

EThekweni Municipality: Informal Trading Amendment By-Law, 2017



Adopted by Council on the:

INFORMAL TRADING AMENDMENT BY-LAW, 2017

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from the existing By-law.

_____ Words underlined with a solid line indicate insertions in existing By-law.

To amend the eThekweni Municipality: Informal Trading By-Law, 2014 so as to prohibit an informal trader from trading in an area or place where informal trading is prohibited or restricted; trading in restricted areas; to provide for certain restrictions on informal trading; to provide for the impoundment of goods; to provide for the regulation of abandoned goods; and to provide for matters connected therewith.

BE IT MADE by the eThekweni Municipal Council as follows:

Amendment in the Table of Contents of the eThekweni Municipality: Informal Trade By-law, 2014

1. The Table of Contents of the eThekweni Municipality: Informal Trading By-law, 2014 (hereinafter referred to as the principal By-law) is hereby amended by the insertion of the following heading:

“35A. Abandoned goods”.

Amendment of Section 18 of the eThekweni Municipality: Informal Trading By-Law, 2014

2. Section 18 of the principal By-law is hereby amended by the addition of the following subsection after subsection (4):

“(5) An informal trader must not trade in any place or area where informal trading is restricted or prohibited in terms of this By-law.”

Amendment of Section 21 of the eThekweni Municipality: Informal Trading By-Law, 2014

3. Section 21 of the principal By-law is hereby amended–

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) place his or her goods on a public road[**or public place, with the exception of his or her motor vehicle or trailer from which informal trading is conducted: provided that such motor vehicle or trailer does not obstruct pedestrian or vehicular traffic movement and complies with the provisions of the National Road Traffic Act, 1996 (Act No. 93 of 1996)**];”;

(b) by the substitution in subsection (1)(b) for the words preceding sub-paragraph (i) of the following words:

“(b) allow his or her goods or area of activity to cover an area of a [**public road or a**] public place which–”;

(c) by the substitution in subsection (1) for paragraphs (n) and (o) of the following paragraphs:

“(n) trade below the high water mark; [**or**]

(o) trade in a park, unless such area has been declared by the council as an informal trading area[.];

(d) by the addition in subsection (1) of the following paragraphs after paragraph (o):

“(p) trade from a trolley or similar device; or

(q) trade from a motor vehicle.”; and

(e) by the addition of the following subsection after subsection (2):

“(3) Any person–

(a) trading in goods or services; or

(b) displaying goods or services,

in a public place will be regarded as engaging in informal trading.”

Substitution of Section 35 of the eThekweni Municipality: Informal Trading By-Law, 2014

4. The following section is hereby substituted for section 35 of the principle By-law:

“Removal and impoundment

~~35.(1) Subject to subsection (3), an authorised official may remove and impound goods in terms of the Criminal Procedure Act, 1977 (Act No 51 of 1977) any goods of an informal trader which he or she reasonably suspects is being used, has been used or is intended to be used for or in connection with—~~

(a) trading in a place or area—

(i) where informal trading is prohibited or restricted, as per section 18(5); or

(ii) prohibited or restricted by the Municipality, as per section 31(1);

(b) trading without a valid informal trading permit issued by the Municipality, as per section 11; or

(c) trading in illegal goods.

(2) An authorised official may remove and impound goods which he or she has satisfied on reasonable grounds that such goods have been abandoned.

(3) The removal and impoundment of goods in terms of subsection (1) may be carried out irrespective of whether or not such goods are in the possession or under the control of any third party at the time.

(4) Any authorised official who removes and impounds goods in terms of subsection (1) must, except where goods have been left or abandoned in terms of section 35A, issue the informal trader a receipt which—

(a) captures the full name, identity number and contact details of the trader;

(b) states the relevant section of the by-law contravened by the informal trader;

(c) itemises the goods to be removed and impounded;

(d) states the period of impoundment;

(e) states the terms and conditions which must be met to secure the release of the impounded goods;

(f) states the impoundment fee to be paid to secure release of the impounded goods;

(g) states the place at which the goods will be kept and where representations may be made for the payment of the fee and release of such goods;

(h) contains an acknowledgement signed or marked by the informal trader confirming that—

(i) the contents of the receipt are correct;

- (ii) the contents of the receipt have been explained to him or her; and
- (iii) he or she understands the consequences of impoundment and the requirements for the release of such impounded goods; and
- (i) contains the name of the authorised official concerned and the time and date of impoundment.

(5) The Municipality must upon the presentation of such goods at the place of impoundment—

- (a) keep a register of impounded goods;
- (b) immediately enter in the register the—
 - (i) details of the informal trader as per subsection (4);
 - (ii) details of the goods removed and impounded, including the condition of such goods;
 - (iii) place and area where such goods were removed from;
 - (iv) name of the authorised official who attended to the removal and impoundment of the goods; and
 - (v) time of such removal and impoundment.

(6) Goods which have been impounded must, subject to subsection (10), be released after proof of ownership in the form of the presentation of the receipt contemplated in subsection (3) together with—

- (a) proof of payment of the impoundment fee;
- (b) proof of payment of a fine imposed; or
- (c) where applicable proof of payment of the impoundment fee and the imposed fine,

(7) Where perishable goods and foodstuffs were impounded, the Municipality may, subject to subsection (8), sell, destroy or dispose of such goods and foodstuffs if the informal trader did not secure the release of such perishable goods and foodstuffs in terms of subsection (8) within 48 hours of such impoundment.

(8) Subject to subsection (7), the Municipality may at any time after the impoundment sell, destroy or otherwise dispose of impounded—

- (a) perishable goods if the goods represent or might represent a health risk or a nuisance; and
- (b) foodstuffs which are unfit for human consumption :Provided—

(i) an assessment of the perishable goods or foodstuffs is conducted by an authorised official of the Municipality's Health Department and a notice has been issued by such official for the sale, destruction or disposal of such perishable goods and foodstuffs; and

(ii) a notice has been served on the informal trader concerned advising him or her—

(aa) that his or her impounded goods are to be sold, destroyed or disposed of;

(bb) of the time of such sale, destruction or disposal; and

(cc) of the reasons for such sale, destruction or disposal.

(9) Impounded goods other than perishable goods or foodstuffs may be sold by the Municipality if the informal trader does not, or is unable to, pay the impoundment fee within three months from the date of impoundment of those goods.

(10) After the three month period mentioned in subsection (7) has lapsed, the Municipality must serve a notice on the informal trader concerned advising him or her—

(a) that the Municipality intends selling his or her impounded goods as a result of his or her failure to secure the release of such goods within the specified time;

(b) of the date, time and place where representations may be made by the informal trader as to why the Municipality should not sell his or her goods; and

(c) of the date, time and place of such sale should the informal trader prove to be unsuccessful in his or her attempt to have such goods released as per paragraph (b).

(11) If impounded goods are sold by the Municipality in terms of subsection (9), and upon the presentation of the receipt contemplated in subsection (4) as proof of ownership, the Municipality must pay to the person presenting the inventory the proceeds of the sale less the impoundment fee.

(12) If in the reasonable opinion of an authorised official, an informal trader is suspected of trading in illegal goods, then those goods may be immediately confiscated and, in the event of such a confiscation, the authorised official must—

(a) comply with the requirements of this section; and

(b) immediately surrender the suspected illegal goods to the possession of the South African Police Service."

Insertion of section 35A of the eThekweni Municipality: Informal Trading By-Law, 2014

5. The following section is hereby inserted after section 35 of the principle By-law:

“Abandoned goods

35A.(1) The Municipality shall regard the following as abandoned goods:

- (a) goods found on a public road or public place that do not appear to be under the control of any person;
- (b) goods found on a public road or public place at the end of a day’s business;
- or
- (c) goods found in a manhole, storm water drain, public toilet, public transport shelter or in any tree or shrub.

(2) Any abandoned goods found by the Municipality may be removed and immediately delivered to a place of impoundment.

(3) The Municipality must–

- (a) keep a register of abandoned goods at all places of impoundment;
- (b) immediately enter in the register the–
 - (i) details of the goods removed, including the condition of such goods;
 - (ii) place and area where such goods were removed from;
 - (iii) name of the authorised official who attended to the removal of the goods; and
 - (iv) time and date of such removal,

upon the presentation of such goods at the place of impoundment.

(4) Where abandoned goods have not been claimed within 14 days from the date of removal, the Municipality may–

- (a) destroy the goods where the sale of such goods is not practical; or
- (b) subject to section 35(13), sell such goods in a public auction.

(5) Where abandoned goods have been sold in terms of paragraph 4(b), the proceeds of such sale are to be forfeited to the Municipality.”.

Short title and commencement

6. This By-law is called the eThekweni Municipality: Informal Trading Amendment By-Law, 2017 and comes into operation on the date of publication in the *Provincial Gazette*.