

MUNICIPAL NOTICE 44 OF 2018

CS 35/2018



NEWCASTLE LOCAL MUNICIPALITY

Informal / Street Trading bylaw 2014

October 2014

Submitted to the Municipal Manager

Physical Address: Newcastle Civic Centre, Murchison Street, Newcastle.

Postal Address: Private Bag X662, Newcastle, 2940.

Tel: +27 034 328 7600

Fax: +27 034 312 1570



Submitted by:

Cwaninga Development Consulting



Re-Inventing Local and Regional Development

23 Northward Dr | Newcastle | 2940
Tel: +27(0)34 315 9177
Mobile: +27(0)79 809 9511 | +27(0)72 396 1938
Fax: +27(0)86 776 8349
Email: admin@cwanninga.co.za

TABLE OF CONTENTS

1. PREAMBLE	2
2. OBJECTS AND SCOPE OF THIS BYLAW	3
3. INTERPRETATION	3
4. ADOPTION AND ADMINISTRATION OF INFORMAL TRADE POLICY	6
5. FREEDOM TO CONDUCT INFORMAL TRADING	7
6. REGISTRATION AND PERMITTING OF INFORMAL TRADE	7
7. FORMULATION, ADOPTION, AMENDMENTS AND REVIEW OF INFORMAL TRADING PLAN	13
8. PROHIBITIONS AND RESTRICTIONS OF INFORMAL TRADE.....	15
9. OFFENCES AND PENALTIES.....	18
10. WASTE REMOVAL AND HYGIENE IN RESPECT TO INFORMAL TRADING	20
11. VICARIOUS LIABILITY OF PERSONS.....	28
12. MISCELLANEOUS PROVISIONS.....	20
13. NAME OF THE BYLAW.....	29

1. PREAMBLE

1.1. Municipal councils are empowered by section 156 (2) of the Constitution of the Republic of South Africa 108 of 1996 to formulate and gazette bylaws relating to matters which they have the right to govern.

1.2. The Business Act Amendment of 1993 grants significant autonomy to local authorities, in formulation of street trading bylaws as well as declaration and prohibition of trading in some zones.

1.3. This should be done within the framework of Section 153 of the Municipal Systems Act 32 of 2000, which requires municipalities to, among other tasks, promote social and economic development.

1.4. The Newcastle municipal council therefore recognises the need to balance between regulating sustainable use of public space and promoting social & economic development through developmental regulation of street trading.

1.5. The Newcastle Municipal council considers the following in the attempt to maintain the balance between social & economic development and sustainable use of public space.

1.5.1. promotion of safe and healthy environment

1.5.2. sustainable management of municipal public space, pedestrian walkways and roads

1.5.3. conservation of the environment

1.5.4. current and future municipal spatial planning

1.5.5. creating enabling environment for social and economic development

1.6. The council acknowledges the role played by street traders in alleviating poverty and creating employment as well as the important economic contribution of street trading to the municipal economy.

1.7. The council further takes cognisance of the strong linkages which exist between informal trade and the formal economy, and the interdependence between the two.

1.8. Within the above context, the Newcastle Municipal Council therefore proceeds to formulate informal trading bylaw on the basis of section 156 of the Constitution of the Republic of South Africa and the Municipal Systems Act of 2000 (Act No. 32 of 2000).

2. OBJECTIVES AND SCOPE OF THIS BYLAW

2.1. This Bylaw aims to regulate informal trading activities in all areas within Newcastle municipal boundaries for the purposes of-

2.1.1. Ensuring that informal trading in Newcastle municipality is conducted within the context of environmental conservation

2.1.2. Guiding safe and responsible use of public land

2.1.3. Safeguarding the safety and health of the public

2.1.4. Alleviating poverty and creating employment through supporting responsible informal trading

2.1.5. Coordinating healthy relationship between the informal trade and the: –

2.1.5.1. formal economy

2.5.5.2. Newcastle Municipal Council.

3. INTERPRETATION

Unless otherwise indicated in this Bylaw:

3.1. “**Authorised Official**” shall mean-

3.1.1. Municipal employee or delegated nominees authorised by the Municipal Council inclusive but not limited to the person designated by the Municipal Council for express dealings with informal trade in Newcastle Municipal area;

3.1.2. Peace Officer as defined under section 334 of the Criminal Procedure Act, 1977 (Act no. 51 of 1977);

3.1.3. Traffic Officer appointed and defined in terms of Section 3A of the National Traffic Act, 1996 (Act No. 93 of 1996);

3.1.4. Member of the Police Service as contemplated in terms of section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995).

3.2. “**Designated Area**” shall mean a specific place allocated for specific purpose as stipulated by the Municipal Council.

3.3. **"Event"** shall mean an event contemplated in terms of the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010), denoting sporting, entertainment, recreational, religious, cultural, exhibitional, organizational, or related activities hosted at a stadium, venue, or along a route.

3.4. **"Food Stuff"** means food intended for human consumption as determined under section 1 of the Foodstuff, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972)

3.5. **"Fine"** in the context of informal trade shall mean penalties imposed as a consequence of breaking stipulated trade conditions by an Informal Trader

3.6. **"Goods"** in regards to this bylaw shall mean movable property displayed or kept in a public space, used or intended to be used in exchange for compensation or reward.

3.7. **"Illegal Goods"** means-

3.7.1 goods which have been or intend to be acquired in an unlawful manner

3.7.2. goods which are intended to be sold in an unlawful manner

3.7.3. counterfeit goods as determined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997)

3.8. **"Impoundment Costs"** means the expenses incurred by the municipality including-

3.8.1. Transporting of impounded goods from an Informal Trader

3.8.2. Storage of impounded goods

3.8.3. Disposal and releasing of impounded goods

3.9. **"Impoundment Fee"** shall mean the tariff which should be paid as a penalty by an offending Informal Trader, as determined by the Municipal Council.

3.10. **"Informal Trader"** means a person who engages in informal trading whether temporarily or permanently

3.11. **"Informal Trading"** means a person who transfers the ownership of goods or services to another in exchange for money outside a formal process, which typically constitutes but not limited to the following:

3.11.1 trading along streets

3.11.2 trading at pedestrian pavements or Kerb lines

3.11.3 trading in public places

3.11.4 trading from mobile facilities such as caravans, wheelbarrows, trolleys, vehicles, and bicycles

3.11.5 trading at special events

3.11.6 trading at markets or flea markets

3.11.7 trading from make municipal shelters, makeshift shelters, containers or braai stands

3.11.8 trading hand or shoulder held goods or services

3.11.9 trading outside shopping centres

3.12. **"Informal Trade Permit"** means a document which confirms legal authorization to conduct trade of goods or services within the municipality under conditions provided by the Municipal Council.

3.13. **"Lease"** shall mean a contractual arrangement between the lessee (user) and the lessor (owner) for use of an asset.

3.14. **"Litter"** means any object such as paper, tins, bottles, or any other waste, liquid or solid, which has been discarded by the Informal Trader or customers in a place other than a designated place.

3.15. **"Market"** shall mean an area designated by the municipal council, where exchange of goods and services occur.

3.16. **"Motor Vehicle"** means self-propelled vehicle as described under section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

3.17. **"Municipal Council"** shall mean the councillors elected every five years by the public to form a Municipal Council, for the purpose of making bylaws and decisions for Newcastle Municipality and overseeing the execution and administration thereof.

3.18. **"Municipal Manager"** means a municipal official appointed under section 55 (1) of the Municipal Systems Act (Act 32 of 2000), as head of municipal administration.

3.19. **"Municipal Park"** means a designated and demarcated recreational area for the public, by the municipality.

3.20. **"Municipal Property"** means movable or immovable assets owned by, leased by or controlled by the Newcastle Municipality.

3.21. **"Municipal Shelters"** shall mean structures constructed by the municipality for the purposes of accommodating Informal Traders.

3.22. **"Nuisance"** means an act or conduct by an individual, business or an organization, which is offensive or harmful to a member of the public, or the collective public.

3.23. **"Pedestrians"** shall mean person or persons travelling on foot in public places, rather than driving cycling, or boarding a vehicle.

3.24. **"Pedestrian Walk"** means a side walk or pavement, footpath, thoroughfare or a platform along the side of the road, usually separated from the vehicular section by a Kerb.

3.25. **"Periodic Market"** means a regular but not permanent place authorized by the Municipal Council and for the reasons provided by the Municipal Council thereof, as a trading area.

3.26. **"Private Property"** shall mean movable or immovable assets such as (but not limited to) land, buildings, money, copyrights and patents, in which individuals or non-government entities have exclusive and absolute legal rights.

3.27. **"Public Space"** means a spatial area open and accessible to the public, and designated for the rightful use of the public. They may include –

3.27.1. public roads

3.27.2. public parking spaces

3.27.3. recreational grounds

3.27.4. municipal cemeteries

3.27.5. shopping centres

3.28. **"Road Shoulder"** shall mean paved or non-paved reserved space between the edge of the roadway and the Kerb line as described in the National Road Traffic Act, 1996 (Act no. 93 of 1996)

3.29. **"Services"** in the context of informal trade shall mean the act of doing work for the purpose of gaining monetary or non-monetary compensation.

3.30. **"Shopping Centre"** shall mean a designated place where a group of retail shops, restaurants, or businesses conduct commercial activities.

3.31. **"Traffic Act"** means the National Road Traffic Act, 1996 (Act No. 93 of 1996).

3.32. **"Trading Plan"** means an informal trading plan whose objective is to govern informal trading in Newcastle Municipality, and ratified through adoption by the Municipal Council.

4. ADOPTION AND ADMINISTRATION OF INFORMAL TRADE POLICY

The council shall adopt the informal trade policy and bylaw, after full satisfaction with its objectives, contents, and admissibility. The adoption shall be ratified by gazetting of the bylaw as required by the Municipal Systems Act. The publishing of this bylaw in Government Gazette shall legitimize this bylaw as an authoritative and binding legislation of informal trade regulation in Newcastle Municipality.

5. FREEDOM TO CONDUCT INFORMAL TRADING

5.1. Subject to provisions of:-

5.1.1. This bylaw

5.1.2. Section 22 of the Constitution of the Republic of South Africa

5.1.3. Any other law in the Republic of South Africa

5.2. Any person has the right to choose their trade, occupation or profession freely, and may engage in informal trading within a specific area as designated by the Municipal Council.

6. REGISTRATION AND PERMITTING OF INFORMAL TRADE

6.1. Concerning registration and permitting of Informal Traders:-

6.1.2. The Municipal Council shall constitute an Informal Trade inter-departmental committee, consisting of at least one representative from all municipal departments which play primary or secondary roles in enforcing bylaws on informal traders.

6.1.3. The tasks of the Informal Trade inter-departmental committee shall be to:-

6.1.3.1. review and approve applications for establishment of Informal Trade areas;

6.1.3.2. resolve complaints and disputes occurring between the Municipal council and the public;

6.1.3.3. facilitate efficiency and municipal responsiveness in enforcing Informal Trade bylaws.

6.1.4. The Informal Trade inter-departmental committee:-

6.1.4.1. shall agree on the regularity of meetings

6.1.4.2. must be chaired and coordinated by an Authorised Official situated in the municipality's department of Economic Development.

6.1.5. The Informal Trade office shall be responsible for:-

6.1.5.1. establishing and maintaining an annual registration database of Informal Traders;

6.1.5.2. administering the registration process comprising the:-

6.1.5.2.1. receipting of applications for registration,

6.1.5.2.2. investigation of the feasibility of the application and the compilation of a report thereon,

6.1.5.2.3. submission of the application and the feasibility report to the Informal Trade Inter-departmental committee,

6.1.5.2.4. issuing of a registration card

6.1.6. The registration database of Informal Traders referred to in section 6.1.5.1 at a minimum contain:-

6.1.6.1. the full name and surname of the Informal Trader

6.1.6.2. the identity number of the informal trader concerned,

6.1.6.3. the physical and postal address of the informal trader concerned,

6.1.6.4. the location where the informal trader concerned is authorized by such registration to carry on business as an informal trader, and if such registration applies to a trading plan area, the trading bay or market allocated to such Informal Trader in accordance with the applicable trading plan,

6.1.6.5. a description of the goods and / or services that the informal trader concerned may be authorized by such registration to sell or provide,

6.1.6.6. a distinguishing registration number and

6.1.6.7. any other information that may be required by this Bylaw

6.1.7. Any informal trader conducting informal trading activities within Newcastle Municipal area must do so having registered with the Municipal Council, under the conditions set out in section 6.1.15

6.1.8. A registered trader must be issued with a registration card, made of durable material, being not bigger than 5 centimeters by 9 centimeters, on which must be printed the name and identity number of the registered trader, the distinguishing registration number allocated to such registered trader and a summary of the information required to be entered in the database of Informal Traders in terms of section 6.1.6.

6.1.9. The registration card referred to in section 6.1.8:-

6.1.9.1. shall be prima facie proof of the registration of the registered trader, as informal trade permit in a designated place within Newcastle Municipal area.

6.1.9.2. remains the property of the Municipal council at all times and is issued personally and on an annual basis to the registered trader, who may not permit or authorize any other person to conduct any informal or other trading except to the extent permitted by this bylaw under section 6.1.25.

6.1.10. In the event that an informal trader conducts trade activities without registration with the Municipal Council, the Municipal Council shall commission a designated law enforcement officer, or any other person designated by the Municipal Council, and working as a full time employee of the municipal council, to give a written notice and a verbal instruction in one of the official languages of the Republic of South Africa that such person understands, requiring the unregistered trader to make application for registration as required by section in terms of section 6.1.7 and such notice and instructions must provide such person with such additional information that will enable him or her to understand the procedure to register and the consequences thereof as contained in this bylaw.

6.1.11. Any informal trader on whom a notice and instruction is served in terms of section 6.1.10 shall within thirty (30) days of the notice and instructions being served on him or her:-

6.1.11.1 apply for registration as an informal trader in terms of section 6.1.15 of this bylaw, failing which he or she shall be deemed to be trading in contravention of this policy unless he or she ceases such informal trading forthwith, or

6.1.11.2. submit prove to the Municipal Council that he or she is not an informal trader.

6.1.12 The Municipality must, within six (6) months of the commencement of this Bylaw give notice to all persons engaged in informal trading in the Municipal area of the adoption of this bylaw and the obligation to register in terms of section 6.1.7, through:-

6.1.12.1 publication of a notice in a provincial newspaper and a local newspaper which circulates regularly within the Municipal area, such notice to be in English, Afrikaans and isiZulu,

6.1.12.2. erecting such number of notices, in the English, Afrikaans and isiZulu languages, containing the information at or near all locations in the Municipal area where informal trading is or is likely to take place,

6.1.12.3. publicly broadcasting the contents of such notices by loudhailer or loudspeaker in places where informal trading is or is likely to take place.

6.1.12.4. causing the information contained in such notices to be broadcast on radio on local radio-stations that broadcast in the English, Afrikaans and isiZulu languages in the Municipal area.

6.1.13. Compliance with the provision of section 6.1.12 shall be deemed sufficient notice and instruction from the Municipal Council to the informal trader, unless in any proceedings in any court, an informal trader may prove to the satisfaction of the court that, despite such compliance with the provisions of clause 6.1.12, he or she was not aware of the need to register as an informal trader.

6.1.14. The Municipal Council is entitled to charge a registered trader:

6.1.14.1. a periodic trading fee; and

6.1.14.2. an additional fee or tariff, which is to be determined by the Municipal Council in its sole discretion, in respect of additional costs or services where the registered trader trades within an informal trading area.

6.1.15. In order to qualify for registration, the applicant:

6.1.15.1. must have experience as a trader, in particular where there is a history of trading in a specific geographical area;

6.1.15.2. must be a South African citizen, unless such person is authorized to carry on business as an informal trader in terms of the Immigration Act, 2002 (Act No 13 of 2002);

6.1.15.3. must not employ and actively utilize the services of more than five (5) persons;

6.1.15.4. must re-apply for registration to the municipal council, on an annual basis.

6.1.16 The Municipality must take into account the following factors when considering an application for registration of an Informal Trader:-

6.1.16.1. the nature of the trading goods which the applicant intends selling, or the services which the applicant intends rendering, bearing in mind the nature of the formal businesses within that trading plan area or in its immediate vicinity;

6.1.16.2. the need to give preference to unemployed applicants;

6.1.16.3. the need to give preference to applicants who do not share a household with an existing registered trader, unless the number of available trading bays for the relevant trading plan area is greater than the number of applicants seeking registrations for those trading bays;

6.1.16.4. whether the applicant has, in terms of this Bylaw, been convicted of an offence and/or had a registration revoked.

6.1.17. The Municipal Council may, by regulation, impose such terms and conditions in respect of any registration as it deems fit, including but not limited to, the right to:-

6.1.17.1. specify the trading hours during which the registered trader may trade;

6.1.17.2. specify the nature of the goods or services the registered trader is registered to trade; and

6.1.17.3. specify the registered trader's trading bay number;

- 6.1.17.4. allocate the Informal Trader an alternative bay in the same trading plan area;
- 6.1.17.5. specify the type of structure(s), if any, which may be erected on a trading bay and/or in a trading plan area;
- 6.1.17.6. impound the informal trader's trading goods or the informal trader's service facilities in terms of section;
- 6.1.17.7. authorize informal trading at a special event, in a specific designated area;
- 6.1.17.8. suspend informal trading for a special event on prior notice to the informal trader, with no compensation payable to the informal trader.
- 6.1.18. Notwithstanding the contents of the Municipal Council's informal trading plan, the Municipal Council has the right, upon prior notice to the informal trader and with no compensation payable by the Municipal Council to the registration holder, temporarily to:
 - 6.1.18.1 relocate a registered informal trader to a different trading area other than the usual trading zone,
 - 6.1.18.2 suspend the validity of any registration, or
 - 6.1.18.3. prohibit a registered informal trader from trading at the relevant trading bay,
- 6.1.19. Prohibition of informal trading in the relevant trading bays, by the Municipal Council, are conditional to circumstances which render the continuation of trading from the relevant trading bay impractical, unsafe or for good and sufficient reason severely inconvenient, which circumstances shall include, but not be limited to:-
 - 6.1.19.1 the maintenance or construction of infrastructure or buildings is required to be undertaken by the Municipality,
 - 6.1.19.2. property developments,
 - 6.1.19.3. alterations or refurbishments by any entity, or activities by public entities conducted in terms of their powers and functions.
- 6.1.20. The registration of a registered informal trader may be cancelled by the authorized official if:-
 - 6.1.20.1. the registered informal trader voluntarily and in writing proposes such cancellation,
 - 6.1.20.2. subject to the provisions of section 6.1.25.1 upon the death of the registered trader
 - 6.1.20.3. in the event of a transfer of registration in terms of section 6.1.25. being refused and the registered trader concerned fails to carry on the informal trading for which such registration was granted within a reasonable period after such refusal, provided that the Municipal Council shall have first given such registered trader not less than 14

(fourteen) days written notice of the intention to cancel the registration of such registered trader in terms of this sub-section, or the provisions of section 6.1.25 are invoked by the Municipal Council.

6.1.21. Businesses in respect of which any other license, certificate or permit is required, other than an informal trading license are required, are to comply with the necessary provisions in addition to this registration process. This refers in particular to formal or informal businesses that engage in the:-

6.1.21.1. sale or supply of meals or perishable foodstuffs;

6.1.21.2. provision of certain types of health facilities or entertainment;

6.1.21.3. sale or supply of repacked sweets, crisps, chocolates, biscuits and other prepared foodstuffs.

6.1.21.4. provision of informal hairdressing services, cosmetology or beauty services, body piercing and tattooing services.

6.1.22. It is the responsibility of all periodic market organizers or operators, falling within the definition and scope of this bylaw, to seek permission to operate such a market from the Municipal Council if it is intended that the market will operate in public spaces.

6.1.23. The Municipal Council must develop processes and procedures for the granting of limited period permissions for the operators of periodic markets within markets that are assigned thereto.

6.1.24. Any action taken by the Municipal Council in terms of this section 6 must comply with the provisions of the Promotion of Administrative Justice, 2000 (Act No 3 of 2000).

6.1.25. The registration of a registered trader may be permanently transferred, with the written approval of the Municipal Council, to a dependant of the registered trader, or an assistant acting on behalf of such dependant, who will continue trading as a registered trader until the registration is cancelled for any valid reason, in the event of:-

6.1.25.1. Death of principal informal trader – where the inability to trade would place undue hardship on the family of the principal informal trader, permission may be granted to another family member/assistant trader to continue trading until the end of the trading period as stipulated on the permit; and

6.1.25.2. If the loss of income generated by the informal trading would place such dependant under undue or severe economic hardship.

6.1.26. A registration may be temporarily transferred, with the written approval of the Municipal Council, to a dependant of a registered trader, if the registered trader –

6.1.26.1. is unable to carry on informal trading for an extended period due to an obligation to fulfill religious, traditional or cultural duties, provided that where the validity of the registration extends beyond 1 (one) month, then

the registered trader must resume trading within 1 (one) month, unless the Municipal Council consents to a longer period in exceptional circumstances.

6.1.26.2. is incapable of informal trading because of an illness, provided that:-

6.1.26.2.1. proof from a medical practitioner is provided to the Municipal Council which certifies that the registered trader is unable to trade; and

6.1.26.2.2. the dependant or assistant is only permitted to replace the registered informal trader for the period stipulated by the medical practitioner in the certificate for which the registered informal trader will be incapable of trading;

6.1.27. Subject to sections 6.1.26, a registered informal trader may not transfer his or her registration to any other person in any manner, including but not limited to, by way of lease or sale.

6.1.28. The transfer of any registration in terms of sections 6.1.26 shall be notified to the designated official from the Local Economic Unit, who shall record such transfer in the database of informal traders and no transfer shall be valid until so recorded.

7. FORMULATION, ADOPTION, AMENDMENTS AND REVIEW OF INFORMAL TRADING PLAN

7.1. The municipal council is responsible to facilitate formulation of an informal trading plan, which must;

7.1.1. define the spatial boundaries of a designated informal trading area.

7.1.2. demarcate informal trade bays

7.1.3. demarcate areas for flea markets

7.1.4. designate areas where municipal shelters should be located

7.1.5. demarcate areas in taxi and/or bus ranks

7.1.6. demarcate areas within close proximity to shopping and/or designated commercial centres

7.2. The process of formulating a trading plan shall account for the following procedures

7.2.1. consult with interested and affected persons, including participants in the informal and formal business sectors and owners and occupiers of land in the vicinity of the trading plan area to be subject to the proposed trading plan;

7.2.2. compile a draft trading plan following the consultation process in terms of section 7.2.1.;

7.2.3. give notice to all interested and affected persons through:

7.2.3.1. publication of a notice in a local newspaper regularly circulating in the Municipal area in English, Afrikaans and isiZulu languages;

7.2.3.2. erecting such number of notices, in English, Afrikaans and isiZulu languages, at or near the intended location of the trading plan area designated in such trading plan,

7.2.3.3. publicly broadcasting the contents of such notices by loudhailer or loudspeaker at or near the intended location of the trading plan area designated in such trading plan, and

7.2.3.4. by causing the information contained in such notices to be broadcast by a local radio-stations that broadcast in English, Afrikaans and isiZulu languages.

7.3. In the notices referred to in section 7.2.3.1. to 7.1.3.4., the Municipality must provide sufficient information to enable interested and affected persons to identify the location of the proposed trading plan, and invite such persons:

7.3.1. to lodge objections or comments to the demarcation of a trading plan within a period specified in such notice, which period shall not be less than 60 (sixty) days :-

7.3.2. to a public consultative meeting.

7.4. The public meeting referred to in clause 7.2.1 must be held –

7.4.1. in the vicinity of the proposed trading plan area; and

7.4.2. after seven (7) days but not later than sixty (60) days from the date of publication of the notice.

7.5. At the public meeting, the Municipality must –

7.5.1. be represented by a person duly authorized by the Municipality who must make a presentation to the public at the meeting in which the draft trading plan is explained;

7.5.2. reasonably respond to any queries related to the draft trading plan which may be posed by the public at the public meeting; and

7.5.3. give interested and affected parties an opportunity to make comments and objections at the public meeting, which comments and objections must be recorded.

7.6. The Municipal Council must consider all objections or comments that the Municipal Council may receive pursuant to the process outlined in this section (section 7).

7.7. After having considered the comments and objections, the Municipal Council must, within a reasonable period of time after the commencement of the public participation process in respect of the relevant draft trading plan,

notwithstanding the provisions of any other law, including, but not limited to laws pertaining to municipal planning, and at a meeting of the Council–

7.7.1. adopt the draft trading plan;

7.7.2. amend and adopt the draft trading plan; or

7.7.3. reject the draft trading plan.

7.8. Notwithstanding the provisions of section 59 of the Municipal Systems Act, the Council may not delegate the decision-making powers referred to in section 7.6 and 7.7 above.

7.9. Public Notice of the adoption of a trading plan by the Municipality shall, in addition to publication in the Provincial Gazette, be published in a local newspaper regularly circulating in the Municipal area, such notice to be in English, Afrikaans, and isiZulu.

7.10. The published notice shall inform the public:-

7.10.1. that the draft trading plan has been adopted as a trading plan, with or without amendment;

7.10.2. of the key aspects of the trading plan; and

7.10.3. that the trading plan is available for inspection at a specified location within the Municipal area.

7.11. The Municipal Council:-

7.11.1. may by regulation amend an adopted trading plan, provided that if the amendment deviates materially from the trading plan, then the Municipal Council must comply with section 7.2; and

7.11.2. must review trading plans from time to time as the Municipal Council deems fit.

8. PROHIBITIONS AND RESTRICTIONS OF INFORMAL TRADE

8.1. No person shall conduct informal trade activity at a place or area where:-

8.1.1. the Municipal Council has declared as an area in which informal trading is prohibited;

8.1.2. the Municipal Council has erected signs, markings or other devices to indicate the boundaries of :-

8.1.2.1. areas where informal trading is restricted or prohibited;

8.1.2.2. informal trading areas and informal trading signs according to the municipality's informal trading plan

8.1.3. the informal trade activity is likely to obstruct vehicular traffic;

8.1.4. On a side walk neighbouring a building in which business is being carried on by any person who sells goods or services of the same or of a similar nature to the goods being sold on such sidewalk by the informal trader, if the goods or services are sold by the informal trader without prior consent of such person and an authorised official has informed the informal trader that such consent does not exist.

8.1.5. On a side walk neighbouring a public building, a place of worship such as church, mosque, synagogue, or a national monument.

8.2. An Informal Trader must not:-

8.2.1. erect any structure for trading or storage of trade goods and services, whether movable or immovable, without approval by the Municipal Council;

8.2.2. sleep overnight at the place where he or she carries out informal trading;

8.2.3. on concluding business for the day, leave his or her goods and service facilities at an informal trading site which is part of a public road or public space, unless the storage facility is approved by the municipal council;

8.2.4. place his or her goods and/or services on a public road or public space, 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, complies with the provisions of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

8.2.5. allow his or her goods or area of activity to cover an area of a public road or a public space which is greater than 4 square metres, and greater than 2 metres in length unless approved by the municipal council;

8.2.6. trade on a road shoulder of any 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;

8.2.7. Obstruct 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 this bylaw or any other law;

8.2.8. Obstruct access to pedestrian crossing, pedestrian arcade or shopping mall;

8.2.9. Obstruct access to Automatic Teller Machine;

8.2.10. Obstruct access to refuse disposal bins or other facilities intended for the use of the public;

8.2.11. Obstruct the view of CCTV camera;

8.2.12. Obstruct any municipal sign, including but not limited to informal trading signs;

8.2.13. Limit access to parking or loading bays or other facilities for vehicular traffic;

8.2.14. Trade within 5 metres of:-

8.2.14.1. a road intersection or fire hydrant, or any other fire- fighting equipment;

8.2.14.2. electricity power units located in a public space;

8.2.14.3. telephone power units located in a public space;

8.2.14.4. public telephone unit;

8.2.15. trade in a park unless such area has been demarcated by the municipal council as an informal trading area;

8.3. An informal trader must, in respect of any sidewalk, leave an unobstructed space for pedestrian traffic of not less than:-

8.3.1. 2 metres wide when measured from any neighbouring building to his or her goods or area of activity; and

8.3.2. 0.5 metres wide when measured from the kerb line to his or her goods or area of activity, unless approved by the Municipal Council.

8.4. An informal trader must not obstruct access to, or the use of, street furniture or any other facility designed for the use of the public;

8.5. An informal trader must not make a fire at any place unless authorised to prepare foodstuffs by utilising open flame fire or gas-fired equipment and, where the informal trade is authorised to make a fire, he or she must not make a fire in circumstances where it could harm any person or damage any building, structure, vehicle or other property;

8.6. An informal trader must dispose of litter generated by his or her informal trading in a refuse receptacle approved or supplied by the municipality;

8.7. An informal trader must not, other than in a refuse receptacle approved or supplied by the Municipal Council, 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;

8.8. An informal trader must not attach any of his or her goods or service facilities, 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.

8.9. An informal trader must not—

8.9.1. sell or promote alcoholic products;

8.9.2 use bells, hooters, amplified equipment or similar devices which emit sound, in order to attract customers; and

8.9.3. use any electrical supply or a power generator, unless expressly approved by the Municipality.

8.9.4. An informal trader must not carry on informal trading—

8.9.4.1. in a place or area in contravention of any prohibition or restriction imposed by Municipal Council; or in such a manner as to—

8.9.4.1.1. create a nuisance;

8.9.4.1.2. damage or deface the surface of any public road or public place, or any public or private property;

8.9.4.1.3. create a traffic or health hazard or a health risk;

8.9.4.1.4. contravene any of the terms and conditions of his or her informal trading registration conditions; or

8.9.4.1.5. act in a way which disturbs the reasonable peace, comfort or convenience and well-being of any other person.

8.9.5. Any sign erected in terms of this Bylaw or any other law, by the Municipal Council, shall serve as sufficient notice to an informal trader, that informal trading activities are prohibited or restricted in the area.

9. OFFENCES AND PENALTIES

9.1. A person is guilty of an offence and liable on conviction to a fine not exceeding R2000.00 (two thousand Rand) or to imprisonment for a period not exceeding 3 (three) months, subject to the Adjustment of Fines Act 1991, (Act No. 101 of 1991), if such person:

9.1.1 contravenes any provision of this Bylaw, or fails to comply with any condition imposed in terms thereof;

9.1.2 places or stacks goods on a stand in such a manner that they constitute a danger to any other person or are likely to injure any person or damage any other goods or property;

9.1.3 attaches any goods by any means to any building, structure, pavement, street parking meter, lamp pole, electricity pole, telephone booth, post box, traffic sign or bench;

9.1.4 makes a fire on or near any stand or at a place or in circumstances where it could harm any person or damage any building or vehicle;

9.1.5 stores goods in a manhole or storm water drain or any other place not intended for the storage thereof;

9.1.6 disposes of any litter in a manhole, storm water drain or any other place not intended for disposal thereof;

9.1.7 uses any vehicle, trailer, container, shelter, tent or any structure not approved for use by the Council on a Council approved trading point or in a prohibited / restricted area;

9.1.8. threatens, resists, interferes with or obstructs any authorized officer or any employee of the Municipal Council in the performance of official duties or functions in terms of or under this Bylaw; or

9.1.9 deliberately furnishes false or misleading information to an officer or an employee of the Municipality, in any matter which relates to this Bylaw, on conviction shall be guilty of an offence.

9.2. If an informal trader contravenes any provision of this By-law, an applicable informal trading policy or his or her permit and fails or refuses to cease the contravention, or to take steps to rectify any contravention, then the Municipality may take those steps itself and recover the costs from the informal trader.

9.3. The costs mentioned in subsection 9.2 are in addition to any fine which may be imposed on the informal trader.

9.4. The removal and impoundment of goods in terms of subsection 9.2 may be carried out regardless of whether or not such goods are in the possession or under the control of the owner, employee or any third party at the time.

9.5. Any authorised official who removes and impounds goods in terms of subsection 9.2 must, except where goods have been left or abandoned, issue the informal trader a receipt which—

9.5.1. itemises the goods to be removed and impounded;

9.5.2. provides the address where the impounded goods will be kept;

9.5.3. states the period of impoundment;

9.5.4. states the terms and conditions which must be met to secure the release of the impounded goods;

9.5.5. states the impoundment fee to be paid to secure release of the impounded goods;

9.5.6 states the terms and conditions on which unclaimed goods will be sold or otherwise disposed of; and

9.5.7 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.

9.6. If any goods to be impounded are attached to immovable property or a structure, an authorised 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:-

9.6.1. that person shall be guilty of an offence; and

9.6.2. the authorised official may remove the goods himself or herself.

9.7. Goods which have been impounded may be released after:-

9.7.1. proof of ownership in the form of the presentation of the receipt contemplated in subsection 9.5 and

9.7.2. payment of the impoundment fee, is received.

9.8. The Municipality may at any time after the impoundment sell, destroy or otherwise dispose of—

9.8.1 impounded perishable goods if the goods represent or might represent a health risk or a nuisance; and

9.8.2. foodstuffs which are unfit for human consumption.

9.9. 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.

9.10. If impounded goods are sold by the Municipality in terms of subsections 9.8 and 9.9, and upon the presentation of the receipt contemplated in subsection 9.5 as proof of ownership, the Municipality must pay to the person presenting the inventory the proceeds of the sale less the impoundment fee.

9.11. If in the reasonable opinion of an authorised official, an Informal Trader is suspected of trading in illegal goods, the matter must be reported immediately to the South African Police Service.

10. WASTE REMOVAL AND HYGIENE IN RESPECT TO INFORMAL TRADING

10.1. An Informal Trader must:-

10.1.1. Always keep and maintain the allocated informal trade site or area clean and in sanitary condition;

10.1.2. On conclusion of a trading day, collect and remove all waste of any kind, from the allocated informal trade site or area, whether the waste is caused by the informal trader or any other person;

10.1.3. Keep his or her goods in a clean and sanitary way;

10.1.4. Conduct informal trade activities in such a manner that does not cause a threat to public health or public safety;

10.1.5. On the request by an authorised official, move or remove any object so that the area or informal trading area in which informal trade activities are conducted may be kept clean.

11. VICARIOUS LIABILITY OF PERSONS

When an employee of a person conducting the business of informal trading does or omits to do any act which would be an offence in terms of these by-laws for that person to do or omit to do, that person shall be deemed himself/ herself to have done or omitted to do that act, unless he/she satisfies the presiding officer at an enquiry that:-

11.1 he/she neither contemplated nor permitted the act or omission by the employee concerned;

11.2 He / she took all reasonable steps to prevent the act or omission.

When a person carrying on business of informal trading is by virtue of this section liable for an act or omission by an employee shall also be liable as if he/ she was the person carrying on the business concerned.

12. MISCELLANEOUS PROVISIONS

12.1. The Municipality must appoint an officer/ officers conversant in the home languages of informal traders who are illiterate or not able functionally to understand the purpose and consequences of the provisions of this Bylaw and any regulations made hereunder to assist such informal traders in complying with the provisions of the relevant policy, and any such regulations generally intended to ensure that such informal traders are treated fairly and in accordance with the provisions of this Bylaw. Such an officer or officers must at all times act impartially in regard to such assistance and must observe the confidentiality of any information imparted to him or her / them by such informal trader unless authorized to disclose such information by the informal trader.

12.2. The municipality must provide sector support which is necessary to help informal traders participate meaningfully and productively in the municipal economy.

12.3. The municipality must always ensure that to the extent possible, the process of engaging informal traders is highly consultative, inclusive of but not limited to, communication of the contents of this Bylaw.

12.4 Any declaration in terms of the Businesses Act, 1991 (Act No. 71 of 1991) or any applicable regulation of an area within the jurisdiction of the Municipality as an area in which the carrying on of the business of street trading, peddler or hawker may be restricted or prohibited, shall remain valid until such time as the Municipality adopts a trading plan in respect of such area in terms of this By-law;

12.5. Where an informal trader had entered into a lease agreement with municipality prior to the enactment of this Bylaw which permits trading from a particular bay, such lease agreement shall remain valid until the Municipality adopts a trading plan in respect of the area to which such lease agreement applies, or such lease terminates.

12.6. The lessee under any lease agreement referred to in section 11.5 shall, if such lease is cancelled as a consequence of the area leased being included in a trading plan area, be given an opportunity to apply for a trading bay or to be permitted to carry on informal trading in any market established in terms of the applicable trading plan.

12.7. An owner of non-municipal property must –

12.7.1. ensure that any informal trading taking place on his or her property complies with the law including the municipal Bylaws;

12.7.2. Permit any authorised official access to his or her property for the purpose of ensuring compliance with the law; and

12.7.3. Ensure at the owner's cost, that sufficient services are provided to maintain acceptable hygienic conditions in respect of his / her informal trading activities.

13. NAME OF THE BYLAW

This Bylaw shall be known as the

Newcastle Municipality Informal Trade Bylaw