



**DRAFT**

**MKHAMBATHINI INFORMAL ECONOMY BY-LAW**

**2024/2025 REVIEW**

## SCHEDULE

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## **Preamble**

WHEREAS Section 152(1) and 153(a) of the Constitution of the Republic of South Africa, 1996 ("Constitution"), requires municipalities to promote social and economic development within their jurisdictional areas;

AND WHEREAS the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), mandates municipal spatial development frameworks to identify current and future economic nodes where public and private investment will be prioritised and identify the designation of areas where incremental upgrading approaches to development and regulation will be applicable;

AND WHEREAS the Business Act, 1991 (Act No. 71 of 1991), provides for municipalities to declare and prohibit trading in zones within their jurisdictional areas;

**And whereas** the dense concentration of poverty, unemployment and related social ills makes townships a priority for inclusive growth and development;

AND WHEREAS Government acknowledges that townships must be vibrant economic centres;

AND WHEREAS section 22 of the Constitution guarantees the right of every citizen to choose his or her trade, occupation or profession freely, and empowers the State to regulate the practice of a trade, occupation or profession by law;

AND WHEREAS Government recognises that participation and meaningful inclusion of the businesses in townships will transform the economy,

BE IT THEREFORE ENACTED **by** the Municipal Council of (Insert municipality name), as follows:

## **Definitions**

1. In this **draft** By-law, a word or expression to which a meaning has been assigned in an Act, bears the meaning so assigned and, unless the context otherwise indicates—

**"authorised official"** means an employee of the municipality who is duly responsible for carrying out any duty or function or exercising any power in terms of this Standard Draft By-Law and includes: a. a law enforcement officer declared to be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and b. any other employee delegated or person authorised to carry out or exercise the duty, function or power;

**"business"** means an entrepreneurial undertaking, or a business concern, whether formal (registered) or informal (unregistered), which is engaged in the production of goods or provision of services or sale of goods, undertaken by an entrepreneur or an enterprise, an enterprise organisation or a co-operative as categorised in the National Small Business Act;

**" Businesses Act"** means the Businesses Act, 1991 (Act No. 71 of 1991);

**"business activity"** means the selling of goods, or the supplying or offering to supply a service for remuneration;

**"business license"** means a license and or permit issued by a local government that allow individuals or companies to conduct business within the government's geographical jurisdiction;

**"council"** means -

(a) the Municipality established by Provincial Notice No. 6766 of 2000 dated 1 October 2000, as amended, exercising its legislative and executive authority through its municipal Council; or

(b) its successor in title; or

(c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-Law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); or

(d) 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.

**"council Services"** means any system conducted by or on behalf of a local authority, for the collection, conveyance, treatment or disposal of refuse, sewage, or storm water, or for the generation, impounding, storage or purification, or supply of water, gas or electricity, or municipal services;

**"council Service Works"** means all property or works of whatever nature necessary for or incidental to any Council services;

**"demarcated stand"** means a stand demarcated by Council for the purposes of street trading in terms of section 6(a)(3)(b) of the Act;

**"foodstuff"** means foodstuff as defined in section 1 of the Foodstuff Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

**"foreigner"** means an individual who is neither a South African citizen, nor a resident, but is not an illegal foreigner in terms of the Immigration Act, 2002 (Act No. 13 of 2002);

**“Garden or Park”** means a garden or park to which the public has a right of access;

**"goods"** means product marketed for any use or consumption (including agricultural and non-agricultural commodities);

**"illegal goods"** means means goods which may not lawfully be acquired or disposed of [and includes:

(a) goods that are prohibited from sale or distribution under any applicable national, provincial, or municipal law;

(b) counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);

(c) goods that are required to, but have not been, imported or produced in terms of the provisions of the Customs and Excise Act, 1964 (Act No.91 of 1964);

(d) stolen goods; and

(e) goods that do not meet mandatory safety or quality standards as prescribed by relevant legislation;

**“Informal Economy”** means activities as defined in the KZN Policy on Informal Economy, 2010.

**“Intersection”** means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

**"litter"** includes a receptacle, container, or other matter, which has been discarded, abandoned, or left behind, by a street trader, or by his or her customers;

**“Minister”** means the Minister responsible for local government;

**“motor Vehicle”** means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996;

**"municipal council"** means the municipal council referred to in section 157(1) of the Constitution;

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

**“ Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**"nuisance"** means any conduct or behaviour by a person, any organisation/ business or institution 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, noise pollution or discomfort to the public or to a person, in the exercise of rights common to all or of a person;

**“National Road Traffic Act”** means the National Road Traffic Act, 1996 (Act No. 93 of 1996);

**"obstruct"** means to do anything which blocks or is likely to block vehicular or pedestrian traffic flow on a public road or private roads, open spaces/public spaces or even private spaces;

**“PAIA”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

**“public Building”** means a building belonging to or occupied solely by the State or the Council;

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

**"public place"** means a building, square, park, recreation ground or open space to which the public has the right of access, or which is shown on a general plan or land use scheme of a township filed in the deeds registry, Surveyor-General's office or a municipality, and has been provided for the use of the public or the owners of erven in such township;

**"public road"** means a public road as defined in section 1 of the National Road Traffic Act;

**"roadway"** means a roadway as defined in section 1 of the National Road Traffic Act;

**"sell"** means exchange, offer, display, deliver, supply or dispose of, for sale or authorise, direct or allow a sale;

**“services”** means work done or value created for human consumption; means activities or value created, generated or performed for consumption.

**"sidewalk"** means a sidewalk as defined in section 1 of the National Road Traffic Act;

**“Spatial Planning and Land Use Management Act”** means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

**“Street Furniture”** means any furniture installed by the Council on the street for public use;

**“Street Trader”** means a person who carries on the business of street trading and includes any employee of such person;

**“Rural”** means a geographical area located out of cities and towns comprising of residential homesteads where only the most basic amenities and infrastructure are provided by government, with the absence of alternative commercial properties in respect to the town planning scheme, and development of built infrastructure.

**“rural economies”** means business activities (formal or informal) undertaken in the rural areas;

**“the Act”** means the Businesses Act, 1991 (Act No. 71 of 1991) and includes the regulations promulgated thereunder; and

**“Verge”** means a verge as defined in section 1 of the National Road Traffic Act, 1996;

## **Objectives**

2. The objects of this by-law are to—

- (1) facilitate inclusive spatial and economic development in urban and rural areas of the municipality;
- (2) harmonise the urban and rural areas ecosystem and provide norms and standards for the establishment and management of township-based enterprises both formal and informal;
- (3) raise awareness of applicable laws and regulations affecting urban and rural businesses; and
- (4) support small businesses to grow and participate in mainstream economic activities.

## **Freedom to engage in business activities**

3.(1) Subject to subsection (2) any person that has a business licence, may engage in business activities within the area of jurisdiction of a municipality.

(2) A municipality may, based on its developmental objectives, determine quotas on the proportion of businesses within specific categories of businesses, to be owned and operated by foreigners in line with all the relevant legislation.

(3) In determining the quotas municipalities must ensure amongst others that a proportion of the total staff employed in the business are South African citizens or permanent residents in line with all relevant legislation.

(4) A business activity referred to in subsections (1) and (2), is subject to the provisions of—

- (a) legislation in the Republic of South Africa;
- (b) any applicable permits or licencing requirements;
- (c) other applicable municipal by-laws and policies; and
- (d) this standard draft by-law.

(5) No person shall carry on any business within the area of jurisdiction of a municipality unless they are a holder a business permit issued or transferred to them by the municipality.

### **Designated business areas and sites**

4.(1) A municipality must, subject to the provisions of the Spatial Planning and Land Use Management Act and any other applicable legislation, policy or by-law:

(a) promote commercial, retail and industrial activities in all areas of the municipality and

(b) demarcate business areas and sites to promote inclusive economic development or recognise township as mixed use business area.

(2) A municipality may, by resolution—

- (a) extend, reduce, or disestablish any business area or site subject to compliance with the requirements of the Spatial Planning and Land Use Management Act and after public consultation and reasonable notice;
- (b) lease land or a portion of a property from the owner or occupier on condition that the owner or occupier allows a specified number of businesses to trade on such property on terms and conditions determined by the municipality over an agreed period of time; or
- (c) where possible, provide infrastructure for businesses that are leasing, including but not limited to trading stalls.

### **Issuing of permits**

5. (1) A municipality must issue a permit which is properly applied for, unless-

- (a) The permit holder does not comply with subsection (3) (1) of this Standard Draft By-Laws;



- (b) The goods or services provided by the business are illegal; or
  - (c) The business premises do not comply with the requirement relating to town planning or the safety or health of the public, or any law which applies to those premises;
- (2) The municipality must be satisfied that the applicant, will be in actual and effective control of the business;
- (3) A municipality may may grant the permit:
  - (a) on condition that the goods and services sold are legal;
  - (b) on condition that the business premises does comply with the requirement relating to town planning or the safety or health of the public, or any law which applies to those premises.
- (4) A municipality may, on application by a permit holder –
  - (a) Amend a condition;
  - (b) Extend the period of the permit;
  - (c) Revoke a condition; or
  - (d) Indicate that the condition specified in the permit is complied with;

### **Proactive steps to be undertaken by municipality**

- 6. A municipality must exercise its functions and powers to -
  - (a) build the operational and management capacity of entrepreneurs and small businesses in townships through workshops, training or mentoring;
  - (b) conduct business compliance and awareness workshops;
  - (c) facilitate skills development and business development support services for township businesses;
  - (d) facilitate access to infrastructure for township businesses; and
  - (e) facilitate access to markets for township businesses.

### **Registration and permitting of business activities**

- 7.(1) A municipality must delegate the authority to deal with the registration, permitting and enforcing of the by-law for informal economies to the municipal manager or any other delegated official.

- (2) The delegated official is responsible for—
- (a) creating awareness about the application process and applicable policies and by-laws;
  - (b) assisting and supporting applicants in the application process;
  - (c) administering the processing of applications and the timely processing of applications within 30 business day;
  - (d) reviewing and approving applications for registration or permitting including—
    - (i) receiving, reviewing and approving applications for registration or permitting within 30 working days;
    - (ii) investigating the feasibility of the application and the compilation of a report thereon;
    - (iii) submitting the application and the feasibility report to the delegated authority; and
    - (iv) issuing of registration cards or permits;
  - (e) resolving complaints and disputes occurring between the municipality and the business; and
  - (f) facilitating efficiency and municipal responsiveness in registering and permitting businesses, as well as enforcing the by-law.
- (3) Applications registration or permitting can be made at the municipal offices or through the EDTEA business licensing and permitting system accessible through the Department's website.
- (4) The municipal manager or any other delegated official is responsible to establish and maintain a database of registered businesses, which may contain the following information and must be managed in accordance with PAIA guidelines:
- (a) The full name, surname, gender and disability status of the business owner;
  - (b) the identity number of the business owner concerned;
  - (c) the physical and postal address of the business concerned;
  - (d) the location where the business concerned is authorised by such registration to carry on business, and if such registration applies to a trading plan area, the trading bay or market allocated to such a business in accordance with the applicable trading plan;

- (e) a description of the goods or services that the business concerned may be authorised by such registration to sell or provide;
  - (f) a distinguishing registration number;
  - (g) citizen, passport number, valid visa allowing foreign national to be in the Republic to conduct business; and
  - (h) any other information that may be required by this by-law.
- (5) The applicant must provide a sworn affidavit stating that they are not engaged in the trade of illegal goods as defined in this by-law and that their business operations are within applicable norms and standards.
- (6) The municipality reserves the right to conduct background checks on applicants, including liaising with law enforcement agencies, to verify the legality of their business activities.
- (7) A registered business must be issued with a registration card or permit that must be displayed and be available for inspection at all times.
- (8) The responsible official must put in place a complaints system that can be used by residents and community members to report and receive feedback regarding their complaints or concerns and an appeal process.

### **Transferability of permit**

**8.(1)** In the event of the death of a permit-holder and the loss of income generated by the informal trading would place the dependents of the deceased permit-holder under undue or severe economic hardship, a permit may be transferred, by the municipality, to a dependant, or an assistant acting on behalf of the dependant, who will continue trading until the permit is no longer valid.

(2) A permit may be temporarily transferred for a period of no longer than twelve months by the municipality, to a dependent or, where there is no dependent, to an individual nominated by the permit-holder, if the permit-holder is unable to perform his or her functions: Provided that a written affidavit is provided to the municipality stating the nature and period for which the permit-holder requires the permit transfer.

(3) A dependent or assistant is only permitted to replace the permit-holder for the period stipulated in the affidavit and approved by the municipality.

(4) A permit-holder may not transfer a permit to any other person in any manner including but not limited to, by way of lease or sale.

a) permission must be obtained from the Department of Home Affairs in the case of foreign nationals.

(b) A South African may only transfer to a foreigner after approval by the municipality and the Department of Home Affairs.

(c) In the case of the transfer by foreigner to another foreigner such transfer shall only take place after approval by the municipality and the Department of Home Affairs.

(d) In the case of the transfer from a foreigner to a South African such a transfer shall only take place after approval by the municipality and the Department of Home Affairs.

(5) (a) If a permit is transferred by the municipality and the holder and does not resume trading, the municipality may revoke the permit and in such a case the permit must immediately be returned to the municipality.

(b) Details of revoked permits must be placed on a database to be shared with relevant departments.

(6) If a permit holder no longer wishes to trade, the municipality may revoke the permit and in such a case the permit must immediately be returned to the municipality.

(7) A permit transferred may not be used for the purposes of any business other than the approved business in the permit.

### **Prohibitions and restrictions**

**9.(1)** Except in cases where prior approval has been granted by the municipality, no person may carry out a business activity—

(a) in a garden or park to which the public has a right of access;

(b) on a verge, adjacent to—

(i) a building belonging to, or occupied by an organ of state;

(ii) any formal and registered religious institutions including; a church, mosque, synagogue or other places of worship;

(iii) a building belonging to, or occupied by the municipality;

(c) at a building declared to be a public monument;

- (d) next to an auto teller bank machine by a minimum distance of one meter is suggested;
  - (e) at a place where—
    - (i) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
    - (ii) it causes an obstruction to vehicular traffic; or
    - (iii) it substantially obstructs pedestrians in their use of a sidewalk;
  - (f) on a verge adjacent to a building in which business is conducted by a person who sells goods of the same nature as or of a similar nature to goods being sold by the seller concerned;
  - (g) on that half of a public road adjacent to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto.
- (2) A person carrying on a business—
- (a) may not sleep overnight at the place of such business except in cases where prior approval has been granted by the municipality. This excludes businesses operating from residential units / structures;
  - (b) may not place his or her property on a public road except in cases where prior approval has been granted by the municipality;
  - (c) may not construct a permanent structure on a public road or public place. This excludes sheds / shacks / Wendy houses, poles implanted into the ground, and other infrastructural arrangement common in the street trading environment;
  - (d) may not buy goods from establishments that are not complying with relevant regulatory prescripts, sell illegal goods or goods not complying with acceptable standards;
  - (e) may not sell expired items;
  - (f) must ensure that his or her property or area of activity—
    - (i) does not cover an area of a public road, or a public place which is greater than six square metres (with a maximum length of three metres) in extent, unless otherwise approved by the municipality; and
    - (ii) in respect of any sidewalk, leaves an unobstructed space for pedestrian traffic, being not less than one and a half metres

wide when measured from any contiguous building to the property or area of activity, and not less than one metre wide when measured from the kerb line to the property or area of activity;

- (g) may not conduct business on a sidewalk where the width of such sidewalk is less than one meter;
- (h) may not place or stack his or her goods in such a manner that it is likely to injure a person or cause damage to property;
- (i) may not sell, distribute or store illegal goods;
- (j) may not carry on business in such a manner as to –
  - (i) create a nuisance;
  - (ii) create a traffic, health hazard, or health risk;
  - (iii) obstruct access to, or the use of, street furniture and any other facility designed for use by the general public.
- (j) must maintain records of the identification of their suppliers and be able to provide proof of the legitimate sourcing of their goods upon request by an authorised official;
- (k) may not knowingly purchase goods from suppliers engaged in the trade of illegal goods.

## **Hygiene and waste removal**

**10.(1)** A person operating a registered business must—

- (a) ensure that the business complies with health and safety requirements and has the applicable health and safety certificates;
- (b) keep the business area or site occupied by him or her for the purposes of such business activity in a clean and sanitary condition;
- (c) keep his or her property in a clean, sanitary and well-maintained condition;
- (d) dispose of litter generated by his or her business in whatever refuse receptacle provided by the municipality for the public, or at a dumping site of the municipality;

- (e) ensure that no excessive smoke, fumes or other substance, odours, or noise, emanating from his or her business activities, causes pollution of any kind.
  - (f) person operating a registered business must ensure that the necessary recycling methods are utilised. Hazardous and e-waste should be disposed of in the correct manner.
- (2) The owner or tenant of the property where business activities including selling prepared meals and or beverages take place must ensure that there is appropriate infrastructure, including ablution facilities.

### **Restricted and prohibited areas**

**11.(1)** A municipality may in terms of section 6A(2) of the Businesses Act, after consulting the public and by resolution, declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited, and must, to enable compliance therewith, prescribe or make signs, markings or other devices indicating—

- (a) specified hours during which, goods or services in respect of which, business activity is restricted or prohibited;
  - (b) the boundaries of the restricted or prohibited areas; and
  - (c) any other restriction or prohibition against business activity regarding the area in question.
- (2) A municipality must display any such sign, marking or device in such a position and manner as will indicate the restriction or prohibition and the location or boundaries of the area concerned.
- (3) A sign erected in terms of this by-law or the National Business Act serves as sufficient notice of the prohibition or restriction in respect of the area concerned.
- (4) A sign contemplated in subsection (1) may be amended from time to time and displayed by the municipality for the purpose of this by-law and has the same effect as a road sign in terms of the National Road Traffic Act, 1996.
- (5) A registered business must not cause any nuisance.

## **Offences and penalties**

**12.(1)** A person who –

- (a) contravenes, or fails to comply with, a provision of this by-law;
- (b) fails to comply with a notice issued in terms of this by-law;
- (c) fails to comply with a lawful instruction given in terms of this by-law; or
- (d) who obstructs or hinders an authorised official in the execution of his or her duties under this by-law,

is guilty of an offence and must be served with a written warning advising of the offence, the remedial action and applicable times, consequences for failure to redress, and the appeal process.

(2) Notwithstanding the provision of (1) above, a person found to be transgressing any provision of this by-law of must:

- (a) On a first transgression, be served with a written warning notice informing them of the transgression and that their business license will immediately be cancelled if they do not remedy the transgression within a reasonable time based on industry or sector trends;
- (b) Different penalties may be effected in respect of different businesses based on industry trends;
- (c) On a subsequent transgression, be served with a written notice informing them of the transgression and that, subject to an appeal process, their business license is immediately cancelled and that they will be barred from reapplying for a license in any municipality for a period of five years after the subsequent transgression.

## **Appeals**

13. (1) Any person who feels aggrieved by the decision of the municipality, may lodge an appeal within a period of 21 days after the receipt of the application outcome or within such extended period as may be agreed upon between the municipality and the applicant concerned.

(2) During the appeal process it is presumed that the application was unsuccessful.



## **Enforcement of by-laws**

**14.(1)** Authorised officials appointed by the municipality are responsible for monitoring and enforcement of these by-laws and must regularly liaise and co-operate with the relevant departments to ensure compliance with related legislation such as Home Affairs, Health and South African Revenue Services (SARS).

**(2)** A municipality may

- (a)** apply its discretion to impound business equipment where continuous transgression without remedy is observed.
- (b)** release the business equipment at a fee in line with municipal tariffs.

**14(3) (a)** a municipality may impound goods on reasonable suspicion that such goods are expired or illegal.

- (a)** If the goods be confirmed to be expired or illegal, these goods will be handed over to the relevant government body for destruction.

**14(4)** The municipality must establish a task team dedicated to combating the trade of illegal goods and services, to:

- (a)** conduct regular inspections of businesses to verify that they are registered and that the products being sold are legal and comply with applicable regulatory requirements or norms and standards;
- (b)** collaborate with national and provincial law enforcement agencies to share information and conduct joint operations against illicit trade networks;
- (c)** implement a confidential reporting system for the public and other traders to report suspected illicit trade activities;
- (d)** implement information programmes to educate business on what constitutes an illegal product.
- (e)** implement a central repository of individuals whose licences have been cancelled due to non-compliance with the by-law and share details on an annual basis with other municipalities.

**Amendment of by-laws and transitional measures**

**15.** Once approved, the municipality must consider the impact of this by-law on all other by-laws and must amend sections that conflict with the provisions of these by-laws or amend the applicable by-laws to be in line with the provisions of these by-laws.