



DRAKENSTEIN

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Paarl | Wellington | Gouda | Saron | Simondium

Informal trading management Policy

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Signed by the City Manager

Signature Date

28 March 2018

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1. DEFINITIONS

For purposes of this policy, unless otherwise stated, the following definitions shall apply:

Municipality	Means the Municipality of Drakenstein established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), Provincial Notice 488 dated 22 September 2000.
Informal trader	Means a person, or an enterprise which is not registered or incorporated in terms of the corporate laws of South Africa, and who or which engages in informal trading whether such person is registered as an informal trader or not.
Permit-holder	Means an informal trader who has been granted a permit by the municipality to conduct informal trading in a trading area.
Special events	May include, but are not limited to, sports events, night markets, flea markets, bazaars, traditional events, fundraising events, cultural events, music festivals, promotional events and religious events.
Street Trading Sites	Means trading area or trading stands provided by Drakenstein Municipality in areas determined and approved by Drakenstein Municipality Council.
Demarcated trading area	Means an area designated for the purposes of informal trading after having followed the process for designation in terms of the Businesses Act 71 of 1991.
illegal goods	Goods that are illegal to sell or to buy (including but not limited to counterfeit goods as defined in the Counterfeit Goods Act No. 37 of 1997).
Historically Disadvantaged individuals	Means persons who, although of legal age to vote, did not have the right to vote before 1994 in the South African elections.
Businesses Act	Means the Businesses Act, No. 71 of 1991 including any regulations issued thereunder.
Law Enforcement officer	Shall be an officer who is duly authorized to act as a peace officer in terms of Commissioner of Oath and Justice of Peace Act of 1975



2. PREAMBLE

The Constitution of the Republic of South Africa, 1996 provides that municipal government is responsible for "trading regulations" and "street trading" within its area of jurisdiction, and a local government's objective is to promote social and economic development.

The municipality recognizes that informal trading makes an important contribution to the economic and social environment of Drakenstein citizens and thereby helps in the absorption of many who would otherwise be economically idle.

The municipality acknowledges the need to shift away from a culture of prosecution to a culture of accommodation of informal traders. The emphasis is shifting away from punitive law enforcement towards creating a supportive environment for the informal trading sector to thrive.

The municipal By-Law No.14/2007 on informal trade in Drakenstein Municipality contains provisions that govern informal trade within designated trading areas. Certain definitions and provisions of this By-Law will apply to this policy in order to ensure consistency and effective law enforcement.

3. LEGISLATIVE FRAMEWORK

The following are key legislative imperatives that provide a mandate to Drakenstein Municipality to support, manage and control activities within the Informal Trading sector.

LEGISLATION	RELEVANCE
Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)	Section 22 of the Constitution of the Republic of South Africa (the Constitution) provides for the freedom of trade, occupation and profession. It provides that "every citizen has the right to choose their trade, occupation or profession freely." It is accepted that this freedom extends to informal trading. Section 22 of the Constitution further provides that "the practice of a trade, occupation or profession may be regulated by law."



The Businesses Act 71 of 1991	Prohibits the conduct of any business without the possession of a requisite licence. Makes specific provision for the licensing of businesses.
The National Road Traffic Act 93 of 1996	Determines where, on public roads, a trader may/may not trade.
The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)	Prohibits the state or any person from discriminating unfairly against any person on the grounds of race or gender through the denial of access to opportunities for rendering services or by failing to take steps to reasonably accommodate the needs of such persons.
Regulation 918 promulgated under The Health Act 63 of 1977	Establishes the manner for the application and issue of Certificates of Acceptability.
The Atmospheric Pollution Prevention Act 45 of 1965	Establishes the framework for the prevention of pollution in the atmosphere and provides for matters incidental thereto.
Counterfeit Goods Act 37 of 1997	Introduces measures aimed against the trade of counterfeit goods.

4. POLICY SCOPE, OBJECTIVES AND PRINCIPLES

4.1 Policy Scope

The different types of informal trading that take place in the municipality are covered by the policy, namely:

- Kerbside traders – This shall be traders who trade on the sidewalks of pedestrian walkways or public roads;
- Market traders – This shall be traders who trades in formal markets and shall be applicable to traders that particularly trade on a Saturday;
- Business Hive traders – This shall be traders who trade from areas developed by the Municipality as business hives or business parks;
- Traders trading from intersections – This shall be traders or vendors that sells newspapers or magazines from the intersections; and




- Weekend traders and special day traders – shall be traders who trade only weekends or on special days such as social grant payout days.

4.2 Policy Objective

Drakenstein Municipality acknowledges the relevance and contribution of informal trading to the economic and social life of the area. Informal Trading provides some income to those who are unemployed as well as providing an alternative to established traditional formal sector retail options.

The main aim of the Informal Trading Management Policy is to create a favorable economic environment that recognize informal trade as a legitimate expression of business and economic activity through effective management, control and law enforcement.

4.3 Guiding Principles

The key principles that govern the Municipality's approach to Informal Trading are economic, social and spatial:

a) Economic Principles

Economic growth in the Informal Trading sector will be facilitated through:

- Linking the development and growth of trading areas to commercial zones in order to create viable hubs of business activity that will mutually benefit formal/informal businesses;
- Providing a range of facilities, capacity building and business support services that caters for the different levels of traders, from the weekly Saturday trader and small survivalist trader to larger traders;
- Ensuring that the buildings and property owned by the Municipality are used for the maximum social and economic development of the community within which they are located; and
- Targeting highly accessible and visible locations for the promotion of tourist related trading in order to derive benefit for informal traders from the tourist potential.

b) Social Principles

The promotion of equity within Drakenstein to create a dignified trading area through:

- Spreading public spending in an equitable manner throughout the area with an emphasis on the poorer parts of the Drakenstein area that have not historically benefited from Public Sector investment;



- Viewing the location of Public Sector investment as an opportunity to improve the general environmental condition of the historically disadvantaged areas of the region;
- Viewing the location of Public Sector investment as an opportunity to integrate communities that have historically been spatially separated; and
- Providing basic services such as water and refuse facilities to all areas where public health and for public safety is at risk.

c) Spatial Principles

Informal trading contributes to the value of public spaces as amenities, place of dignity, and has the potential to be a catalyst for generating positive public spaces through:

- Developing those areas that will have most significant impact on the largest number of people, i.e. areas with large flows of pedestrian traffic;
- Allocating spaces for Informal Trading areas in accordance with broad spatial planning policies of Council and the Spatial Development Framework; and
- Providing minimal infrastructure for informal trading, which would vary depending on the type of activity.

5. DEMARCATION PROCEDURE

5.1 Demarcation by way of Section 6 A of the Businesses Act of 1991

Demarcation in terms of Section 6 A of the Businesses Act of 1991 shall be applied in the following manner:

- A Municipality may by resolution demarcate areas for the purposes of informal trade in its area of jurisdiction;
- Once such resolution is taken, the Municipality shall advertise the resolution with the intended areas to be demarcated for public comment for 21 days;
- Once the demarcated areas have been advertised for 21 days, the Municipality shall take a resolution to publish the demarcated areas in the Provincial Gazette;
- After such resolution have been taken, the Municipality shall publish the demarcation in the Provincial Gazette for a period of 60 days; and




- After publication, the Municipality shall send the approved document to the provincial Department of Local Government for notification.

5.2 Demarcation by way of municipal Council trading plan

In terms of the Constitution of South Africa, the Council has concurrent legislative competence. In terms of such competence, the Council is entitled to set out areas identified for informal trading areas and by resolution declare such areas as informal trading areas.

6. APPLICATION PROCESS

6.1 Informal Trading Permits/licenses

- Application forms for trading permits are available at the Economic Growth and Tourism Offices in Wellington and all municipal libraries;
- Applicants must bring the following supporting documents for their applications:
 - Certified copy of their ID's;
 - Two ID sized photos; and
 - Proof of address.
- The prescribed form must be completed with supporting documents and be handed to the Economic Growth Officer for processing;
- An acknowledgement of receipt letter is issued;
- The Economic Growth Officer checks whether the application for trading space falls within the demarcated areas;
- If it falls within the demarcated areas, recommendation of approval is made;
- The application is sent for approval to the Senior Manager: Economic Growth and Tourism;
- The application is approved, a permit is issued, and the relevant information is captured on the central database;
- If an application is not approved, the applicant has the right to appeal the decision; and
- The turnaround time for an application is approximately 3 days.



6.2 Bricked Structures

- The Municipality's Economic Growth and Tourism Division, will identify vacant bricked structures and subsequently;
- Advertise all bricked structures defined as a structure that is built with bricks and mortar in a local newspaper for a period determined by the municipality;
- Prospective applicants are required to submit a compulsory comprehensive business plan that explains the type of business they will be operating from the premises;
- Applicants must submit a prescribed application form, which must be completed with supporting documents and be handed to the Economic Growth and Tourism Officer for processing; and
- An acknowledgement of receipt letter will be issued.

7. SELECTION PROCESS

7.1 Bricked Structures

- Only applications received on or before the closing date of advertised bricked structures will be considered/ evaluated based on a set criteria;
- Applicants whose application forms and business plan meet the criteria will be shortlisted;
- Shortlisted applicants will be invited for an interview to determine the suitability and sustainability of their proposed informal business;
- The interview panel will draft a recommendation memorandum to the Municipality's Strategic Management Team;
- The Strategic Management Team will review the recommendations and forward the final applicants names to the Mayoral Committee for approval;
- The Mayoral Committee review and provide a final approval;
- Successful applicants will be informed about the outcomes of their applications and invited to review and sign lease agreements; and
- Relevant information is captured on the central database.



8. ALLOCATION OF TRADING BAYS

Central to equitable allocation of trading bays, is the compilation of traders information in a particular area, which will include but not limited to; ID number or any recognized form of identification, proof of address, description of goods being sold, trading location and any other required information. Allocation of trading bays will be based on the following criteria's:

8.1 Criteria for bricked structures

- Only emerging micro-enterprises;
- Once spaces are allocated, successful applicants will be encouraged to join an Association in the area in order to facilitate the provision of sector specific support and business services;
- Preference will be given to historically disadvantaged individuals defined as those who, although of legal age to vote, did not have the right to vote before 1994 in the South African elections;
- Preference will be given to individuals that are registered on the Voters roll of Drakenstein;
- The trader/business owner must be in possession of a valid South African identification document or working permit;
- The trader/business owner must trade for at least 4 days per week and for 45 weeks of the year;
- Only one trading space will be issued per business owner;
- Only one trading space will be issued per household;
- In the case of foodstuffs, the business owner must be in possession of the required business license and certificate of acceptability;
- Applicants who have successfully operated an emerging micro-enterprise in the past year will get preference;
- Applicants who submit compulsory comprehensive business plans will get preference;
- Preference will be given to applicants who are selling South African products or are self-producing the stock or service; and
- Where possible, trading spaces will be allocated in such a manner to prevent those formal/informal traders selling or producing similar items being in close proximity to one another.



8.2 Criteria for outdoor trading bays

- Only bona-fide informal traders will be eligible;
- Previous experience as a trader, in particular where there is a history of trading in a specific geographical area;
- Preference will be given to historically disadvantaged individuals defined as those who, although of legal age to vote, did not have the right to vote before 1994 in the South African elections;
- Preference will be given to individuals that are registered on the Voters roll of Drakenstein;
- Preference will be given to unemployed individuals;
- The informal trader must be in possession of a valid South African identification document or working permit;
- The informal trader must trade for at least 4 days per week and for 45 weeks of the year;
- There must be sufficient product diversity in an area to ensure the needs of consumers are appropriately met as well as ensuring sufficient market share for traders, for them to operate profitably;
- Only one permit will be issued per trader;
- Only one permit will be issued per household; and
- In the case of foodstuffs, the trader must be in possession of the required business license and certificate of acceptability.

8.3 Other conditions

Subject to, and in compliance with Section 6A (1), (2) and (3) of the Businesses Act No. 71 of 1991, the allocation of trading bays is to be based on the following:

- Existing and new informal traders;
- The nature of the goods and services the permit holder is permitted to trade (preference will be given to locally produced goods);
- In high demand zones, alternative allocation models will be explored, where deemed appropriate to enhance the trading mix; and
- Once bays are allocated informal traders will be encouraged to join an Association in the area;



9. PERMITS AND LICENCE

In order to qualify for a permit, the applicant:

- Must be an informal trader, or desire to become an informal trader;
- May not already hold a permit in respect of the trading area in respect of which a permit is being applied; and
- Must be a South African citizen, failing, which, must be in possession of a valid work permit, which includes, but is not limited to, a refugee permit.

The municipality will take into account the following factors when considering an application for a permit:

- The applicant's ability to meet the trading hours for the relevant trading area as the municipality may determine;
- The need to give preference to applicants that are historically disadvantaged individuals;
- The nature of the trading goods which the applicant intends selling, or the services which the applicant intends rendering, bearing in mind the nature of the businesses within that trading area or in its immediate vicinity;
- The need to give preference to unemployed applicants; and
- The applicant who shares a household with a permit-holder is not a dependant or financially reliant upon such permit-holder.

9.1 Other conditions

- No person may conduct informal trading in the municipality jurisdiction without a valid permit issued by the municipality; and
- The municipality is entitled to charge a permit-holder a trading fee and an application fee.

The following permits shall apply mutatis mutandis

- Regular Street Vendor – Such permits shall be issued to traders that trade on sidewalks and pedestrian walkways and shall trade 4 days per week;
- Weekend Traders – Such traders shall only have a permit to trade on Fridays and Saturdays. Such permits will only be issued for a limited duration before reapplication;



- Pay point Traders – Such permits shall be a day permit and will only be for traders who trade on the days social grants are paid;
- Market Traders – Permits will be issued by the market organizer in consultation with the municipality; and
- Special Permits – These are special permits that are issued and trading on non-demarcated sites can be approved if such trading is for fund raising purposes only.

There must be sufficient product diversity in an area to ensure the needs of consumers are appropriately met as well as ensuring sufficient market share for traders, for them to operate profitably to this end Council shall have the right to review or withdraw a permit if such conditions are not met;

- Only one permit will be issued per trader;
- Only one permit will be issued per household; and
- In the case of foodstuffs, the trader must be in possession of the required business license and certificate of acceptability.

10. ASSISTANCE TO INFORMAL TRADERS

10.1 Informal trader's upliftment strategy

Support for informal traders are provided through the Informal Trading Upliftment Strategy (ITUP). The National Department of Small Business Development manages the programme. In terms of the programme informal traders attend a training programme of 20 weeks through an FET College. After receiving such training, they are provided with financial support from the Department equal to R 8000.00.

10.2 Provision of infrastructure

In certain instances, the municipality provides basic infrastructure to informal trades by utilizing its capital budget to build shelters for informal traders. The structures that are built are rented to the traders under strict condition for a period of 12 months renewable.

11. TARRIFF STRUCTURE

The municipal Council will determine the tariff structure based on the following services offered at different areas designated for informal trading




DISCRETE LOCATION	BRICKED STRUCTURES	OUTDOOR TRADING BAYS	MARKED DEMARCATED TRADING AREA
SERVICES			
1. Storage and Security	X		
2. Refuse Removal and Cleaning Services	X	X	X
3. Electricity, Water and Ablution Facilities	X		
4. Trading Permit	X	X	X

12. INSTITUTIONAL ARRANGEMENTS

There are basically 4 key components to informal trading within the Council:

- Policy formulation and revision;
- Regulation and enforcement;
- Developmental responsibilities; and
- Management / Operations;

Control of policy formulation and regulation should always reside directly with the Council. However, external service providers that are managed directly or indirectly by Drakenstein Municipality can provide development and management. Coordination and consultation takes place mainly through the Informal Traders Associations. In each town, there is a committee which is independent from Council and is only used for consultative purposes and not decision-making.

13. LAW ENFORCEMENT

In order to enhance our area's image in the eyes of both, its residents and visitors, the conduct of traders will be strictly monitored. Anti-social and other unruly behavior will be viewed as misconduct.

- No trader will be permitted to carry on such business in a manner, which creates a nuisance, is a danger or threat to public health and safety, or damages or details any Council property;

- Disciplinary and appeal procedures will be dealt with as outlined on page 32 in paragraph 62 in the Municipal Systems Act 32 of 2000;
- Where a trader violates the permit conditions, he/she will be informed in writing of the violation and course of action. Permit fees will not be refundable if the permit is revoked or suspended;
- Punitive measures could include a warning, a suspension for a specified period or the total withdrawal of such trading permit;
- The trader will have the opportunity to put his/her case forward at an inquiry and he/she will be permitted to submit written representations to the City Manager or delegated official; and
- In the case of a trader being refused a permit or having his/her permit revoked, the appeal procedures will be followed through the Appeals Committee. In terms of the Municipal Systems Act, should the complaint be about a Council official it must be referred to the City Manager, should the complaint be about an elected official it should be referred to the Executive Mayor;

13.1 Removal and impoundment

- A Law Enforcement officer may remove and impound 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 informal trading which is in contravention of this policy or any other applicable law;
- The removal and impoundment of goods 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;
- Any Law Enforcement officer who removes and impounds must, except where goods have been left or abandoned, issue the informal trader a receipt which:
 - itemizes the goods to be removed and impounded;
 - provides the address where the impounded goods will be kept;
 - states the period of impoundment;
 - states the terms and conditions which must be met to secure the release of the impounded goods;
 - states the impoundment fee to be paid to secure release of the impounded goods;
 - states the terms and conditions on which unclaimed goods will be sold or otherwise disposed of;
 and



- provides the name and address of a municipal official to whom any representations regarding the impoundment may be made and the date and time by which representations must be made.
- The municipality may at any time after the impoundment sell, destroy or otherwise dispose of:
 - impounded perishable goods if the goods represent or might represent a health risk or a nuisance; and
 - Foodstuffs that are unfit for human consumption.
- Impounded goods other than perishable goods, may be sold by the municipality if the owner does not, or is unable to, pay the impoundment fee within one month from the date of impoundment of those goods;
- If in the reasonable opinion of a Law Enforcement officer, 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 authorized official must–
 - Immediately surrender the suspected illegal goods to the possession of the South African Police Service.
- When an employee or agent of an informal trader contravenes a provision of any informal trading policy or informal trading permit, the informal trader shall be deemed to have committed such contravention himself or herself unless such informal trader satisfies the court that he or she took reasonable steps to prevent such contravention.
- A person is guilty of an offence if he or she;
 - Trades without an informal trading permit;
 - Contravenes any provision of this policy;
 - Contravenes any condition on which a permit has been issued to him or her;
 - Contravenes any provision of an applicable By-Law; and
 - Threatens, resists, interferes with or obstructs any Law Enforcement officer in the performance of official duties or functions in terms of or under this Policy.



14. DISPUTE RESOLUTION PROCEDURE

All traders that were informed by the Economic Growth and Tourism Division that their application was unsuccessful or when a permit has to be recalled shall be entitled to appeal such decision in terms of the normal administrative justice process. The process shall be as follows:

- The trader shall request in writing to the Department to furnish reasons why he/she was not successful. The Department must respond within 7 days of receipt of request;
- Once the Department furnishes the trader with reasons, the trader shall be afforded the opportunity to make written representations to an appeals committee dealing with the appeal. The committee shall consist of the City Manager or delegated official; and
- Once the ad hoc Appeals Committee has reached its decision, it shall communicate such decision to the trader in writing within 14 days.

15. REGULAR REVIEW PROCESSES

The Informal Trading Management Policy must be reviewed annually to ensure that it complies with the Municipality's strategic objectives and current legislation.

A handwritten signature in black ink, consisting of a stylized first name followed by a more complex surname.