

No. 79

12 June 2009

ABAQULUSI MUNICIPALITY

No. 6 of 2009

I, under powers vested in me by section 14(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and after a resolution by Council in a meeting open to the public and public consultation hereby publish a set of by-laws as per schedule attached hereto.

Signed at Vryheid on this 27th day of June 2008.

**M.J. MATHENYWA
MUNICIPAL MANAGER**

STREET TRADING BY-LAWS

Be it enacted by the Council of the Abaqulusi Municipality, in terms of section 156 of the Republic of South Africa Act No. 108 of 1996, and with the approval of the Member of the Executive Council responsible for Local Government in terms of section 6 (1) (a) of the Business Act No. 71 of 1991 in the Province of KwaZulu- Natal, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

INDEX

CHAPTER 1: DEFINITIONS	3
1. Definitions.....	3
CHAPTER 2: PROHIBITIONS.....	4
2. Prohibitions.....	4
CHAPTER 3: RESTRICTIONS.....	6
3. Restrictions.....	6
CHAPTER 4: GENERAL DUTIES OF STREET TRADERS.....	7
4. Cleanliness and public health.....	7
5. Display of goods.....	8
CHAPTER 5: REMOVAL AND IMPOUNDMENT.....	8
6. Removal and impoundment.....	8
7. Disposal of impounded goods.....	9

CHAPTER 6: GENERAL OFFENCES AND PENALTIES..... 10

8. General offences and penalties..... 10

CHAPTER 7: REPEAL OF BY-LAWS.....12

9. Repeal of by-laws.....12

CHAPTER 8: SHORT TITLE AND COMMENCEMENT.....12

10. Short title and commencement.....12

CHAPTER 1: DEFINITIONS

1. Definitions

In this by-law, unless the context indicates otherwise-,

"approval" means approval by an authorized official and "approve" has a corresponding meaning;

"authorised official" means an official of the Council to whom it has delegated a duty, function or power under this bylaw, in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official;

"Council" means the Council of the Abaqulusi Municipality and in relations to the exercise of a power, the performance of a duty or the carrying out of a function includes any committee or official of the Council to whom such power, duty or function has been delegated;

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

"goods" means any movable property used in connection with street trading and, without limiting the generality of the foregoing, includes products for sale, display tables, stands, receptacles, vehicles, structures or animals;

"public place" means a public place as defined in section 1 of the Local Authorities Ordinance No. 25 of 1974;

"public road" means a public road as defined in section 1 of the National Road Traffic Act No. 93 of 1996;

"roadway" means a roadway as defined in section 1 of the National Road Traffic Act No. 93 of 1996 but excludes a public place;

"sidewalk" means a sidewalk as defined in section 1 of the National Road Traffic Act No. 93 of 1996;

"street trader" means a person who sells, barter, exchanges, hires out, displays, exposes, offers or prepares for sale, barter, exchange or hire any goods or who provides or offers any service for reward as a street vendor, hawker or pedlar in a public road or in a public place, but does not include any person who sells newspapers only;

"the Act" means the Businesses Act No. 71 of 1991 and includes the regulations made there under; and

"verge" means a verge as defined in section 1 of the Road National Traffic Act No. 93 of 1996.

CHAPTER 2: PROHIBITIONS

2. Prohibition

No street trader shall carry on undertake street trading –

- (1) on a verge contiguous to -

- (i) a building belonging to or occupied solely by the state or the Council;
 - (ii) a church or other place of worship, or
 - (iii) a building declared to be a national monument in terms of the National Monuments Act No. 28 of 1969;
- (2) on any verge contiguous to a building in which business is being carried on by any person who sells goods of the same nature as, or of similar nature to, goods being sold by the street trader or who offers services of the same nature as, or of a similar nature to, a service offered by the street trader concerned without the consent of such person;
- (3) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;
- (4) at any place where the carrying on of such business causes an obstruction to-
- (a) the entrance to or exit from a building, or
 - (b) a fire hydrant;
- (5) in any declared area identified as such in terms of section 6A (2) of the Act in respect of which the carrying on of the business of street trader has been –
- (a) prohibited by the Council, or
 - (b) restricted by the Council, unless such business is carried on in accordance with such restrictions;
- (6) at any place which has been set apart and demarcated as stands or areas by the Council in terms of section 6A (3) (b) of the Act for the purposes of the carrying on of the business of street trader, unless such business is carried on in accordance with -

- (a) an agreement with the Council, or
 - (b) the allocation by the Council to the street trader of any area or stand;
and
- (7) in any public garden or park except with prior written consent of the Council.

CHAPTER 3: RESTRICTIONS

3. Restrictions

No person engaging in street trading shall -

- (1) sleep overnight at the business site;
- (2) erect any permanent structure in a public place or public road for the purpose of providing shelter, or
- (3) place or store any goods in such a manner or position as to constitute a danger to any person;
- (4) carry on such business in such a manner as to-
 - (a) create a nuisance;
 - (b) damage or deface any public road or public place or any public or private property; or
 - (c) create a traffic hazard;
- (5) obstruct access to a service or to service works of the Council or of the State or any statutory body;

- (6) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
- (7) obstruct access to a pedestrian arcade or mall;
- (8) carry on such business in a place or area in contravention of any restriction imposed by Council resolution in terms of section 6A(2)(a) of the Act;
- (9) place or store his or her goods on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;
- (10) attach any of his or her goods by any means to the building structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or a public road or public place;
- (11) make an open fire on a public road or public place;
- (12) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop displayed window, or obscure such goods from view;
- (13) obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic; and
- (14) obstruct or inhibit the use of street furniture and any other facility designed for the use of the general public.

CHAPTER 4: GENERAL DUTIES OF STREET TRADERS

4. Cleanliness

Every street trader shall-

- (1) keep the area used by him or her for the purposes of street trading, as well as any goods used by him or her, in a clean and sanitary condition;
- (2) at the request of any authorised official of the Council, move or remove his or her goods so as to permit the cleansing of the area where he or she is trading, or for the purpose of effecting Council services;
- (3) if his or her activities involve the cooking or other preparation of food, take steps to ensure that no fat, oil or other substance drops or overflows onto the surface of a sidewalk or splashes against a building or other structure; and
- (4) not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter.

5. Display of goods

A street trader shall ensure that any structure, container, surface or other object used by him or her for the preparation, display, storage or transportation of goods-

- (1) is maintained in a good state of repair and in a clean and sanitary condition; and
- (2) is not so placed or stored so as to constitute a danger to any person.

CHAPTER 5: REMOVAL AND IMPOUNDMENT

6. Removal and impoundment

- (1) An inspector may remove and impound any goods -
 - (a) which he reasonably suspects are being used or intended to be used or have been used in or connection with the carrying on of the business of a street trader, and
 - (b) which he finds at a place where the carrying on of such business is prohibited or restricted in terms of these bylaws,

whether or not such goods are in the possessions or under the control of any person at the time of such removal and impoundment.

- (2) An inspector removing and impounding any goods shall -
- (a) except in the case of goods which appear to have been abandoned or in respect of which the owner or person having control thereof cannot be found, issue to the owner or person having control of such goods a receipt for the removal and impoundment thereof and stating-
- (i) the place where the goods shall be kept;
 - (ii) the amount payable in respect of expenses incurred by the Council in impounding and removing the goods; and
 - (iii) the date on or after which the goods will be sold or destroyed unless claimed; and
- (b) forthwith place such goods in safe custody.
- (3) Neither the Council nor any inspector, officer or employee of the Council shall be liable for any loss or theft of or damage to any goods removed and impounded in terms of these bylaws

7. Disposal of impounded goods

- (1) Any goods impounded in terms of these by-laws shall be dealt with as follows -
- (a) if the goods are claimed, the street trader shall pay the expenses incurred by the Council for impoundment; and
 - (b) if the goods are not claimed within the period specified on the receipt issued in terms of these by-laws, the goods shall be sold to defray expenses incurred by Council in impounding and removing the goods.
- (2) In the event that the goods-

- (a) are not capable of being sold, they shall be destroyed after the properd specified on the receipt issued in terms of these by-laws;
 - (b) any perishable goods may be sold or destroyed as soon as may be necessary.
- (3) If the proceeds contemplated by this section are insufficient to pay expenses incurred by Council, the owner shall be liable for any excess.

CHAPTER 6: GENERAL OFFENCES AND PENALTIES

8. General offences and penalties

- (1) Any person who-
- (a) contravenes any provision of these by-laws;
 - (b) ignores, disregards or disobeys any notice, sign or marking displayed or erected for the purposes of these by-laws;
 - (c) for the purposes of these by-laws, makes a false statement knowing it to be false or deliberately furnishes false or misleading information to an authorised official; or
 - (d) threatens, resists, interferes with or obstructs an authorised official, officer or employee of the Council in the performance of his or her powers, duties or functions under these by-laws,

shall be liable on conviction to a fine not exceeding R 1000-00 or imprisonment for a period not exceeding three months.

CHAPTER 5

GENERAL PROVISIONS

Repeal of existing By-laws

9. The Council's existing Street Trading by-laws are hereby repealed.

Short title and commencement

10. These by-laws shall be called the Street Trading By-laws, 2009, and shall come into operation on 12 June 2009.