

# TSANTSABANE LOCAL MUNICIPALITY

## INFORMAL TRADING POLICY 2024/25



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## Purpose of this Policy

The purpose of this policy is parallel with the objectives in section 152 (1) (c) and (e) of the Constitution of the Republic of South Africa, 1996; to promote economic development, a safe and healthy environment, to promulgate municipal planning, trading regulations and to provide a well-managed informal trading sector that is fully integrated into the local economy and conforms to the social development objectives set by the municipality (By-Law, p.3).

The Municipality therefore recognizes the need to regulate informal trading, for the benefit of the public residing and carrying on business within the municipal boundaries of the Council.

## Definitions

“**Approval**” means approval by the Council and “approved” has a corresponding meaning;

“**Authorised official**” means

(a) an official of the Council who has been authorised by it to administer, implement and enforce the provisions of this policy and its by-law

(b) a traffic officer appointed in terms of Section 3A of the National Road Traffic Act, '1996 [Act No. 93 of 1996];

“**Municipal**” means the Tsantsabane Municipality's area of jurisdiction;

(a) the body exercising its legislative and executive authority through its municipal Council; A person exercising a delegated power or carrying out an instruction, where any power in the implementation of the policy delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); or

(b) a service provider fulfilling a responsibility under this policy, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000, or any other law, as the case may be.

“**Municipal 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;

“**Goods**” means a commodity or service that can be utilized to satisfy human needs and that has exchange value;

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

“**Informal trading areas**” means an area demarcated by the Municipality and promulgated through the Informal Trading By-Law for the sale of legal goods and/or services by individuals and/or groups;

“**Informal trader**” means a person who carries on the business of trading in a demarcated informal trading area [beside a public road, or in a public place and at municipal markets] and includes any employee of such person;

“**Litter**” includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by a Trader or by his or her customers;

“**Property**” in relation to a Trader, means any article, container, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he or she trades;

“**Public place**” means any square, park, recreation ground or open space which is vested in the Council or to which the public has the right to use or is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's office and has been provided for the use of the public or the owners of erven in such township;

“**Public road**” means a public road as defined in Section 1 of the National Road Traffic Act, 1996;

“**Rental**” means amount payable by the street / informal trader for the allocated trading space, whether a fixed site / building or any other space demarcated for informal trading.

“**Sell**” includes

[a] exchange or hire out;

[b] display, expose, offer or prepare for sale;

[c] store on a public road or public place with a view to sell; or

[d] provide a service for reward;

and “sale” or “selling” has a corresponding meaning;

“**Sidewalk**” means a sidewalk as defined in Section 1 of the National Road Traffic Act, 1996;

“**the Act**” means the Businesses Act, 1991 [Act No. 71 of 1991] and includes the regulations promulgated there under;

## **1. INTRODUCTION**

This policy is aimed at regulating the growing and many instances disorganised Informal Trading Sector. The introduction of this policy does not negate the existing Informal Trading by-law for the stewardship and management of public places by regulating informal trading within the jurisdictional area of Tsantsabane in a way that enhances the Municipality's constitutional and statutory obligations within the meaning of section 156(1)(a) and (2) of the Constitution of the Republic of South-Africa, 1996 and section 83(1) of the Municipal Structures Act, 1998 - the operations of this sector have long been neglected nor properly serviced to grow, therefore this policy suggests practical approaches to dealing with the challenges.

Trading areas will be continuously demarcated to ensure that informal traders operate in secure and neat areas that are well managed public spaces and to keep public walkways and streets clear from obstacles which may cause an interruption of the traffic flow. For traders to operate in demarcated areas, they will need to apply for an informal trading permit from there on the due process for allocation shall be followed [judged against the criteria and the authorised official/s].

Informal Trading specifically excludes any activity that is defined as illegal by any National, Local and/or Provincial Law. This policy seeks to address the regulation of Informal Trading activities taking place on public and privately owned property.

Formalized Trading on private residences in the form of, among others, spaza shops and taverns is not subject to this policy, as these economic activities are subject to the other

policies and procedures within the Tsantsabane Local Municipality.

The Tsantsabane Local Municipality acknowledges the relevance and contribution of Informal Trading to the economic and social life within the Tsantsabane Local Municipality. Informal Trading

provides income to those who are unemployed as well as providing an alternative to established traditional formal sector retail options.

The Tsantsabane Local Municipality aims to develop the informal sector and its participants into a

commercially viable and dynamic economic sector, which contributes to the quality of life of its citizens in a sustainable manner. Appropriate infrastructure support and services, entrepreneurial development and spatial planning will be the cornerstones to achieving such a policy goal.

Uncontrolled and unplanned growth of the Informal Trading Sector will have a negative impact on the mobility of sidewalks and trafficable areas, and could lead to an unwanted effect which is not in keeping with the aesthetics and character of the existing settlement.<sup>7</sup>

Informal Trading will be governed through key principles directed by the following;

- Economic
- Social and
- Spatial

•Economic Principle

- Identifying and creating viable hubs for business activity;
- Link to range of facilities such as business support service;
- Ensure that the buildings and property owned by the Municipality are utilised appropriately for the benefit of all;
- Earmarking areas that have large flows of pedestrians;

•Social Principle

- Providing basic services such as refuse and water facilities and other important public facilities where public health and safety are at risk;
- Use an opportunity to improve the general environmental conditions of the area;
- Providing equal trading opportunities to all residence;

• Spatial Principle

- Allocating space in accordance with local Spatial Development Framework;
- Providing minimal infrastructure for Informal Trading.
- Identifying highly visible and accessible locations;

## **2. SCOPE OF INFORMAL TRADING**

The Tsantsabane Municipality acknowledges the significant input and the important role played by informal traders who are in many instances operating at a survivalist level [far beyond the defined small business official definition] such as crafters, market users and informal traders.

This policy seeks to recognise and place importance as an opportunity to encourage further new entrepreneurs while simultaneously seeking to offer growth opportunities for existing and new traders through established and formalised channels.

Informal trading with regard to the municipality forms a positive development in the micro business sector as it contributes to the creation of jobs and potential to expand further municipality's economic base, contribute to the creation of a globally competitive

town by enhancing tourism potential.

The Tsantsabane Municipality envisages different types of Informal Trading which may take place at the demarcated trading areas and includes but are not limited to;

- Street trading, and
- Flea and craft markets.

### **3. THE APPROACH**

The Tsantsabane Municipality seeks to create equal opportunity for Informal Traders through demarcating trading areas throughout the municipal jurisdiction. Four steps development perspectives are instituted into the approach of acquiring a demarcated informal trading area.

#### **3.1 PLANNING**

Proper planning of markets for Informal Trading should bear in mind the economic needs of traders, vibrant land use, the need for an orderly town, spatial and transport planning including health and safety. Markets should be managed properly including development of new markets which must be linked to the development patterns of the areas they serve. The planning approach will be guided by the Spatial Development Framework, 2006, the Tsantsabane Local Municipality Strategic Growth Management Strategy, 2009 and the Integrated Development Strategy Framework 2014.

#### **3.2 REGISTRATION**

All Informal Traders should be registered to ensure a smooth operation, equitable and fair allocation. This process is to give permission to trade and provision for access to services and support. Data on registration will be kept in the Information System linking where traders are, sector they in, rent paying status and other issues of compliance such as environmental health and enforcement. Permits will only be allocated to those who register and qualify.

#### **3.3 ALLOCATION**

Allocation in respect of trading [bays, markets, permits, etc.] is central to the entire policy for the informal economy as it is the lever through which local government can steer management and support of the informal economy. The aim is to support sustainable growth and provide opportunities for new entrants, in an economically sustainable and socially useful way. Any allocation of sites must first be discussed with the Property Administration and Town Planning departments to ensure that the site is suitable and available and aligned with the relevant Scheme regulations.

#### **3.4 LEASES / PERMIT**

Informal Traders will have a choice between leasing a designated site or to acquire a permit (which is valid for a limited time). Lease agreements and Permits are further differentiated between in Section 6 of this Policy.

## **4. TRADING AREAS**

Trading areas will be demarcated and may be reviewed at any time. Structures used and owned by the informal traders must be dismantlable and freestanding i.e. not attached to any building, structure or pole. Informal trading will only be permitted in areas which have been promulgated in terms of the Informal Trade By-Law, these areas may include harbours, taxi ranks and street trading.

## **5. OPERATIONAL MATTERS**

### **5.1 Criteria for allocation of trading permit**

The Municipality will compile a database of all street traders in a particular area to ensure equitable allocation of trading bays, information which must accompany an application-

- ID number or any other form of identification;
- Address [physical];
- Goods being sold [list thereof];
- Trading location:
- Period.
- Type of permit.
- And any other relevant information
- Where goods are produced /manufactured and imported from;

The following are only guidelines as criteria but could be managed in line with other sets of management guidelines that are locally based. It is therefore critical that all traders are fully aware of exactly which criteria are being used in respect of allocation of trading bays.

In compliance with section 6A (1), (2) and (3) of the Business Act No. 71 of 1991, allocation of trading bays will be based on the following criteria;

- Only bona fide informal traders will be eligible - people who operate from a brick building will not be considered;
- All informal traders that are allocated permits will be encouraged to join an Association of Informal Traders in the area if one exist, to ensure focused support and business services;
- Only one trading spot will be allocated per trader in a given area;
- The Municipality will reserve the right to withdraw summarily the allocation of the permit in the event of evidence providing that:
  - A trader has will fully supplied incorrect information related to permit conditions.
  - Failure to update information when required.
  - Sublet or sell to a third party without the municipal approval.
  - Not complying with the Informal Trading By-Law.
  - When municipal approved special events and/or development occur, the municipality will have the right to summarily cease [without any compensation for lost of earnings] all trading bays which the municipality deems are affected by the special event and/or development.

- Only one bay/trading point to be issued per household.
  - In case of where foods are prepared, the trader must be in possession of the required certificate from the local Health Inspector [West Coast District Municipality].
- Special circumstances for allocation of permits.

The following circumstances may warrant a variation on the above criteria or may require flexibility on enforcement:

- Death of Principal Trader
- Illness of Principal Trader

If application for special consideration as outlined above is not done by applicant, the permit must be returned to be allocated to the next person meeting the criteria on the waiting list.

## **6. PERMIT AND LEASE AGREEMENT**

A permit or lease agreement will have to be obtained depending on the type of occupation, as seen below:

**6.1 Permanent** – shall be defined as set trading bay used specifically for the purpose of trading by one person. Market related fees will be charged and a lease agreement entered into with the respective Lessee on a period determined by council. Tariffs are set out in the Municipality tariff schedule and approved annually.

A trader or market association does not hold a right or reserve over any trading site. The delegated authority responsible for the demarcated trading areas will have a final decision on the allocation of trading space.

**6.2 Adhoc / Seasonal** – permits will be allocated to traders for purpose contrived purely for the purpose in hand and/or special activities such as, festivals, seasonal and other approved events as approved by the Municipality, [examples Taxi rank trading, special events and demarcated areas on Municipal property]. Permits must be bought from the Municipality and to be valid for a period.

Non-permanent structures are allowed to be erected [e.g. gazebos], which must be taken down on a daily basis. Adhoc / Seasonal traders will have to adhere to the minimum standards as listed under Annexure B.

Tariffs to be determined by Council during the yearly budget process.

## **7. PROCESS OF OBTAINING PERMIT**

An Area Informal Trading Management Committee will be established to consider applicants against criteria. The number of permits may not exceed the number of sites 11 allowed in any trading area. Permits will be issued on a “first come, first serve” basis from the waiting list, new applications will be required to fill in a prescribed application form if they wish to trade from a demarcated informal trading bay.

The following sets the steps involved in issuing permits and the various municipal departments that contribute to the process.



## **STEPS TO APPLY AND OBTAIN INFORMAL TRADING PERMIT**

A permit application will not be successful if the applicant does not provide the correct documentation as set out in Step 2.

## **8. ENFORCEMENT AND MONITORING**

In order to enhance the Municipality's image in the eyes of both the residents and visitors, the conduct of traders will be strictly monitored. Anti-social and other unruly behaviour will be viewed as misconduct.

No trader will be permitted to carry on such business in a manner, which creates a nuisance, is threat or danger to public health and safety, or damages or defaces any Municipality property;

- All criminal acts will be dealt with through the appropriate criminal procedures.

## **STEPS TO BE FOLLOWED TO APPLY FOR INFORMAL TRADING PERMIT**

**STEP 1:** Consult Local Economic Development and Town Planning Units to determine Step 2 processes.

**STEP 2:** Application made with all necessary documentation and submitted with fees (ID number or any other form of identification, Address [physical], Goods being sold [list thereof], Trading location, Period, Where goods are produced /manufactured and imported from; and any other relevant information)

**STEP 3** Area Informal Trading Management Committee assess the application and sent for comments by Property Administration, Town Planning; Health and Safety, LED and other relevant departments.

**STEP 4:** Application approved or refused and communicated to applicant in writing. Centralised database kept at LED Unit

**STEP 5:** Appeals and complaints procedure dealt with through committee.

- Where a trader violates the permit conditions, he/she will be informed in writing of the violation and course of action. Permit fees will not be refundable if the permit is revoked or suspended.
- Punitive measure could include a warning, suspension for a specified period, or the total withdrawal of such trading permit.

Permit holders must comply with the relevant legislation, such as–

- The Informal Trade By-Law of the Tsantsabane Local Municipality;
- Tsantsabane Municipal Land Use Management Scheme
- Constitution of the Republic of South-Africa, 1996;
- Health and Safety Act No. 54 of 1972 (Foodstuffs, Cosmetics and Disinfectants Act, 1972);
- Business Act No 71 of 1991; and
- National Building and Fire Regulations (SANS 10400:2011).

## **8.1 Penalties:**

In relation to the Informal Trade By-Law of the Tsantsabane Municipality, any person who does not comply with the relevant legislation or contravenes any provision thereof commits an offence and

shall be convicted and shall be liable to –

- a fine or imprisonment, or both a fine and imprisonment,
- an additional fine or additional period of imprisonment, or both if a offence is continued,
- a further amount equal to any cost and expenses found by the court to have been incur by the Municipality as result of such contravention or failure,
- a warning, a suspension for a specified period, or the total withdrawal of trading permit.

Furthermore, property may be removed or impounded by the municipality or relevant authority officer if the person carrying on the business of informal trader fails or refuse to comply with a written request – the contents of which have been explained to him or her, or to remove his or her own property, or leave such property unsupervised for a period of more than 24 hours.

A receipt will be given to the owner of any property which has been impounded or removed along with adequate information as to where the property is taken and the procurement procedures, except in the case of where goods have been left abandoned.

Perishable property that are removed or impounded may be sold or destroyed. Perishable property may be returned to the owner, if proof of ownership can be given to the Municipality, within any time prior to the disposal thereof.

Non-perishable property that are removed or impounded may be returned to the owner within one month from date of impoundment, if proof of ownership can be given.

If property is sold, such proceeds will cover the expenses incurred by the Municipality, the remaining proceeds will be paid to the property owner. The property owner has one month to claim the proceeds before forfeited to the Municipality.

Additional expenses incurred by the Municipality which is not covered by the proceeds, will be the owner's liability. Any person who hinders or obstructs an official in the performance of his or her duties under this section or who refuses or fails to remove the object when ordered to do so by an official commits an offence.

## **CONCLUSION**

Currently, Informal Trading is poorly managed within various departments that include, Law Enforcement, Area Management, Finance [income section] and Economic Development and Tourism. Different systems were used in managing Informal Trading and this created challenges in terms of uniformity and consistency throughout the Municipality. There is a need for an effective and efficient management of Informal Trading and this is outlined with the establishment of a cross-functional co-operation with the involvement of other departments and focused on the end result.