caravans, containers, marquees, trailers and Wendy Houses.

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1. Introduction

The Informal Economy Policy encourages and supports opportunities for informal traders on sites that are properly managed and monitored through effective integration from different municipal departments. The policy states that trading opportunities should be developed and properly planned as part of the Business Support Unit's strategy for job creation.

The Informal Economy has a diverse combination of informal traders in different sectors and they use different resources to generate revenue. Informal traders use movable structures as trading resources and these resources differ from tables, caravans to steel containers. Traders in movable roofed structures have been operating without proper guidelines and mechanisms from the Ethekwini Municipality; herein referred to as Council.

The Container Policy is aimed at providing a guideline for the support, management and monitoring of the informal traders who trade in roofed movable structures; herein referred to as Container Trading; that are located in leased economic sites in all district areas of the Council. The structures included in this policy are Caravans, Containers, Marquees, Wendy Houses, Trailers and any other roofed movable structure used for informal trade.

The Container Policy is applicable to all Council Districts and CBD areas.

The policy encompasses:

- * The provision of economic sites to traders who trade in the identified structures
- * The integrated management system between municipal departments
- * Mechanisms for managing and monitoring trading activities
- * The registration of traders who trade in the identified structures

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2. Background

Informal traders are required to get permission in the form of a permit to trade in any area of the Council. Itinerant traders require permission to trade in their commodities and resident traders require permission to lease the land in which they provide their trade. Resident traders use different structures to conduct their trade including caravans, containers, marquees, wendy houses and trailers. The trader/s enters into a short term tenancy agreement with the Council to lease the land for container trading.

In the 1990's the Council issued resident container traders with permits to lease the land on which they conducted trade. The placement of containers on road verges was authorised by Council to encourage the upliftment of street traders. The issuing of permits continued until 1997 when Council put a moratorium on the issuing of permits to container traders as they were deemed to be undesirable and contributing to urban decay in the CBD. The Council did not have control over the activities that were conducted in the containers as traders placed containers on pavements and road verges causing pedestrian and vehicular traffic. Some traded in goods and services they were not permitted to sell as part of the agreement with the Council. The Council also established that some traders were using the containers to conduct illegal activities and using them as accommodation. Container trading has continued unmonitored with new entrants operating without Council approval after the 1997 moratorium.

The placement of the containers on road verges created a perception to the public that any person can engage in container trading without reference and authorisation from Council. Container trading continued without clear controls on the size, design, condition and maintenance of containers which resulted in clashes with the aesthetics requirements of the city as determined by Council.

The traders had no access to water, toilets and waste disposal facilities which led to unhygienic conditions. Containers were placed without proper regard to the number of street traders already in an area, the type of product sold, the facilities and products being provided by commercial/industrial companies for their employees.

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Council removed container traders in the CBD as a mechanism to clamp down on the proliferation of illegal traders and the undesirable effects of container trading. Container trading continued uncontrolled in other parts of the City outside the CBD especially in urban residential and rural areas.

The Business Support Unit has developed the Container Policy to be applicable to all Council districts. This policy addresses the lack of proper control and management regarding the placement and conditions of container trading.

3. Policy Development Process

The policy development process is a cycle including firstly the identification of the issues and needs to be addressed by the policy, the assessment of the policy issues, the policy document, implementation and constant evaluation and review.

A survey was conducted to establish the current conditions and challenges involved in container trading. The process also involved consultations with Council internal and external stakeholders.



Fig 1. Policy Development Cycle

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3.1 Survey

A survey was conducted in three informal trade management areas of the Council; the North, South and Inner & Outer West. Interviews were held with informal traders who trade in Containers, Caravans, Marquees, Wendy Houses and Trailers. Questionnaires in English and Zulu were used for the interviews that were conducted with the informal business owners and employees.

3.2 Internal Stakeholders

Consultations were held with Council internal stakeholders that are affected by the placement of the identified trading structures. Internal stakeholder input establishes a baseline of information against which to measure performance and effectiveness of the final policy. These consultations provided stakeholders with an opportunity to identify the implications of policy options in terms of their service configuration, identify the scope and impact of issues.

The consulted Council stakeholders were:

- (a) Development Planning
- (b) Licensing
- (c) Land Transaction
- (d) Transport Authority
- (e) Parks
- (f) Environmental Health
- (g) Ethekwini Health – Foods Section
- (h) Durban Solid Waste

3.3 External Stakeholders

Consultations were held with external stakeholders that include Informal Trade Associations, Container Retailers and Telecommunication Companies. The external stakeholders were consulted to create awareness of the policy and to establish the dynamics involved in the container trading sector to inform and test the feasibility of options.

4. Status Quo

4.1 What is happening

The survey indicates that 74% of traders in the identified structures operate without permits. This situation is created by the lack of strategy by Council to incorporate resident traders in the current permit approval system. This has caused people to set up trading structures illegally in their fight against unemployment and poverty.

26% of the traders operate legally with permits with 50% indicating they had fallen behind on their monthly rent payments.

18% of the traders rent the trading structures from private individuals and they pay only for the trading structures. The Council has sponsored 15% containers to traders and 16% have an arrangement with private companies to use the containers to trade specific products.

Council has developed Container Parks for container traders in two areas in the North and Inner & Outer West areas. These parks are situated in accessible areas for the traders and customers; one is next to a taxi rank and the other at the entrance of the residential area.

Traders are situated in road verges close to taxi ranks, schools, industrial parks and next to formal businesses. The placement of trading structure and trading area is influenced by the type of goods and services to be sold and the location of the customers.

Goods and Services provided by container traders include:

- * Fast Foods
- * Spaza Shops
- * Hair Salons
- * Community Phones
- * Fresh Produce

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- * Sewing
- * Florists
- * Internet Café
- * Shoe repairs
- * Dry Cleaner
- * Cosmetics Retail
- * Liquor selling
- * Car Wash

The goods sold and services provided by container traders vary and have moved into sectors that have predominantly been associated with the formal sector. The internet café, dry cleaner and cosmetics shops indicate that the informal traders are tapping into new trading markets. This could mean that the street informal traders are supplying both the low and middle income earners.

However, this transition into other areas or sectors of business is still at an early stage as most traders still provide the same products in the same area which leads to high unsustainable competition.

4.2 Challenges

Container traders do not have proper access to water, sanitation and waste disposal bins and bags. 38% of the traders indicated they had no access to water and sanitation and only 10% do not have access to proper waste removal facilities. 62% of the traders use neighbouring houses, factories and taxi ranks facilities.

Container traders lack information and are not aware that trading in structures other than an umbrella requires written permission from Council.

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Container Parks are faced with security challenges as they experienced high rate of crime in the form of theft and break-ins. Yet, the container parks concept is based on the principle that being clustered together creates some form of security.

Structures used for selling fresh produce and fast foods are unhygienic and not properly cleaned. Most of the trading structures surveyed were in poor conditions externally and internally with roof leaks and poor ventilation.

Telecommunication companies provide traders with branded containers as part of their community phones service. The containers provide shelter for the customers when they use the phone service. The branding of these containers is not done according to Council requirements for signs on buildings and structures.

Traders have created foundations in the form of concrete slabs and other material to secure the areas they work in. This is done both on private and Council land; some of these foundations have not been approved. Foundations in public places are problematic as they possibly could block access to electricity and telephone cables as well as water pipes.

Business Support has to encourage and ensure that current and future container traders are registered as currently more than 50% operate illegally without permits.

5. Policy Strategic Direction

5.1 Policy Context

The Informal Economy Policy states that Council should promote and develop the informal economy through:

- (a) The provision and development of sites and markets for trading
- (b) The provision of facilities and infrastructure: and
- (c) The supply of supporting services

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The Container policy is developed in this context of promoting and developing the container traders. The policy does not seek to stop container trading but provides mechanisms and tools for managing it. The Council's Business Support Unit shall be responsible for controlling and maintaining the placement of trading structures and proper management of container trading.

The Informal Economy Policy also states that tools for managing informal traders include:

- (a) The registration of traders
- (b) The allocation of sites
- (c) Proper rentals management
- (d) Compliance to Bylaws and Regulations

The legislative framework for the policy is within the context of the Business Act 71 of 1991, the Ethekwini City Street Trading Bylaw and the Scheduled Trades and Occupations Bylaw. The policy is also linked to other bylaws of the Council as applicable to each department and impacting on container trading.

5.2 Objectives

- * To ensure proper management of permits and rentals
- * To encourage the continued leasing of land to container traders
- * To promote the regulation of the sector
- * To encourage compliance to rules and regulations for informal trade

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6. Authority to trade

Container trading operates in the informal sector however the usage of structures such as containers for trade renders it informal trade with formal structures. The formal classification of structures allows for better control by the Council of the trading structures in terms of identifying areas of trade which could be incorporated into town planning schemes as these structures though not permanent have an implied permanent status. The Informal Economy policy states that street traders (informal traders) have to graduate from informal to formal businesses. Trading in containers, Wendy house, marquees and caravans or any other formal structure is considered to be the last step before graduating to the formal sector.

The trading structures are classified as formal to ensure that Council departments including environmental health, development planning can regulate and monitor the placement and management of container trading structures.

Any person who trades in a public road or public place and wants to erect a formal structure for purposes of trade must have written permission from Council approving the type of structure to be used, goods and services to be traded. No trader can set up a trading structure without getting permission from Council with the exception of the traders who have been trading on public roads and places without Council permission before 1 March 2006. The exempted traders must apply for written permission from Council no later than two (2) months after the adoption of this policy. If these traders continue to trade without permission from Council they shall be subject to Council approved sanctions.

Traders who want to trade using formal trading structures on public roads and public places should apply for permission at the Business Support Unit department. The applicant should provide the unit with an application letter describing the area they want to trade in, the type of goods to be sold and services to be provided. The application letter must also indicate the type of trading structure to be used, the general condition of the structure.

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The Business Support Unit will process the application in consultation with other Council departments including Land Transaction, Environmental Health, Real Estate and Development & Planning. The Licensing department should be consulted after Business Support Unit has approved the lease application prior to informing the applicant. This will ensure that all trading activities conducted on Council land are properly registered and licensed. Business Support Unit shall be the only department that receives all applications for container trading and communicates with informal traders with regards to container trading.

The Traffic, Parks and Solid Waste departments should provide Business Support with their requirements and regulations that should be considered when allocating sites.

Traders who continue to trade and those who want to engage in container trading without permits after the adoption of the policy shall be subject to removal after a notice period of 30 days. If these removed traders want to apply for permits they would have to undergo the process of proper allocation by Council before placing trading structures.

Permission to trade shall be in the form of a short term tenancy lease agreement which shall state the terms and conditions for container trading. The short term tenancy agreement is recommend because there is a one month termination notice as security of tenure is not permitted in public spaces.

7. Trading zone

Container trading is informal with formal structures, is a form street trading which can be carried out on verges of public roads and in public places. Traders should have written permission from Council to trade, in a public road or public space, from structures other than an umbrella. Trading structures requiring Council permission are Caravans, Containers, Marquees, Trailers, Wendy Houses and any other formal roofed structure. It is imperative that the allocation of sites for these traders be not limited to the Allocations Policy as it does not account for all aspects pertaining to the placement of trading structures. Council shall establish a system for identifying and demarcating trading sites.

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Council will be responsible for identifying and allocating trading areas / sites for container traders to ensure that all trading sites meet the policy requirements. Container trading is permitted only in Council identified sites.

7.1 Location of trading structure

(a) Trading structures should not obstruct or block:

- * pedestrians in sidewalks
- * vehicular traffic
- * pedestrian crossings
- * parking / loading bays
- * facilities for vehicular and pedestrian traffic
- * road traffic signs
- * access to street furniture
- * building entrances and exits
- * a fire hydrant;
- * displayed goods in shops from view

(b) Trading structures should not be used for sleeping overnight at the place of business.

(c) The structures should not be on a verge next a formal business that sells the same goods without consent of that business owner.

(d) Trading structures shall not be placed for purposes of trading in a public garden or park.

(e) These requirements are applicable to the placement or setting up of all the trading structures unless when exempted by Council.

7.2 Trading sites

7.2.1 CBD

Container trading is restricted, it shall only be allowed and exempted by Council due to the demand and need for the goods and services; the suitability of the trading structure and/ or any other valid concern.

7.2.3 Taxi Ranks

Container trading is permitted in designated areas inside or next to taxi ranks. The approval of trading sites should be done in consultation with the Transport Authority. Taxi ranks in the CBD areas should be treated as restricted areas that require Council exemption.

7.2.4 Residential Town Areas

Container trading is permitted in designated areas and should be in line with the requirements for issuing sites.

7.2.5 Residential property

Town planning schemes approve the placement of trading structures on residential property as a Special Concern. Approval for these structures should be linked with Business Support's process of issuing permits to informal traders. This will ensure that one department is primarily responsible for all informal trading activities.

7.2.6 Rural Areas

Container trading is permitted in identified sites and should be in line with the requirements for site allocation.

8. Trading Structures

8.1 Containers

Size: 6mx2m

Containers can be modified to suit the specific needs of a trader.

General Requirements

- * Containers should have proper ventilation systems with windows.
- * Traders should not create foundations with any material for placing containers without Council approval. This is applicable to residential and council land.
- * Containers should be properly maintained and have no holes on the roofs and floors.
- * Containers should have no internal and external rust.
- * Container must be painted in one colour, preferably blue.

8.1.1 Container Traders Selling Food

Requirements

- * Traders should at all times follow acceptable hygiene practices, i.e. they should be free of open wounds and infectious diseases, have no sores, wear a clean apron, protective head gear and use sanitised tongs and utensils to handle food.
- * In containers that use electric stoves, a two-plated stove is permitted, primus and gas stoves are not permitted.
- * Containers should have a deep bowl sink for hand-washing that is drained to the sewer or to the satisfaction of the Environment Health Practitioner. These could be installed as a modification that the container-selling containers provide.
- * There should be suitable storage facilities.
- * Container tops must be impervious and resistant to fire, they should not hold water.
- * Walls and floors should be made of easy to clean material.
- * Traders must meet all Environmental Health requirements.

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8.1.2 Container Community Phones Trading

Requirements

- * Telecommunication companies must ensure legal placement of containers on Council land. This applies to the companies that own the containers and contract the traders to operate.
- * In cases where the trader owns the container, the trader is responsible for obtaining permission from Council.
- * Branding of the container should be aligned to the signage requirements described in this policy.

8.2 Wendy Houses

Wendy Houses are made of timber and corrugated iron.

Size: 2.4m x 2.4m

Requirements

- * Timber Wendy houses cannot be used to sell food that has to be cooked with gas and primus stoves as timber is a flammable material.
- * Fresh produce in the form of fruits and vegetables can be sold and stored in timber Wendy houses because they are well ventilated.

8.3 Marquees

Marquees are ventilated and can be used to conduct the fresh produce business.

Size: 5m x 10m (One Pole)

Requirements

- * A fresh produce seller should have a rodent proof storage facility to store the fruits and vegetables overnight.
- * Food traders must keep marquees clean and free of germ-transmitting pests.
- * Traders should not create foundations and floors without Council approval.

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8.4 Caravans

Mobile and Immobile caravans should meet the set requirements for trading.

Size: 5m x 2m

8.4.1 Caravans Selling Food

Requirements

- * Caravans should be kept clean and the person conducting the business should at all times be hygienic, i.e. they should not have sores, open wounds, infectious diseases. Traders should wear clean aprons, protective head gear and use sanitised tongs and utensils to handle food.
- * Caravans that use electric stoves a two-plated stove is permitted, primus and gas stoves are not permitted.
- * Caravans should have a deep bowl sink for hand-washing that is drained to the sewer or to the satisfaction of the Environment Health Practitioner.
- * There should be suitable storage facilities
- * Caravan tops should be impervious and resistant to fire, they should not hold water.
- * Walls and floors should be made of easy to clean material.
- * Traders must meet all Environmental Health requirements.

9. Access to Council Services

Business Support Unit will facilitate the provision of access to Council services in the demarcated areas. Traders are responsible for ensuring connection and payment for services such as electricity, water and waste.

Service payments except for waste removal shall be made separate from the rent payments and shall be made directly to the service providers. Traders need to have a trading permit from Business Support Unit before applying for electricity and water services.

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9.1 Water

- * Traders should have access to water taps either on site or in nearby sites.
- * Container parks should have water taps on site.
- * Proper drainage systems should be available on site or in nearby site.
- * Traders who do not have access to water taps should have a 25 litre bucket of water on site.
- * Traders must pay for water usage according to the Water and Sanitation department's requirements.

9.2 Ablution Facilities

- * Ablution facilities should be available on site or nearby site.
- * Ablution facilities should be in a maximum distance of 50m from traders.
- * Ablution facilities could be mobile or permanent structures which should be kept cleaned and hygienic at all times.

9.3 Waste

Traders are responsible for collecting and disposing of litter generated by customers and employees.

- * Traders are responsible for putting litter in the provided litterbags for collection by Council.
- * Traders should take out the waste on waste removal dates, the trader/s should be aware of the collection dates.
- * Traders must pay Council for the waste removal service. This payment should be incorporated into monthly rentals.

10. Signage on Trading Structures

Advertising on trading structures in rural and urban areas shall meet the following criteria:

- * Advertising is limited to the name of the business, nature of the business as well as goods and services provided.
- * The use of containers for third party or remote advertising is not permitted on trading sites and/or structures.
- * Permanent ground signs are not permitted.
- * Advertising on any one side of the trading structure shall not exceed 1.5m².
- * Product advertising shall be limited to 30% of the structure's sign.
- * A single movable/portable board not exceeding 0.600 X 0.900mm is permitted on the trading site.
- * Advertising that does not comply with the above will be removed without notice and costs incurred during the removal process will be covered by the trader concerned.

11. Goods and Services

The Informal Economy Policy encourages and supports a diverse mix of markets and trading opportunities. Informal traders are treated as small business owners and cannot be limited in terms of the type of services they can provide. Goods and services that are legal, non-hazardous, comply to the City Health requirements and meet all licensing requirements can be sold and/or provided in the trading structures.

Services that require licensing include selling liquor, milk, food and perishables. Traders should consult with City Health and Licensing to ensure that goods and services meet environmental health and licensing requirements. The processing of applications for food traders shall be done in conjunction with environmental health to ensure that traders have the required Certificate of Acceptability before approval.

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Traders can provide similar products in a trading site but should be in line with the principles of fair competition and sustainable business development. Competition in container parks should be controlled to enable sustainable management of the traders businesses. The number of traders providing the same service in a container park or trading site can be limited to a maximum of three (3) traders; the number of traders will be influenced by the demand and supply of the product/s. This restriction applies to traders who trade from one trading plot and service the same customer base. These restrictions allow for sustainable profit gains, business growth and the creation of new opportunities in a well-managed environment.

Street traders in the CBD need storage facilities that are accessible and safe. Container storage facilities for the street traders can be allowed in designated areas and they should be well-managed. Container trading services in the CBD is subject to trading requirements and any other requirement as determined by Council. The additional requirements could be influenced by the aesthetics of the area, maintenance and cleaning of the CBD.

12. Container Parks

There are not many container parks currently operating as trading sites for informal traders. The policy encourages the establishment of container parks in urban and rural areas.

- * Traders should be encouraged to operate in container parks as they will secure growth prospects and access to Council facilities.
- * Container parks should be on sites that are easily accessible to both customers and traders.
- * The parks must have a management committee that is responsible for the management of the park.
- * The members of the management committee must be tenant traders.

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- * The management committee should establish rules and regulations for operating the park including competition restrictions.
- * The management committee must ensure that the park has security in the form of a guard/s.

13. Monitoring and evaluation

Business Support Unit should ensure constant monitoring of informal trading activities as a tool for improved management. Container trading activities have to be constantly monitored to ensure that traders do not provide illegal goods or services and ensure that they are not contravening trading requirements.

If a container trader or employee of the trader is found to be in breach of the terms and conditions of the lease agreement and trading requirements, the trader shall be issued with a written warning and must rectify the problem within 14 days. If the trader does not rectify the problem after 14 days, Council shall terminate the lease agreement and order the removal of the trading structure from the site. If the trader does not remove the structure within 14 days, Council shall remove it and the trader shall be responsible for the costs of removal and storage of the trading structure.

Traders who create structural changes and put up foundations on the leased land that make the trading structures permanent shall be ordered to remove these structural changes within 14 days. If the trader fails to remove the structural changes after 14 days, Council shall terminate the agreement and remove the trading structure with its changes. The trader shall be responsible for the costs of removing the structure.

Complaints from the community and other businesses (formal and informal) shall be investigated and if the trader is found to be guilty of failing to comply with the Street Trading By-law and policy restrictions s/he shall be penalised. The penalty shall be in a form of a fine.

Annexure 1 – Street Trading Bylaw

STREET TRADING BYLAWS

1. Definitions

(1) In these bylaws, except as otherwise expressly provided or unless the context otherwise requires -

"approval" means approval by the authorised official and "approve" has a corresponding meaning;

"authorized official" means an official of the Council to whom it has delegated a duty, function or power under these bylaws, in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official:

"City" means the City of Durban;

"Council" means the City Council of the City and includes, in relation to a duty, function or power under these bylaws, a committee or official of the Council to whom it has delegated that duty, function or power;

"litter" includes any receptacle, container or other object or matter discarded or abandoned by a trader or his customers or left behind by him or them;

"local authority service" means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse, sewage or stormwater or for the generation, impounding, storage, purification or supply of water, gas or electricity;

"local authority service works" means all property or works of whatsoever nature necessary or desirable for or incidental to any local authority service;

"nuisance" bears the meaning given to it by the Ordinance

"Ordinance" means the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974);

"prescribed" means prescribed by the Council by resolution;

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"property" in relation to a street trader, means any goods, receptacle, vehicle or movable structure used or intended to be used in connection with the carrying on of his business as such;

"public place" means a public place as defined in section 1 of the Ordinance;

"public road" means a public road as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989);

"roadway" means a roadway as defined in section 1 of the Road Traffic Act, 1989;

"sell" includes -

- (a) barter, exchange or hire out;
- (b) display, expose, offer or prepare for sale;
- (c) store with a view to sell; or
- (d) provide a service for reward,

and "sale" has a corresponding meaning;

"sidewalk" means a sidewalk as defined in section 1 of the Road Traffic Act, 1989;

"street trader" means a person who carries on the business of street trading;

"street trading" means the selling of any goods (including a living thing) or the supplying or offering to supply any service for reward, as a street vendor, peddler or hawker in a public road or public place but does not include the sale of newspapers only;

"the Act" means the Businesses Act, 1991 (Act No. 71 of 1991) and includes the regulations made thereunder;

"vehicle" includes -

- (a) a self-propelled vehicle;
- (b) a trailer;
- (c) a hand-drawn or propelled vehicle; and

"verge" means a verge as defined in section 1 of the Road Traffic Act, 1989.

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(2) In these bylaws, unless the context otherwise indicates, any word or expression defined in the Act shall bear the meaning so given to it.

(3) For the purpose of these bylaws a single act of offering for sale or of selling goods or services from a public road or public place constitutes the carrying on of the business of a street trader.

(4) For the purpose of these bylaws a reference to a person carrying on the business of street trader shall include any employee of any such person.

Prohibitions

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

(a) at a place or in an area declared under section 6A(2)(a) of the Act as a place or area in which the carrying on of street trading is prohibited;

(b) on the verge, contiguous to -

(i) a building belonging to, or occupied solely by, the State or the Council;

(ii) a church or other place of worship; or

(iii) a building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969),

except to the extent that the carrying on of such business is permitted by a notice or sign erected or displayed by the Council and in compliance therewith;

(c) on a verge contiguous to a building in which business is being carried on by any person who solely or mainly sell goods of the same or similar nature as goods being sold by the street trader concerned, without the consent of that person;

(d) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;

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(e) at a place where it substantially obstructs pedestrians in the use of a sidewalk or take up a position or deposit his property on a sidewalk so as to do so;

(f) at a place where it causes an obstruction to vehicular traffic;

(g) at a place where it causes an obstruction in front of -

(i) an entrance to or exit from a building;

(ii) a fire hydrant;

(h) on a stand or in any area contemplated in section 6A(3)(b) of the Act 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;

(i) in contravention of the terms and conditions of the lease or allocation to him of a stand or area contemplated in section 6A(3)(b) and (c) of the Act.

3. Restrictions

No person carrying on the business of a street trader shall -

(a) if such business is carried on any public road or public place -

(i) sleep overnight at the place of such business; or

(ii) erect any structure (other than a device which operates in the same manner as, and is shaped like, an umbrella) for the purpose of providing shelter;

without prior written approval of the Council;

(b) carry on such business in such a manner as to -

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- (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 hazard;
- (c) other than in a refuse receptacle approved or provided by the Council, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any litter on any land or premises or on any public road or public place;
- (d) obstruct access to a service or to service works of the Council or of the State or any statutory body;
- (e) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
- (f) obstruct access to a pedestrian arcade or mall;
- (g) carry on business or take up a position or place his property on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the Council for the purposes of these bylaws;
- (h) carry on such business in a place or area in contravention of any restriction imposed by Council resolution in terms of section 6A(2)(a) of the Act;
- (i) obstruct access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;
- (j) obstruct access to or the use of street furniture such as bus passenger benches or shelters and queuing lines, refuse disposal bins, and other facilities designed for the use of the general public; or

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(k) obscure any road traffic sign displayed in terms of the Road Traffic Act, 1989, and regulations made thereunder or any markings, notice or sign displayed or made in terms of these bylaws.

4. Cleanliness of place of business and protection of public health

Every street trader shall -

(a) unless prior written approval exempting him from the provisions of this paragraph has been given by the Council, daily remove from any public road or public place at the end of each trading day or at the conclusion of trading all goods, movable structures, waste, packaging material, stock and equipment of whatsoever nature which are utilized in connection with such trading;

(b) carry on his business in such a manner as not to be a danger or threat to public health or public safety;

(c) at the request of an officer or an employee of the Council move or remove anything so that the place of business may be cleaned;

(d) keep the area or stand occupied by him for the purpose of his business as well as his property in a clean and sanitary condition and free of litter; or

(e) if his activities involve the cooking or other preparation of food, take steps to ensure that no fat, oil or other substance drops or overflows onto the surface of a sidewalk or splashes against a building or other structure.

5. Trading in parks and gardens

No street trader shall carry on business in a garden or park to which the public has the right of access except with the prior written approval of the Council's Director of Parks or other authorized official and in compliance with any conditions imposed by him when granting such consent.

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6. Objections used for display of goods

A street trader shall ensure that any structure, container, surface or other object used by him for the preparation, display, storage or transportation of goods -

(a) is maintained in a good state of repair and in a clean and sanitary condition; and

(b) is not so placed or stacked so as to constitute a danger to any person or so as to be likely to injure any person.

Removal and impoundment

(1) For the purpose of this bylaw "goods" includes any receptacle, vehicle or movable structure.

(2) An officer may remove and impound any goods -

(a) which he reasonably suspects are being used or are intended to be used or have been used or in connection with the carrying on of any business of a street trader; and

(b) which he finds at a place where the carrying on of such business is restricted in terms of bylaw (3)(h) or bylaw 5 or prohibited in terms of bylaw 2(a) to (g) and which in his opinion constitutes an infringement of such provision,

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

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(3) Any officer acting in terms of sub-bylaw (2) shall -

(a) except in the case of goods which have been left or abandoned, issue to the person carrying on the business of street trader a receipt for any goods so removed and impounded; and

(b) forthwith deliver any such goods to the authorized official.

(4) Neither the Council nor a councillor, official, officer or employee of the Council shall be liable for any loss of or damage to any goods removed and impounded in terms of this section.

General offences and penalties

(1) Any person who -

(a) contravenes or fails to comply with any provision of these bylaws;

(b) ignores, disregards or disobeys any notice, sign or marking displayed or erected for the purpose of these bylaws;

(c) contravenes or fails to comply with any approval or condition granted or imposes in terms of these bylaws;

(d) for the purpose of these bylaws makes a false statement knowing it to be false in a material particular or deliberately furnishes false or misleading information to an authorized official or officer; or

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(e) threatens, resists, interferes with or obstructs an authorized official, officer or employee of the Council in the performance of his powers, duties or functions under these bylaws;

shall be guilty of an offence and on conviction be liable to a fine or imprisonment for a period not exceeding three months.

(2) When an employee of a street trader performs any act or is guilty of any omission which constitutes an offence under these bylaws the employer shall be deemed to have performed the act or to be guilty of the omission himself and he shall be liable on conviction to the penalties mentioned in sub-bylaw (1) unless he proves to the satisfaction of the Court that -

(a) in performing the act or being guilty of the omission the employee was acting without his knowledge or permission;

(b) all reasonable steps were taken by him to prevent the act or omission in question; and

(c) it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.

(3) The fact that an employer issued instructions forbidding any act or omission referred to in sub-bylaw (2) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of that sub-bylaw.

(4) When an employer is by virtue of the provisions of sub-bylaw (2) liable for anything done or omitted by his employee, then that employee shall also be liable to prosecution for the offence.

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9. Presumption

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