

SENQU MUNICIPALITY MUNICIPAL NOTICE

LOCAL AUTHORITY NOTICE NO...

2017

BY-LAW RELATING TO BUSINESSES AND STREET TRADING

The Municipal Council of Senqu Local Municipality in the Schedule hereto publishes, in terms of section 13 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) read with section 162 of the Constitution of the Republic of South Africa Act 1996 (Act 108 of 1996) the By-Law on Businesses and Street Trading.

SCHEDULE

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CHAPTER 1

OBJECTIVE, DEFINITIONS AND APPLICABILITY OF BY-LAW

1 Objectives

The objective of this By-law is to govern informal trading within it's the area of jurisdiction of the Municipality.

2 Definitions

In this By-law any word or expression to which a meaning has been assigned in the By-law shall have the meaning so assigned to it and, unless the context otherwise indicates:

“demarcated stand” means a public place marked out in the prescribed manner by the Municipality for the purpose of street trading and not exceeding 2 m²;

“compliance officer” means a person who is authorised to implement and enforce the provisions of this By-law by virtue of his or her –

- (a) declaration as a peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (b) appointment as a police officer as contemplated in the South African Police Service Act, 1995 (Act 68 of 1995);
- (c) a traffic officer appointed in terms of section 3 of the Road Traffic Act, No. 29 of 1989 or section 3A of the National Road Traffic Act No. 93 of 1996 as the case may be;

- (d) appointment as a law enforcement officer or traffic officer by the Municipality and declaration as peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977); or
- (e) appointment by the Municipality as a compliance officer or an inspector;

“Council” means the Senqu municipal council, a municipal council referred to in section 157(1) of the Constitution;

“fee” means any fee, charge or deposit determined for purposes of section 19 of this By-law, by the Municipality in terms of the Senqu Municipality: Tariff By-law, 2017;

“form” means a form approved by the Municipality for the purposes of this By-law;

“management zone” means any number of demarcated stands grouped together to ensure good and effective management of street trading in a particular area;

“mobile street trader” means a street trader that does not use a demarcated stand and conducts street trading from a cart, portable container or receptacle;

“Municipality” means the Senqu Municipality and includes the Council, any executive councillor, or committee established by the Municipality, or any employee thereof, or duly authorised agent thereof acting in connection with this By-law by virtue of a power vested in the Municipality and delegated to such employee or agent;

“nuisance” means any conduct that unreasonably interferes with the physical comfort, health and safety the public is entitled to expect in a public place;

“permit” means the document issued to a street trader by the Municipality containing the terms and conditions that apply to a particular trading opportunity;

“public place” means any place that is owned by or vests in the Municipality for the access, use, enjoyment and benefit of the public;

“street trader” means a person who has been issued with a permit entitling him or her to carry on street trading on a demarcated stand, or within a specified management zone in the case of a mobile street trader;

“street trading” means the selling of merchandise or the provision of services by a street trader, whether mobile or not;

“trading opportunity” refers to an existing, or the creation of a new, economic prospect that is capable of being exploited by a street trader.

3 Applicability of By-law

(1) This By-law must be read with any applicable provisions of the Businesses Act, 71 of 1991.

(2) In the event of any conflict with any other by-law which directly or indirectly, within the jurisdiction of the Municipality, regulates street trading, the provisions of this By-law shall prevail to the extent of the inconsistency.

CHAPTER 2

BUSINESSES

4 Licences required by certain businesses

(1) No person shall, within the municipal area, carry on any business without a valid licence if such business is required to be licensed in terms of the Businesses Act, 71 of 1991 or any other applicable legislation.

(2) Every person who is required to hold a licence or licences in terms of subsection (1) shall comply with every condition or requirements set out in such licence as issued by the appropriate licensing authority.

5 Prohibitions

(1) Any person intending to carry on any permanent business activity within the area of jurisdiction of the Municipality shall notify the Municipality in writing his or her intention to commence business, such notification to reach the offices of the Municipality at least 14 clear days prior to the intended date of the proposed commencement of the business, advising the Municipality of the type of business to be conducted and give details of the premises, if any, to be used for the conduct of such business.

(2) No person shall carry on any business in or on any premises unless such activity or use is permitted in terms of the town-planning scheme.

CHAPTER 3

TRADING OPPORTUNITIES

Part 1: Determination of trading opportunities

6 Determination of trading opportunity

(1) The Municipality must carry out a survey of all public places and compile a list and a map depicting all the areas considered viable and appropriate for street trading.

(2) In deciding whether any public place is viable and appropriate the following factors must be considered by the Municipality in consultation with relevant stakeholders:

- (a) the zoning of the public place as reflected in the town planning scheme;
- (b) the existing land uses in the vicinity of the public place;
- (c) the nature and volume of pedestrian and vehicular traffic adjoining such public place especially during peak periods;
- (d) introduction of measures to minimise disruption of such traffic;
- (e) the existence of appropriate provision for the collection and disposal of litter;
- (f) the existence of toilet facilities and water;
- (g) existing street furniture and municipal services;
- (h) the nature of the proposed street trading and its likely impact on the public place and adjoining businesses or residences;
- (i) the dimensions of the public place, and its capacity to carry the proposed street trading;

- (j) whether street trading will unduly affect the free passage, convenience and safety of pedestrians especially children, the disabled, and elderly; and
- (k) the requirements of any relevant law.

(3) Having decided that a public place is viable and appropriate for street trading the Municipality must proceed to determine the number of trading opportunities available in that public place, and allocate a unique number to each such opportunity.

(4) The Municipality must draw up a plan proposing the number and size of demarcated stands the Municipality seeks to establish in that public place, as well as the number of trading opportunities available to mobile street traders.

(5) To facilitate effective management of street trading, demarcated stands may be grouped together into management zones.

(6) If the Municipality considers that consumers would be better served, it may designate, that only specified things or services be sold or provided in a particular management zone.

(7) The Municipality may in exceptional circumstances issue a permit to any person to engage in street trading for a non-renewable period not exceeding three months at any public place, whether it has been demarcated for street trading or not.

(8) The Municipality may issue a permit subject to such conditions it considers appropriate, including the size of the stall or stand and the goods which may be traded by the permit holder.

7 Application for and allocation of trading opportunity

(1) A permit is necessary only in designated management zones proclaimed by the Municipality from time to time.

(2) As and when trading opportunities become available, the Municipality must call by way of a media campaign upon all those who are able and willing to avail themselves of such trading opportunities to apply for such trading opportunity at the nearest municipal office.

(3) Trading opportunities must be allocated in a transparent manner, provided that each applicant satisfies the criteria for allocation of trading opportunities set out in clause 10.

(4) A trading opportunity may be allocated to more than one person on a time-share basis: Provided that each such person shall be entitled to engage in street trading only during the period or periods indicated in the permit issued to him or her.

(5) Those who have been allocated a trading opportunity must within 6 months of having received the permit to trade, attend at a workshop at which all aspects of street trading are dealt with in detail.

(6) Preference in the allocation of a trading opportunity must be given to –

- (a) a person who may be granted preference in terms of the Preferential Procurement Policy Framework Act, 5 of 2000;
- (b) an unemployed person; and
- (c) a single person with dependants.

(7) The Municipality must approve an application form

(8) The application form must contain an explanation of the steps to be taken by an aspirant street trader, and he or she must be assisted with the completion of the form in case of difficulty.'

(9) Each application form must be accompanied by a copy of the identity document of the applicant or the work permit if such applicant is a foreign national together with two passport size photographs of the applicant and a proof of residence on the approved form obtained from the ward councillor of the ward where he or she resides.

(10) The Municipality must consider the application and within a reasonable period give its decision to the applicant.

(11) If the Municipality refuses an application it must give reasons for the decision in writing and advise the applicant of his or her right to appeal against the decision in terms of clause 37.

8 Period of validity of permit

A permit is valid for a period of 12 months.

9 Permit card

(1) The Municipality must issue to every street trader a distinctive card containing his or her photograph and other particulars as are necessary.

(2) In the event that the permit provides for the employment of an assistant, then a further distinctive card must be issued to such assistant.

(3) The street trader and his or her assistants must during the hours of trade display such cards on their persons so as to enable any member of the public or compliance officer to inspect such card.

10 Commencement of street trading

Street trading may only be commenced after the applicant has been issued with a permit containing the conditions to ensure that it is carried on in an orderly and effective manner.

Part 2: Conditions of Permit

11 Specific conditions

The Municipality may issue a permit subject to the following specific conditions:

- (a) the payment of fees and charges;
- (b) the address of the demarcated stand, if the street trader is stationary, or the boundaries of the management zone within which street trading may be carried on by a mobile street trader;
- (c) specifying whether the merchandise and services traded relate to a food or non-food related activity and if trading is carried on in a food related activity then the street trader must, in addition, be in possession of a "certificate of acceptability" issued in terms of section 9(18) of the Health Act, 63 of 1977, failing which the permit shall not be valid;
- (d) specifying the period of validity of a permit; and

- (e) specifying the day or days on which and the time during which the street trading may take place.

12 General conditions

(1) The Municipality may issue a permit subject to the following general conditions which relates to the duty of a street trader to -

- (a) in the case of a stationary street trader, to place his or her merchandise or equipment strictly within the boundary of the demarcated stand allocated to him or her;
- (b) in the case of a mobile street trader, to trade within the boundary of the management zone assigned to him or her, and from a cart or receptacle the characteristics and dimensions of which may be specified by the Municipality;
- (c) ensure that the merchandise, equipment or any other thing used on the demarcated stand does not pose a danger to the health and safety of any person;
- (d) construct the stand or equipment used in a sturdy manner, and do not obstruct unreasonably the sight of pedestrians with umbrellas in the public place;
- (e) carry on the street trading in such a manner that it does not cause a nuisance;
- (f) not shout unreasonably loud, or rings bells or horns or use any other device to attract attention to his merchandise or service;
- (g) place all refuse and litter produced in the course of street trading in refuse bins provided by the Municipality;
- (h) ensure, if the street trading activity involves the cooking or preparation of food, that any food or oil or other thing that drops onto the surface of the demarcated stand is promptly removed;
- (i) ensure that any assistant employed by the street trader is properly supervised and registered, and is aware of all the terms and conditions of the permit and this By-law.
- (j) remove all merchandise, structure and equipment from the demarcated stand at the termination of business each day;
- (k) refrain from selling anything or providing a service that is similar to that provided by a regular store owner in that vicinity;
- (l) report, or cause to be reported to the Municipality his or her absence from street trading due to illness, death in the family or any other pressing cause;
- (m) familiarise himself or herself with the penalties for failure to comply with any term or condition; and,
- (n) any additional matter that needs to be reasonably regulated in any particular case.

(2) In the temporary absence of the street trader any non-compliance by an assistant shall be deemed to be a non-compliance by the street trader.

Part 3: Termination of Permit

13 Termination by Municipality

- (1) The Municipality may at any time terminate a permit if, after a hearing, it is satisfied that –
- (a) Owing to circumstances that have arisen since the issue of the permit, and having regard to the factors in clause 4, it is deemed not viable or appropriate for further street trading to take place at any demarcated stand or management zone as the case may be;
 - (b) the street trader has, without reasonable excuse, and without having reported his or her absence in terms of clause 10(1)(l), failed to engage in actual street trading for a period of two weeks;
 - (c) the street trader or his or her assistant is not in possession of the card issued to him or her in terms of clause 7;
 - (d) the street trader made a false statement in respect of a material particular on his or her application;
 - (e) the street trader has failed to pay the fees and charges;
 - (f) the street trader fails to maintain his or her demarcated stand, and its vicinity, free of refuse and litter;
 - (g) the conduct of the street trader constitutes a nuisance. In enquiring whether the conduct complained of constitutes a nuisance the following factors must be taken into consideration:
 - (i) the nature of the street trading;
 - (ii) the motive and purpose of the street trader;
 - (iii) the locality of the street trading; and
 - (iv) the practicality of preventing the harm recurring;
 - (h) the street trader has failed to comply with this By-law, or a material term and condition of the permit, on three separate occasions, and after having received a warning in respect of the first and second failures.

(2) Notwithstanding anything to the contrary in this By-law, the Municipality may at any time suspend any permit without notice if the street trading being conducted poses a risk to the health or safety or any person.

14 Notification of termination

The Council may not terminate the permit unless it has given the street trader or his assistant (which service shall be deemed to be service on the street trader) two written warnings within a period of six months of -

- (a) the conduct or omission on his, her or the assistant's part, that constitutes non-compliance with the Bylaw, or a material term and condition of the permit;
- (b) calling upon him or her to comply within seven days; and

- (c) the penalties that attach to such non-compliance.

15 Termination by holder of permit

In the event that a street trader gives notice of his or her intention to cease street trading or the permit is terminated by the Council, then that trading opportunity must be re-allocated in terms of clause 4.

16 Death of holder of permit

- (1) A permit terminates when its holder dies.
- (2) Nothing emanating from a permit shall form part of any deceased estate, and shall not be capable of being transmitted to any heirs or legatees.
- (3) Any permit contemplated in this section shall be re-allocated by the Municipality in terms of clause 4.

CHAPTER 4

POWERS AND DUTIES OF MUNICIPALITY

17 General powers and duties of Municipality

- (1) The Municipality must -
 - (a) provide refuse bins at or near all demarcated stands and within all management zones;
 - (b) ensure that the areas where street trading is conducted are kept clean and any refuse bins emptied regularly;
 - (c) ensure that the demarcated stands and management zones are cleaned and refuse bins emptied on a regular basis;
 - (d) demarcate specified management zones where perishable foodstuffs may be cooked and sold and in those instances establish suitable facilities for such activities to take place having regard to health and safety;
 - (e) maintain a register of street traders who hold permits. The register must be available for public inspection, and show information relating to the serial number of the permit, the date and duration of permit, the name and home address of the street trader; his or her identity number; the location of the demarcated stand or management area in which street trading is carried on; and any other detail;
 - (f) re-allocate demarcated stands that become vacant, or where mobile street traders cease trading in any management zone;
 - (g) approve the manner in which a demarcated stand is to be marked out;
- (2) The Municipality may -
 - (a) rescind or alter any decision made after consultation with affected parties;
 - (b) propose a new or revised policy in relation to any aspect of street trading;
 - (c) erect shelters or other facilities for use and hire by street traders;

- (d) remove any receptacle or merchandise belonging to a street trader insofar as it is not removed to a place of storage at the end of the trading day;
- (e) remove any receptacle, containers, and other merchandise that are a danger to the health and safety of the trader or the general public insofar as they are toxic, hazardous, corrosive or explosive; and
- (f) terminate any permit where the street trader is in breach of any term or condition, or this By-law.

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18 Provision of storage facilities

- (1) There is no duty on the Municipality to provide a storage facility to any street trader.
- (2) In the event that storage facilities are provided, the Municipality may make such charges as are reasonable to recoup the costs of maintaining such service.

19 Fees and charges

- (1) The Municipality may levy a fee or charge on any street trader, or a category of street traders as it may determine and as may be sufficient to recoup the costs in connection with street trading including –
 - (a) the collection, removal and disposal of refuse and litter, or other services rendered to street traders;
 - (b) the provision of storage facilities;
 - (c) the hire of tables or other equipment;
 - (d) the cleaning of the public places in which street trading takes place insofar as such cleaning is necessitated by street trading;
 - (e) the reasonable administrative or other costs in connection with administering street trading.
- (2) The Municipality may levy different charges and fees in respect of different management zones depending on the profitability of such management zone.
- (3) Nothing contained herein prevents the Council from subsidising any aspect of street trading.

CHAPTER 5

PUBLIC PARTICIPATION

20 Notification

- (1) Proposals in relation to places that may be declared to be viable and appropriate; the number of trading opportunities available; the establishment of a management zone; the deproclamation of a public place for purpose of street trading; and the levying of fees and charges, must be published in at least two newspapers circulating within the municipal area its proposals in relation to these subjects.

(2) Such proposals must be accompanied by such reasons or motivations as may be necessary, while in relation to the proposed rent, fees and charges, the Municipality must publish a statement of how such is calculated.

(3) Interested and affected parties must be invited to make written comment and representations within a period of 30 days on the proposals of the Municipality.

(4) After the expiry of the period of 30 days, the Municipality must consider any comment and representations received and if necessary revise the proposals in questions.

(5) Any affected or interested person may, in order to enable him or her to ascertain whether the proposals are reasonable, request the Municipality to furnish such further information or explanation with regard to the proposals as he or she may reasonably require.

(6) In addition to the above, the Municipality must consult with street trading committees or associations on its proposals.

21 Street trading committees and associations

(1) Every street trader has the right to participate in the formation of, and belong to a street trading association to represent his or her interests for the respective management zone.

(2) The Municipality must recognise and negotiate with any association that represents a significant number of street traders

CHAPTER 6

LAW ENFORCEMENT

22 Appointment of compliance officer

(1) The Municipality may appoint or designate a person or employee to serve as a compliance officer for purposes of compliance and enforcement monitoring of this By-law.

(2) A compliance officer shall take all lawful, necessary and practicable measures to enforce the provisions of this By-law.

(3) The Municipality shall issue each compliance officer with a written appointment stating that he or she has been appointed for purposes of this By-law or with an identification card that contains the municipal logo, department and name of the officer.

23 Powers and functions of compliance officer

(1) A compliance officer may issue a person with a written warning if, in his or her opinion, that person has trade in goods or provided services in contravention of this By-law or that person has contravened this By-law in any other manner, including but not limited to a violation of a permit condition, or any other applicable law.

(2) In the event of a person continuing or repeating a contravention in respect of which a written warning has already been issued to that person, then a compliance officer may impound, in the cases of an informal trader, any property used by the informal trader in conducting the informal trade, and in

the case of any other person, any property, including but not limited to, goods, equipment, structures and motor vehicles, in which case the compliance officer must –

- (a) complete a full inventory of all the property that has been impounded and such inventory must include information on the consequences of such impoundment should the person fail to pay the impoundment costs and collect the goods;
- (b) provide the person with a copy of the inventory; and
- (c) immediately store the impounded property in an area designated by the Municipality for the storage of impounded property.

(3) Property which has been impounded from a person may be released after the presentation by the person of the inventory contemplated in subsection (2) and the payment of the impoundment costs, provided that the Municipality is reasonably satisfied that the relevant person will not, upon the release of the property, continue to commit any contravention which led to the goods being impounded, provided that where the Municipality is not so satisfied, it may withhold the goods for up to 30 days after payment of any fine or impoundment costs.

(4) Perishable goods that have been impounded may, at any time after the impoundment, be sold or otherwise disposed of by the Municipality.

(5) The Municipality may destroy the goods if the condition of those goods renders them unfit for human consumption.

(6) Impounded property other than perishable goods may be sold by the Municipality if the owner does not, or is unable to, pay the impoundment costs within 30 days from the date of impoundment of that property.

(7) In the event of the impounded property being sold by the Municipality in terms of subsection (4) or (5), and upon the presentation of the inventory by the owner, the Municipality must pay to that owner –

- (a) the proceeds of the sale less the impoundment costs; or
- (b) if the owner has previously paid the impoundment costs, the proceeds must be paid to the owner free of any such deduction.

(8) If the owner does not claim the proceeds derived from the sale of the impounded goods within three months from the date of impoundment, then the proceeds will be forfeited to the Municipality.

(9) If in the opinion of the compliance officer, a street trader is suspected of trading in illegal goods then such goods may be immediately confiscated.

(10) If illegal goods are confiscated as contemplated in subsection (9), the compliance officer must –

- (a) complete a full inventory of all the property that has been confiscated;
- (b) provide the street trader with a copy of the inventory; and
- (c) immediately surrender the suspected illegal goods to the possession of the South African Police Service.

24 Offences and penalties

- (1) A person shall be guilty of an offence if such person
- (a) fails to comply with a decision taken or condition imposed by the Municipality in terms of this By-law.
 - (a) wilfully and with intent provides false or misleading information in connection with an application contemplated in this By-law;
 - (b) unlawfully prevents a compliance officer entry to his or her stand or causes or permits any other person to prevent entry;
 - (c) obstructs or hinders a compliance officer in the performance of his or her duties or causes or permits any other person to so obstruct or hinder the compliance officer;
 - (d) refuses or fails to provide to a compliance officer such information as is required to allow a compliance officer to perform a function in terms of this By-law;
 - (e) furnishes false or misleading information to an official of the Municipality when called upon to furnish information;
 - (f) impersonates a compliance officer;
 - (g) contravenes or fails to comply with any provision of this By-law;
 - (h) supplies particulars, information or answers in an application or on knowing it to be false, incorrect or misleading; or
 - (i) undertakes or proceeds with the installation or display of a sign in conflict with the provisions of this By-law.

(2) Any person convicted of an offence in terms of this By-law, shall be liable upon conviction to a fine or imprisonment or to both such fine and imprisonment.

(3) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, is guilty of a continuing offence and upon conviction is liable to a fine or to imprisonment, or to both such fine and imprisonment, in respect of each day on which he or she so continues with that conduct.

CHAPTER 7

GENERAL MATTERS

25 Appeals

Any person may appeal against any decision taken under this By-law by giving written notice of the appeal in accordance with the provisions of section 62 of the Municipal Systems Act, 2000, as amended.

26 Repeal of by-laws

The By-Laws Relating to Businesses and Street Trading published in the *Provincial Gazette* by Notice Number 187 of 2005 is hereby repealed.

27 Transitional provisions in respect of licences

(1) A licence issued before the commencement of this By-law remains valid until such time as the Municipality has established management zones in terms of this By-law.

(2) The holder of a licence must, within three months from the establishment of a management zone in terms of this By-law, apply to the Municipality for a permit.

(3) If the holder of a licence does not apply to the Municipality within the period referred to in subsection (2), he or she shall be deemed to be trading unlawfully and the sanctions provided for in this By-law shall take effect.

28 Short title and commencement

This By-law shall be known as the Senqu Municipality: Businesses and Street Trading By-law, 2017 and shall come into operation on the date of publication thereof in the *Provincial Gazette*.