

## GOVAN MBEKI MUNICIPALITY

The Council of Govan Mbeki Municipality has in terms of section 156 of the Constitution, 1996, read in conjunction with Section 11 and 98 of the Local Government: Municipal Systems Act, 2000, (Act No. 32 of 2000, as amended), made the following Bylaw:

### BUSINESS BY-LAW

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## 1. DEFINITIONS

(1) For the purpose of this by-law, unless the context indicates otherwise:

<b>"Authorized official"</b>	means (a) an official of the Council authorized to implement the provisions of the by-law and "officer" shall have a corresponding meaning; (b) A traffic officer appointed in terms of Section 3A of the National Road Traffic Act, 1996 [Act No. 93 of 1996] (c) A member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995 [Act NO 68 of 1996] (d) A peace officer, contemplated in terms of Section 334 of the Criminal Procedure Act, 1977 [Act No. 51 of 1977]
<b>"Building"</b>	means normal brick structures and includes informal structures such as "shanties or movable such as caravans";
<b>"foodstuff"</b>	means any article or substance [except a drug as defined in the Drugs and Drugs Trafficking Act, (Act 140 of 1992)], ordinarily eaten or drunk by persons or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance;
<b>"Formal trader"</b>	means any natural or juristic person selling goods for profit whether or not such good have been manufactured by same person or sourced from other entities;
<b>"Garden or park"</b>	means a garden or park to which the public has a right of access;
<b>"Goods"</b>	means any transferable interest but excludes any living thing and hazardous substances;
<b>"Impoundment costs"</b>	means all costs incurred by the Municipality in respect impounding and storing of impounded Good or Property and, where applicable, costs incurred in respect of disposal of impounded goods;
<b>"License"</b>	in relation to a business, means a business or informal traders license issued by the licensing authority in terms of this by-law;
<b>"License Holder"</b>	means a person who is the holder of a license;
<b>"Licensing authority"</b>	means Govan Mbeki Municipality;
<b>"litter"</b>	means any waste materials and includes any container or other matter which has been discarded, abandoned or left behind by a person trading or his/her customers;
<b>"Municipality"</b>	means the Govan Mbeki Municipality;
<b>"Municipal Council"</b>	means the Council of the Municipality as referred to in section 157 of the Constitution No.108 of 1996:
<b>"Municipal Manager"</b>	means the person appointed by the Municipal Council as the Municipal Manager of the Municipality in terms of section 54A of the Local Government: Municipal Systems Act, 32 of 2000 and includes any person -

- a) acting in such a position;
- b) to whom the municipal manager has delegated the power, function or duty in respect of such delegated power, function or duty;

<b>"National monument"</b>	means a building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969);
<b>"Nuisance"</b>	means any action or behavior by anyone which constitutes a disturbance or causes discomfort to anyone;
<b>"Pavement"</b>	means a sidewalk or that portion of a road reserved for the use of pedestrians;
<b>"Perishables foodstuff"</b>	<p>means any foodstuff with a limited lifespan as indicated by the manufacturer by means of a "best before date", "use by date" or "expiry date".</p> <p>This includes all foodstuff usually consumed on its own or that forms part of a meal when combined with other foodstuff.</p> <p>Raw unprocessed fruits and vegetables are excluded from this definition for the purpose of this By-law;</p>
<b>"Premier"</b>	means the Premier of Mpumalanga Province or Member of the Executive Council who is charged with the responsibility of the administration of the Business Act (Act No. 2 of 1996);
<b>"Prohibited area"</b>	means any place declared or to be declared under subsection 6A (2) of the Act by resolution of the Council to be an area in which street trading may be prohibited;
<b>"property"</b>	means in relation to a person carrying on the business of street trading, means any article, receptacle, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he/she trades;
<b>"Public building"</b>	means a building occupied solely by the State or the Council or any organs or state;
<b>"Public place"</b>	<p>means any square, park, recreation ground, sport ground, sanitary lane or open space which has-</p> <ul style="list-style-type: none"> <li>(a) in connection with any subdivision or layout of land into erven, lots of plots, been provided, reserved or set apart for use by the public or the owner or occupiers of such erven, lots of plots, whether or not it is shown on a general plan, plan of subdivision or diagram;</li> <li>(b) at any time been dedicated to the public;</li> <li>(c) Been used without interruption by the public.</li> <li>(d) at any time been declared or rendered such by a Council or other competent authority;</li> </ul>
<b>"Public road"</b>	means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes-

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

**"Informal trader"** means a person that is mobile and sells goods for own profit whether such goods are the product of his/her own labour or not;

**"Sell"** means alienation for value and includes supply to and also-

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

**"Services"** means and includes any advantage or gain for consideration or reward;

**"The Act"** means the Business Act, 1996 (act No. 2 of 1996);

**"Trade"** means the lawful sale of goods or services in a public road or public place, and "trading" has a corresponding meaning;

**"Verge"** means a verge as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989), and any word or expression to which a meaning has been assigned in the Business Act, 1996 (Act No, 2 of 1996).

## **2. INTERPRETATION**

- (1) Meaning of words and expressions in the Act incorporated in this By-law – unless context indicate otherwise, any word or expression to which a meaning has been assigned in the Act shall have a corresponding meaning in this By-law.
- (2) For the purpose of this by-law a single act of selling within the public domain shall constitute trading.

## **3. LICENSING AUTHORITIES AND LICENSING OF BUSINESSES**

- (1) For the purpose of this By-law, the Municipality as the local authority is the licensing authority.
- (2) The Municipality shall subject to the provisions of the Act, issues business licenses and informal trading permits which have been properly applied for unless –
  - (a) The business premises do not comply with the requirements related to town planning and or the health and safety of the community;
  - (b) Any apparatus, equipment, storage space, working surface, structure, vehicle conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with the laws related to Health and Safety;
  - (c) The Municipality believes that the applicant is not a fit and proper person to operate such business;
  - (d) In case of an informal trader application, if it was found that the license of which the applicant is a holder of has been withdrawn at any time during the preceding 12 months.
- (3) For the purpose of subsection 2 (c), the Municipality may ask the South African Police Service for a report stating particulars of all convictions (if any) recorded against an applicant concerned or against any person in control of the business.
- (4) For the purpose of such report, the applicant will be required to provide the South African police Service with particulars such as fingerprints, palm prints and foot prints.
- (5) In considering the application for a business license, the Municipality may –

- (a) Grant the application on condition that:
  - (i) The prescribed fees and all attachments have been provided;
  - (ii) The business premises comply with the town planning and health requirements as set out in sub- section 2 (a);
  - (iii) Any apparatus, equipment, storage, working surface, structure, vehicle, conveyance, article or place shall, before the license is issued comply with requirements contemplated in sub-section 2(b);
- (6) The Municipality may, on application by a prospective license holder, by way of endorsement on the license –
  - (a) Amend a condition;
  - (b) Extend the license period;
  - (c) Revoke condition; and
  - (d) Indicate that a condition specified in the license has been complied with.
- (7) The Municipality may at any time of issuing the license to the applicant withdraw or suspend the license –
  - (a) On grounds that the business does not comply with any requirements of this By-law;
  - (b) On the grounds that the license is found to have contravened the conditions of the license;
  - (c) On the grounds that the license holder is found to be conduction illegal activities within the business premises; and
  - (d) In case the license is not renewed;
  - (e) In case any foodstuffs sold by the license holder do not comply with the requirements of the Health and Safety Regulations;
- (8) If the Municipality refuses to grant the license subject to certain conditions or amend any condition –
  - (a) The applicant or license holder will be notified in writing of such decision;
  - (b) The applicant or license holder will be furnished reasons of the decision; and
  - (c) The applicant will be informed of his or her right to appeal the decision.
- (9) Issuing of a license does not in any manner relieve the license holder of his duties to comply with the laws related operating his or her business and the premises.

#### **4. CATEGORIES OF BUSINESSES**

- (1) Businesses which require a business license in terms of this By-law are:

Category A: The sale or supply of meals or perishable foodstuffs

- (a) Any foodstuff in the form of meals for consumption on or off the business premises;
- (b) Any perishable foodstuff.

Category B: Provision of certain types of health facilities or entertainment –

- (a) Providing Turkish baths, saunas or other health baths;
- (b) Providing massages or infra-red treatments;
- (c) Making services of an escort, whether male or female, available to anyone;
- (d) Keeping three or more mechanical, electronic or electrical contrivances, instruments, apparatus or devices which are designed or used for the purpose of playing of any game or for the purpose of recreation or amusement and the operation of which involves the payment of any valuable consideration, either by the insertion of a coin, token coin or disk therein or in an appliance attached thereto or in any other manner;
- (e) Keeping three or more snooker or billiard tables;
- (f) Keeping or operating a night club or discotheque; and
- (g) Keeping or operating a cinema or theatre.

Category C: Hawking meals or perishable foodstuffs –

- (a) The carrying of a business, whether as principal, employee or agent, by selling any foodstuffs in the form of meals or perishable foodstuffs –
- (i) Which is conveyed from place to place, whether by vehicle or otherwise;
  - (ii) On a public road or at any other place accessible to the public; or
  - (iii) In, on or from a movable structure or stationary vehicle.

Unless the business is covered by a license for a business in terms Category A.

## **5. RIGHT TO TRADE**

Subject to compliance with the provisions of this By-law, the Act and any other law, any member of the public who has the legal capacity may be permitted to trade in any business mentioned in this By-law.

## **6. LEASE AND ALLOCATION OF STANDS**

- (1) Any person who intends to carry on a business as Informal Trader in terms of the provisions of this By-Law may apply to the Municipality in the prescribed manner for a lease or allocation of a stand.
- (2) The Municipality may grant subject to conditions, or refuse, an application referred to in subsection (1).
- (3) If such application is successful –
  - (a) an Informal Trader must enter into a lease agreement with the Municipality in respect of such stand, which lease agreement must be produced at the request of an Authorised Official;
  - (b) in respect of the allocation, as well as the lease of a stand a permit shall be issued to an Informal trader as proof of an Informal Trader's rights to occupy the stand for the purpose of conducting Informal Trading;
  - (c) an Informal Trader must, at all times while carrying on business on the stand or public space, retain such token on his or her person ready for display to an Authorised Official, if requested; and
  - (d) the Municipality may, on the written request of an Informal Trader, issue a permit to a bona fide employee of the Informal Trader.
- (4) Any person who carries on Informal Trading on a stand or Public Place and who, without a reasonable explanation, is unable to produce a valid lease agreement or token as envisaged in subsection (3) above, shall be guilty of an offence.
- (5) Any person who carries on Informal Trading on a stand or Public Place and who, without a reasonable explanation, fails to comply with the terms and conditions of the lease agreement shall be guilty of an offence.

## **7. GENERAL CONDUCT OF STREET TRADERS ON PRE-DETERMINED AREAS**

A person 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, public place or pavement which is greater in extent than three square metres (3m<sup>2</sup>) unless written permission for a greater area is obtained from the Council ;
- (c) not trade on pavements narrower than 2,5m
- (d) not place or stack his/her property in such a manner that it constitutes a danger to any person or property or is likely to injure any person or damage property;

- (e) not erect any structure for the purpose of providing shelter or sleep overnight at the place of business without the prior written approval of the Council provided that where approval is given for a shelter to protect goods he/she shall not erect an unsightly structure from which to conduct business;
- (f) not obstruct access to a fire hydrant or area demarcated solely for the use of emergency vehicles and/or services;
- (g) on concluding business for the day, remove his/her property, except any permanent structure permitted by the Municipality, to a place which is not part of a public road or public place;
- (h) on request by an employee or agent of the Municipality 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, place or any such service;
- (i) not attached any object or goods by any means to any building structure, pavement, tree, parking meter, lamp post, electricity pole, telephone booth, post box, traffic sign, fence, bench or any other street furniture in or on a public road or public place;
- (j) not make an open fire at a place of trading or in circumstances where it could harm a person or damage a building or vehicle;
- (k) not store his/her property in manhole or storm water drain, bus shelter, public toilet or tree;
- (l) not sell his/her goods in a street by constantly using megaphones, radios, loudspeakers, or constantly shouting or singing in a manner which shall constitute a nuisance or disturbance in the area;
- (m) not commence any businesses under this By-law unless he/she registers with the Municipality and pay such fees or costs for services reasonably required including the costs of leasing any trading space or structure provided by the Municipality.

## **8. ENVIRONMENTAL HEALTH AND SAFETY**

### **(1) An Informal Trader must-**

- (a) keep the area or site occupied by him or her for the purposes of conducting Informal Trading in a clean and sanitary condition;
- (b) keep his or her Property in a clean, sanitary and well maintained condition;
- (c) dispose of Litter generated by his or her business in whatever refuse receptacle is provided by the Municipality for the public or at a disposal site of the Municipality;
- (d) not dispose of Litter in a manhole, storm water drain or other place not intended for the disposal of Litter;
- (e) ensure that on completion of business for the day, the area or site occupied by him or her for the purposes of conducting Informal Trading is free of Litter.
- (f) take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a Public Road, or Public Place or Into a storm water drain, of any fat, oil or grease;
- (g) ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her activities associated with Informal Trading, causes pollution of any kind;
- (h) on request by an Authorised Official, move his or her property so as to permit the cleansing of the space or the area or site. Where he or she is conducting Informal Trading, or the effecting Of Municipal Services.

## **9. CLEANLINESS**

### **(1) A Person trading shall-**

- (a) keep his/her property and or the area or site occupied by him/her for the purpose of such business in a clean and sanitary condition.
- (b) dispose of litter generated by his/her business in whatever receptacles provided therefor by the Municipality, including recycling and dumping sites, and not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;

- (c) ensure that on completion of business for the day the area or site occupied by him/her for the purpose of trade is free of litter.
- (d) take such precautions as may be necessary or prescribed by the Municipality to prevent the spilling onto a public road or public place of any fat, oil, grease or any hazardous substances in the course of conducting his/her business and prevent any smoke, fumes, odor or noise emanating from his/her activities from becoming a nuisance.

**(2) The Municipality shall-**

- (a) ensure that the site on which the informal traders are trading are cleaned and sanitized on a regular basis;
- (b) provide receptacles on the sites in order to facilitate the disposal of litter by the informal traders; and
- (c) ensure that the receptacles are emptied on a regular basis in order to facilitate clean trading sites.

**10. PROHIBITED CONDUCT**

**(1) No person shall carry on the business of an Informal Trader-**

- (a) at a place or in an area declared by the Municipality in terms of section as a place or area in which conducting a business is prohibited;
- (b) in a Garden to which the public has a right of access;
- (c) directly alongside-
  - (i) a building belonging to the South African Police and or a Police Station;
  - (ii) a church, mosque, synagogue or other place of worship;
  - (iii) a building declared to be a public monument;
  - (iv) an auto teller bank machine;
  - (v) at a place where it causes an obstruction in respect of-
    - a fire hydrant; or
    - any entrance to or exit from a building;
- (d) at a place where it is likely to obstruct vehicular traffic;
- (e) 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 that building objects thereto and such objection is made known to the traders by an Authorised Official;
- (f) on a stand or in any area demarcated by the Municipality, if he or she is not in possession of written proof that he or she has hired such stand or area from the Municipality or that such stand has otherwise been allocated to him or her by the Municipality;
- (g) on a Sidewalk contiguous to a building in which business is being carried on by any person who sells goods of the same or of a similar nature to the goods being sold on such Sidewalk by the Trader, if the Goods are sold by the Informal Trader without the prior consent of such person and an Authorised Official has informed the Informal Trader that such consent does not exist.

**11. OBSTRUCTION OF PEDESTRIANS**

**No person shall trade at a place where such trading-**

- (a) obstructs access to or use of street facilities such as a bus passenger bench or shelter or queuing line, refuse disposal bin or other facility intended for the use of the general public;
- (b) obstructs the visibility of a display window, signboard or premises, if the person carrying on business in the premises concerned objects thereto;
- (c) obstructs access to a building in width, automatic bank teller machine, pedestrian crossing or motor vehicle;



- (d) leaves less than 1,5m in width of a sidewalk clear for pedestrian use, or in any manner substantially obstructs pedestrians in their use of a sidewalk.

**12. OBSTRUCTION OF VEHICLE TRAFFIC**

No person shall trade at a place where such trading-

- (a) causes an obstruction on a roadway;
- (b) limits access to parking or loading bays or other facilities for vehicular traffic;
- (c) obscures any road traffic sign or any marking, notice or sign displayed or made in terms of this or any other by-law; or
- (d) interferes in any way with any vehicle that may be parked alongside such place;
- (e) Obscures or impedes the view of any user of the road, any traffic sign or any other road user.

**13. TRADING RESTRICTED TO SPECIFIED HOURS IN CERTAIN PLACES**

No person shall trade-

- (a) on a verge contiguous to any place of worship, national monument or public building;  
or
- (b) in a restricted area, which is specified in Schedule A, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act, outside the hours so specified in relation to each garden, park, verge or area.

**14. TRADING RESTRICTED TO SPECIFIED GOODS OR SERVICES IN CERTAIN PLACES**

No person shall trade-

- (a) on a verge contiguous to any place of worship, national monument or public building;
- (b) in a restricted area, which is specified in Schedule B, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act, other than the goods or services so specified in relation to each such garden, park, verge or area; or
- (c) on a verge contiguous to that part of a building in which business is being carried on by a person other than a department store or supermarket or other large supplier of many different lines of goods of the same nature as or of a similar nature to goods being sold by the first-mentioned person without the consent of the second-mentioned person.

**15. TRADING RESTRICTED TO DEMARCATED STANDS OR AREAS IN CERTAIN PLACES**

No person shall trade-

- (a) on a verge contiguous to any place of worship, national monument or public building;  
or
- (b) in a restricted area, which is specified in Schedule C, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act outside a stand or area set apart for trading purposes as contemplated in subsection 6A(3)(b) of the Act.

**16. NO TRADING IN STANDS OR AREAS WHICH HAVE BEEN LET EXCEPT BY THE LESSEE**

- (1) If the Municipality has let or otherwise allocated any stand or area set apart or otherwise established for informal trading purposes, as contemplated in subsection 6A (3) (c) of the Act,

no person may trade in such area if he/she is not in possession of proof that he/she has hired such stand or area from the Council or that it has otherwise been allocated to him/her.

**17. NO TRADING NEAR CERTAIN PUBLIC BUILDINGS, PLACES OF WORSHIP AND NATIONAL MONUMENTS**

- (1) No person shall trade on a verge contiguous to any place of worship, national monument or public building which is specified in Schedule D, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act, unless he/she obtains written consent from the Council, which consent shall not be unreasonably withheld.

**18. NO TRADING IN PROHIBITED AREA**

- (1) No person shall trade in any prohibited area, prohibited for that purpose by the Council.

**19. TRADING NEAR RESIDENTIAL BUILDINGS**

- (1) No person shall, outside an area specified in Schedule E, compiled according to the consultation process outlined in subsections 6A(a) to (j) of the Act, trade in that half of a public road contiguous to a building used exclusively for residential purpose if-
- (a) the owner, person in control or occupier of any part of the building facing onto such road has objected thereto in writing; and
  - (b) The fact that such objection was made has been made known in writing to the first mentioned person by an authorized official.

**20. SIGNS INDICATING RESTRICTIONS AND AREA**

The Municipality may-

- (a) by resolution, after consultation with all interested parties, prescribe signs, markings or other devices indicating-
  - (i) specified hours, places, goods or services in respect of which informal trading is restricted;
  - (ii) the location or boundaries of a restricted area;
  - (iii) the boundaries of a stand or area set apart for the purpose of the carrying on of the business of informal trading.
  - (iv) the fact that any such stand or area has been let or otherwise allocated;
  - (v) any restrictions or prohibition against trading in terms of this by-law;
  - (vi) the location of boundaries of a prohibited area; and
- (b) display any such sign, marking or device in such a position and manner as will indicate the restrictions or the location or boundaries of the area of stand concerned.

**21. REMOVAL AND IMPOUNDMENT**

- (1) An officer may remove and impound any goods, articles, receptacle, vehicle or structure-
- (a) which he/she reasonable suspects is being used or has been used in or in connection with informal trading; and
  - (b) which he/she finds at a place where informal trading is restricted or prohibited in terms of sections 5 to 13 inclusive and which, in his/her opinion, constitutes an infringement of any such section; or
  - (c) which constitutes an infringement of subsection 3(d) hereof.
- (2) Any officer acting in terms of these provisions shall-

- (a) except in the case of goods which have been left or abandoned, issue forthwith to the person carrying on the business of informal trader a detailed receipt for any property so removed and where the property will be impounded and the procedure for reclaiming such property; and
  - (b) forthwith deliver any such property to the Municipality.
- (3) Any property removed and/or impounded as contemplated by subsection 6A of the Act-
- (a) may, in the case of perishable property, be sold or destroyed by the Municipality concerned within a reasonable time after the impoundment thereof, provided that such property shall be subject to the provisions of 15 (4) hereunder, at any time prior to the disposal thereof, be returned to the owner on request and proof of ownership by such owner to the Municipality concerned, provided such perishables are still fit for human consumption;
  - (b) shall, subject to the provisions of 15(4) hereunder, in the case of property other than perishable property, be returned to the owner thereof on request and proof of ownership by such owner to the Municipality concerned within a period of one month of the date of impoundment?
- (4) The Municipality concerned shall be entitled to keep the property concerned until all reasonable expenses have been paid to it, failing which the property may be sold by public auction upon 14 days' notice being given to the owner or in the case of perishable goods either be sold or destroyed by Municipality
- (5) In case of a sale of impounded property by a Municipality, the proceeds of such shall be paid onto a special fund created by Municipality dedicated to the development of the informal sector.

## **22. OFFENCES**

- (1) Any person who-
- (a) contravenes or fails to comply with any provision of this by-law;
  - (b) ignores, disregards or disobeys any notice, sign or marking displayed or erected for purpose of this by-law;
  - (c) contravenes or fails to comply with any approval or conditions granted or imposed in terms of this by-law;
  - (d) fails to comply with a written instruction to move or remove his/her property;
  - (e) deliberately furnishes false or misleading information to an officer or an employee of the Municipality ; or
  - (f) threatens, resists, interferes with or obstructs an officer or employee of the Municipality the performance of his/her powers, duties or functions under this by-law; shall be guilty of an offence.

## **23. PENALTIES**

- (1) Any person who is guilty of an offence in terms of this by-law shall on conviction be liable to a fine not exceeding R5 000 00 (five thousand rand) or to imprisonment for a period not exceeding six (6) months.

## **24. RESPONSIBILITY OF PERSONS CARRYING ON BUSINESS**

- (1) When an employee of a person conducting the business of informal trading does or omits to do anything which would be an offence in terms of this by-law for that person to do or omit to do, that person shall be deemed himself/herself to have done or omitted to do the act, unless he/she satisfies the court that-
- (a) he/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 employer concerned, and the fact that the said person issued instructions whereby an act or omission that nature is prohibited shall not in itself be sufficient proof that he/she took all reasonable steps to prevent the act or omission.

## **19. RESPONSIBILITY OF EMPLOYEES**

- (1) When a person carrying on the business of informal trading is by virtue of section 18 liable for an act of omission by an employee of that person, that employee shall also be liable as if he/she was the person carrying on the business concerned.

## **20. APPEALS**

- (1) Any person who feels him/herself aggrieved by the decision of the Municipality may appeal against such decision to an appeal committee in accordance with the provisions set out herein.
- (2) Any person who feels him/herself aggrieved by a decision of the Municipality shall notify the Municipality of his/her intention to appeal the decision in writing within 10 days of having received notification of the Council's decision.

## **21. CONSTITUTION OF AN APPEAL COMMITTEE**

- (1) The Member of Mayoral Committee responsible for Planning and Development shall be the Chairperson.
- (2) Representatives of the informal traders association and designated persons as members and alternate members of the Appeal Committee as appointed by Council.
- (3) The Appeal Committee shall consist of a maximum of 7(seven) members with at least 1(one) member from the relevant sector.
- (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 meetings of the Committee.
- (7) 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 one Notice of Appeal.
- (8) The aggrieved person who has received notice in terms of provision 21 (7) shall personally appear at the meeting or appoint a legal representative or any other person to appear on his/her behalf.
- (9) An authorized official or a legal representative may represent the Council concerned.

## **22. PROCEDURE AT APPEAL MEETINGS**

- (1) The Chairperson shall determine the procedure of the meeting, provided-
  - (a) such procedures adhere to the *Audi alter am partum* principle; and

- (b) All parties are advised seven days prior to the hearing and the procedures to be observed.
- (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 to trade of the aggrieved person; 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 deliberative 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.

### **23. REPEAL OF BY-LAWS**

- (1) Any by-laws adopted by the Municipal Council or any Municipal Council of any Municipality now forming an administrative unit of the Municipality and relating to informal trading are hereby repealed.

### **24. SHORT TITLE**

- (1) This by-law shall be called the Business By-law 2017.