

LOCAL AUTHORITY NOTICE 1066 OF 2024



**KING SABATA DALINDYEBO MUNICIPALITY
INFORMAL TRADING BY- LAW 2023**

KING SABATA DALINDYEBO MUNICIPALITY**INFORMAL TRADING BY-LAW****INDEX**

ITEM		PAGE
	PREAMBLE	3 -4
1.	DEFINITIONS	5-9
2.	OBJECT OF BY-LAW	9
3.	APPLICATION OF BY-LAW	9
4.	FREEDOM TO TRADE INFORMALLY	9
5.	INTERPRETATION OF BY-LAWS	10
6.	SINGLE ACT CONSTITUTES STREET TRADING	10
7.	RESTRICTED & PROHIBITED AREAS	10
8.	PROHIBITED CONDUCT	11-12
9.	RESTRICTED CONDUCT	12-14
10.1	PRODUCTS & SERVICES PROHIBITED	14
10.2	ACCEPTABLE PRODUCTS & SERVICES	15
11.	CLEANLINESS & SANITATION IN DEMARCATED & ADJACENT	15-16
12.	APPLICATION FOR & ALLOCATION OF LEASE AND	16-19
13.	CONDITIONS FOR TRANSFER OR RE-ALLOCATION OF STALLS	19-20
14.	TERMINATION OF TRADING PERMITS	20
15.	INFORMAL / STREET TRADING AND FORMAL BUSINESS	20
16.	PAYMENTS AND SETTLEMENT ARRANGEMENTS	20
17.	IMPOUNDMENT AND REMOVAL	21-22
18.	VICARIOUS LIABILITY OF PERSONS TRADING	22
19.	EXEMPTION FROM LIABILITY	22
20.	CHILDREN NOT PERMITTED TO TRADE	22-23
21.	OWNERS OF PRIVATE PROPERTY	23
22.	OFFENCES AND PENALTIES	23
23.	RECOVERY OF LOSS	23-24
24.1	DELEGATION	24
24.2	APPEALS	24-25
24.3	REPEAL OF LAWS AND SAVINGS	25
24.4	TRANSITIONAL PROVISIONS	26
25.	SHORT TITLE AND COMMENCEMENT	26
	SCHEDULE 1	27-28
	GOODS REALISING INSTRUCTIONS	28
	SCHEDULE 2	29

INFORMAL TRADING BY-LAW, 2024

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

PREAMBLE

WHEREAS the Municipal Integrated Development programs call for joint efforts between spheres of government to uplift local communities in as far as job creation, sustainable rural development and urban renewal are concerned;

WHEREAS the King Sabata Dalindyebo Municipality is committed to contribute toward economic development of the Municipality by establishing and maintaining a creative environment conducive for growth in all levels of business within its local community. One of the objects of Municipalities set out in the **Constitution of the RSA, Act 108/1996** is to promote social and economic development [Section 152(1)(c)], and obliges a Municipality to participate in national and provincial development programs [Section 153(b)]

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

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

Furthermore, the Local Government: Municipal Systems Act, 32 of 2000, stipulates that a Municipality must develop a culture of Municipal governance that promotes and undertakes development within the municipality.

NOW THEREFORE, for the purposes of this Act, read in conjunction with Section 156 and Part B of Schedule 4 and 5 of the Constitution of the Republic of South Africa, the Municipality must develop local government legislation to create terms and conditions for local communities who participate in economic development and business, and hereby makes the following declaration By-law:

1. DEFINITIONS

In this by-law, except as otherwise expressly provided:

"Act"- means the Businesses Act 71 of 1991 as amended.

"Approval"- means approval by the Council and "approve" has a corresponding meaning:

"Authorised officer"- means a law enforcement official of Council authorised to implement the provisions of this by-law:

- (i) A traffic officer appointed under section 3 of the Road Traffic Act, 1989(Act no 29 Of 1989)
- (ii) A peace officer as contemplated in section 334 of the Criminal Procedure Act 51 of 1977;
- (iii) An Environmental Health Practitioner means an official appointed by the Council, and who is duly registered as an environmental health practitioner with the Health Professions Council of South Africa in terms of section 33(1) of the medical, Dental and Supplementary Health Services Professions Act, 1974(Act No. 56 of 1974);
- (iv) A Fire Officer as contemplated in the Fire Brigade Services Act, 99 of 1987.

"Certificate of Acceptability" means a certificate of acceptability referred to in Government Notice No. R.918 of 30 July 1999 as corrected by Government Notice R.723 of 12 July 2002, regulation 3.

"Child" - means a male or female person under the age of 16 years, in terms of the Labour Relations Act.

"Clay or clay soil" is a soft, earthy material made up of several minerals rich in alumina, silica, and water. Clay can also contain other minerals.

"Council"- means King Sabata Dalindyebo Local Municipal Council whose members are elected in terms of section 22 of the Local Government Municipal Structures Act 1998(Act 117 of 1998).

"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:

"Event" means an event as defined in the Safety at Sports and Recreational Events Act, 2010 (Act.2/2010), namely sporting, entertainment,

recreational, religious, cultural, exhibition, organisational or similar activities hosted at a stadium, venue or along a route or within their respective precincts;

"Foodstuff"- means foodstuffs as defined in the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972:

"Garden or park"- means any garden or park to which the public has a right of access:

"Beach" means the portion of land above and contiguous to the seashore and includes any grass verge, where such verge exists;

"Beach trading" means informal trading that is conducted on a beach and includes informal trading in a parking area adjacent to the beach;

"Goods" - means any movable property displayed or kept by a person in a public place or public road for the purpose of carrying on the business of a street trader including any article, container, vehicle or movable structure and further includes a living thing;

"Intersection"- means any intersection as defined in the regulations promulgated in terms of the National Road Traffic 93 of 1996:

"High-water mark" means the high-water mark as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

"Lease"- means a lease agreement as contemplated in section 9 of this by-law:

"Litter"- includes any receptacle, container or other waste matter that has been discarded or left behind by the person trading or his/her customer.

"Municipality" means King Sabata Dalindyebo Local Municipal Council

"Permit / token" documentary proof of a valid informal / street trading licence as provided for in subsection 9.7 and to be carried on the person of the street trader during trading hours.

"Permit-holder" means an informal trader who has been granted a permit by the Municipality, to conduct informal trading from a designated site situated in an informal trading area on municipal property / jurisdiction.

"Prescribed"- means determined by Council resolution.

"Prohibited area"- means an area of in which street trading is prohibited:

"Property" in relation to a street trader, means any article, container, vehicle or structure used or intended to be used in connection with such business, and includes goods with which he or she trades.

"Public amenity" - means:

- (i) Any land, square, swimming bath, public resort, recreation site, zoological, botanical or other garden, park or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, as well as any public road, road reserve, reserve street, lake, dam, or river;
- (ii) Any building, structure, hall, room or office including any part thereof and any facility or apparatus therein, which is the property of, or possessed, controlled or leased by the Municipality and to which the general public has access, whether on payment of admission fees or not;
- (iii) Also, any public amenity if it is lawfully controlled and managed in terms of an agreement by a person other than the Municipality;
- (iv) Any nature conservation area including -
 - (a) Nature reserves
 - (b) Protected natural areas
 - (c) Nature conservation worthy areas
 - (d) Natural open spaces

"Public building" means a building belonging to or occupied solely by the State of the Municipality.

"Public monument" means any one of the public monuments and memorials as defined in the National Heritage Resources Act, 1999 (Act 25 of 1999).

"Public place" - means a public place as defined in section 2 of the Local Government Ordinance 17 of 1939:

"Public road or roadway" means a public road and roadway as defined in section 1 of the National Road Traffic Act 93 of 1996:

"Sell or selling" shall mean to give or hand over (something) in exchange for money and shall also include:

- (i) offer to render a service;
- (ii) barter, exchange or hiring out;
- (iii) display, expose, offer or prepare for sale;
- (iv) store with a view to sell; or
- (v) provides a service for reward and "sale" has a corresponding meaning:

"Services"- includes any advantage or gain for consideration or reward.

"Sidewalk" - means a sidewalk as defined in section 1 of the National Road Traffic Act 93 of 1996.

"Stall" - means any structure installed by the Municipality for the purposes of trading.

"Street furniture" - means any furniture installed by the Municipality on the street for public use;

"Informal trader"- means a person selling goods or rendering a service and includes a seller, peddler, street trader or hawker and:

- (i) A person who as principal, agent, assistant or employee carries on the business of street trading; and
- (ii) A person who is a part-time job seeker.

"Informal trading" means the trading of goods and services in the informal sector by an informal trader in a public road or public place, and which typically includes, without limitation, the following types of trading:

- (a) beach trading;
- (b) street trading;
- (c) trading in pedestrian malls;
- (d) trading at markets or flea markets;
- (e) trading at transport interchanges;
- (f) trading in public places;
- (g) mobile trading, such as caravans and light delivery vehicles;
- (h) trading from kiosks, stalls or containers;
- (i) car wash;
- (j) hair dressing;
- (k) photography;
- (l) roving traders, including without limitation, trading from trolleys, trading from Containers, trading from caravans; and
- (m) trading at special events;

"Trader" has the same meaning as "Informal / Street trader".

"Verge" - means a verge as defined in section 1 of the National Road Traffic Act 93 of 1996.

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

2. OBJECT OF BY-LAW

The object of this By-law is to regulate informal trading in a manner which –

- (a) ensures that informal trading is conducted in an orderly manner;
- (b) enables access to job and entrepreneurial opportunities within the informal trading sector;
- (c) harmonises the relationship between the informal trading sector and the formal trading sector; and
- (d) ensures the health and safety of the public.

3. APPLICATION OF BY-LAW

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

4. FREEDOM TO TRADE INFORMALLY

Freedom to engage in informal trading is subject to compliance with the provisions of –

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

Any person is permitted to engage in informal trading within the area of jurisdiction of the Municipality.

5. INTERPRETATION AND APPLICATION OF BY-LAW

5.1 In this by-law any word or expression for which a meaning has been assigned shall have such meaning as assigned in the Businesses Act 71 of 1991, unless the context indicates otherwise, in which event the Business Act shall take precedence.

5.2 For purpose of this by-law a reference to any legislation shall be a reference to that legislation and the regulations promulgated thereunder.

5.3 This By-law shall apply to all areas which fall under the jurisdiction of the King Sabata Dalindyebo Local Municipality and is binding on all persons to the extent applicable.

6. SINGLE ACT CONSTITUTES INFORMAL TRADING

For the purposes of this by-law a single act of selling or offering for sale or rendering of services in a public road, public place or public amenity constitutes informal trading.

7. RESTRICTED & PROHIBITED AREAS

- (a) The Municipality may, by resolution and in terms of section A (2) of the Act, 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:
- i. specified hours, places, goods or services in respect of which street trading is restricted or prohibited;
 - ii. the locations of boundaries of restricted or prohibited areas;
 - iii. the boundaries of a stand or area set apart for the purposes of the carrying on of the business of informal / street trading;
 - iv. the fact that any such stand or area has been let or otherwise allocated; and
 - v. any restriction or prohibition against street trading in terms of this by-law.
- (b) prohibited trading area in any manner it deems appropriate and fit.
- (c) Any sign erected in terms of this by-law or any other law, shall serve as sufficient notice to a street trader of the prohibition or restriction of the area concerned; and
- (d) Any sign may be amended from time to time and displayed by the Municipality for purpose of this by-law and shall have the same effect as a road sign in terms of the National Road Traffic Act, 1996.
- (e) Trading in the following streets is strictly prohibited:
- (i) SUTHERLAND (R61) and
 - (ii) YORK ROAD Streets
 - (iii) No container allowed as places of business within the Mthatha and Mqanduli Central Business District. All business operation operated on mobile, containers must be granted Consent by local Authority.
 - (iv) No mobile containers allowed to obstruct pedestrians from designated walkways.

8. PROHIBITED CONDUCT

8.1 No person shall, within the municipal area of the King Sabata Dalindyebo Municipality:

- (a) Carry on the business of an informal / street trader:
- (i) at a place or in any area declared by the Municipality in terms of section 6A(2)(a) of the Act as a place or area in which informal / street trading is prohibited;

- (ii) in a garden or a park to which the public has a right of access;
- (b) on a verge contiguous to-
 - (i) a building belonging to, or occupied solely by the State, Entity or the Municipality;
 - (ii) church or another place of worship;
 - (iii) a building or place declared to be a public monument;
 - (iv) an auto teller bank machine;
- (c) At a place where it causes an obstruction in front of-
 - (i) a fire hydrant;
 - (ii) An entrance to or exit from a building excepts where letter of authority provided by building or property owner
- (d) At a place where it could obstruct vehicular traffic;
- (e) At a place where it could substantially obstruct a pedestrian in his or her use of the sidewalk;
- (f) 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 that building objects thereto and such objection is made known to the street trader by an authorized official;
- (g) On a stand, or in any area demarcated by the Municipality in terms of section 6A(3)(b) of the Act, if he or she is not in possession of written proof (permit/token) that he or she has hired such stand or area from the Municipality, or that such stand has otherwise been allocated to him or her;
- (h) Within 5 (five) meters of any intersection as defined in Regulation 322 of the National Road Traffic Act 1996;
- (i) On a sidewalk contiguous to a building in which business is being carried on, by a person who sells goods of the same or of a similar nature to the goods being sold on such sidewalk by the street trader if the goods are sold without the prior consent of such person and an authorised official has informed the street trader that such consent does not exist; and
- (j) Trading on stand allocated to another trader/not allocated to you as trader.
- (k) Trading from a Mobile caravan or container without being granted consent by local Authority.

8.2 A person who has hired a stand from, or been allocated a stand by the Municipality in terms of subsection 5.1(h), may not trade in contravention of the terms and conditions of such lease or allocation.

9. RESTRICTED CONDUCT

9.1 A person carrying on the business of an informal and formal trader-

- (a) It is not permitted to sleep overnight or stay at the place of such business.
- (b) Must not erect any structure for the purpose of providing shelter, other than a device approved by the Municipality;
- (c) Must not place his or her property on a public road or public place, with the exception of his or her motor vehicle or trailer from which trade is conducted, and provided that such vehicle or trailer does not obstruct pedestrian and vehicular traffic movement and complies with the provisions of the National Road Traffic Act, 1996. Therefore, trading in a motor vehicle or trailer in the CBD is prohibited and is permitted outside CBD.
- (d) Must ensure his or her property or area of activity does not cover an area of a public road or public place which is greater in extent than six square metres (with a maximum length of 3 metres) unless otherwise approved by the Municipality, and which on any sidewalk leaves an unobstructed space for pedestrian traffic, the length of the area of the property or area of activity, and not less than 1,5 metres wide, measured from any contiguous building to the obstructed area, and an unobstructed space, the length of the property or area of activity, and not less than 0,5 metres wide, measured from the kerb of the roadway;
- (e) Must not trade on a sidewalk where the width of such sidewalk is less than 4 (four) meters;
- (f) Must not place or stack his or her property in such a manner that it constitutes a danger to any person or property, or is likely to injure any person or cause damage to any property;
- (g) Must not display his or her goods or other property on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;
- (h) Must on request by an authorised official of the Municipality, or supplier of telecommunication or electricity or other council services, move his or her property so as to permit the carrying out of any work in relation to a public road, public place or any such service;
- (i) Must not attach any of his or her property 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;

- (j) Must not carry on business in such a manner as to-
 - (i) Create a nuisance;
 - (ii) Damage or deface the surface of any public road or public place, or any public or private property
- (k) Create a traffic and/or health hazard, or health risk or both;
- (l) Must not make an open fire on a public road or in a public place;
- (m) Must not interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure such goods from view;
- (n) Must not obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic;
- (o) Must not obstruct access to, or the use of street furniture and any other facility designed for the use of the general public;
- (p) Must not obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996, or any marking, notice or sign displayed or made in terms of this by-law;
- (q) Must not carry on business, or take up a position or place his or her property on a portion of a sidewalk or public place, in contravention of a notice or sign erected or displayed by the Municipality for the purpose of this by-law;
- (r) Must not, other than in a refuse receptacle approved or supplied by the Municipality, accumulate, dump, store or 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;
- (s) Must not place on a public road or in a public place, his or her property that is not capable of being easily removed to a storage place away from such public road or public place at the end of the day's business;
- (t) Must on concluding business for the day remove his or her property, except any structure permitted by the Municipality, to a place which is not part of a public road or public place;
- (u) Must not store his or her property in a manhole, stormwater drain, public toilet, bus shelter or tree;
- (v) Must not carry on such business in a place or area in contravention of any prohibition or restriction set by the Municipality in terms of section 6A(2)(a);
- (w) Must not use any inflammable liquids without the necessary approval by the Municipality;
- (x) Must not make open fires in any other manner than in an approved purpose made stove, fireplace or hearth that forms an integral part of a structure;
- (y) Must not keep stock in value exceeding R2 500; and

- (z) Must not trade without a valid permit during events
- (aa) Caravans and containers are forbidden in municipal areas that have not been established and approved by the Council.
- (bb) 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.

9.2 Food will only be handled if a valid certificate of acceptability has been issued by the Local Authority i.e. Environmental Health Services.

9.3 No trader shall leave a stall vacant for more than thirty (30) days without any formal communication with Municipality regarding the reasons that compels him/her for not being onsite/trading within that period.

10. PRODUCTS AND SERVICES

10.1 PROHIBITED PRODUCTS AND SERVICES

10.1.1 Prohibited services and products are not to be deemed as limited to the listed activities below, which serves as a guideline only, and any activities prohibited by legislation shall be deemed to form part of this section: Selling and/or offering of the following products and/or services are not allowed:

- (a) Sale or any trade of flammable liquids
- (b) Trade involving any illegal activities i.e. drugs
- (c) Repair of motor vehicles, including washing of motor vehicles
- (d) Liquor or any intoxicating substances
- (e) Harmful chemicals, poisons and defoliants;
- (f) Raw meat, fish, livestock except in a designated area, and all perishable foodstuffs (including raw and boiled eggs) but excluding ice cream and frozen yoghurt;
- (g) Fireworks;
- (h) Clay and clay soils
- (i) Hairdressers.
- (j) Using gas cylinder of more than 9kg/trading without functional fire extinguishers.

10.2 ACCEPTABLE PRODUCTS AND SERVICES

10.2.1 Selling and/or offering of the following products and/or services are allowed to be traded and offered by street traders:

- (a) Sale of accessories

- (b) Sale of Fruits and vegetables
- (c) Hair cutting services with special consent (enclosed gazebo, no harmful chemicals, no generators, cleaning up hair clippings daily at end of business.)
- (d) Public phones and snacks services
- (e) Photography services
- (f) Cooking and sale of food in a mobile food cart
- (g) Shoe repair services
- (h) Home utensils
- (i) Herbal products
- (j) Ice cream and nuts
- (k) Newspapers & magazines
- (l) Trolley services
- (m) Clothes
- (n) Seedlings

11. CLEANLINESS AND SANITATION IN DEMARCATED AND ADJACENT AREAS

A street trader must:

- (a) Keep the area or site occupied by him or her for the purposes of street trading in a clean and sanitary condition;
- (b) Keep his or her property in a clean, sanitary and well maintained condition;
- (c) Dispose of litter generated by his or her business in whatever receptacle is provided by the Municipality for the public or at a dumping site of the Municipality;
- (d) Not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
- (e) Ensure that on completion of business for the day, the area or site occupied by him or her for the purposes of street trading is free of litter;
- (f) Take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a public road or public place or into a storm water drain, any fat, oil or grease;
- (g) Ensure that no smoke, fumes or other substance, odours or noise emanating from his or her activities causes pollution of any kind;

- (h) On request by an authorized official of the Municipality, move his or her property to permit cleaning or effecting of municipal services of or in the space of the site where he or she is trading.

12. APPLICATION FOR AND ALLOCATION OF LEASE AND PERMIT/TOKEN FOR STREET TRADING STANDS

12.1 Any person who intends to carry on a business as a street trader in terms of the provisions of this by-law must apply to the Municipality in the prescribed manner for the allocation of a demarcated stand.

12.2 The Municipality will, from time to time and within such periods determined by the Municipal Council, and further upon availability of feasible demarcated stands, issue application forms to interested members of the public in observation of section 21 of the Local Government Municipal Systems Act (32 Of 2000), free of charge.

12.2.1 The following criteria must be adhered to by an applicant for the Municipality to consider and approve applications:

- (a) Submission of a properly completed application on the prescribed form accompanied by the relevant required documents.
- (b) The stall or area applied for must be vacant and available.
- (c) Applicants must be older than 16 (sixteen) years of age.
- (d) Applicants must be South African Citizens with valid RSA Identity Documents.
- (e) Applicants must be law-abiding citizens who have not promoted division and inhumanity in the community, and they must not have a criminal record.
- (f) Applicants will only be considered for a stall and permit provided that such an applicant is not already in possession of a permit or has not already been allocated a stall.
- (g) Applicants must not be from the same family unit such as wife, husband, or child.
- (h) An Applicant must not be indebted to the Municipality in whatsoever manner.
- (i) Applicants must be full time residents within the jurisdiction of King Sabata Dalindyebo Municipality and must provide proof to that effect.

12.3 The Municipality may in its own discretion grant or refuse an application referred to in section 12.2 subject thereto that written reasons for refusal of an application shall be supplied

12.4 If such application is successful:

- 12.4.1 The street trader must enter into a lease agreement with the Municipality for the stand allocated to him / her, which lease agreement must be produced at any reasonable time on the request of an authorised officer.
- 12.4.2 In respect of the allocation, as well as the lease of a stand, a permit/token shall be issued to the street trader as proof of the person's right to occupy a stand for the purpose of carrying on business as contemplated in this by-law.
- 12.4.3 Street traders must, while carrying on business on the stand, retain such permit / token on their person ready for display to any authorised officer who requests it; and
- 12.4.4 The Municipality, may, on the written request of a street trader, issue a token to one bona fide employee of the street trader and the provisions of the lease agreement prescribed in subsection 12.4.1 as well as the terms and conditions of this by-law shall apply to such employee.
- 12.5 A person who carries on the business of a street trader on demarcated stand and who is unable to produce a valid lease agreement or permit / token, as contemplated in section 12.4, shall be guilty of an offence and liable to a fine under this by-law.
- 12.6 A person who carries on the business of a street trader on a demarcated stand and who fails to comply with the conditions of the lease agreement and the terms and conditions of this by-law shall be guilty of an offence and liable to a fine as prescribed under this by-law.
- 12.7 A valid permit / token shall carry on it a photo; permit number and identity number of the registered street trader, products/service colour code, as well as a stall number issued by the Municipality.
- 12.8 Only the owner of the permit / token in whose name the lease agreement has been entered into may renew a permit / token, including the permit/token issued on written request to a bona fide employee.
- 12.9 Permits / tokens will be renewed monthly on making the required monthly payment. Advance payments to the maximum of two (2) months (advanced payment) will be accepted. Where no payment is made the lease agreement and permit/token shall be cancelled with immediate effect.
- 12.10 No monthly renewal payment on a permit/token will be accepted where fines - that have not been paid - have been issued against the permit/token holder. Subsequently a permit / token will only be renewed where all outstanding fines issued against that permit/token holder has been paid in full.

- 12.11 Permit cards and application forms are totally non-transferable and may not be sold, traded, or transferred in any way without the written consent of the Municipality.
- 12.12 Stall or containers of street traders are conditionally transferable and may be re-allocated only with the written consent of the Municipality.
- 12.13 Where a permit holder voluntarily withdraws from trading, such a permit holder shall have a preferential discretion in the re-allocation of the stall, which means that he/she will be allowed to nominate to whom the stall must be allocated.
- 12.14 Lease Agreements for street trading stalls shall be entered into for a period of three (3) years, which lease period may be renewed based on the good conduct of the trader / permit holder and further within the sole discretion of the Municipality and on such new terms and conditions as the Municipality may set.
- 12.15 A Lease Agreement shall not be renewed, and a trading permit shall be withdrawn in totality where the trader/permit holder is in arrears with his/her permit fees or municipal services account.
- 12.16 The following types of trading permits may be issued by the Municipality:
- (a) Seasonal permits: Issued to persons who intended to offer services/business conducted within a certain period, and within specified areas during the year, not operating the entire year but also not exceeding a trading period of 6 (six) months.
 - (b) Standard permit: Issued to persons conducting business as street traders within demarcated areas for a minimum period of three years in terms of renewable Lease Agreements.
 - (c) Special permits: Issued on special request to certain classes of applicants (either being seasonal or standard permit holders) who satisfy certain set criteria for conditional approval for a trading permit, which approval must be authorized by Business Licensing.
 - (d) Events permits: Permits issued in terms of the Safety at Sport & Recreational Events Act and the Safety at Sport and Recreational Events By-law.
 - (e) Delivery permits: Issued to persons delivering goods to street traders within set periods during a day. These persons are not permitted to trade from their respective delivery vehicles.
- 12.17 Subletting is prohibited.
- 12.18 Schools, religious bodies, and non-profit organisations are exempted from the requirement of obtaining an informal trading permit for a one-off event.
- 12.19 All container operated business to be applied, allocated and granted consent on areas designated by local authorities.

13. CONDITIONS FOR TRANSFER OR RE-ALLOCATION OF STALLS

- 13.1 A permit is non-transferable and may not be leased, sold, or otherwise disposed of except with the prior consent of the Municipality in terms of this section. Therefore, a stall may be permanently or temporarily re-allocated, transferred or terminated, with the written approval of the Municipality;
- 13.2 Such a re-allocation may be made to another new applicant whether related or not to the current permit holder which new applicant may also be an assistant or employee of the current permit holder and who will continue trading until the period remaining in the lease agreement pertaining to the permit runs out.
- 13.3 A transfer or re-allocation as contemplated in 13.2 shall be allowed in the event of the death or incapacitation of the permit-holder, where such event will mean that the loss of income due to death or incapacitation will place the employee/assistant and/or dependents of the trader under undue or severe economic hardship;
- 13.4 Incapacity of a trader to trade shall be regarded as circumstances relating to pregnancy, illness, family responsibility issues, religious or cultural matters, or any other personal matter, for a period determined by the Municipality on consideration of the merit of a case;
- 13.5 Re-allocation under this clause shall only be taken into consideration by the Municipality on receipt of an affidavit stating the nature of incapacity as well as the period for which the permit holder requires the stall to be re-allocated;
- 13.6 The dependant or assistant of the permit holder shall only be permitted to replace the permit-holder as trader for the period stipulated or applied for in the sworn affidavit;
- 13.7 Temporary re-allocation of permits shall only be allowed for a period of 1 (one) calendar month (whereafter the original permit holder must resume trade under the existing lease agreement) unless the Municipality consents to an extended period necessitated by exceptional circumstances, which granting of an extended period shall fall solely within the discretion of the Municipality; and
- 13.8 Should the Municipality revoke a permit for any reason whatsoever, such a permit shall cease to be valid from the date stipulated by the Municipality and such a permit must be immediately returned to the Municipality. Should the permit not be returned it shall in any event be null and void and it shall be recorded as such by the Municipality and all inspectors alerted to that fact.

14. TERMINATION OF TRADING PERMITS

14.1 A trading Permit shall automatically be terminated in the following circumstances: -

14.1.1 Where a trader voluntarily terminates his permit through written notification to the Municipality.

14.1.2 Where the trader has contravened this By-law and/or any other Municipal Policies.

14.1.3 In the event of termination of the lease agreement without any application of renewal thereof being received.

14.1.4 Permit-holder becomes employed in the formal sector.

15. INFORMAL / STREET TRADING AND FORMAL BUSINESS

15.1 The following criteria will disqualify a trader from being an informal street trader and render such trader as a formal business: -

15.1.1 Employing more than 5 (five) employees or assistants.

15.1.2 Occupying an area measuring more than 6 (six) square meters, which areas do not necessarily have to be adjacent to each other.

16. PAYMENTS AND SETTLEMENT ARRANGEMENTS

16.1 The Municipality reserves the right to re-assess monthly rental rates / tariffs payable within its discretion.

16.2 Permit holders are obliged to pay rental tariffs and fines levied within a financial year by the end of such a financial year, failing which such an offending permit holder's lease agreement may be terminated.

16.3 Financial arrangements will only be accepted on recommendation of the Municipality's Chief Financial Officer.

16.4 Interest and legal costs shall be levied on all outstanding amounts on a monthly basis against a street trader in arrears with payments of tariffs and fines.

16.5 The tariff structure of the Municipality for Street trading as reviewed and approved every financial year by the Municipal Council shall apply to Informal Trading activities within the King Sabata Dalindyebo Municipality.

17. IMPOUNDMENT AND REMOVAL

17.1 An authorised official may remove and impound any property of a street trader which:

17.1.1 he/she reasonably suspects is being used or are intended to be used or have been used in or in connection with the business of informal / street trading;

17.1.2 he/she finds at a place where the business of street trading constitutes an offence in terms of this by-law, irrespective of whether such goods or property are in the possession or control of any person at the time of such impoundment and/or removal; and

17.1.3 a person is selling or intends to sell in areas where street trading is prohibited, whether such property is in possession or under control of any person at the time of such removal or impoundment.

17.2 Any goods of a perishable nature, including plants and flowers, will be kept for or within 24 hours after confiscation and if of no value they shall be disposed of, recorded according to Schedule 1, and otherwise sold to the best advantage by the authorised officer or person designated by him/her, the proceeds to accrue to the Municipality to defray costs.

17.3 An authorized official acting in terms of subsection 17.1 & 17.2 above, except where goods have been left or abandoned, issue to the person carrying on the business of a street trader, a receipt for any property so removed and impounded, which receipt must-

- (i) Itemize the property to be removed and impounded;
- (ii) Provide the address where the impounded property will be kept, and the period thereof;
- (iii) State the conditions for the release of the impounded property;
- (iv) State the terms and conditions relating to the sale of unclaimed property by public auction;
- (v) Provide the name and address of a council official to whom any representations regarding the impoundment may be made, and the date and time by which this must be done.
- (vi) Contain full details of the law enforcement officer who impounded the goods.

17.4 If any property about to be impounded is attached to any immovable property or a structures, and such property is under the apparent control of a person present at the property, any authorised official of the Municipality may order such person to remove the property, and if such person refuses or fails to comply, he or she shall be guilty of an offence.

17.5 When any person fails to comply with an order to remove the property referred to in subsection 17.3, any authorised official of the Municipality may take such steps as may be necessary to remove such property.

17.6 The Municipality has the authority to confiscate caravans and containers that are not authorized or permitted to be in the Municipal jurisdiction.

18. VICARIOUS LIABILITY OF PERSONS TRADING

18.1 When an employee/subcontractor/assistant/agent of an informal / street trader performs any act or an omission which constitutes an offence in terms of this by-law, the employer shall be deemed to have committed the act or omission himself/herself unless he/she satisfies the court that:

18.1.1 In committing that act or omission the employee/ subcontractor/ assistant/ agent was acting without his/her permission or knowledge.

18.1.2 He/she took all reasonable steps to prevent the act or the omission; and

18.1.3 It was not within the scope of authority and the course of employment of the employee to perform such act or omission, of the nature in question.

18.2 The mere fact that such employer issued instructions forbidding the act or omission shall not itself be accepted as sufficient proof that he/she took such reasonable steps.

18.3 When an employer is by virtue of section 18.1, liable for an act or omission by his employee, then that employee shall also be liable for prosecution of the offence.

19. EXEMPTION FROM LIABILITY

The Municipality shall not be liable for damages or compensation arising from anything lawfully done in good faith by it or any authorised official or employee of the Municipality in terms of this By-law.

20. CHILDREN NOT PERMITTED TO TRADE

20.1 No person under the age of sixteen (16) in terms of the Labour Relations Act shall be permitted to trade.

20.2 Any person who employs or engages or request such a person referred to in section 20.1 above, to conduct the business of an Informal Trader or to assist therewith shall be guilty of an offence under the relevant law.

21. OWNERS OF PRIVATE PROPERTY

21.1 Owners of private shall not allow any person to trade from such a property without the necessary land use right required for such trading.

21.2 Where the necessary land use rights have been obtained from the Municipality for trading on private property, such owner of private property shall ensure that such informal trading taking place on his/her property complies with this By-law.

22. OFFENCES AND PENALTIES

22.1 Any person who:

- (i) contravenes or fails to comply with any provision of this By-law;
- (ii) Fails to comply with any notice issued in terms of this By-law;
- (iii) Fails to comply with any lawful instruction given in terms of this By-law;
- (iv) Who obstructs or hinders any authorised representative of the Municipality in the execution of his or her duties under this By-law shall be guilty of an offence;

22.2 Should any person be found guilty of any action contained in section 22.1 above, such person shall upon conviction be liable to payment of a fine as per Schedule 2.

- (iv) *Who obstructs or hinders any authorised representative of the Municipality in the execution of his or her duties under this By-law shall be guilty of an offence.*

22.3 Should any person be found guilty of any action contained in section 22.1 above, such person shall upon conviction be liable to payment of a fine as per Schedule 2.

23. RECOVERY OF COSTS

23.1 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.

23.2 The costs mentioned in subsection (23.1) is in addition to any fine which may be imposed on the informal trader.

24. MISCELLANEOUS PROVISIONS

24.1 DELEGATION

24.1.1 Subject to the Constitution and applicable national and provincial laws, any –

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty, conferred, in terms of this By-law, upon the council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor, or staff member, to an entity within, or a staff member employed by, the Municipality.

24.1.2 The delegation in terms of subsection (24.1.1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.

24.1.3 Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the –

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

24.2 APPEALS

24.2.1 A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the municipal manager within twenty-one (21) days of the date of the notification of the decision.

24.2.2 The Municipal Manager must promptly submit the appeal to the appropriate appeal authority.

24.2.3 The appeal authority must commence with an appeal within six (6) weeks and decide the appeal within a reasonable period.

24.2.4 The appeal authority must confirm, vary, or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

24.2.5 The appeal authority must furnish written reasons for its decision on all appeal matters.

24.2.6 All appeals lodged are done in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.

24.2.7 Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsection (24.2.1) to (24.2.5).

24.3 REPEAL OF LAWS AND SAVINGS

24.3.1 Any By-law or Council Resolutions taken or adopted by the Municipality or a municipality now forming an administrative unit of the Municipality and relating to any matter regulated by these By-laws are, from date of promulgation of this By-law, hereby repealed.

24.3.2 The By-law Notice 137 /2010 is hereby repealed the whole of it.

24.3.3 All permits issued under the King Sabata Dalindyebo Municipality Street Trading By-law published under Municipal Notice 137/2010 remain in full force and effect as if the said By-law has not been repealed as contemplated in subsection (24.3.2).

24.3.4 Any rights accrued, or obligations incurred as contemplated in the laws referred to in subsection (24.3.2) remain in force, as if this law has not been repealed.

24.4 TRANSITIONAL PROVISIONS

24.4.1 Notwithstanding the enactment of this By-law—

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

(b) where an informal trader had been issued with a lease or permit prior to the enactment of this By-law which permits trading from a particular site, such lease or permit shall remain valid until a new permit system is adopted by the council which complies with the permit system as contemplated in this By-law.

25. SHORT TITLE AND COMMENCEMENT

This By-law is called the King Sabata Dalindyebo Municipality: Informal Trading By-law, 2023 and takes effect on the date on which it is published in the Provincial Gazette of Eastern Cape.

SCHEDULE 1

Goods/Item Confiscation form

Dates	
Personal details	
Names and surnames	
Id number	
Gender	
Citizenship	
Postal address	_____ _____ _____
Code	
Laws/policies contravened	_____ _____ _____ _____
Areas/streets where confiscation persist	_____ _____
Goods/items name confiscated and total number of items confiscated	_____ _____ _____ _____ _____ _____ _____
Serial code of Goods/items if applicable	_____ _____
Address where impounded goods/items will be stored	_____ _____ _____

Office where impoundment matters may be addressed to.	<hr/> <hr/> <hr/>
Signatures of offender in terms of confiscation preconditions below	<hr/>
Names official who impounded goods or items	Surname and initials Signatures Date

GOODS RELEASING INSTRUCTION

Terms and conditions during confiscations of goods/items

1. Must not send anyone to collect his/her goods.
2. If the goods confiscated are perishable, they must be collected within 24hours, if not so the Municipality will demolish those goods or will be sold or donated or dumped.
3. The offender must bring along this receipts and ID book for release of impounded goods/items.
4. Impoundment fine must be paid in full fines and are to be paid at KSD Municipal (Mthatha and Mqanduli) Business section.
5. No officials will be liable for any damage of the impounded goods/items.
6. Miscalculation and wrong code shall not be municipal responsibilities.
7. Providing false information on the form shall further be in contravention and disqualify the release of impounded goods.
8. Failure to pay state impoundment fine will lead to disapproval for release.
9. The offender must cooperate with official during impoundment and release.
10. Should the goods/items need SAPS such proper procedure shall apply.
11. In all the circumstances criminal procedure act and related policies will apply.
12. If the goods confiscated is non-perishable, they must be collected within the maximum of 3 months from the date of confiscation.
13. Confiscated goods must be collected in Law Enforcement Municipal Offices, on Monday to Friday from 09h00 to 12h00.
14. STORAGE FEES PER DAY R 55.65 before vat R 64.00 incl. vat

SCHEDULE 2

OFFENCES OR PENALTIES FOR CONTRAVENTION OF INFORMAL TRADING BY-LAW

SECTION	OFFENCES / PENALTIES	FINES
12.5	Failure to produce valid permit	R500.00 / Confiscation
12.16	Failure to produce valid trading accreditation / permits	R1,500.00 fine / Confiscation
12.15	Permit in arrears	R500.00 / Confiscation
8.1	Trading in prohibited areas	R750.00 fines / Confiscation
7	Trading in restricted areas	R500.00 / confiscation
8 & 9	Contravention of the do's and don'ts	R500.00
8.1 (c) (i) (ii) 9.1(a) (c), (d), (k)	The following are exceptional examples: <input type="checkbox"/> Sleep overnight. <input type="checkbox"/> Trading on intersections <input type="checkbox"/> Causing vehicular obstruction. <input type="checkbox"/> Causing health hazards	R5,000.00 and permit confiscation R750.00 and products confiscation R1,000.00 and products confiscation R1,500.00 and Termination of permit
12.17	Subletting of permit	Permit confiscation and Termination
11(a-h)	Unclean stall while trading onsite	Fine of R500.00
10.1.1.(a-f)	Selling of prohibited products	<ul style="list-style-type: none"> • Confiscation and fine of R1,500.00 • Confiscation and arrest • (drugs)
9.1.(c)(d)	Selling from a vehicle	<ul style="list-style-type: none"> • Fine of R1,500.00 (and impoundments and • Confiscation and fine of R1,500.00
10.1.1(g)	Use of open fire	Confiscation and R1,000.00 fines
10.1.1(i)	Hairdressers	Fine of R500.00
10.1.1(j)	Using gas cylinder of more than 9kg / trading without functional fire extinguishers (food cart)	Fine of R1,000.00
8.1(k)	Trading on stand allocated to another Trader / not allocated to you as trader.	R300.00 / Confiscation
9.1 (aa)	Caravans and Containers	<ul style="list-style-type: none"> • R5,000.00 fine. • Impoundment and Confiscation

NB: The above tariff structure will change every financial year. The indicative tariffs will be in the Tariff Structure of KSD Municipality and approved in line with the MTREF Budget and IDP.