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BREED VALLEY MUNICIPALITY

INFORMAL TRADERS BY-LAW

PREAMBLE

Breede Valley Municipality, by virtue of the powers vested in it by section 156 (2) of the Constitution of the Republic of South Africa as amended, read with section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), has made the By-law set out below.

In this by-law, words used in the masculine gender include the feminine.

All singular meanings shall include the plural interpretation and vice versa.

The English text shall prevail in the event of an inconsistency between the different texts, unless the context otherwise indicates.

WHEREAS it is recognized that there is a need to create an environment in which the carrying on of business of informal trading is permitted in public places, subject to the rights of all citizens as contained in the **Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)** and the provisions of the **Business Act 1991 (Act 71 of 1991)**;

AND WHEREAS Breede Valley Municipality recognizes the contribution of informal trading in poverty alleviation, income generation and entrepreneurial development and the impact that informal trading has on the historically disadvantaged individuals and communities;

AND WHEREAS Breede Valley Municipality also acknowledge the need to adopt a developmental approach to the informal trading sector in order to create an environment that is conducive to economic growth of business within the informal trading sector.

NOW THEREFORE this by-law is promulgated to facilitate the regulation of informal trade business and to provide for matters incidental thereto.

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SCHEDULE

1. Definitions

In this by-law unless the context indicates otherwise, word or an expansion to which a meaning has been assigned in the Businesses Act, 1991 (Act 71 of 1991), shall have that meaning, and unless the context indicates otherwise-

“**authorised official**” means an employee of the municipality authorized by the municipal manager to perform functions and duties in terms of the provisions of this by-law.

“**bay**” means an area on a street, the boundaries of which are clearly marked out, and allocated with the number which also appears on a trading plan approved by the council.

“**council**” means the council of the Breede Valley Municipality as contemplated in **section 18** of the **Local Government : Municipal Structures Act, 1997 (Act 117 of 1997)** and includes any committee or employee of the council exercising powers or performing duties delegated to that committee or employee by the council.

“**declaration**” means an order published by the council in the Official Gazette, in terms of which an area as defined in such a declaration is earmarked for trading.

“**goods**” includes any receptacle, vehicle or movable structure used for the storage or transportation of goods.

“**litter**” means any receptacle, container or other object or matter discarded or abandoned by a street trader or his or her customers.

“**local authority services**” means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal or refuse, sewage or stormwater or for the manufacture, generation, impounding, storage, purification, distribution, conduction, transmission, conveyance provision or supply of water, gas or electricity.

“local authority service works” means all works of whatsoever nature, necessary or desirable for or incidental, supplementary or ancillary to any local authority service and includes anything of whatsoever nature used for or in connection with any such works or service.

“Municipality” means the Breede Valley Municipality established in terms of **section 12** of the **Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)**, published in **Provincial Notice 5571** dated the **28th of August 2000** and includes any political structure, political office-bearer, councillor, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office-bearer, councillor, or employees.

“Municipal Manager” means the official appointed by the council in the capacity of the Municipal Manager in terms of **section 54** of the **Local Government: Municipal Systems act, 1997 (Act 117 of 1997)**.

“nuisance” means any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to a person or the property of a person or which materially interferes with the ordinary comfort convenience, peace or quiet of a person.

“officer” means –

- (a) a traffic officer appointed under **section 3** of the **National Road Traffic Act, 1996 (Act 93 of 1996)**;
- (b) a member of the Force as defined in **section 1(1)** of the **Police Act, 1958 (Act 29 of 1958)**;
- (c) a peace officer contemplated in **section 334** of the **Criminal Procedure Act, 1977 (Act 51 of 1977)**;
- (d) an Environmental Health Officer in the service of the council or the District Municipality;
- (e) an official of the council authorised to implement the provisions of this by-law.

“permit” means an official approval issued by the municipal manager or his delegate in terms of which a trader is allowed to trade for a bay in a street situated within a restricted area, subject to such terms and conditions as may be imposed by the council.

“property” in relation to a street trader, means money, goods, receptacle, a vehicle or a movable structure used or intended to be used in connection with the carrying on of his or her business.

“public road” means any road, street, thoroughfare or place (whether a thoroughfare or not) which is commonly used by the public or a section of the public or to which the public has a right of access and includes-

- (a) the verge of any such road, street or thoroughfare.
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare.

“public place” means a square, a park, recreation grounds, sports grounds, a sanitary lane or an open space which has or have for residential purposes.

- (a) in connection with a subdivision or lay-out of land into erven, lots or plots, been provided, reserved or set apart for use by the public or the owners or occupiers of those erven, lots or plots, whether or not it is shown on a general plan, plan of subdivision or diagram.
- (b) at any time been dedicated to the public.

(c) at any time been declared or rendered a public place by the local authority or another competent authority.

“**street**” means any public road, street, thoroughfare, parking bay, parking area, road and street reserve, sidewalk, verge, bridge or drift.

“**street trading**” includes the selling of goods or the supplying or offering to supply a service for reward as a street trader in a public road or public place and is not limited to the sale of newspapers only.

“**street trader**” means a person who carries on the business of a street vendor, pedlar or hawker and includes an employee of such a person for the purposes of this by-law.

“**trade**” means the carrying on of the business on a street, either by selling wares or by rendering a service to the public.

“**trader**” means a person who carries on the business of informal trader on a street or public place.

“**the Act**” means the **Businesses Act 1991 (Act 71 of 1991)**.

“**verge**” means that portion of the road, street or thoroughfare which is not the roadway.

2. FREEDOM TO ENGAGE IN FORMAL TRADING

Informal trading is permitted in any area, within the geographical area of operation for the Breede Valley, subject to any trading plans adopted by the council, and subject to the provisions of this by-law and/or other applicable legislation.

3. ADOPTION OF TRADING PLANS

3(1) The municipality must, where appropriate, adopt trading plans, to regulate informal trading.

3(2) A trading plan must:

3(2)(1) define the geographical boundary of the trading area.

3(2)(2) demarcate informal trading bays and markets where informal trading is permitted, outside the area where informal trading, will be prohibited.

3(3) A trading plan may include any other matters governing informal trading in the relevant trading area, as such:

3(3)(1) prescribing any informal trading conditions, including such terms and such conditions imposed in terms of permits, issued in terms of this by-law.

3(3)(2) the manner in which social and economic development will be promoted through the trading plan.

3(3)(3) the manner in which sensitive heritage and environmental areas, within the proposed trading area will be protected.

3(3)(4) matters relating to a market, which may be located within the relevant trading area, including, but not limited to:

3(3)(4)(1) the demarcation of the area for informal trading, which constitutes a market.

3(3)(4)(2) where appropriate, the demarcation of trading bays within the market.

3(3)(4)(3) the legal arrangements between the municipality and any third party or organization in respect of obligations relating to the general management of the market in which the third party or organization will be responsible for the following:

3(3)(4)(3)(1) the management and operations of the market.

- 3(3)(4)(3)(2) the management of informal traders operating within a specific market area.
- 3(3)(4)(3)(3) ensuring that all relevant persons participate in appropriate decision making, which is relevant to them.
- 3(3)(4)(3)(4) providing guidance to informal traders operating within the market, with business support and development services.
- 3(3)(4)(3)(5) any services additional to those municipal services provided by council.
- 3(4) Any trading plans must comply with this by-law and any other applicable legislation.
- 3(5) Any person shall be entitled to request that the municipality consider the adoption of a trading plan, provided that the municipality will consider such a request within a reasonable timeframe.
- 3(6) When considering a request for the adoption of a new trading site the municipality shall have due regard for existing business activities in the newly proposed trading plans in the vicinity, and not downgrade the commercial appeal of other businesses in the area.

4. PUBLIC PARTICIPATION IN RESPECT TO THE ADOPTION OF A TRADING PLAN

- 4(1) Before adopting a trading plan the municipality shall:
 - 4(1)(1) consult with interested and affected parties including the informal and formal sectors, prior to accepting such a plan.
 - 4(1)(2) compile a draft trading plan in commensurate with a consultation process.
 - 4(1)(3) publish a notice in the local newspapers, which are circulated in the area, in which the proposed trading area is situated.
- 4(2) These notices must at least contain:
 - 4(2)(1) the key aspects of the draft trading plan.
 - 4(2)(2) notification to the public that the draft trading plan is open for inspection at a designated location.
 - 4(2)(3) invite comments and objections from the public in relation to such draft trading plan, to be received by the municipality within fourteen (14) days of the date of publication.

5. CONSIDERATIONS OF OPTIONS PRIOR TO ADOPTING A TRADING PLAN

- 5(1) The municipality must consider all objections and comments received regarding the adoption of new trading plans.
- 5(2) Thereafter council must within a reasonable period from the date of the commencement of the public participation process, in respect of the trading plan, consider:
 - 5(2)(1) the adoption of the draft trading plan;
 - 5(2)(2) any amendments to the draft trading plan; and/or
 - 5(2)(3) the rejection of the draft trading plan.
- 5(3) In the event of the adoption of the draft trading plan by council, a notice must be published in the local newspaper, which informs the public that:
 - 5(3)(1) the draft trading plan had been adopted by council, as a trading plan;
 - 5(3)(2) of the key aspects of the trading plan, including the date on which it shall become effective; and/or
 - 5(3)(3) that the trading plan is available for inspection at a specified location.

6. RESTRICTIONS ON STREET TRADING

- 6(1) No trader may trade in a street reserve adjacent to:
- 6(1)(1) a building belonging to, or occupied by the state or the municipality, without prior written authorisation.
 - 6(1)(2) a church or other place of worship, without relevant consultation or approval.
 - 6(1)(3) a building declared as a monument in terms of relevant legislation,
 - 6(1)(4) a building in which business is being carried on by any person who sells goods of a similar nature to the goods which is offered by the relevant trader.
 - 6(1)(5) a building used for residential purposes, unless application was lodged, coupled with a public consultation process were followed.
- 6(2) No person may trade in a street or public place, where:
- 6(2)(1) a fire hydrant or any other designated facility or area demarcated solely for the use of emergency vehicles and services.
 - 6(2)(2) vehicular and pedestrian traffic is obstructed or a traffic hazard is created.
 - 6(2)(3) any facility, where the use of the general public is obstructed.
 - 6(2)(4) the visibility of a display window at a business premises are obstructed.
 - 6(2)(5) traffic sign, road marking, notices or signs are obstructed.
 - 6(2)(6) access to loading and/or parking bays, vehicular or other facilities for vehicular or pedestrian traffic is limited.
 - 6(2)(7) free access to municipal service works is obstructed.
 - 6(2)(8) an entrance or an exit to a building is obstructed.
 - 6(2)(9) in a garden or park under the control of the municipality, to which the public has a right of access.
 - 6(2)(10) it obstructs access to street furniture, bus passenger benches or shelters, queuing lines, refuse disposal bins or other facilities intended for the use of the general public.
 - 6(2)(11) it interferes in any way with any vehicle that may be parked alongside such place.
 - 6(2)(12) in an area declared under **section 6A(2)(a)** of the Act as a place where the carrying on of the business of street vendor, pedlar or hawker is prohibited.
- 6(3) No trader may:
- 6(3)(1) stay overnight at a place of business or trading area, even if the area, specified is also earmarked for night trading.
 - 6(3)(2) creates a nuisance.
 - 6(3)(3) damage or deface the surface of a street or any municipal property.
 - 6(3)(4) erect a structure other than an umbrella, without the written authorisation of the municipality.
 - 6(3)(5) create a hazard to traffic.
 - 6(3)(6) attach any object by any means to a building, street furniture, structure, pavement, tree, lamp pole, electrical pole, telephone facility, post box, traffic sign, parking meter or bench.
 - 6(3)(7) make a fire without the written permission of the municipal manager or his delegate.
 - 6(3)(8) fail to move or remove any goods after having been requested to do so by an authorized official.
 - 6(3)(9) accumulate, dump, store or deposit any refuse or waste materials on any land, street, or premises other than in a refuse receptacle approved and provided by the municipality.

- 6(3)(10) allow the area or stand where business is carried on becoming unclean or in an unsanitary condition;
- 6(3)(11) keep goods in an unclean or unsanitary condition.
- 6(3)(12) fail to remove daily waste including all packaging material, stock or equipment or general waste from the place of business or trading area at the end of its allocated business hours.
- 6(3)(13) carry out business activities in a manner that may pose a threat or danger to public health or safety.
- 6(3)(14) fail to, at all times, carry on his or her person a copy of any permit or written authorization issued in terms of this by-law and must, on request of an authorized official, produce such authorization.
- 6(3)(15) fail to ensure that any permit or written authorisation is available to his assistants, if he is absent from the trading site for any reason.
- 6(3)(16) fail to ensure that no fat, oil or other substance drops or overflows onto the surface of a public road or public place or splashes against a building or other structure if his activities involves the cooking or other preparation of food.
- 6(3)(17) carry on business in such a manner that it creates a danger or threat to public health or public safety;
- 6(3)(18) let his property on a public road or in a public place cover an area which is greater than 3m in length and 2m in width, provided that in areas where adequate space is available the space dimensions may be increased to 4m in length and 2m in width.
- 6(3)(19) Not place his goods on a public road or public place if it is not for conduct informal trade activity.

7. AMENDMENT, REVOCATION AND REVIEW OF TRADING PLANS

7(1) The Municipality –

- 7(1)(1) may amend an adopted trading plan, provided that if the amendment deviates materially from the trading plan, then the Municipality must comply with all requirements in terms of this by-law; and
- 7(1)(2) must review trading plans from time to time as the Municipality deems fit.

8. PERMITS

- 8(1) No person may do informal trading or display his goods for trading, in an area, without being in possession of a valid permit.
 - 8(1)(1) The municipality may, after giving due consideration and engage in consultation implement the necessary enabling permit system, designate public places, public roads or road intersections where informal trade activity will not be allowed, this will not apply to the selling of newspapers at intersections or to the sale of goodies and coupons by non-governmental organizations and welfare organizations, as they may apply for an exemption to allow such activities within a specific timeframe, and on a specific day.
 - 8(1)(2) Notwithstanding the provisions of section 8(1)(1), the municipality may issue permits for the sale of goods and service and in so doing, limit the number of permits for an area and set conditions or limitations on certain categories of trading.

- 8(2) In order to qualify for a permit, the applicant must:
- 8(2)(1) be an informal trader.
 - 8(2)(2) may not hold for any other trading permit for an area for which he or she is applying for a permit.
 - 8(2)(3) must be a South African citizen, if not must in possession of a valid work permit which includes but is not limited to a refugee permit.
 - 8(2)(4) must not employ or actively utilize the services of more than 20 persons.
- 8(3) The municipality must take into account the following factors when considering the application for a permit:
- 8(3)(1) the applicant's ability to meet the trading hours for the relevant trading area as determined by the municipality.
 - 8(3)(2) the need to give preference to applicants who are regarded as previously disadvantaged individuals.
 - 8(3)(3) where there is a limited number of trading bays available in the trading area, for which the permit is sought, preference must be awarded to new applicants to extend the opportunity to other deserving applicants.
 - 8(3)(4) the nature of the goods which the applicant intends selling or the services the applicant intends rendering, to ensure a solid mix of goods and services on offer to ensure healthy competition but minimize counterproductive rivalry.
 - 8(3)(5) to provide preference to unemployed persons.
 - 8(3)(6) give preference to applicants who do not share a household with an existing permit holder, unless.
 - 8(3)(6)(1) the number of trading bays for the relevant trading area is more than the number of applicants seeking permits for those trading bays.
 - 8(3)(6)(2) the applicant who shares a household with a permit holder is not a dependant or financially reliant on the permit holder.
 - 8(3)(7) whether the applicant has, in terms of this by-law, or other relevant legislation been convicted of an offence and/or had a permit revoked or suspended.
 - 8(3)(8) whether the applicant is a suitable person to carry out the lawful business at the allocated site, whether by reason of his character the person is in constant disagreement with the police or other law enforcement agencies.
 - 8(3)(9) where the trading plans are adopted in areas previously not subject to such plans, preference must be awarded to applicants who have an established a historical informal trading operation in the vicinity where the new trading area is conceptualized.
- 8(4) Council is entitled to impose conditions in respect of permits as it deems fit, subject to the provisions of the applicable trading plan, including but not limited to the right to:
- 8(4)(1) specify the trading hours during which the trading permit holder may trade.
 - 8(4)(2) the nature of the goods and services the permit holder is permitted to trade.
 - 8(4)(3) the permit holder's trading bay number.
 - 8(4)(4) to allocate the informal trader an alternative bay in the same or other trading area.
 - 8(4)(5) specify the type of structure(s), if any, which may be erected on the trading bay and/or in the trading area.
 - 8(4)(6) impound trading goods in terms of **section 11** and **section 12** in the event of a contravention of any of the provisions in terms of this by-law and/or any other law;

- 8(4)(7) suspend a permit for the duration of a special event, and issue a reasonable notice prior to the said event, with no compensation payable to the informal trader, notwithstanding that informal trading may be permitted by the municipality at a special event in terms of **section 10**, and in accordance with applicable legislation.
- 8(4)(8) on reasonable prior notice to the informal trader and after affording the relevant informal trader an opportunity to make written representations, revoke or suspend a permit in the event of an informal trader:
- 8(4)(8)(1) breaching any provisions of the permit and/or the by-law or any other law.
 - 8(4)(8)(2) being convicted of trading in illegal goods or providing a service unlawfully, in terms of any legislation;
 - 8(4)(8)(3) wilfully supplying incorrect information when required to provide municipal officials with information;
 - 8(4)(8)(4) being found to be unsuitable as contemplated in **section 8(2)** and **8(3)** to perform trade within a trading area.
- 8(5) The municipality has the right to:
- 8(5)(1) relocate the permit holder to another trading area;
 - 8(5)(2) suspend the validity of a permit;
 - 8(5)(3) prohibit the permit holder from trading in the relevant trading bay; and/or
 - 8(5)(4) should it be necessary to do so, render the continuation of trading from the relevant trading bay impractical or severely inconvenient.
 - 8(5)(5) The suspension of any vested rights in terms of the above-mentioned provisions, included in section 8(5)(1) to 8(5)(4), can only be done if the municipality provided the approved informal traders a notice of their intention to suspend those rights and allow said affected party the right to make representations within a reasonable time for the discretion of the municipal official.
 - 8(5)(6) When said provisions included in section 8(5)(1) to 8(5)(5) is invoked, any trader affected, will not be entitled to claim any form of compensation.
- 8(6) The provisions of section 8(5) will only be invoked in exceptional cases, including maintenance and construction of any infrastructure or buildings performed by the municipality, property developments, alterations, and refurbishment by any entity, or activities by public entities conducted in terms of their powers or functions
- 8(7) Council shall determine charges payable in its annual tariff policy, and upon receiving payment and it must issue a receipt, which will serve as authorisation to use bays, stands or stalls in trading areas under its control, it is then that trading of the small business of street vendor, pedlar or hawker is permissible.

9. APPOINTMENT OF ASSISTANTS

- 9(1) Any permit holder will be allowed to appoint assistants to trade in accordance with the permit conditions but must communicate this in advance to the officers with the necessary delegation.
- 9(2) All prescriptions in this by-law will be applicable to the assistants appointed by the permit holders, as would be the case of the permit holder.

10. SPECIAL EVENTS

- 10.1. the municipality may permit, or in other case prohibit informal trade for purposes of special events on such terms and conditions as it may deem fit, notwithstanding the terms of any trading plan, or any permits issued in respect of the relevant trading area.

- 10.2. When special events are approved by the municipality in terms of relevant legislation, then applications for street or public area trading will be brought in terms of section 15 of this by-law, by those responsible for approval of the said event.
- 10.3. Existing and special events traders will be allowed to apply for informal trading approvals from the organisers of said special events, either on existing or specifically allocated trading areas, approved by official with the necessary delegation of council, in terms of section 15 of this by-law.

11. REMOVAL AND IMPOUNDMENT

- 11(1) the relevant official with the delegated authority may remove and impound any goods which a trader failed or remove from a place, after been requested to do so, or which had been left abandoned or unattended:
- 11(1)(1) which the authorized official reasonable suspects, are being used in
for the purpose of informal trading business.
- 11(1)(2) which is found at a place where the business of street trading is
prohibited or restricted in terms of this by-law and which is likely to
constitute a contravention in terms of this by-law.
- 11(1)(3) or causes an obstruction to pedestrians or vehicular or any municipal
service or service works.
- 11(2) An authorized official acting in terms of **section 11(1)**, must:
- 11(2)(1) except in the case of goods that have been left or abandoned, issue to a trader a
receipt for any goods so removed or impounded, and
- 11(2)(2) forthwith deliver such goods to a place determined by the Municipal
Manager or his/her delegated official.
- 11(3) The owner of goods removed and impounded in terms of **section 11(1)** shall, subject to
the provisions of **section 12**, be liable for any expense incurred by the municipality,
- 11(4) The municipality may keep such goods, until all such expenses have been paid or goods
are dealt with in terms of **section 12**.
- 11(5) A receipt issued under the hand of the Municipal Manager or his duly authorised
delegated official, shall be deemed to be proof of any expenses incurred by the
municipality.

12. DISPOSAL OF IMPOUNDED GOODS

- 12(1) Any perishable goods impounded in terms of **section 11(1)**, may at any time be sold or
destroyed by the Municipal Manager, or his/her delegated official and the proceeds of the
sale, less any expenses incurred by the municipality, shall upon presentation of the
receipt contemplated in by **section 11(2)** or **11(5)** be paid to the owner, provided that if
such proceeds are not claimed within three months of the date on which the goods
concerned were sold, the proceeds shall be forfeited to the municipality.
- 12(2) The owner of goods impounded in terms of **section 11(1)** may, in the case where the
goods were not destroyed or sold in terms of **section 12(1)**, on production of the receipt
contemplated by **section 11(2)**, reclaim the goods, provided that if the goods remain
unclaimed after three months, the Municipal Manager or his/her delegated official, shall
have the right to sell the goods and the proceeds shall be forfeited to the municipality.
- 12(3) When goods are reclaimed in terms of **section 12(2)**, any outstanding expenses incurred
by the municipality in connection with the removal and impoundment, must first be paid,
before the goods are returned.

- 12(4) In the event of the proceeds of a sale of goods, contemplated by this by-law not being sufficient to defray the expenses incurred by the municipality, the owner of such goods will remain liable for the balance of such expenses that are not defrayed by the proceeds from the sale of such goods.

13. APPEALS

Any person who wants to appeal against a decision taken in terms of this by-law, may do so in terms of **section 62** of the **Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)**.

14. OFFENCES

14(1) Any person who;

14(1)(1) contravenes or fails to comply with a provision of this by-law.

14(1)(2) ignores, disregards or disobeys a notice, sign or marking displayed or erected for the purposes of this by-law;

14(1)(3) contravenes or fails to comply with an approval or a condition granted or imposed in terms of this by-law;

14(1)(4) fails to comply with a request to move or remove his property.

14(1)(5) deliberately furnished false or misleading information to an officer or duly authorised employee of the council; or

14(1)(6) threatens, resists, interferes with obstructs an officer or duly authorised employee of the council in the exercise or performance of that officer's or employee's power or duties under this by-law;

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand-rand (R1000.00) or to imprisonment for a period not exceeding three (3) months.

15. EXEMPTIONS

15(1) The municipality may, from time to time, on such conditions as it may determine, grant exemptions from the provisions of this by-law.

15(2) The municipality may, on such conditions as it may determine, in writing, for said exemption in terms of this by-law, exercise powers in terms of delegated authority, which council may approve from time to time.

16. APPLICATION

16(1) This by-law shall be known as the **BVM Informal Traders By-law** and shall come into operation on the date of publication thereof in the Provincial Gazette.

16(2) The by-law listed in the schedule hereto, is hereby repealed to the extent indicated in the third column of this Schedule.

SCHEDULE

BY-LAW ON INFORMAL TRADING APPLICABLE TO BREEDE VALLEY MUNICIPALITY		
PN No.	Short title	Extent of repeal
6560/2008	Informal Traders by-law	Whole