



KANNALAND MUNICIPALITY BY-LAW RELATING TO STREET TRADING REGULATIONS

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Kannaland Municipality enacts as follows:-

1. Definitions

(1) In this by-law, unless the context otherwise indicates –

“Act” means the Businesses Act, 1991 (Act 71 of 1991), and includes the regulations promulgated under the Act;

“advertisement” means any representation of a word, name, letter, figure or object or an abbreviation of a word or name, or any symbol, or any light which is not intended solely for illumination or as a warning against any dangers;

“advertising” means the act or process of notifying, warning, informing, displaying, making known or any other act of transferring information with a commercial message;

“approval” means approval by the municipality and “approve” has a corresponding meaning;

“garden” means a garden to which the public has a right to access; **“goods”** means any movable property and includes a living thing;

“intersection” means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act 93 of 1996);

“litter” means any object or matter which is discarded by a person in any place except in an approved receptacle provided for that purpose or at a waste disposal or processing facility; **“motor vehicle”** means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

“municipality” means –

- (a) the Kannaland Municipality, and includes any political structure, political office bearer, councilor, duly authorised agent, representative or service provider thereof or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councilor, agent or employee; or
- (b) A service provider fulfilling a responsibility under this by-law, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000, or any other law as the case may be;

“municipal manager” is the person appointed by the municipality in terms of Section 82 of the Municipal Structures Act, 1998 and includes any person:

- (a) acting in such position; and
- (b) to whom the municipal manager has delegated any power, function or responsibility in as far as it concerns the execution of those powers, functions or duties.

“nuisance” means any act, omission or condition which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people or which affects, or may affect, the safety of the public;

“official” means a designated officer who is authorized by the municipality to perform and exercise any or all of the functions and powers contemplated in this by-law;

“park” means a park to which the public has a right to access;

“perishable foodstuffs” mean perishable foodstuffs declared as such in the Perishable Foodstuffs Regulations published under Government Notice R1183 in Government Gazette 12497 of 1 June 1990 (as amended) in terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972 and which includes meat, milk, fish, fish spawn, molluscs, crustaceans, fruit, vegetables and bread;

“premises” includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

“prescribed” means prescribed by the municipality by resolution;

“property”, in relation to a street trader, means goods in which a street trader trades, and includes any article, container, vehicle or structure used or intended to be used in connection with street trading by the street trader;

2. Principles and objectives

- (1) The Municipality, acting in terms of section 6A(1)(a)(i) of the Businesses Act, 1991 (Act 71 of 1991), and –
 - (a) having regard to the principles set out in the Act and in the Constitution;
 - (b) taking into consideration the need of the residents to actively participate in economic activities; and
 - (c) taking into consideration the need to maintain a clean, healthy and safe environment, in this by-law provides mechanisms, procedures and rules to manage street trading.
- (2) In the development and management of its obligations and the implementation of this by- law, the municipality also recognises the infrastructural, social and economical disparities and inequalities resulting from previous local government dispensations and shall strive to overcome such disparities and inequalities by supporting the new goals for local government as determined in section 152 of the Constitution.
- (3) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Kannaland area, the need for local economic development, the duty to promote local tourism, the different customs, cultures, circumstances, geographical areas, kinds of premises, levels of development and conventions and the municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines, the granting of exemptions and the utilisation of liaison forums.

3. Application

This by-law applies to all persons who carry on the business of street trading within the area of jurisdiction of the Kannaland Municipality.

GENERAL PROVISIONS APPLICABLE TO STREET TRADING

4. Restricted and prohibited areas

- (1) The municipality may, in terms of section 6A(2)(a) of the Act and subject to the provisions of paragraphs (b) up to and including (j) of section 6A(2), declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited.
- (2) The municipality may by public notice and by erected sign indicate such areas, and the notice and sign must indicate –
 - (a) the restriction or prohibition against street trading;
 - (b) if street trading is restricted –
 - (i) the boundaries of the area or stand set aside for restricted street trading;
 - (ii) the hours when street trading is restricted or prohibited; and

- (iii) the goods or services in respect of which street trading is restricted or prohibited; and
 - (c) that the area has been let or otherwise allocated.
- (3) The municipality may change the areas contemplated in subsection (1) if the needs and circumstances of residents and street traders demand such reconsideration.
- (4) A person who carries on the business of a street trader in contravention of a notice contemplated in subsection (2) commits an offence.

5. Places where street trading is prohibited

- (1) Unless the municipality has so permitted in terms of an agreement or by means of the display of a sign, no person may carry on the business of a street trader in any of the following places:
 - (a) In a garden or a park to which the public has a right of access; or
 - (b) on a verge contiguous to –
 - (i) a building belonging to, or occupied solely by the State or the municipality;
 - (ii) a church or other place of worship; or
 - (iii) a building declared to be a public monument under the National Heritage Resources Act, 1999.
- (2) No person may carry on the business of a street trader in any of the following places:
 - (a) in a place declared by the municipality under section 6A(2)(a) of the Act as a place in which street trading is prohibited;
 - (b) at a place where street trading obstructs the use of the sidewalk by pedestrians or interferes with the ability of persons using the sidewalk to view the goods displayed behind a shop display window or obscures such goods from view.
 - (c) within 5 metres of an intersection as defined in Regulation 322 of the National Road Traffic Regulations published under GN R225 in GG 20963 of 17 March 2000 in terms of the National Road Traffic Act, 1996 (Act 93 of 1996);
 - (d) at a place where street trading obstructs –
 - (i) a fire hydrant;
 - (ii) the entrance to, or exit from, a building;
 - (iii) vehicular traffic;
 - (iv) access to a pedestrian crossing, a parking or loading bay or any other facility for vehicular or pedestrian traffic;
- (3) No person may purchase or offer to purchase from a street trader any goods or service, including casual labour services, in or at a place where street trading is prohibited.
- (4) A person who contravenes a provision of this section commits an offence.

6. Duties of street trader

- (1) A street trader must –
 - (a) when he or she concludes business for the day, remove his or her property, except if stored in any structure approved and permitted by the municipality, to a place which is not part of a public road or public amenity;
 - (b) when requested by an official of the municipality or a by a person who has been authorized to provide municipal services, move his or her property so as to permit the official or other person to carry out any work in relation to a public road, public amenity or service;
 - (c) keep the area or stand occupied by him or her in a clean and sanitary condition;
 - (d) ensure that the area is free of litter at all times, and must, when he or she concludes business for the day, dispose of litter generated by his or her business in receptacles provided by the municipality for the public;
- (2) A person who contravenes a provision of subsection (1) commits an offence.

7. Prohibited conduct

- (1) A street trader –
 - (a) may not sleep or overnight at the area where he or she is trading, or at the area where another street trader is trading;
 - (b) may not place or stack his or her property in such a manner that it –
 - (i) constitutes a danger to any person or property; or
 - (ii) is likely to injure any person or cause damage to any property;
 - (c) may not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
 - (d) may not release onto a public road or public amenity or into a storm water drain any fat, oil or grease in the course of conducting his or her business;
 - (e) may not allow smoke, fumes, noise, smells, or other substance arising from his or her activities to cause a nuisance or pollution of any kind;
- (2) A person who contravenes a provision of subsection (1) commits an offence.

8. Removal and impoundment

- (1) An official who reasonably suspects that property is being used or intended to be used in, or in connection with, street trading, whether or not the property is in possession or under the control of any person may, subject to subsection (2), remove and impound the property which he or she finds at a place where street trading is restricted or prohibited and which constitutes an infringement of any such restriction or prohibition.
- (2) An official who acts under subsection (1) must, except in the case of goods that have been left or abandoned, issue to the street trader a receipt for the property so removed and impounded and the receipt must contain the following particulars:
 - (a) the address where the impounded property will be kept and the period it will be kept;
 - (b) the conditions for the release of the impounded property; and
 - (c) that unclaimed property will be sold by public auction.
- (3) If any impounded property is attached to immovable property or a structure, and the impounded property is under the apparent control of a person present at that place, an official may order the person to remove the impounded property.
- (4) When a person fails to comply with an order to remove the impounded property, an official may take such steps as may be necessary to remove the impounded property.
- (6) A person who hinders or obstructs an official in the performance of his or her duties under this section, or who refuses or fails to remove the object when ordered to do so by an official, commits an offence.

9. Municipal employees and councilors may not purchase impounded goods

Employees and councilors of the municipality, or a family member, or a close associate of any municipal employee or councilor, may not purchase any goods offered for sale in terms of this by-law, either personally or through any other person, directly or indirectly.

MISCELLANEOUS PROVISIONS

10. Penalty

A person who has committed an offence in terms of these by-laws is, on conviction, and subject to penalties prescribed in any other law, 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.

11. Responsibility of persons employing street traders

When an employee of a person who performs an act which contravenes a provision of this by-law, the employer is deemed to have committed the contravention him- or herself, unless he or she proves that –

- (a) he or she did not permit such act;
- (b) he or she took all reasonable steps to prevent the performance of the act; and
- (c) it was not in the scope of the authority or the course of employment of the employee to perform an act which contravenes this by-law.

12. Indemnity

The municipality will not be liable for any loss or damage suffered arising from the impoundment of any goods in terms of this by-law.

13. Appeal

A person whose rights are affected by a decision of 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.

14. Revocation of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in these By-laws.

15. Short title and commencement

This by-law may be cited as the Kannaland Municipality Street Trading By-law and commences on the date of publication thereof in the Provincial Gazette.