

WITZENBERG MUNICIPALITY: INFORMAL TRADING BY-LAW, 2025

Adopted by Council on the:

Promulgated on:

INFORMAL TRADING BY-LAW, 2025

To provide for the right to engage in informal trading; to establish informal trading areas and informal trading sites on municipal property; to provide for the granting of trading permits to trade on municipal property; to restrict and prohibit informal trading in certain areas; to regulate the conduct of informal traders; to regulate informal trading at special events; to provide for measures to ensure health and safety; to indicate offences and penalties; to provide for the repeal of bylaws; and to provide for matters incidental thereto.

TABLE OF CONTENTS

CHAPTER 1 INTERPRETATION

1. Definitions
2. Interpretation of By-law
3. Objects of By-law
4. Application of By-law

CHAPTER 2 FREEDOM TO TRADE INFORMALLY

5. Freedom to engage in informal trading

CHAPTER 3 INFORMAL TRADING ON MUNICIPAL PROPERTY

6. Trading areas and trading sites
7. Trading hours and other conditions
8. Prohibition: informal trading on municipal property without permit
9. Informal trading permits
10. Informal trading fees
11. Transfer of informal trading permits
12. Removal and suspension of informal trading permits
13. Temporary relocation and suspension

CHAPTER 4

RESTRICTIONS AND PROHIBITIONS ON INFORMAL TRADING

14. Restricted or prohibited areas
15. Restricted conduct: erection of structures
16. Restricted conduct: use of the site overnight
17. Restricted conduct: location of trading
18. Restricted conduct: display and storage of goods
19. Restricted conduct: fires
20. Restricted conduct: litter
21. Restricted conduct: attachments
22. Restricted conduct: alcohol, sound-emitting devices and electricity
23. Restricted conduct: general
24. Environmental health
25. Temporary relocation
26. Special events
27. Obligation of owners on non-municipal property

CHAPTER 5

ENFORCEMENT

28. Recovery of costs
29. Removal and impoundment
30. Vicarious liability
31. Offences
32. Penalties

CHAPTER 6

MISCELLANEOUS PROVISIONS

33. Appeals
34. Repeal of laws and savings
35. Short title and commencement

PREAMBLE

WHEREAS the council recognizes the key role that informal trading plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal trading has on historically disadvantaged individuals and communities;

WHEREAS the council recognizes the need to adopt a developmental approach to informal trading within a well-managed municipal area. This requires that, in managing informal trading, consideration must also be given to –

- (a) the promotion of social and economic development;
- (b) the promotion of a safe and healthy environment;
- (c) municipal planning;
- (d) the licensing and control of undertakings that sell food to the public; and
- (e) the management of public places and public roads;

WHEREAS the council has competence in terms of Part B of Schedules 4 and 5 of the Constitution relating to such matters as the control of street trading, trading, and markets;

AND WHEREAS the Witzenberg municipal council has competence, in terms of section 156 (2) of the Constitution of the Republic of South Africa as amended, read with section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as amended, to make and administer by-laws for the effective administration of the matters which it has the right to administer, hereby makes the following By-law:

CHAPTER 1 INTERPRETATION

Definitions

1. In this By-law, unless the context otherwise-

“**act**” means the Business Act, 1991, (Act 71 of 1991)

“ **abandoned goods**” shall mean:

- (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 that do not appear to be under the control of any person;
- (c) goods found in a manhole, storm water drain, public toilet, taxi rank or in any tree of shrub where no evidence is available that it belongs to a specific persons.

"authorized official" means a person authorized to implement the provisions of this By-law, including but not limited to:-

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) a traffic officer appointed under section 3A of the National Road Traffic Act, 1996 (Act 93 of 1996);
- (c) a member of the Service as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995) or
- (d) such employees, delegated nominees, representatives and service providers of the Municipality as are specifically authorized by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"foodstuffs" means foodstuffs intended for human consumption as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

“goods” means any movable property displayed or kept by a person in a public place or public road used or intended to be used in connection with carrying on the business of an informal trader and includes wares, articles, receptacles, vehicles or structures

“illegal goods” means –

- (a) goods which may not lawfully be sold or bought including, but not limited to, counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);
- (b) goods that are bought or sold in an unlawful manner; or
- (c) goods that have been acquired in an unlawful manner.

“impoundment fee” means the applicable tariff charge, as determined by the council from time to time, for the impounding and storing of goods impounded in terms of this By-law, as well as the disposal or releasing of the impounded goods and any associated costs;

“informal trader” means a person carrying on the business of street vendor, peddler or hawker and includes any employee of such person;

“informal trading” means the trading in goods and services in the informal sector by an informal trader in a public road or public place, irrespective whether it is in a residential area, town or informal settlement and which typically includes, without limitation, the following types of trading:

- (a) street trading;
- (b) trading in public places;
- (c) mobile trading, such as caravans, light delivery vehicles and trailers;
- (d) trading from kiosks, stalls or containers;
- (e) trading at special events;
- (f) trading at markets

“kerb line” means the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“litter” includes any container, wrapping or other waste which has been discarded or left behind by an informal trader or by his or her customers;

“market” means an area within an informal trading area which is designated as a market on an informal trading plan and which is managed in a coordinated manner;

“motor vehicle” means any self-propelled vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996)

“municipal council” or **“council”** means the Witzenberg municipal council, a municipal council referred to in section 157(1) of the Constitution;

“Municipality” means the Witzenberg Municipality, a category B Municipality as envisaged in terms of section 155(1) of the Constitution of South Africa

“municipal manager” means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

“municipal property” means property owned by, leased by or under the control of the Municipality;

"national monument" means any one of the "public monuments and memorials" as defined in terms of section 2 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

“non-municipal property” means property that is situated within the area of jurisdiction of the Municipality but which is not owned by, leased by or under the control of the Municipality;

"nuisance" means any conduct or behaviour by any person or the use, keeping, producing, by-producing, harbouring or conveying, as the case may be, of any item, substance, matter, material, equipment, tool, plant or animal or causing or creating any situation or condition in or on private property or in a public place or anywhere in the Municipality which causes damage, annoyance, inconvenience or discomfort to the public or to any person, in the exercise of rights common to all or of any person;

"obstruct" means to do anything which blocks or is likely to block vehicular or pedestrian traffic flow on a public road;

“once-off event” means an event that occurs only once annually;

"park" means a garden or park to which the public has a right of access, and “garden” has the same meaning;

“permit-holder” means an informal trader who has been granted a permit by the Municipality, to conduct informal trading from a designated site situated in an informal trading area on municipal property;

"prescribed" means as determined by resolution of the council from time to time;

"public building" means a building belonging to or occupied solely by any sphere of the government, including the Municipality;

"public parking space" means any space in a public place designated by the Municipality for the parking of a motor vehicle;

"public place" means -

- (a) a public road;
- (b) a public parking space; and
- (c) any square, park, recreation ground, sports ground, shopping centre, municipal cemetery, open space, or vacant municipal land which is vested in the Municipality, or in respect of which the public has the right of use, or which is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's office as having been provided for the use of the public or the owners of erven in such township;

"public road" 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;

"roadway" means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic, which is between the edges of the roadway, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"sell" includes -

- (a) bartering, exchanging or hiring out;
- (b) displaying, exposing, offering or preparing for sale;
- (c) storing on a public road or in a public place with a view to selling; and
- (d) providing a service for reward,

and "sale" or "selling" has a corresponding meaning;

"services", in relation to an informal trader, includes any advantage or gain given or supplied by the trader in return for consideration or reward;

“shoulder” means that portion of the road, street or thoroughfare between the edge of the roadway and the kerb line, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"sidewalk" means that portion of a verge intended for the exclusive use of pedestrians, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"verge" means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway on the shoulder, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

“special event” means events that include but are not limited to: concerts, parades, circuses, fairs, festivals, block parties, community events, running and bicycle races.

Interpretation of By-law

2. If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

Objects of By-law

3. The object of this By-law is to regulate informal trading in a manner which –
 - (a) ensures that informal trading is conducted in an orderly manner and on demarcated areas;
 - (b) enables access to job and entrepreneurial opportunities within the informal trading sector;
 - (c) harmonizes the relationship between the informal trading sector and the formal trading sector; and
 - (d) ensures the health and safety of the public
 - (e) Ensures inclusive public participation which recognize and protects the rights of all those impacted by informal traders

Application of By-law

4. This By-law applies to all areas which fall under the jurisdiction of the Witzenberg Municipality and is binding on all persons to the extent applicable.

CHAPTER 2

FREEDOM TO TRADE INFORMALLY

Freedom to engage in informal trading

5. Subject to compliance with the provisions of –

- (a) this By-law;
- (b) any other applicable law; and
- (c) any applicable informal trading permit,
- (d) Municipal rules governing informal trading

Any qualifying person that resides legally within South Africa and that has not been previously banned from trading at Witzenberg Municipality, is permitted to engage in informal trading within the demarcated area which falls within the jurisdiction of the Municipality.

CHAPTER 3

INFORMAL TRADING ON MUNICIPAL PROPERTY

Trading areas and trading sites

6. (1) The council may, by resolution

- (a) set apart informal trading areas on municipal property within any area designated as an informal trading area and
- (b) demarcate informal trading sites within informal trading areas.

(2) The council may on reasonable and justifiable grounds, by resolution –

- (a) extend, move, reduce, establish or disestablish any informal trading area or informal trading site

(3) No person is allowed to trade on municipal property if it is not deemed a demarcated informal trading area by Council

Trading hours and other conditions

7. The Municipality may when setting apart informal trading areas, or at any time thereafter on reasonable notice, impose -

- (a) trading days and hours; and
- (b) any other conditions.

The trading days will be:

- Monday to Thursdays: 7h00 – 17h00
- Fridays: 07h00 – 19h00
- Saturdays: 07h00 – 16h00
- Sundays: informal trading allowed under special circumstances. A special permit allowing Sunday trading will then be applicable with additional costs for trading on a Sunday. Trading on Sundays will only be allowed from 07h00 - 14h00.

Prohibition: informal trading on municipal property without permit

8. No person may conduct informal trading on municipal property without a valid informal trader permit from the Municipality.

- a. Only the permit holder or his authorized representative may trade with the permit.

9. Informal trading permits

(1) Trading without a valid trading permit in the demarcated Municipal areas are prohibited.

- a. An application for an informal trading permit must be on the official administrative form prescribed by the Municipality

(2) The Municipality must consider any application for an informal trading permit and may—

- (a) approve it subject to any conditions;
- (b) request that additional information be furnished within a specified time frame; or
- (c) reject the application and provide reasons thereof.

- (3) The Municipality may, when issuing an informal trading permit, impose any reasonable conditions, including but not limited to—
 - (a) minimum or maximum trading hours;
 - (b) restrictions regarding the type of goods or services in which the permit-holder is permitted to trade;
 - (c) an expiry date for the permit; and
 - (d) conditions regarding the type of structure or structures, if any, which may be erected on an informal trading site or in an informal trading area.
 - (e) days of trading allowed
- (4) An informal trading permit –
 - (a) must refer to a specified trading bay, as identified by its allocated number, to which the permit relates;
 - (b) gives only the permit-holder, and his or her representative, the right to use that trading bay subject to the conditions of the permit, the provisions of any other conditions imposed in terms of this By-law, and
 - (c) A permit to trade must be kept at the place of trade at all times and must be produced on demand by an authorized official

Informal trading fees

10. The Municipality is entitled to charge -

- (a) any person who applies for an informal trading permit, an application fee on submission of each application for an informal trading permit and
- (b) Different trading fees will be charged for under-roof, open demarcated spaces and food trailer spaces and
- (c) An additional fee or tariff, in respect of additional costs incurred or services provided by the municipality, such as for trading on Sundays.
- (d) In the case where new under-roof structures is constructed on existing demarcated space during a financial year, the Municipality may at its discretion not charge the current permit holder an under-roof tariff for the remaining term of the permit. In this case the under-roof tariff must be applied and charged from the next financial year.
- (e) In the case where the application is unsuccessful, application fees will not be paid back to the applicant.
- (f) Trading fees is not refundable.

Transfer of informal trading permits

11. (1) A permit is generally non-transferable and may only be leased, sold or otherwise disposed of with the prior written consent of the Municipality in terms of this section.
- (2) A permit may, with the prior written approval of the Municipality, be temporarily or permanently transferred to a person nominated by a permit-holder in writing, and subject to the provision of any information which the Municipality may reasonably require from time to time.
- (3) A permit may be transferred to a beneficiary/dependent, who will continue trading until the permit is no longer valid, in the event of the death of the permit-holder.
- (4) If the Municipality consents to the temporary or permanent transfer of an informal trading permit, the—
- (a) Municipality may impose such requirements as it deems fit; and
 - (b) person replacing the permit-holder will be entitled to trade, if the transfer is temporary, for the period of time indicated by the Municipality.
- (5) No subletting of informal trading stands is allowed.

Removal and suspension of informal trading permits

12. (1) The Municipality may, on reasonable notice to an informal trader and after having given the informal trader an opportunity to make written representations, revoke or suspend an informal trading permit if the informal trader has—
- (a) breached any conditions of his or her informal trading permit;
 - (b) breached the provisions of this By-law or of any other law;
 - (c) been convicted of trading in illegal goods or of providing a service unlawfully;
 - (d) been found to have willfully supplied incorrect information to the Municipality when required to provide that information.
- (2) A permit-holder must immediately return the permit to the Municipality when the—
- (a) Municipality revokes the permit;
 - (b) permit-holder is refused permission to transfer the permit;
 - (c) permit-holder ceases trading on the demarcated space for a period of 2 months or more days;
 - (d) permit-holder no longer wishes to trade as an informal trader from the relevant informal trading site before the expiry date;
 - (e) permit holder has not utilized a 2nd demarcated stall for a period of 2 months, which may constitute to blocking other trader competition by keeping a stall space open next to their already demarcated stall space

Temporary relocation and suspension

13.(1) The Municipality may, on reasonable notice to an informal trader, temporarily—

- (a) relocate a permit-holder;
- (b) suspend the validity of a permit; or
- (c) suspend informal trading from an informal trading area or a particular trading site or sites,

if the continuation of trading from an informal trading area or trading site is impractical or inconvenient to the activities of the Municipality, any sphere of government or any public entity, including their respective service providers.

(2) No compensation is payable by the Municipality to an informal trader in the event that—

- (a) the trader is relocated;
- (b) the permit is suspended or revoked; or
- (c) trading is suspended or prohibited from a particular informal trading area or trading site, irrespective whether an alternate site is provided to the permit holder

CHAPTER 4

RESTRICTIONS AND PROHIBITIONS ON INFORMAL TRADING

Restricted or prohibited areas

- 14.(1) The council may, by resolution, declare any place in its area of jurisdiction to be an area in which informal trading is restricted or prohibited.
- (2) The council may, in restricting or prohibiting informal trade, indicate places where—
- (a) informal trading is prohibited; or
 - (b) informal trade in specified goods or services is prohibited.
- (3) The Municipality must erect signs, markings or other devices to indicate the boundaries of—
- (a) areas where informal trading is restricted or prohibited (and the nature of any restriction); and
 - (b) informal trading areas and informal trading sites.
- (4) Any sign erected in terms of this By-law or any other law, shall serve as sufficient notice to an informal trader that informal trading is prohibited or restricted in that area.

Restricted conduct: erection of structures

15. (1) An informal trader must not erect any structure, whether movable or immovable, other than approved by the Municipality.

Restricted conduct: use of the site overnight

16. (1) An informal trader must not sleep overnight at the place where he or she carries on informal trading.
- (2) An informal trader must not, on concluding business for the day, leave his or her goods or trading structure at an informal trading site which is part of a public road or public place

Restricted conduct: location of trading

- 17.(1) An informal trader must not—
- 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);
 - (a) allow his or her goods or area of activity to cover an area of a public road or a public place which—

- (i) is greater than 6 square meters in area; or
- (ii) is greater than 3 meters in length, unless otherwise approved by the Municipality, on a specially demarcated trailer informal trading space;
- (b) trade on a sidewalk or verge where the—
 - (i) width of the sidewalk or verge is less than 3 meters;
 - (ii) sidewalk or verge is next to a public building, a place of worship such as a church, synagogue or mosque, or a national monument; or
 - (iii) sidewalk is 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 that person objects to informal trading taking place at that location;
- (c) trade on the half of a public road which is next to a building that is being used for residential purposes, if the owner or occupier of that building objects to informal trading taking place at that location;
- (d) trade on any immediate sidewalk in front of a business or shop, whether it is with or without the permission of the respective shop owner
- (e) obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996), or any marking, notice or sign displayed or made in terms of a by-law;
- (f) obstruct vehicular traffic;
- (g) obstruct access to a pedestrian crossing, pedestrian arcade or mall;
- (h) obstruct access to a vehicle;
- (i) obstruct access to refuse disposal bins or other facilities intended for the use of the public;
- (j) obstruct access to an automatic teller machine;
- (k) obstruct the view of a CCTV camera;
- (l) limit access to parking or loading bays or other facilities for vehicular traffic;
- (m) trade within 5 meters of an intersection or fire hydrant or any other firefighting equipment ;or
- (n)trade in a park, unless such area has been declared by the council as an informal trading area.

(2) An informal trader must, in respect of any sidewalk, leave an unobstructed space for pedestrian traffic of not less than—

- (a) 2 meters wide when measured from any contiguous building to his or her goods or area of activity; and
- (b) 0.5 meters wide when measured from the kerb line to his or her goods or area of activity.

Restricted conduct: display and storage of goods

18. (1) An informal trader must not—

- (a) place or stack his or her goods in such a manner that it constitutes a danger to any person or property, or is likely to injure any person or cause damage to any property;
- (b) display his or her goods on or in a building, with or without the consent of the owner, lawful occupier, or person in control of such building or property;
- (c) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
- (d) place on a public road or public place any goods that are not capable of being easily removed to a storage place at the end of the day's business; and
- (e) store or dispose of his or her goods or litter in a manhole, storm water drain, public toilet, or in a tree.

Restricted conduct: fires

19. (1) An informal trader must not make a fire at any demarcated or non-demarcated place whatsoever to prepare foodstuffs by utilizing open-flame fire; gas-fired equipment must be utilized with the relevant fire extinguisher on hand

Restricted conduct: litter

20.(1) An informal trader must dispose of litter generated by his or her informal trading in a refuse receptacle approved or supplied by the Municipality.

(2) An informal trader must not, other than in a refuse receptacle approved or supplied by the Municipality, accumulate, dump, store, deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property.

Restricted conduct: attachments

- 21.** An informal trader must not attach any of his or her goods by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place.

Restricted conduct: alcohol, sound-emitting devices and electricity

- 22.** An informal trader must not—

- a. sell or promote alcoholic products;
- b. sell or promote prescriptive or related pharmaceutical medicine
- c. sell any illegal substances or plants
- d. sell any illegal goods
- e. use bells, hooters, amplified equipment or similar devices which emit sound, in order to attract customers, and
- f. use any electrical supply or a power generator, unless expressly approved by the Municipality.

Restricted conduct: general

- 23.** An informal trader must not carry on informal trading—

- a. in a place or area in contravention of any prohibition or restriction imposed by the Municipality; or
- b. in such a manner as to—
 - i. act in a way which disturbs the reasonable peace, comfort or convenience and well-being of any other person, thus creating a nuisance
 - ii. damage or deface the surface of any public road or public place, or any public or private property;
 - iii. create a traffic or health hazard or a health risk;
 - iv. contravene any of the terms and conditions of his or her informal trading permit; or

Environmental health

- 24.** An informal trader must —

- a. keep the informal trading site or area or occupied by him or her for the purposes of conducting informal trading in a clean and sanitary condition;
- b. keep his or her goods in a clean and sanitary condition;

- c. ensure that, on completion of business each day –
 - i. the informal trading site or area occupied by him or her for the purposes of conducting informal trading is free of litter and other waste; and
 - ii. all his or her goods are collected and removed from any public road or public place and stored in a suitable facility;
- d. take necessary precautions in the course of conducting his or her business as may be necessary to prevent the spilling of fat, oil or grease onto a public road, or public place, or into a storm water drain;
- e. ensure that no smoke, fumes or other substance, odors, or noise, emanating from his or her activities associated with informal trading, causes pollution of any kind;
- f. carry on business in a manner which does not cause a threat to public health or public safety; and
- g. at the request of an authorized official of the Municipality, move or remove any object so that the area or informal trading site from which informal trading is conducted may be cleaned.

- (3) A certificate of acceptability, as contemplated in Regulations Governing General Hygiene Requirements for Food Premises, G’N R638 of 22 June 2018, must first be obtained from the Cape Winelands District Municipality where food, irrespective of where such food was prepared, is sold or handled in an informal trading bay.

Temporary relocation

- 25. (1) An informal trader must, on request by an authorized official or a service provider appointed by the Municipality, move his or her goods so as to permit the carrying out of any work in relation to a public road, public place or any work.
- (2) No compensation is payable by the Municipality to any informal trader as a result of the temporary relocation of informal trading as contemplated in subsection (1).

Special events

- 26. (1) The Municipality may, on reasonable notice, prohibit or restrict informal trading for the duration of a special event and within a prescribed area, notwithstanding the provisions of any informal trading policy or any informal trading permit.
- (2) No compensation is payable by the Municipality to any informal trader as a result of the prohibition or restriction of informal trading as contemplated in subsection (1).

Obligation of owners on non-municipal property

27. An owner of non-municipal property must –

- a. ensure that any informal trading taking place on his or her property complies with this By-law;
- b. permit any authorized official access to his or her property for the purpose of ensuring compliance with this By-law; and
- c. ensure, at the owner's cost, that sufficient services are provided to maintain acceptable hygienic conditions in respect of the informal trading.
- d. Ensure written approval of consent from all neighbors surrounding the immediate property

CHAPTER 5 ENFORCEMENT

Recovery of costs

- 28.**(1) If an informal trader contravenes any provision of this By-law or his or her permit and fails or refuses to cease the contravention, or to take to rectify any contravention, then the Municipality may take those steps itself and recover the costs from the informal trader.
- (2) The costs mentioned in subsection (1) is in addition to any fine which may be imposed on the informal trader.

Removal and impoundment

- 29.**(1) An authorized official 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 By-law or any other applicable law.
- (2) 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.
- (3) Any authorized official who removes and impounds goods in terms of subsection (1) must, except where goods have been left or abandoned, issue the informal trader a receipt which—
- (a) itemizes the goods to be removed and impounded;
 - (b) provides the address where the impounded goods will be kept;
 - (c) states the period of impoundment;
 - (d) states the terms and conditions which must be met to secure the release of the impounded goods;
 - (e) states the impoundment fee to be paid to secure release of the impounded goods;
 - (f) states the terms and conditions on which unclaimed goods will be sold or otherwise disposed of; and

- (g) 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.
- (4) If any goods to be impounded are attached to immovable property or a structure, an authorized official may order any person who appears to be in control of the immovable property or structure to remove the goods to be impounded and, if that person refuses or fails to comply, then—
- (a) that person shall be guilty of an offence; and
 - (b) the authorized official may remove the goods himself or herself.
- (5) Goods which have been impounded may be released after —
- (a) proof of ownership in the form of the presentation of the receipt contemplated in subsection (3); and
 - (b) payment of the impoundment fee or ,
is received.
- (6) (1) The Municipality may at any time after the impoundment sell, destroy or otherwise dispose of—
- (a) impounded 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 that notice has been served on the informal trader concerned, advising him or her
 - (i) that his/her impounded goods are to be sold, destroyed or disposed of;
 - (ii) of the time of such sale, destruction or disposal; and
 - of the reasons for such sale, destruction or disposal.
- (7) 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 1 month from the date of impoundment of those goods.
- (8) If impounded goods are sold by the Municipality in terms of subsections (6) or (7), and upon the presentation of the receipt contemplated in subsection (3) as proof of ownership, the Municipality must pay to the person presenting the inventory the proceeds of the sale less the impoundment fee.
- (9) If in the reasonable opinion of an authorized 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 authorized 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.

Vicarious liability

30.(1) When an employee or agent of an informal trader contravenes a provision of this By-law, 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.

(2) The fact that the informal trader issued instructions to the representative, prohibiting such contravention, shall not in itself constitute sufficient proof of such reasonable steps.

Offences

31.(1) A person is guilty of an offence if he or she—

- (a) trades without an informal trading permit;
- (b) contravenes any provision of this By-law;
- (c) contravenes any condition on which a permit has been issued to him or her;
- (d) fails to comply with any lawful instruction given in terms of this By-law;
- (e) threatens, resists, interferes with or obstructs any authorized official in the performance of official duties or functions in terms of or under this By-law; or
- (f) deliberately furnishes false or misleading information to an authorized official.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

Penalties

32.(1) Any person who is convicted of contravening paragraph 31(1)(a) shall be liable to a fine of an amount not exceeding R1 000, or a 24 months ban on informal trading, or to both such fine and ban

(2) Subject to subsection (1), any person who is convicted of an offence under this By-law shall be liable to a fine of an amount not exceeding R1 000 or to a 24 months ban on informal trading or to both such fine and ban.

(3) In the case of a continuing offence, an additional fine of an amount not exceeding R150 or ban not exceeding 1 month, for each day on which such offence continues or both such fine and ban, will be imposed.

CHAPTER 6

MISCELLANEOUS PROVISIONS

Appeals

- 33.** (1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.
- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority.
- (3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- (4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.
- (5) The appeal authority must furnish written reasons for its decision on all appeal matters.
- (6) All appeals lodged are done in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.
- (7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsection (1) to (5).

Repeal of laws and savings

- 34.** (1) The Witzenberg Street Trading By-Law gazetted on 16 August 2002 are hereby repealed and replaced by this By-law
- (2) All permits issued under the Witzenberg Municipality Street Trading By-laws published under Municipal Notice 97 of 1995 remain in full force and effect as if the said By-law has not been repealed as contemplated in subsection (1).

- (3) Any rights accrued or obligations incurred as contemplated in the laws referred to in subsection (2) remain in force, as if those laws have not been repealed.

Notwithstanding the enactment of this By-law—

(a) any declaration of an area within the jurisdiction of the Municipality as an area in which the carrying on of the business of street vendor, peddler or hawker may be restricted or prohibited, shall remain valid until such time as the council adopts an informal trading policy in respect of such area in terms of this By-law;

(b) where an informal trader had been issued with a permit prior to the enactment of this By-law which permits trading from a particular site, this permit shall comply with the regulations stated in this By-law

Short title and commencement

- 35.** This By-law is called the Witzenberg Municipality: Informal Trading By-law, 2025 and takes effect on the date on which it is published in the *Provincial Gazette* of the Western Cap

