



PUBLIC SPACE TRADING GUIDELINES FOR LOCAL GOVERNMENT

2021-2026



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List of Acronyms

AeT	Asiye eTafuleni
BEPP	Built Environment Performance Plan
CBPEP	Capacity Building Programme for Employment Promotion
COIDA	Compensation for Occupational Injuries and Diseases Act
CoGTA	Department of Cooperative Governance and Traditional Affairs
COVID-19	Novel Coronavirus Disease of 2019
CSP	Cities Support Programme
DDM	District Development Model
DoLE	Department of Labour and Employment
DPME	Department of Performance Monitoring and Evaluation
DSBD	Department of Small Business Development
DTIC	Department of Trade, Industry and Competition
FMF	Free Market Foundation
GIBUS	Gauteng Informal Business Upliftment Strategy
GPG	Gauteng Provincial Government
GTAC	Government Technical Advisory Centre
ICED	Infrastructure and Cities for Economic Development
IDP	Integrated Development Plan
IGR	Intergovernmental Relations
ILO	International Labour Organisation
MIG	Municipal Infrastructure Grant
NDMA	National Disaster Management Act
NDMC	National Disaster Management Centre
NIBUS	National Informal Business Upliftment Strategy
NT	National Treasury
QLFS	Quarterly Labour Force Survey
SACN	South African Cities Network



SAITA	South African Informal Traders Alliance
SAITF	South African Informal Traders Forum
SALGA	South African Local Government Association
SDBIP	Service Delivery and Budget Implementation Plan
SDG	Sustainable Development Goals
SEDA	Small Enterprise Development Agency
SEIF	Shared Economic Infrastructure Facility
SERI	Socio-Economic Rights Institute of South Africa
SETA	Sector Education and Training Authority
SMME	Small, Medium and Macro Enterprises
SPLUMA	Spatial Planning and Land Use Management Act
Stats SA	Statistics South Africa
TIA	Technology Innovation Agency
TVET	Technical and Vocational Education and Training
UIF	Unemployment Insurance Fund
UKZN	University of KwaZulu-Natal
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WASH	Water, Sanitation and Hygiene
WIEGO	Women in Informal Employment: Globalising and Organising

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HEALTH, SPACE AND INFRASTRUCTURE GUIDELINE

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Joanne Lees has over 25 years' experience as an architect, urbanist, and public housing specialist, grappling with a broad array of issues related to inclusive and integrated sustainable development and spatial transformation. In the process she has sometimes strayed away from architecture altogether.

Jo is a Director of the firm DesigncoLab (Pty) Ltd, but has been an associate of Asiye eTafuleni's (AeT) for many years. She worked with the founders of AeT when they were still at the eThekweni Municipality, and has periodically worked with AeT since their inception. She has been working more actively as a part of the AeT core team since 2019.

AET

Asiye eTafuleni (AeT) was founded in 2008 by Richard Dobson and Patrick Ndlovu, two local eThekweni (Durban, South Africa) officials concerned with the widening gap between the city government's urban agenda and the realities faced by Durban's inner-city informal workers – a large and historic downtown community. Dobson and Ndlovu had both been part of a municipal urban regeneration project, an experience that informed their belief that informal workers should be engaged with through consultative processes.

AeT founders believed that supporting informal economic spaces – markets, street-side vending,

etc – should be integrated into the city's planning and budgeting priorities with the aim of creating urban environments that are both supportive of informal workers' livelihoods and create vibrant and culturally important urban spaces for the entire city. At the heart of this concern was a belief that work was critical to overturning the disastrous racial, economic and spatial divisions created within the city during the apartheid era.

FRAMEWORK BY-LAW GUIDELINE

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Cheadle Thompson & Haysom Inc.

CTH has leading experts in various legal fields among its directors, including constitutional and administrative law, public sector law and labour law. CTH lawyers have authored major legal textbooks, drafted key laws in many different policy areas, and litigated in precedent setting cases with far-reaching effects on the development of South African law.



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PREFACE

1. Background

SALGA, together with the key stakeholders (see section 3 below) have for the past few years been collaborating around research, policy and programmatic initiatives relating to the informal economy. These include, among others, ILO R204 implementation, The Migration Task Team, development of the Local Government Informal Economy Position Paper, a review of jurisprudence pertaining to local government and the informal economy.

For SALGA, the commitment to undertake this work originates from a joint sitting of the Home Affairs and Cooperative Governance portfolio committee, dealing with migration and impact and role of local government. At this meeting in late 2019, it was resolved that SALGA would undertake an assessment of the extent to which local government has adopted and implemented regulatory tools regarding the informal economy.

SALGA and the key stakeholders resolved to undertake the work. Subsequently, SALGA submitted a concept note to the Capacity Building Programme for Employment Promotion Capacity Building (CBPEP) in early January 2020. It was approved in principle in April 2020, but due to the Covid-19 Pandemic the CBPEP programme requested SALGA to amend the brief to a short-term project to ensure that it responded to the immediacy of the pandemic while at the same time targeting systemic issues. The revised proposal was later approved and work commenced at the end of July, 2020.

2. The Brief

This body of work was *designed* to develop a set of guidelines to aid local government execute its regulatory and developmental mandate with respect to public space trading. Due to the short-term nature of the project, existing research, policy and advocacy material developed over the last five to eight years would be used as the primary sources for the development of the Guideline.

The guideline would necessarily *focus* on systemic issues as identified in the source material and the collective knowledge of the researchers and the

steercom. However, due to the pandemic, the guideline would have to ensure that appropriate guidance was provided for local government to ensure safe and viable trading could take place as soon as possible.

Constituent Products

The *Policy Guideline's* brief focused on the identifying the most pressing policy problems, that if addressed would have the largest impact. It would articulate the systemic and short-term problems, expound and motivate for selected policy options and provide the policy 'centre' for the by-law and space guidelines to draw from.

The *Framework By-Law*, as the title suggests, would focus on key themes, as opposed to following the route of a standard or model by-law. This approach, firstly, avoids developing a by-law that is adopted in spite of local circumstances and secondly, it provides for developing by-law material that is targeted to specific problems and contexts emerging either from practice or from jurisprudence and, thirdly, it hopefully sets up a dialogue between the municipality and the framework by-law which would result in the municipality selecting and adapting the by-law material to suit their local context.

The *Safety, Spatial and Infrastructure Guidelines* would almost wholly focus on proposing a spatial response to the pandemic. However, certain additional issues such as spatial governance and infrastructure supply (e.g. water and ablutions) and planning approaches would also be necessary to support the pandemic response.

3. Institutional Arrangements

Client and Product Owner:

The South African Local Government Association (SALGA), the constitutionally mandated organisation responsible for representing local government, scoped the terms of reference for this project, on behalf of all the municipalities it represents and supports.

Sponsor and Implementing Agent:

This project was funded by the people of the

European Union and administered by the European Commission office in Pretoria. DT-Global holds the EU contract for providing technical support to the South African Government to meet the key national objective of reducing unemployment, by building institutional and organisational capacity for employment promotion. This has resulted in the Capacity Building Programme for Employment Promotion (CBPEP), and is administered via the Government Technical Assistance Centre (GTAC) attached to the National Treasury. CBPEP commissioned the project and exercises governance and oversight for the project.

Stakeholders

The Project Steering Committee and extended consultations were held with government and informal economy advocacy actors such as CoGTA, DSD, NDMC, GTAC, SERI, WIEGO, the EU and StreetNet International. Academics in local government and law (Wits), municipalities, representatives of national and local informal sector organisations. Their feedback, insights direct contribution and comment on various drafts during the development stages of the guidelines remain invaluable.

PROJECT OUTCOMES IN BRIEF

1. The Products

This project aimed to deliver five products. Three of the five would form the Guidelines while the research report and the stakeholder engagement process would serve as a resource and feedback system the Guidelines themselves.

- Research Report
- *Policy guideline*
- *Framework by-law*
- *Health, Space and Infrastructure Guidelines*
- Stakeholder Engagement Process

2. Background Research Report

The research report gleaned insights from a number of key references and was designed to be a source document for the guideline development process. The research report presented the material along the following logic:

- Key insights into the state of local government and the informal sector, commenting on the relation between the two; global conditions were compared to the local status quo.



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“All people in South Africa have the right to participate in the economy.”

- Pre-pandemic/pandemic public space trading issues compared; focus on regulatory environment, basic infrastructure and services, funding streams, representation and inclusion. It argued that issues in the pre-pandemic context have a bearing on the intensity of impact and responses in the pandemic context
- Foreign nationals in the informal sector; comments on the legal framework regarding foreign nationals, perceptions of foreign nationals by fellow traders, local government and civil society in general and challenges they are confronted with before and during the Covid-19 pandemic.
- Government support mechanisms available to the informal sector and local government in the pre and Covid-19 contexts
- Innovative responses in South Africa and elsewhere to and within a Covid-19 context. Draws some lessons, policy relevance and practical solutions to issues arising.
- Lastly, offers conclusions draws out key points which have implications for regulatory approaches.

3. The Policy Guideline

The policy guideline outlines short, medium and long term policy recommendations aimed, respectively, at the Covid-19 and emergency situations, improving the operating conditions for informal business, and delivering a coherent and effective governance structure.

Short term: These recommendations emphasised pandemic related measures and making systemic provisions at local government level aimed at improving business continuity for the informal economy. In brief, the recommendations pointed to:

- Relaxing enforcement measures
- Making provision for additional and alternative space for trading
- Supplying WASH infrastructure to prevent the spread of disease

Medium term: Seven medium term intervention areas were fleshed out to the level of specific action for key stakeholders in the system, these were:

- 1) Conducive regulatory environment both at local and national level;

- 2) Infrastructure development, space planning and utilisation which responds to the need for an improved business environment for the informal economy;
- 3) Economic development and enterprise support acknowledging the nascent entrepreneurial initiative taken by many actors in the sector;
- 4) Supporting formation of local, regional and national organisation and representation of the sector is crucial to the coordinated service delivery;
- 5) Social inclusion & protection refers to the need to be inclusive to all members of society, including foreign nationals;
- 6) Skills development and training that recognizes both local government and the informal sector could benefit from a better understanding of the law, its implementation, development, and business and technical skills; lastly,
- 7) Institutional coordination, or governance, in the medium term was identified as a critical aspect of the entire intergovernmental system that required restructuring but also recommendations for reform for the governance of the informal sector itself.

Long Term: The pandemic has exposed many structural and systemic issues that compromise the livelihood of the informal economy. The guideline made proposals for behaviour or cultural change to be coupled to a lead agent with the executive authority to set policy, access resources and coordinate government action.

Outcome Areas: As a whole, the Policy Guideline and the companion Guidelines were designed to contribute to four outcome areas that would balance social and economic needs, governance requirements for long term change and an emphasis on emergency or Covid-19:

- 1) *Ensuring Economic Participation and Mobility* – all people in South Africa have the right to participate in the economy, and municipalities should enable paths for economic mobility through economic support measures and options for economic diversification for economic units.
- 2) *Providing for Social Protection and Inclusion* – non-discriminatory public-space trading, and instituting social protection and public safety measures, especially for vulnerable populations.

- 3) *Strengthening Governance* – Local government exercises accountable, coherent, developmentally-oriented governance in respect of the informal sector, within an enabling inter-governmental framework.
- 4) *Covid-19 Pandemic Response/Emergency* – make provision for relaxation of by-laws and necessary essential service provision to allow for trading continuity while ensuring occupational health and safety measures.

Uptake and Implementation: In order to ensure change is effected across the intergovernmental system, the following actions were recommended to promote implementation and uptake of the Guidelines:

- SALGA must ratify the Guideline
- Initiate local adoption and action
- Change management
- A framework for assessing progress and learning

4. Framework By-Law

The recent jurisprudence related to local government and the informal sector formed the basis for the framework by-law. The manner in which the courts interpreted the Constitution permeated each of the thematic areas addressed below. Furthermore, additional thematic areas were selected based on the priorities identified in the Policy Guideline and the Health, Safety and Infrastructure Guideline. The most prominent themes selected for the Framework By-Law were:

- a) Guiding principles for informal trading in public space
- b) Increasing public space for informal trading
- c) Equal protection and benefit of the law
- d) Rights and duties of informal traders
- e) Cancellation of trading permits
- f) Restricting or prohibiting informal trading
- g) Institutional co-ordination and alignment
- h) Capacity building and public awareness
- i) Dispute resolution mechanisms
- j) Meaningful engagement and public participation
- k) Distinguishing between more and less serious contraventions
- l) Accountability of municipal officials
- m) Flexible regulatory instruments
- n) Crisis intervention mechanisms



The Framework By-law was not developed as a standard or model by-law as provided for in the Systems Act (Act 32 of 2000) but focuses on key themes. This approach, firstly, avoids developing a by-law that is adopted in spite of local circumstances which is common practice in South Africa; and secondly, it hopefully sets up a dialogue between the municipality and the framework by-law which results in the municipality selecting and adapting the by-law material to suit their local context.

5. Health, Space and Infrastructure Guidelines

The Health, Space and Infrastructure Guidelines were developed to focus squarely on the pandemic, and to exploit the opportunity for change, or as the author's refer it 'the Covid Moment'! Space was necessarily a major focus of the guideline due to the safety protocols and requirements of Covid-19. However, it was also the authors' view that space and the thoughtful provision of additional space to enhance the functionality of public space as a whole represented a route out of the regulatory development and enforcement cul de sac that local government has been caught in over the last twenty years to the detriment of the sector.

The guideline comprises two parts, the first focuses on health and safety with its objective being to get people back to work safely. To do this effectively, three domains of responsibility are proposed:

- Individual – Personal health protocols
- Community – community led implementation and governance
- Government – policy, regulation, Wash Infrastructure

The second guideline, focuses on space, planning and infrastructure, it provides spatial principles, promoted methods to 'create' additional space, proposes design typologies as a tool and lastly emphasised sustainable urban management and spatial governance.

6. Priority Actions and Next steps

A select summary of the most important and urgent next steps that need to be undertaken by local government and the intergovernmental system in the short, medium and long term are set out below

Local Government - Urgent

- 1) Relax enforcement during the State of Emergency period.
- 2) Enable safe trade and provide social protections.
- 3) Provide direct economic support to the informal sector to mitigate negative disaster impacts.
- 4) Review Disaster Management Plans to include attention to and emergency support for informal-sector workers in times of disaster.

Local Government - Medium to Long Term

- Review governance and coordination of all aspects related to public space trading and establish appropriate structures aligned to these Guidelines.
- Review Policy, By-Law and Spatial approaches to the informal sector in accordance with these Guidelines.

National and Provincial Organs of State - Urgent/Medium to Long Term

- Key national stakeholders to endorse these Guidelines and initiate the programme of action contained herein;
- Through consultation, establish the appropriate lead organ of state, responsible for policy, coordination and outcomes monitoring.
- Establish national and provincial coordination structures.
- Embark on a process to develop a Constitutionally aligned national legislation for the informal economy replacing the Businesses Act (Act No. 71, 1991).
- Ensure social protection is provided for informal workers.
- Develop strategies for greater economic participation and mobility for informal workers.

7. Further Work

As discussed in the background section, this was a rapid development project aimed at responding to the most important systemic and urgent issues as raised by the pandemic using existing knowledge, experience and information at the research team's disposal. For this reason, it is recommended that a mid-term evaluation is undertaken during the upcoming local government term, which can guide further implementation. It would also be prudent to use the opportunity to conduct a thorough assessment of the state of play of regulation and development in the sector as was the original task.

Currently, most recommendations aimed at improving the working conditions for the informal sector are confined to the existing legislative framework hinging largely on local government's regulatory and developmental role. Aspects of that legislative framework, however, predate the Constitution and provide little in the way of regulatory options for local government. But perhaps more pernicious, is that it has hemmed in the majority of thought and confined the struggle to what is 'on offer' via the legislation. It is therefore SALGA's view that conducting a ground-up national policy process that would inform the review of the legislative provisions impacting on and limiting the state of play for the sector to its current equilibrium is the single most important piece of work that the government could embark upon to the benefit of the informal economy.





SALGA PRESIDENT'S FOREWORD

As we navigate through the most turbulent times in recent world history how we treat the weakest and most vulnerable among us will be the yardstick by which history measures our response as local governments. Local Government has a distinct role to play in ensuring: an adequate response to disaster, safe and healthy communities, the provision of infrastructure and services needed to conduct business, and as is a key focus of these Guidelines, ensuring that the livelihoods of public space traders can continue safely for all concerned.

The pandemic, in certain instances, has served to highlight some of the fault lines in our local government system and indeed our intergovernmental arrangements. The pandemic could be used as an opportunity to remedy the immediate issues while taking aim at addressing systemic weaknesses where this is possible. One of the recommendations made in respect of improved governance calls for a national coordination structure led by an appropriate executive arm of Government. SALGA is committed to ensuring that organised local government is represented at the highest level in such a structure.

The Guidelines, a compendium of three documents, the Policy, Framework By-law and Health, Safety and Infrastructure guidelines, have



provided ample consideration for municipal responses in the short, medium and long term. They offer, at times provocative and disruptive policy considerations, by-law provisions, and space and infrastructure options in response to the pandemic and systemic changes required over the medium to long term.

I encourage all Mayor's to review their regulatory and practice frameworks and adopt and implement these Guidelines, where appropriate for their context, in order to kickstart inclusive economic recovery. There are already, and are likely to be many more, economic causalities from this pandemic which we, as municipalities when acting together, can minimise at scale.

Municipalities have the regulatory and developmental mandate to ensure that this sector of the economy responsible, for preventing over 3000 000 people from sliding into abject poverty, survives and thrives beyond Covid-19. With those words, I challenge every municipality to implement the recommendations contained in these Guidelines, keeping in mind that every moment counts, and that each livelihood supports a family.

Cllr. Thembi Nkadimeng
SALGA President



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FOREWORD FROM THE SALGA CEO

The local government elections are once again on our doorstep. The incumbent councillors have had a steep learning curve dealing with all the challenges associated with the pandemic while ensuring essential economic services continue, including informal economic activity and public space trading. The next five-year term, and the incoming councillors will not have it any easier; building back the economy better will be one of the many challenges they face, including dealing with a Covid-19 which is most likely to be a factor to contend with for a while yet.

These Guidelines developed by SALGA, a project funded by the EU and implemented by the Community Based Public Employment Programme in National Treasury: GTAC is not only a well-timed but a critical addition to the tools which local government can use to bolster local government's regulatory and developmental response to the informal economy and public space trading specifically.

Many municipalities are already leading the charge when it comes to support and regulation of the informal sector. If these Local Government Guidelines are implemented by each municipality,



each prioritising the short term and systemic issues required in their jurisdiction, we will at the end of the five-year term hopefully be able to measure, some modest outcome changes for public space traders, for whose benefit these Guidelines are ultimately developed.

These Guidelines recommend governance recommendations requiring an executive arm of government to lead and convene a national coordination structure responsible for streamlining policy and support in times of disaster and relative calm alike. It is my hope that this critical action is implemented without delay. SALGA is committed to playing its role in a fit-for-purpose IGR structure designed to support municipalities in their regulatory role and realising the lofty ideals of its developmental role.

In conclusion, I wish to thank the SALGA team for their work, and I wish each municipality well in implementing these Guidelines. SALGA looks forward to supporting the local government family along this journey.

Xolile George
CEO



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GUIDELINE 1

POLICY GUIDELINES FOR ENABLING GOVERNANCE OF INFORMAL TRADING IN PUBLIC SPACE



“The UNDP maintains that “the consequences born of the COVID-19 outbreak are likely to further exacerbate poverty and inequality in South Africa.”

PART I: POLICY FRAMING

1. Purpose

SALGA: Guidelines for Public Space Trading consists of the Policy Guidelines for Enabling Governance of Informal Trading in Public Spaces, 2020; the Framework By-law: Informal Trading in Public Space; and the Guidelines for Health, Space and Infrastructure: Towards Safe and Viable Public Space Trading. These companion documents have been iteratively developed and should be read together. They are intended as a set of tools to assist municipalities in the development of a more enabling environment, as well as an advocacy tool for traders and trader organisations, hopefully facilitating more trans-disciplinary, cross-silo, and collaborative processes. The key objective of the overall project is to safely enable as many livelihood opportunities in public spaces as possible.

These *Policy Guidelines* are developed from the interpretation of various documents about the informal sector, in the South African local government context, in order to identify key challenges to the governance of public space trading; identify solutions; and propose a set of policy recommendations for municipalities, to enable more effective governance of informal trading in public spaces. It also provides an implementation framework for the Guideline.

The document has three conceptual parts. It begins by setting the context from which the policy guidelines have been developed and describing the need for their development, in order to establish a set of objectives and principles that will guide both their development and the implementation of all proposed interventions. The section also highlights the policy approach undertaken in the development of the policy guidelines, their application and legal framework, and the stakeholders involved in their implementation. The second part focuses on policy proposals, such as governance approach, enabling behaviours, strategic actions and instruments. The final section offers an approach to implementation, monitoring and evaluation, to drive and ensure the development of the sector as intended.

For the first quarter of 2020 indicate that employment decreased by

38 000 to 16.4 million

and the number of unemployed persons increased by

344 000 to 7.1 million.

2. Context

The United Nations Development Programme (UNDP) Socioeconomic Impact Assessment Report on the Impact of the COVID-19 pandemic in South Africa reveals that “the country ranks among the most infected countries in the world, and the virus has set back the gains made in the 26 years since the dawn of democracy. It further reveals that with a slow distribution of wealth, the country is one of the most unequal nations in the world. The ripple effects of the virus impacted more on women, with them having lost the most income and jobs; especially in the informal sector, where they are in the majority” (UNDP, 2020:10).

The UNDP maintains that “the consequences born of the COVID-19 outbreak are likely to further exacerbate poverty and inequality in South Africa. Unemployment threatens to become more precarious – with the highest risks for informal workers and female-headed households”.

In addition to the plight of women, “the results of the QLFS [Quarterly Labour Force Survey] for the first quarter of 2020 indicate that employment decreased by 38 000 to 16.4 million, and the number of unemployed persons increased by 344 000 to 7.1 million. As a result, the official unemployment rate increased to 30.1% compared to the fourth quarter of 2019, with the youth (aged 15-34 years) being the most affected by joblessness” (Stats SA, 2020).

Stats SA also state that “in the first quarter of 2020, there were 20.4 million young people aged 15-34 years. These young people accounted for 63.3% of the total number of unemployed persons, and are not able to meet the employment requirements of the formal sector, due to their low education



and skill levels”. As such, they are more likely to join the informal sector in search of the means for survival.

In recent years there has been a growing emphasis on mechanisms for developing the informal economy into the formal economy, as suggested by Recommendation 204 (R204)¹ of the International Labour Organisation (ILO)², upheld in 2015. R204 was made in recognition that in the process of a rights-based transition to formality, workers and economic units in the informal economy require supportive interventions from the state in order to develop and be economically sustainable.

One proposition was to put in place systems to ensure that existing livelihoods are protected and preserved, and that workplaces such as public spaces should be adequately regulated (ILO, 2015). This concerns changing the operating conditions and environment for informal sector workers, including addressing regulatory barriers, providing access to adequate and affordable infrastructure and service, and representation of workers, among other things for which local government is responsible. In addition, improving the livelihoods of informal workers requires a friendly legal and policy environment: recognising public spaces as places of work, ensuring freedom of association and collective bargaining for informal workers, providing social protection and occupational health and safety for informal workers, etc.

In the South African context, there have been a number of developments in the past few years regarding the informal sector that have shown significant shifts in thinking. However, there has

been disappointing uptake of these progressive ideals by municipalities and other spheres of government when regulating the informal sector. The current COVID-19 pandemic is a case in point: initially, traders operating in public spaces were not considered essential workers during the hard lockdown period. This led to civil society organisations such as Women in Informal Employment: Globalising and Organising (WIEGO), SAITA and the Free Market Foundation (FMF) demanding permits for all informal traders, as they faced starvation as a result of their livelihoods being threatened by unjust and irrational regulations (FMF, 2020). Parliament also called on “local municipalities to assist traders with registration so that they could access the lockdown benefits that the government has made available” (Rayi, 2020).

Government’s acknowledgement of and engagement with the economic crisis was mainly with large formal-sector and established institutions, about support and stimulus packages, and led to the creation of a “R500 billion social and economic relief package from which various funds that we established to provide support for small businesses, including the initiatives of the Department of Small Business Development, the Department of Tourism, the Industrial Development Corporation and the South African Future Trust, have provided direct assistance to thousands of enterprises” (SA Government³, 2020). Included in these relief measures was a “R200 billion Loan Guarantee Scheme, guaranteed by government ... developed for small and medium-sized businesses” (GCIS, 2020), but nothing was put in place as a specific guarantee for the informal sector, not even provision of essential services such as water.



“A R200 billion Loan Guarantee Scheme, guaranteed by government ... developed for small and medium-sized businesses.”

¹ See ilo.org/dyn/normlex/en/F?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204.

² South Africa is a member state of the ILO, and bound by its Conference Resolutions.

³ gov.za/speeches/president-cyril-ramaphosa-engagement-south-african-national-editors-forum-31-may-2020-0000.

Reports at the time of policy development show the possibility of “a second wave of the epidemic, and with further impact on vulnerable households – especially those without wage and income protection, such as the informal sector” (Simkins & Collocott, 2020). All these complexities necessitate a review of practices, to ensure a common set of interventions for local government, and propositions that ensure the informal sector is supported during COVID-19 and beyond.

3. Background

In 2012, the South African Local Government Association (SALGA) developed a set of guidelines to assist local government in dealing with the complexities of the informal sector. Unfortunately the uptake of those guidelines was poor – for various reasons, including a lack of policy champions, and poor municipal appetite for tackling the problem.

Thus in 2018 SALGA submitted a Position Paper to National Treasury (NT), outlining a set of policy recommendations. Among other things, they called for a development of policy guidelines for governance of the informal sector. These recommendations were revisited in 2020 to include the development of a set of local-level guidelines to support the development of the informal sector, especially public-space trading during and after the COVID-19⁴ period. Various institutions, such as the Department of Cooperative Governance and Traditional Affairs (CoGTA), the Department of Small Business Development (DSBD), NT, and several activist organisations including WIEGO have been in various ongoing but inconclusive engagements regarding governance of the informal sector. These policy guidelines are a result of those processes, and are intended to

direct sector actors and instruments to deal with multiple issues facing the informal sector at local level.

These guidelines will therefore assist local government and other stakeholders working in the sector to:

- enable better public space governance for the informal sector;
- provide a set of standard tools and instruments for local governments to approach dealing with informal trading in public spaces; and
- provide a framework for various stakeholders to coordinate efforts to support informal traders during and after the COVID-19 period.

These sector policy guidelines are a culmination of the creation of various policy-informing documents and processes regarding the development of the informal sector in South Africa. These have been systematically reviewed to extract key issues and recommendations, and supplemented through engagement with key practitioners and stakeholders in the sector to ensure that the outcomes of this policy process meet the needs of the sector.

While the focus is at local level and specifically on municipalities, other spheres of government also have a role to play in the governance of the informal economy in South Africa, with the informal sector being a unit within that economy. Collectively they share the responsibility of promoting and creating decent work for all the citizens of the Republic. The successful realisation of this ideal will ensure increased economic participation and mobility for informal traders, social protection and inclusion, as well as effective governance of the sector at local level.



⁴nicd.ac.za/diseases-a-z-index/covid-19/frequently-asked-questions/.



4. Definitions

4.1 Policy guidelines

‘Policy guidelines’ is not a formally specified term in South Africa’s statutory or administrative framework. However, given an understanding of ‘policy’ as “a formal statement of authority, verbal or written, by institutional authorities to reflect the decisions taken to guide and shape the direction of the institution in order to achieve certain envisioned change or outcomes by following certain agreed principles and process” (Gumede, 2008; Cambridge, n.d.; Wies, 1994), then ‘policy guidelines’ may be understood to be a set of steps and process actions indicating advice and support for policies, standards or procedures, with key actions to be taken, in order to achieve an effective policy dispensation.

As such, policy guidelines outline how policy should be developed and implemented by (primarily) local government, but also consider the wider system of stakeholders – public and private – who must play a role in achieving the desired overall objectives and outcomes. By nature, therefore, policy guidelines are non-prescriptive, but offer thought leadership and provocation aimed at improving the regulatory environment, ensuring that it is effective and supportive of enabling governance through being informed by coherent policy, practical knowledge, and contextual realities.

4.2 Informal Economy

The term ‘informal economy’ covers all persons whose livelihoods are generated in the informal sector, as well as those who depend on precarious employment in the formal sector and in private households, or through backyarding or informally rented housing (Peberdy, 2018). Clause 2(a) of ILO R204 defines the informal economy as “*all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements*”. The ILO Resolution on Decent Work and the Informal Economy⁵ formally adopted this terminology in 2002, ending 30

years of polarised understanding of what was meant by the ‘informal sector’. Clause 3 of the Resolution states: “The term ‘informal economy’ is preferable to ‘informal sector’ because the workers and enterprises in question do not fall within any one sector of economic activity, but cut across many sectors.”

4.3 Informal Sector

The ‘informal sector’ may be broadly characterised as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes for the persons concerned. These units typically operate at a low level of organisation, with little or no division between labour and capital as factors of production, and on a small scale; they share the characteristics of household enterprises (ILO, 2018:7) This includes all street traders as well as other small, unregistered businesses involving activities such as tyre repair, small-scale manufacturing of gates or mechanical work that take place under the jurisdiction of municipalities.

4.4 Economic Units

‘Economic units’ include “enterprises, entrepreneurs and households in the informal economy”⁶. This is the term agreed by consensus between social partners (including business, organised labour and governments) and applied in R204 to distinguish all these types of units (including cooperatives, SMMEs, and other small, unregistered businesses as described in 4.3 above) from the workers in the informal economy.

4.5 Workers in the Informal Economy

“Workers in the informal economy include both wage workers and own-account workers. Most own-account workers are as insecure and vulnerable as wage workers, and move from one situation to the other.”⁷ Own-account workers are often called ‘self-employed’ workers. In South Africa, some informal workers have

⁵ ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25res.pdf.

⁶ Chapter 4 of R204.

⁷ Chapter 4 of the ILO 2002 Resolution on Decent Work & the Informal Economy.

employers but are informally employed, by virtue of not being registered for the Unemployment Insurance Fund (UIF), the Compensation for Occupational Injuries or Diseases Act (COIDA) or any other employment-related social security schemes. This goes for the majority of domestic, agricultural, and taxi workers, whose employers are not compliant with relevant labour laws, including the Basic Conditions of Employment Act (BCEA) and Sectoral Determinations. In this sense, 18.8% of all workers who have an employer are informal. All other workers in informal employment are self-employed; they numbered 1 774 million people before COVID-19. Their work was also seriously impacted by the crisis, and they too have nothing to fall back on. They provide services to communities, some of which – such as the collection of recyclables – create huge savings for municipalities.

4.6 Informal Work

This refers to all the economic activities done by workers in different sectors of the informal economy, including by street vendors, informal traders, market vendors and informal cross-border traders; waste pickers and recyclers; minibus-taxi drivers, conductors, washers and rank marshals; home-based workers, including care workers and community-based ECD workers; subsistence fisherpeople; informal agricultural workers; etc. Many informal workers practise in public space.

4.7 Informal Trade

This refers to all the economic activities (bartering of goods/services/labour) that take place in an informal manner, including those of unregistered businesses that operate without formal documents. Most of these take place in public places such as streets, bus and taxi ranks, train stations, and other non-formal business premises in the municipal zones.

4.8 Public Space and Rights

4.8.1 Ownership of public infrastructure

Municipalities are responsible for the provision of public infrastructure such as roads, pavements, stalls, community halls and transport

interchanges, which are used by informal traders for their businesses. Municipalities may also decide to demarcate parts of their towns or cities for the purpose of informal trading, in exchange for a nominal fee for the provision and continued maintenance of the infrastructure. These “municipal properties: property owned by, leased by or under the control of the municipality” (Laws Africa, 2019) should therefore be maintained and kept to a state that will ensure mutual benefit for the two parties.

During the COVID-19 pandemic, municipalities should aim to make more trading spaces available for informal traders, to ensure that there is sufficient social distancing between their businesses and stalls. This will help manage and reduce the chances of infection, while also allowing new traders to enter the sector.

4.8.2 Right of Usage

A municipality may decide to lease their infrastructure to any interested person(s) for the purpose of informal trading. This is subject to any condition(s) the municipality may decide on, such as a trading licence and/or permit to make use of the available infrastructure. The provision of trading infrastructure by municipalities should therefore be guided by the developmental principles of ensuring the dignity of informal traders, and facilitating the socio-economic development of local communities. Trading licences or permits should be an instrument to secure those rights to access and use municipal property, and not a gatekeeping mechanism or means of excluding or discriminating against others.

18.8 % of all workers

of all workers who have an employer are informal. All other workers in informal employment are self-employed; they numbered

1,774 million

people before COVID-19.



5. Problem Statement

5.1 Economic Participation and Mobility

South Africa's informal economy is estimated to involve

4.9 million people, with

3 million

of those in a narrower statistical category known as the informal sector.



Despite its size, this sector is challenged by a well-entrenched tradition of repression, persecution and prosecution of informal traders and other informal workers, who are neglected and lack support and recognition as a critical sector in the provision of livelihood, goods and services for millions of our citizens.

An overarching challenge is that of locating the overall responsibility for considering these issues. As demonstrated in studies by SALGA and the South African Cities Network (SACN) in 2017, the economic development function in government has tended to be transversal, with poor central clarity of roles and responsibilities and poor coordination. However, the studies also indicate that while local government cannot drive economic development on its own, it does have the municipal systems and organisational tools to steer local economies. Given that local government is mandated by the Constitution of the Republic and by the White Paper on Local Government to be developmental, it also bears responsibility for promoting the socio-economic development of its communities, including the informal sector. Regulating street trading is therefore a local government matter that is not sufficiently accommodated in the economic plans of municipalities; as seen in their lack of infrastructure expenditure, and by the exclusion of many by the use of permits as gatekeeping tools rather than instruments to secure and assign economic rights equitably to all interested citizens.

The lack of a common understanding of the informal sector by different spheres and sectors of government led to informal traders being forbidden from trading during lockdown; yet most are as much part of our food and economic-value chains as other formal businesses are. Rather than being developmental, and assisting the sector to ensure the livelihood of poor traders by providing essential services such as water and sanitation, municipalities and other law enforcement agents adopted a hard stance, clamping down on informal traders. These raids included the arrest of traders and the confiscation of goods and merchandise; which led to a public outcry, as it was seen as discriminatory and inhumane. Furthermore, the informal sector was not given any financial support, yet formal businesses were. Although all commercial activities were affected by COVID-19, the situation for the informal sector was worse than for the formal sector. The loss of jobs in the formal economy also forced people to find means of survival through informal trading, further magnifying the challenges.

Street traders who were allowed to work during this time reported a decrease in income stream, due to limited foot traffic. In most cities, restrictions on people and public transport operations resulted in a drastic reduction in potential customers, who are mostly commuters (Heneck, 2020). This resulted in an immediate loss of income for informal traders; most rely on daily sales to put food on the table, without the luxury of savings or other sources of financial support.

While the link between infrastructure development and (formal) economic growth has been established, development for the informal sector is lagging behind in many municipalities across South Africa (WIEGO, 2016; SACN, 2019). Infrastructure provision often targets middle- and high-income users who are able to pay; this often results in inadequate access for those in the informal sector (WIEGO, 2016). Local government is responsible for providing adequate infrastructure and services to traders operating in public spaces, to support and facilitate their growth; yet there is no prioritisation of these sectors of the informal economy, despite their importance in providing economic opportunities to those who would otherwise be excluded.

Lack of prioritisation of the informal sector is evident, as public (and sometimes private) sector spending on infrastructure and services for the informal sector – especially public space trading – is often limited, compared that in the formal sector. This neglect has led to weak and patchy municipal implementation of COVID-19 regulations. The implementation of these regulations led to limited space for traders to operate, because of the requirement for social distancing. This limited space is an outcome of pre-COVID-19 neglect and lack of infrastructure investment, including expenditure on essential infrastructure such as water and sanitation.

5.2 Social Protection and Inclusion

In the current (pandemic) context, an absence of social protection for workers in the informal sector leads to further exclusion of this vulnerable group. The fragmented and contradictory legislative landscape across government spheres and agencies is fertile ground for selective and punitive implementation practices. Public-space traders are still subject to punitive measures such as harassment, eviction and relocation. COVID-19 magnified an already dire situation in the informal sector, given that investment in infrastructure and services such as water, sanitation facilities and waste disposal was already inadequate.

In addition to these challenges, the role and impact of foreign nationals operating in the informal sector, in South Africa and globally, have received significant (mostly negative) attention from civil society and the state. Due to the scarcity of jobs and to barriers to entry into the formal economy, foreign nationals have generally resorted to working in the informal sector to sustain their livelihoods, as locals have done. However, their participation in the informal sector is often viewed as a threat rather than an economic contribution (Skinner, 2018).

While local government's responsibility in the informal sector is articulated in law, there are still contradictions between the rights enshrined in the Constitution and the policies and practices adopted by officials towards foreign nationals. This has seen foreign migrants resorting to litigation to protect their rights to trade in the informal sector, a strategy that has proved effective. Municipalities also fail to include and recognise some trader

voices and their organisations in decision making especially those of foreign nationals. This has led to persistent expression of xenophobic sentiments by local government and other spheres of government.

Foreign nationals have limited negotiating power with government, compared to their local counterparts. Sometimes foreign nationals do not participate in or are deliberately excluded from informal worker organisations formed by locals and engagement platforms with the state. Some have resorted to constituting their own organisations, which have limited access to the state – resulting in their issues not being understood and taken into account during planning. This is an issue that government must assist with, so that the voices of all those operating in the informal sector are accounted for and heard.

5.3 Governance of Informal Trading

Despite the national adoption of ILO R204 in 2015, weak intergovernmental, national and provincial coordination of resources and efforts aimed at formalising the informal sector has persisted. This has led to poor uptake and roll-out of national support programmes and initiatives at local level. The COVID-19 pandemic demonstrated the lack of governance of the sector that exists at national and local level. This has been seen in the incoherent national regulations relating to the sector's role in the food chain, and in the restriction of informal traders from doing business during lockdown, followed by a lack of financial support compared to that offered to the formal sector.

As municipalities are not working systematically, their developmental-policy sentiments and enforcement practices are at odds with each other regarding ways of dealing with the informal sector. One department may develop pro-trader policies, while law enforcement continues with repressive actions against informal traders (especially those in public spaces). Governance of the informal sector is also overwhelming for government, as officials struggle to find the balance between supporting economic activity while simultaneously ensuring that public spaces are also functional for and attractive to other users.

In many South African cities, towns, townships and rural areas, by-laws are developed haphazardly,



in ways that protect municipalities rather than empowering informal actors (SERI, 2018). Some municipalities struggle to develop appropriate trading policies, for a number of reasons, such as limited capacity and understanding of broad legal issues (SALGA, 2012). In some instances where (inclusive) policies exist, the principles used do not translate into the development of adequate by-laws, and authorities adopt selective and punitive implementation practices (Skinner, 2018). Fourie (2018) argued that in spatial and geographical differentiation matters, there are differences between and within provinces and local municipalities which need to be taken into consideration in developing interventions aimed at supporting the sector, including the lack of intergovernmental coordination across and within the various spheres of government.

The ILO (2002:25) concludes that the growth of the informal economy can often be traced to inappropriate, ineffective, misguided or badly implemented macroeconomic and social policies (often developed without tripartite consultation among the spheres of government, as well as within the departments of the same sphere); a lack of conducive legal and institutional frameworks; and a lack of good governance, for the proper implementation of policies and laws. This is also the case for the informal sector in South Africa.

5.4 COVID-19 Pandemic

COVID-19 has heightened the need for government support mechanisms in the informal sector. The South African government must be commended on its decisiveness regarding limiting the transmission of the virus. The choices presented to government were inordinately

difficult, given the challenges of dealing with a crisis of unemployment, poverty and inequality in a pandemic. For many informal businesses, their first point of entry and engagement is with local government, and it is important that this relationship is nurtured to be conducive to collaboration. Further, planning at this level must be driven by real engagement led by bottom-up approaches to respond to real needs, such as engaging with city platforms in integrated development planning (IDP) and budgeting processes.

It is clear that the informal sector and public-space traders are negatively impacted by the pandemic in the current context, and there will be devastating consequences in the long term. While earnings have fallen across the board, women in the informal sector have been adversely affected regarding both earnings and working hours. Food security was an immediate concern when lockdown was announced, as informal traders were not allowed to trade and were subjected to police victimisation and arrest.

Currently, the dynamics differ from one city to another, and between various types of areas (metros, intermediate cities, towns, townships, rural municipalities, etc.). These spatial differences have a number of implications, for example on the organisational structures for public-space traders to engage with local government for support during the pandemic. Their vulnerability is heightened by the fact that resources for development, including COVID-19 Relief Schemes, are concentrated at the national and provincial levels of government; whereas the responsibility for regulating and managing public-space trading lies with local government.



“ It is clear that the informal sector and public-space traders are negatively impacted by the pandemic.”

6. Defining the Policy Need

The Preamble to the Constitution of the Republic of South Africa recognised the injustices of the past and their effect on the citizens of the country, and committed the nation to the establishment of a socially just and equitable society, based on fundamental human rights, and an improved quality of life. This has been translated to the founding provisions of the Republic as a country based on human dignity, equality and the advancement of human rights and freedoms. These values and principles are both developmental and transformative, and by default should inform everything that government (in all spheres) does and aims to achieve.

The Constitution further positions local government as the sphere closest to the people, developmental in nature, and prioritising the socio-economic development of communities. This is done (with the support of national and provincial government) through the legislation and other means necessary to strengthen the capacity of municipalities to succeed in their mandate and functions. The White Paper on Local Government (1998) reaffirms this.

Despite all these provisions, there is little synergy and alignment in policy development and operational procedures between national and provincial departments, let alone between these bodies and local government. An example is the initiative by the Gauteng Provincial Government (GPG) that sought to develop provincial instruments to drive township economic development, including the informal economy, by trying to address gaps in policy and regulation and forcing municipal compliance with township-economy model by-laws.

This vertical disjuncture of policy alignment between the three spheres has led to a lack of coordination, and non-complementarity in resource distribution and service delivery – leading to inadequate capacity and poor sector governance. Unfortunately the informal sector has suffered the most from the exclusion and discriminatory policies and practices of all spheres of government, as well as from the visible lack of support and servicing compared to that given to the formal sector.

Horizontally, departments across each sphere work in silos, and are often overwhelmed by contradictory policies and misaligned practices. Developmental sentiment by one silo does not translate into similar practices in another, for instance regarding spending patterns on infrastructure and harsh law enforcement. The COVID-19 pandemic exposed many of these historically deficient practices – especially during lockdown (primarily over the period March to August 2020) – to the extent that there was no unified government response or support for the informal sector (including informal traders, waste pickers, minibus-taxi drivers, conductors, washers and rank marshals). Municipal departments worked in an uncoordinated manner, resulting in traders falling victim to municipal governance and capacity shortcomings.

The pandemic has also brought the opportunity to re-evaluate municipal legislative and policy tools in terms of their impact on the local economy and livelihoods, the creation of urgent livelihood opportunities, and their contribution to wider economic stimulation. This includes the uneven development and implementation of regulatory tools, a topic specifically raised in relation to





the perception of an increase in the number of foreign nationals conducting business in public space and townships.

There is therefore a great need for inclusive interventions to transform current public-space trading-governance practices from purely regulatory control to a developmental approach, by balancing the need to regulate with enabling support for the enterprise and livelihoods of informal workers across the country, during the COVID-19 era and beyond. Such intervention will ensure:

- i) that the informal sector is prioritised, both politically and strategically, as a critical sector that enables economic participation for millions of poor citizens; and
- ii) the strengthening of policy coherence and intergovernmental relations to build sufficient capacity to support and service the sector through regulatory reforms, increased coordination, fiscal allocations and joint implementation of infrastructure and social protection programmes, as envisioned by the Constitution of the Republic.

South Africa's challenges of poverty, inequality and unemployment can also be addressed through the development and support of the informal sector, as it employs millions of poor citizens whose livelihoods depend on such things as public-space trading.

7. Objectives of the Guidelines

The main objective of the *Policy Guidelines* is to assemble a set of systematic policy actions for more inclusive and enabling governance of the informal economy, focusing on economic participation and mobility, social protection and inclusion. Focusing on the issue of informal trading in public spaces, and used together with the *Space and Infrastructure Guidelines* and *By-law Guidelines*, these guidelines are intended to offer a clear policy agenda, with useful and flexible regulatory instruments that may be endorsed by SALGA and adopted by Councils to advance a more progressive and inclusive governance regime for the informal economy at local level.

8. Guiding Principles

To ensure that the Policy Guidelines achieve their intended objective of developing governance of informal trade in public spaces in South Africa, the following developmental principles are critical. All efforts must therefore be

1) Constitutional

The Constitution requires all spheres of government to work towards the human dignity of all citizens, their socio-economic development, and the realisation of their human rights.

2) Developmentally Oriented

Interventions geared to the informal sector must be developmental, and transform the sector from its current to a more sustainable state with better infrastructure and improved working conditions.

3) Systems Driven (in Thinking and Actions)

A systems approach should be adopted in the planning and implementation of programmes, ensuring that each action leads to the next. Good policies across municipal departments will ensure better implementation outcomes.

4) Representative (of both Government and Traders)

Stakeholder involvement and participation should include both government and informal workers and their representatives. This includes ensuring the support and capacity development of trader associations.

5) Inclusive and Non-discriminatory

Consultation and decision making must include all vulnerable groups such as women, youth, people with disabilities and foreign nationals, and must also promote citizen agency among different stakeholder groups.

6) Geared to Promoting Health and Safety

Health and safety of both informal workers and their clients is critical. This includes the development and promotion of standards for occupational health and safety regarding trading in public spaces, provision of security, hygiene, clean water and sanitation.

7) Inter-governmentally Coordinated (between Government Departments)

Across all spheres, government must work within the parameters of cooperative governance. Plans and programmes must be coordinated, so as to avoid duplication but obtain more value from the use of public funds.

9. Policy Approach

A staged approach was adopted in the development of these Policy Guidelines. This included a systematic step-by-step process to develop the Guidelines from a normal policy lifecycle (USC, 2020), following the five steps of agenda setting, policy formulation, policy adoption, implementation, and finally evaluation (Knill & Tosun, 2008).

The development of these Guidelines began with thorough research to define and affirm the policy need or agenda; followed by drafting a policy framework, to guide content; stakeholder engagements conducted during drafting and revision; and adoption, implementation, monitoring and evaluation, once these had been finalised.

These Guidelines are also anchored on three fundamental issues: COVID-19 Emergency Response, Future Emergency Systemic Changes (to make the system more robust in general, for future crises), and General Sector Issues such as strengthening governance and provision of dedicated services for the informal sector (pre- and post-COVID-19).



Continuous engagement by relevant stakeholders in the informal sector ensured that the Guidelines were inclusive of different voices in their development, thereby building the ownership of all stakeholders as the process unfolded. This was key to ensuring that even municipalities and their officials, traders associations and other stakeholders will see to their immediate implementation for the development of the informal sector, especially public-space trading, as a local government sector emergency response.





10. Application of the Guidelines

These *Policy Guidelines* are to be read together with the complementary guidelines on by-laws, health, safety and infrastructure, which are part of the same transformation process. These are complementary guidelines, and part of the COVID-19 emergency response to create a supportive regulatory environment for the informal sector and improve regulatory tools and practice in local government during the COVID-19 pandemic and beyond.

Multiple stakeholders were implicated in responding, from various spheres of government to informal traders themselves. These guidelines will also be a key policy-guiding document for all municipalities in support of the resolution of the 2019 SALGA Position Paper (adopted by all SALGA members) to review by-laws and create a conducive and supportive regulatory environment for the informal sector.

Provincial and national government will also use them to guide their support for developing the informal sector, so that there is coordination and uniformity of efforts by the government departments currently funding the sector (such as CoGTA and DSBD, and their provincial counterparts). This is in line with their Constitutional mandate to support and strengthen the capacity of municipalities to perform their functions, by legislative and other means.

As the creation of decent work and conducive economic conditions for all citizens is an overall responsibility of government, the proposed governance model makes provision for the continuous involvement of both national and provincial government in the development of this sector, working with municipalities and other stakeholders.

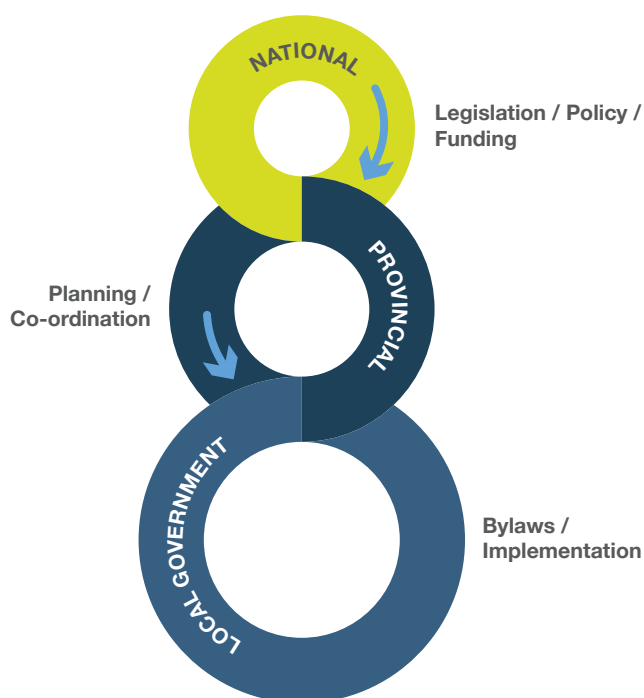


Figure 1: Application of guidelines for governance of the informal sector

Formal businesses, civil society and informal traders themselves will also use them in their engagement with government and the informal sector. Using a coordinated approach the various mandates and policy recommendations can be implemented harmoniously, and their joint impact can be evaluated at the end of each term of local government, which is linked to the planning cycle of municipalities through the IDPs and SDBIPs. The same applies to provincial and national government. In this way, each administration can take responsibility and play a critical part in the development of the sector, by planning, budgeting and implementing certain parts of the recommendations in line with the country's commitment to R204 of the ILO, which must be reported on and accounted for by the country as a member state.

“The Constitution of the Republic of South Africa calls for human dignity and equitable development for all citizens of the republic.”



11. Legal Framework

11.1 The Constitution

The Constitution of the Republic of South Africa calls for human dignity and equitable development for all citizens of the republic. Further, it calls for national and provincial government to strengthen and support municipalities by legislation or any other means so that they are able to fulfil their mandate. While the Constitution explicitly allocate the issues of street trading to local government, Part A of Schedule 4 and Part A of Schedule 5 list regional planning, development and trade as concurrent functions of national and provincial government, while provincial planning is a competency of provinces.

These national and provincial plans and strategies should take into consideration the developmental duties of municipalities in developing the socio-economic needs of its local economies. Ideally, they should be developed in a manner that propels the development of the informal economy, as part of supporting and strengthening municipalities in their developmental mandate.

The Constitution also places an obligation on municipalities “to promote social and economic development of their communities”. Section 153 further emphasises the developmental duty of a municipality as conducting its business with the sole priority of ensuring the basic needs and socio-economic development of its communities.

Municipalities are therefore expected to be part of national and provincial development programmes that seek to ensure that the founding

provisions of the Constitution regarding human dignity and equality are achieved holistically. However, there have been competing policy sentiments from the various spheres of government on the development of the informal economy – despite the Constitution’s call for the various spheres of government to work together to achieve human development and the socio-economic development of citizens. As described earlier, this has led to contradictory practices that impact negatively on the livelihoods of informal traders.

National government is responsible for the development of national legislation, policies such as the National Informal Business Upliftment Strategy (NIBUS), and the provision of funding such as through the Municipal Infrastructure Grant (MIG). They are also responsible for other developmental programmes aimed at supporting and developing townships and cities, through the National Treasury’s City Support and Township Development Programmes.

Provincial government plays a key role, coordinating and supporting municipalities in their jurisdiction. Their Economic Development Strategies are also instrumental in the creation of a development framework that municipalities and other spheres make reference to and support, as part of provincial economic growth and development.

Guidelines aimed at enabling governance of the informal sector therefore provide an all-inclusive blueprint that all the various spheres of government (and different departments within the same sphere) could use in the development of the sectors of the informal economy. These affirm the principles of cooperative government





and intergovernmental relations set by the Constitution for all spheres of government and organs of state, to:

- i. cooperate with one another;
- ii. assist and support one another;
- iii. inform one another; and
- iv. coordinate their actions, all for the well-being of citizens.

11.2 Business Act (1991)

Legislation at the national level of government acknowledges the important role played by the informal sector—a deviation from apartheid, under which informal sector activities were outlawed. The supreme law of the country emphasises local government’s obligation to facilitate economic development in its jurisdiction (SERI, 2018). This coincides with authorities’ change in attitude towards the sector, from repression to deregulation (Skinner, 2018). This change in attitude saw the enactment of the Business Act of 1991, which attempts to reverse harsh apartheid laws impacting informal trading. The Act restricted local government from enacting regulations that prohibit street trading in their areas of jurisdiction, resulting in a considerable increase in informal sector activities across the country. But local authorities struggled to cope with the increase in informal sector activities, particularly trading in public spaces; this led to the enactment of the Business Amendment Act 186 of 1993, which gave local government the power to formulate by-laws and demarcate trading and non-trading areas (SERI, 2018).

Unfortunately, the Business Act does not locate the informal sector as a responsibility or function of any particular department. This has led to informal workers continuing to be excluded and marginalised, as indicated in the problem statement. The sector is split between the street-trading function, approached as being more infrastructure-related by local government, and services that are more commercially inclined. While the DSBD (through NIBUS) has made progress towards formalisation of the sector, none of the three spheres of government has a political or administrative mandate for the development of the sector, as it does for the formal sector (which is addressed as big business, or under the frame of SMMEs). A legislative

mandate is needed to ensure development support is urgently provided.

11.3 SPLUMA

The Spatial Planning and Land Use Management Act (SPLUMA) was promulgated in 2013 to guide all spheres of government on land-use management, planning, and related matters. It aims to create uniformity in the use of land, including the allocation and zoning of land for public-space trading. SPLUMA “provides a framework for policies, principles, norms and standards for spatial development planning and land use management; to address past spatial and regulatory imbalances; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use development” (RSA, 2013: 3).

SPLUMA is therefore a key piece of legislation, empowering municipalities across the country with an instrument to effectively and efficiently use land to redress past spatial and regulatory imbalances, including the exclusion of poor and previously disadvantaged individuals. In line with their developmental principles, these Guidelines support the objective of this legislation for the development of the informal sector.

11.4 Bylaws

At local government level, informal trading by-laws act as a crucial form of regulation of informal trade that municipalities can adopt to enable the activity within its boundaries (SERI, 2018). Ideally, bylaws for informal trade take direction from informal trading policies that municipalities develop to strategically guide the regulation of the activity. In some of the more developed municipalities, such as metros, policies relating to trading in public spaces are often inclusive, but can sometimes be ambivalent or adopt a hostile approach.

Some municipalities struggle to develop appropriate trading policies, for a number of reasons, such as limited capacity and understanding of broad legal issues (SALGA, 2012). In some instances where (inclusive) policies exist, their principles do not translate into the development of adequate by-laws, and authorities adopt selective and punitive implementation practices (Skinner, 2018).

12. Key Role Players

12.1 Stakeholders

Various spheres of government and stakeholders are mandated with a responsibility for policy, planning and/or supporting socio-economic development of informal economic activities, especially public-space trading. These include:

Local Government	Provincial Government	National Government
• SALGA • SACN • Municipalities: - Local economic development - Safety and security / Public safety - Infrastructure development - Disaster management - Water and sanitation - Transport - Planning - Environmental health - IDP/Strategy - Ward Councillors	• Economic development and tourism • Planning/Strategy • Cooperative governance	• Department of Small Business Development (DSBD) • Department of Cooperative Governance and Traditional Affairs (CoGTA) • National Treasury, and its units – the City Support Programme (CSP) and the Government Technical Advisory Centre (GTAC) • Department of Labor and Employment (DoLE)

Also included are these critical stakeholders:

- Informal businesses as economic units and organised informal sector representatives
- All formal businesses located within the boundaries of municipalities
- Civil society organisations and lobby groups
- Academia

12.2 Stakeholder Analysis

Power relations between the various stakeholders vary, with some having more power and interest in the issues of the informal economy, while others have high interest but no power. The distribution of power is associated with resources, knowledge and skills. Those with low power are mostly traders, with no resources to fight for their rights; thus they rely on the lobby groups and civil society organisations to do that for them, which has continued to be the case even during lockdown.

POWER	High	Formal Businesses	Politicians Public Officials Civil Society Organisations Lobby Groups
	Low	Academic Institutions	Informal Workers Customers
		Low	High
		INTEREST	

Figure 2: Analysis of stakeholders in the informal economy



“Formal business – whether big or small – also has tremendous power, and can play a large role in the development (or lack thereof) of the informal economy.”

Formal business – whether big or small – also has tremendous power, and can play a large role in the development (or lack thereof) of the informal economy. This has been evident over the past few decades, when municipalities prioritised formal businesses over informal traders on infrastructure budgets. The same happened during the lockdown: government prioritised formal businesses for various support packages. The involvement of formal business as development partners to the informal could be a game changer for economic growth and sustainability in South Africa.

Customers of the informal sector – mostly poor commuters, on trains, buses or taxis – are powerless, yet have a strong interest in seeing these businesses sustained, as they depend on them for more convenient and affordable access to much-needed products and services than formal businesses can offer. As for academic institutions, only a few in South Africa have been visible in the sector; their interest and power have not been studied, and may vary.



As the stakeholder analysis above reveals, power relations in the sector are biased towards those with resources; “governance of the sector should therefore protect or promote informality through the creation of an adequate enabling environment that will maximise its growth potential and provide protections to those who engage in it” (Young, 2020:4). This will also ensure that those who are not able to fight for their rights, or are without a voice compared to their counterparts in the formal economy, are also enabled and empowered through various platforms to participate in decision-making structures regarding their future and the future of their informal businesses.

PART II: POLICY PROPOSALS

13. A Progressive Response

The informal sector and public space traders have been negatively impacted by the pandemic, more so because of the current context; devastating consequences are already being experienced, and may extend into the long term, compounding the pre-existing challenges of an already-neglected sector. In addition to the systemic issues, the current urgency informs the approach proposed in this section of the document, which includes urgent emergency responses, strategic medium-term responses, and longer-term systemic changes.

Some of the interventions – such as the valorisation of and creation of a conducive working environment for informal traders and

other informal workers – will be implemented in the short to medium term, and can begin to make these sectors less vulnerable to continued or future crises. The evidence collected towards the development of these guidelines identified key factors which if addressed could drastically improve conditions for the informal sector, specifically public-space trading, in the direction of rights-based transitions of the informal economy as envisaged in ILO R204. The key issues relating to public-space trading and local government in the pre-pandemic and COVID-19 context were identified as: the unconducive regulatory environment; the lack of infrastructure, enterprise support and development, and representation of workers; and social exclusion.

The following sections detail the three levels of response.

14. URGENT ACTIONS: The Emergency Response

Informal traders have been among the most affected during the COVID-19 pandemic. In this context they continue to be subject to punitive measures such as harassment, evictions and relocations. While there are measures to curb the virus, such as social distancing protocols, it is difficult to maintain these in inadequately serviced and overcrowded trading spaces. In the long run, this impacts negatively on public-space traders; particularly on their income streams, because for them, no work means no pay. Often the traders are also the unintended, undeserving and unacknowledged victims of the uncoordinated and inconsistent governance attitude to and regulation of the informal sector.

The National Disaster Management Act No. 57 of 2002 (NDMA) gives powers to the custodian minister (CoGTA) to make regulations and direct actions on issues that cannot be fully dealt with in the prevailing existing legislation – e.g. the Health Act, in the case of COVID-19. This is done in consultation with other ministers who oversee the various line functions. The trouble is that when COVID-19 hit, the informal sector lacked specific

political championship at this level, and what was presented were essentially Trade & Industry negotiations for the formal economy. Therefore, although some directives were issued regarding informal trade, a few months into the pandemic, they were not holistic, adequate or representative. Provisions for risk-identification and -reduction measures and disaster management, in relation to the sector, must be embedded in the relevant line or sector plans, and also covered by local (municipal) disaster management plans.

The informal-sector issues highlighted by COVID-19 were governance and service delivery failures that already existed. These will continue to affect informal workers during and after the pandemic era. However, clearly there are also immediate actions that should be taken in order to address the vulnerability and safety of informal traders and other informal workers during the pandemic. The focus of the proposals is thus both dealing with the current crisis situation, and proactive interventions for ensuring livelihoods in a non-discriminatory way in general, with a bias towards the socially and economically vulnerable, while still considering regulatory mandates and challenges.



14.1 Emergency Response in a Time of Disaster

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Relax enforcement during the State of Emergency period.	Prohibit the confiscation of the goods of informal traders and adopt a human-centric approach to the enforcement of bylaws.	COVID-19 pandemic response	All municipalities
	Ratify the <i>'Do No Harm' Circular to Municipalities on Public Space Management for Inclusive Economic Recovery</i> as agreed between the Community Constituency and CoGTA during the NEDLAC negotiations of August 2020.	COVID-19 pandemic response	COGTA
	Relax unnecessary administrative controls in the registration and provision of licences for Informal Traders.	COVID-19 pandemic response	All municipalities
2. Enable safe trade and provide social protection during the pandemic.	Conduct situational assessments to determine specific requirements and priority interventions to ensure informal traders are safe and healthy in the COVID-19 context.	COVID-19 pandemic response	All municipalities, supported by SALGA & CoGTA / MISA
	Urgently provide essential services such as clean drinking water, sanitation, waste removal and hygiene services.	COVID-19 pandemic response	All municipalities
	Provide additional trading space to enable social distancing between traders.	COVID-19 pandemic response	All municipalities
	Provide for childcare and maternal support, income protection, service access, business rescue, etc., particularly in disaster response.	COVID-19 pandemic response and provision of social protection	All municipalities, DOL, DSBD
3. Provide direct economic support to the informal sector to mitigate negative disaster impacts.	Ensure that emergency relief and economic stimulus interventions include the informal sector.	COVID-19 pandemic response	Trade & Industry, All municipalities, Provinces

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
4. Review of Disaster Management Plans to include attention and emergency support to informal sector workers in times of disaster.	Review all Municipal Disaster Management Plans to include COVID-19 risk-mitigation measures and support for the informal economy.	COVID-19 pandemic response and provision of social protection	All municipalities
	District Municipalities must provide support to municipalities in the provision of COVID-19 disaster-risk mitigation for the informal sector.	COVID-19 pandemic response and provision of social protection	All municipalities
	Municipal Disaster Management Centres must provide ongoing monitoring of compliance and adherence of municipalities and informal traders to COVID-19 health protocols.	COVID-19 pandemic response and provision of social protection	All municipalities
	National Government must support and provide Municipal Disaster Management Centres with the necessary infrastructure and tools to monitor and support municipalities in the reduction of infections.	COVID-19 pandemic response and provision of social protection	CoGTA, Treasury





15. MEDIUM-TERM PROPOSALS: Seven Key Policy Intervention Areas

The seven interventions are cross-linked to the Guideline's four outcome areas, which relate to the key problem areas identified. These outcome areas specified for strengthening the governance of public space trading at local level are:



Ensuring Economic Participation and Mobility – all people in South Africa have the right to participate in the economy, and municipalities should enable paths for economic mobility through economic support measures and options for economic diversification for economic units.



Providing for Social Protection and Inclusion – non-discriminatory public-space trading, and instituting social protection and public safety measures, especially for vulnerable populations.



Strengthening Governance – Local government exercises accountable, coherent, developmentally-oriented governance in respect of the informal sector, within an enabling inter-governmental framework.



COVID-19 Pandemic Response – make provision for relaxation of by-laws and necessary essential service provision to allow for trading continuity while ensuring occupational health and safety measures.

The recommended actions require embedding in legislated processes and instruments in the five-year municipal planning and resourcing cycle. They also require a review of the municipal by-laws, the issuance of guidelines and support to sector authorities and enforcers, and the provision of key support services to informal traders.

The following sections outline the intervention areas, recommended actions and corresponding strategic outcomes.

15.1 A Conducive Regulatory Environment

Legislation at the national level of government acknowledges the important role played by the informal sector – a clear departure from the apartheid approach, under which informal sector activities were outlawed. The right to choose one's work extends to informal workers, and their activity may be regulated by the state through legislation and policy documents. Sadly, there are conflicting sentiments regarding the informal sector – despite the explicit focus in legislative directions, particularly at the national level – leading to a fragmented legislative landscape that impacts the sector.

A more enabling regulatory approach would inspire local government to support and foster the productivity of informal enterprises and the quantity and quality of jobs they create (Kraemer-Mbula & Konte, 2016:299). Furthermore, the regulatory environment tends to affect all aspects of productivity, and its apparent shift from a repressive to an inclusive approach to the informal economy will inspire a number of constructive policy approaches and interventions that in turn promote equal access and opportunities in the economy.

At local government level, informal trading policies and by-laws are a crucial form of regulation of informal trade that a municipality can adopt to enable the activity within its boundaries. Municipal policies towards trading in public spaces are sometimes inclusive, but may be ambivalent or adopt a hostile approach. Sometimes there are also contradictions between inclusive policy sentiments and an official's enforcement approach, and often, law enforcement and policy development units are at odds with each other regarding ways to deal with the informal sector, specifically public-space trading.

‘Regulatory environment’ refers to local, provincial and national policy and/or legislation; a conducive regulatory environment for the informal sector would be one in which the regulatory rules, tools and practices assist the development of the sector, and also harmonise the government’s various approaches to dealing with public-space trading in South Africa.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Recognition of informal economy as a critical part of local economies.	Adopt a Council Resolution to recognise informal sector as a critical component of local economies in line with sec 152(1)(c) of the Constitution of the Republic of South Africa.	Ensuring economic participation and strengthened governance	All municipalities
	Adopt a Council Resolution to endorse the allocated trading spaces as a workplace in line with ILO’s Recommendation 200 & 204.	Ensuring economic participation and strengthened governance	All municipalities
2. Create a conducive municipal regulatory environment to enhance the informal economy.	Review all municipal bylaws to align with the developmental principles of this Policy Guideline.	Strengthened governance	All municipalities
	Increase consistent by-law enforcement across municipalities to ensure good conduct and compliance by both officials and informal workers.	Strengthened governance	All municipalities
3. Create a conducive national legislative and policy environment to support the informal economy.	Lobby for the review of the Business Act and other enabling tools to develop the informal sector as a critical part of the South African economy.	Ensuring economic participation and strengthened governance	SALGA, CoGTA, NT
4. Address the negative enforcement approaches aimed at the informal sector by municipal agencies and departments.	Conduct joint workshops between economic development (and associated sector functions) and law enforcement departments.	Strengthened governance	All municipalities, with SAPS
	Increase accountability and consequence management where there are police abuses.	Strengthened governance	All municipalities, with SAPS



15.2 Infrastructure Development, Space Planning and Utilisation

This intervention area seeks to address dual challenges; firstly, the lack of basic and essential services for public-space traders. Water is not only a basic but a key essential service to fight the spread of the coronavirus among informal traders and their customers; yet the provision of water and sanitation to informal traders remains a huge challenge across the country. Local government is constitutionally mandated to provide basic services, and informal traders are not excluded from that.

The urgent provision of water and sanitation to the informal sector will not only ensure human dignity, but reduce the spread of the pandemic, as part of the national response against the spread of COVID-19.

Secondly, the provision of infrastructure by municipalities tends to be biased towards the formal sector as evidenced by their spending less budget on building infrastructure for public-space traders than for their formal counterparts (corporates and SMMEs). This not only shows a lack of recognition of the sector, but has also created unbearable working conditions for both informal traders and other public-space users, due to overcrowding and poor environmental conditions. The spatial circumstances have also made it impossible to ensure social distancing among informal traders and their customers, which is a fundamental, basic requirement for curbing the spread of the Coronavirus.

An urgent review of municipal programmes to prioritise infrastructure provision for informal traders will not only improve working conditions in the sector, but also save lives.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Develop a progressive medium- to long-term infrastructure investment plan, with prioritisation framework, for the informal economy.	Progressively invest across the municipal jurisdiction in a range of economic Infrastructure that provides a pathway for economic growth for public-space traders.	Economic participation and mobility	All municipalities, guided through SALGA
	Progressively provide a range of well-located infrastructure (shelter, storage, electricity, water, Wi-Fi) that promotes competitiveness and provides for business growth and mobility.	Ensuring economic participation and mobility	Local municipalities, National Treasury, DSBD
	Reserve land and underutilised public facilities as sites of training, production and storage and places of commerce for the informal sector.	Increase the number and sustainability of informal businesses	Local municipalities
	Ensure sufficient space for new entrants to the informal economy, consider short- and medium-term use of land ordinarily preserved as road reserve.	Increase the number and sustainability of informal businesses	Local municipalities
	Facilitate public-private partnerships as the centre of infrastructure development to empower informal traders and other informal workers.	Economic participation and social protection	All municipalities

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Develop a progressive medium- to long-term infrastructure investment plan, with prioritisation framework, for the informal economy. <i>contd.</i>	Develop guidelines for the promotion and securing of informal trader rights and access to municipal property.	Economic participation and social inclusion	All municipalities
2. Develop proactive, inclusive urban design measures and approaches to guide municipalities on inclusive public-space usage.	Improve spatial design to ensure that all urban dwellers have access to the city. Reconfigure spatial designs to ensure that all urban dwellers have access to the city.	Economic participation and mobility	All municipalities, guided through SALGA
	Provide childcare centres for women, close to their workplaces.	Economic participation and social protection	All municipalities
	Use SPLUMA overlays to guide municipalities on public-space usage and demarcation of informal trading spaces.	Economic participation and mobility	All municipalities
	Provide sufficient trading spaces (production, storage, shelter, etc.) to accommodate the number of available traders (new and existing) within each municipality.	Economic participation and mobility	All municipalities
3. Ensure long-term sustainability of existing and new infrastructure for the sector.	Allocate sufficient maintenance budget for all informal sector-related infrastructure, in line with established norms.	Economic participation and social protection	All municipalities





15.3 Economic Development and Enterprise Support

Local government struggles to coordinate support across the various departments that deal with the informal sector. Support measures offered (especially funding support) are often concentrated at the national level, with stringent requirements which exclude or are inaccessible to informal

enterprises and workers in the informal economy. Also, a significant number of these support measures are focused broadly on SMMEs, and this category often excludes public-space trading.

Provision of adequate support including funding for informal traders is critical, especially during this time of COVID-19.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Improve the representation and participation of the informal sector in municipal sector/ industry and business forums.	Prioritise informal-sector access to economic planning forums, industry bodies and business chambers.	Economic participation and mobility	Municipalities, Districts, Provinces
	Where required, support the ability of the sector to be effective representatives and derive value from economic networks.	Economic participation and mobility	Municipalities, Districts, Provinces
2. Develop and implement plans to support inclusive economic development at local, regional and national economy levels.	Local: Ensure local economic plans include the informal sector, and that they are planned for along with sector/industry-specific strategies.	Economic participation and mobility	All municipalities
	Provide methods for accessing new markets (local, regional, national).	Economic participation and mobility	Districts, provinces
	Strengthen the informal sector's ability to move up value chains of their choice through access to skills, technology or social networks.	Economic participation and mobility	Districts, provinces
	Regional: Support the development of regional network industries facilitating efficient communication and the movement of goods and people.	Economic participation and mobility	Districts, provinces
	Ensure development and support for industries that have a strong informal-sector presence within the region.	Economic participation and mobility	Districts, provinces
	Ensure informal-sector representation at regional-level industry-development forums.	Economic participation and mobility	Districts, provinces

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
2. Develop and implement plans to support inclusive economic development at local, regional and national economy levels. <i>contd.</i>	National: Maintain a sound macro-economic framework, including trade policy that maintains competitive prices for input factors where they are critical to the sector.	Economic participation and mobility	National Treasury, Competition Commission
	Monetary policy decisions must consider the impact on industries critical to jobs and businesses in the informal sector.	Economic participation and mobility	National Treasury, Competition Commission
	Monitor and prevent unfair competition in sectors critical to the sustainability of the informal sector.	Economic participation and mobility	National Treasury, Competition Commission
3. Improve the administrative and business environment for informal business.	Reduce the red tape for the informal sector and improve the ease of doing business and productivity-enhancing reforms – administrative processes such as searching for and identifying available trading facilities; streamlining the registration, renewal and payment of health and trading permits should be prioritised.	Economic participation and mobility	Local municipalities
	Ensure passive and active safety and security measures are included in sites to enhance business productivity.	Safety and sustainability of informal businesses	Municipalities, Law enforcement agencies
4. Provide industry-specific business support services accessible to the informal sector.	Develop industry/sector-specific plans with key stakeholders from the industry/sector and the informal sector to provide business demand-led business support services for the informal sector.	Economic participation and mobility	DSBD
	Partner with dedicated agencies and stakeholders (SETAs, TVET, SEDA, TIA) to provide tailor-made, accessible business support services.	Economic participation and mobility	Municipalities, DSBD



RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
4. Provide industry-specific business support services accessible to the informal sector. <i>contd.</i>	Gather data and determine the demand for business development services on first-time or annual registration and as regularly as required for existing traders and newcomers for business experience and skills.	Economic participation and mobility	Municipalities, DSBD

15.4 Organisation and Representation

Notwithstanding the issues associated with informal trader organisations and representation, they continue to play a key role in negotiating with the state. It is in this context that organisations are included as key drivers of change in consultation with different spheres of government. Now more than ever it is proving to be a critical role that informal trader organisations and their representatives can play in rebuilding the sector. They have suggestions and ideas based on experience regarding how municipalities can support traders in the current context and in the future. The crisis presents an opportunity to reset the playing field for engagement between

informal traders (through their organisations) and the state.

Sometimes foreign nationals do not participate in or are deliberately excluded from informal worker organisations formed by locals and from engagement platforms with the state. This is an issue that government must assist with, so that the voices of all those operating in the informal sector are accounted for and heard.

Adequate platforms for participatory governance should be created to effectively involve multiple organisations in solution-finding processes, collective bargaining, and preventing the mistakes of the past from being repeated.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Increase support for representative organisations, cooperative arrangements and intermediaries.	Recognise trader associations to engage with on public-space trading issues.	Strengthened governance	All municipalities, with representatives
	Provide institutional support to trader organisations and facilitate help with governance tools, procedures etc. for fledgling organisations.	Social inclusion and strengthened governance	All municipalities, with representatives
	Strengthen collaborative governance mechanisms at trading-area level to ensure improved relations for sustainability of the sector.	Strengthened governance	All municipalities and informal traders, traders' forums and associations
2. Gather data consistently to inform better plans and decisions for the sectors of the informal economy.	Include informal-sector data and statistics in economic planning and reporting.	Economic participation and social inclusion	All municipalities, with SALGA support

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
2. Gather data consistently to inform better plans and decisions for the sectors of the informal economy. <i>contd.</i>	Simplify registration of informal workers, e.g. digital registration, less stringent requirements, and inclusivity.	Economic participation and mobility	All municipalities
	Create a dynamic database of informal workers at local level to take stock of all existing and new entrants.	Economic participation and mobility	All municipalities
	Review and cut red tape for the registration of informal workers.	Economic participation and mobility	All municipalities
	Explore usage of apps such as the SALGA MobiApp to facilitate registration and sharing of information with informal traders.	Economic participation and mobility	All municipalities, with SALGA
3. Develop systems and tools to reverse the marginalisation of the informal sector.	Develop tools to continuously improve inclusivity and best practices within the informal sector, especially public-space trading.	Economic participation and strengthened governance	All municipalities

15.5 Social Inclusion and Protection

Key issues from the pre-pandemic period continue to persist in the current COVID-19 context, with devastating effects for both public-space traders and local government. In the current context, the fragmented and contradictory legislative landscape across government spheres and agencies provides a fertile ground for selective and punitive implementation practices. Public-space traders continue to be subject to punitive measures such as harassment, eviction and relocation during this period.

Women in the informal sector have been the most affected during the crisis and will be the last to recover after it.

For instance, during the hard lockdown, the proportion of women workers decreased dramatically, with only minor changes to the number of men. This is attributed to a number of factors that affect women workers in the informal economy, such as childcare. During lockdown, schools and crèches were closed; ordinarily they would act as childcare centres during the day, while women are at work. This further exacerbated the situation.

Providing mechanisms for social protection within an informal sector that already has inadequate investment in infrastructure and services such as water, sanitation facilities and waste disposal will really help to ensure the dignity of workers.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Provide social protection measures for the informal economy, especially public-space trading.	Provide social infrastructure for promoting public safety and to cater for public-space traders' reproductive roles, such as ablutions, water, shelter and childcare.	COVID-19 pandemic response and provision of social protection	All municipalities



RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Provide social protection measures for the informal economy, especially public-space trading. <i>contd.</i>	Provide for childcare and maternal support, income protection, service access, business rescue, etc., particularly in disaster response.	COVID-19 pandemic response and provision of social protection	All municipalities, DoLE, DSBD
2. Promote non-discriminatory practices and equal access to economic opportunities.	Ensure non-discriminatory measures are in place for access to public space trading by women, youth, people with disabilities & foreign nationals.	Economic participation and social inclusion	All municipalities
	Facilitate social dialogues between various stakeholders, including local government and informal workers.	Social inclusion and strengthened governance	All municipalities, with representatives
3. Facilitate programmes focused on enabling the inclusion of women, the young, disabled people and migrants.	Ensure that multi-stakeholder dialogues specifically ensure and facilitate social inclusion.	Social inclusion and strengthened governance	All municipalities
	Hold multi-stakeholder events specifically to tackle the exclusion of migrants and issues of xenophobia.	Social protection and inclusion	All municipalities
	Increase participation of foreign nationals and their representatives in engagement platforms with the state.	Social protection and inclusion	All municipalities
4. Facilitate a means of improving societal perception and acceptance of the sector.	Include informal-sector data in profiling of local economies to give recognition to the sector.	Social protection and inclusion	All municipalities, with SALGA & Stats SA
	Conduct public awareness campaigns and communications that recognise and valorise the informal sector as part of the local economies.	Social protection and inclusion	All municipalities



15.6 Skills Development and Training

Training of informal traders has often been criticised for not responding to their needs, with no long-term skills gains. Skills audits must be undertaken by authorities to determine the skill set required by informal traders, to inform the type of training to be administered. Also, a lot of emphasis and resources have gone to capacity

building for informal traders, while officials who deal directly with regulating and managing the activity also require training on crucial aspects.

The training system must be reviewed to ensure that it is useful for Informal sector and local government officials, informal workers and business owners.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Understand the needs of the informal sector in the jurisdiction and develop implementable training plans relevant to the sector.	Identify needs, preferences and demand of informal business owners/workers for business and technical training needs on an annual basis for existing traders, and on registration for newcomers to the system.	Improved capacity of informal sector	LM, districts, provinces
	Based on the data gathered above, and together with partners and the sector, develop an industry-specific training plan for the informal sector.	Improved capacity of informal sector	LM, districts, provinces
	For all informal business owners and workers, provide regular and on-demand basic training and information sessions relating to municipal policies and by-laws, duties and rights of municipality and informal sector.	Improved capacity of informal sector	LM, districts, provinces
2. Develop responsive training to ensure that local government promotes, respects and upholds the applicable laws.	Identify the needs, preferences and demand for training of all local government officials relevant to and who interact with the informal sector.	Improved capacity of informal sector	LM, districts, provinces
	Ensure that all regulatory officers are well versed in the applicable laws and by-laws and can interpret and apply the laws in a case-specific manner.	Improved capacity of informal sector	LM, districts, provinces
3. Engage institutions of higher learning to develop training modules for local government that support the transformation of regulatory and development approach to the sector.	Promote developmentally-oriented policy and practice by providing training for officials that provides an understanding of: informal-sector livelihoods, international trends and agreements, planning for informality, and supporting livelihoods and ways in which to apply the knowledge contextually at the local level.	Improved capacity of informal sector	Provinces, NT, SALGA, CoGTA



15.7 Institutional Coordination

- i) Vertical misalignment of efforts between the three spheres of government

The development of policy and legislation is marked by poor working relations and coordination between the three spheres of government. This leads to misalignment of policy priorities and efforts, as departments work in silos even though the principles of intergovernmental relations call for interrelatedness and interdependency between them. Misunderstandings and different interpretations of legislative provisions are evident in the manner in which informal sector issues are being handled.

- ii) Inconsistent and contradictory approaches of departments within the same sphere

Local government is inconsistent in the manner in which it deals with the informal sector. Pro-informal-sector policy sentiment in one department is met with a contradictory approach by law enforcement. Neighbouring municipalities within the same district apply contradictory approaches in dealing with the same sector of the informal economy. There are different political and administrative views within the same institution, with notable disagreements on how the informal economy should be developed.

A governance approach is therefore needed to ensure that different spheres of government, and different departments within the same sphere, are coordinated and their efforts unified for the development of the informal sector.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
1. Strengthen horizontal governance between the various municipal departments servicing the informal sector.	Establish multi-stakeholder institutional coordinating structures for all municipal functions related to the informal sector, e.g. LED, by-laws, Infrastructure, health & safety, etc.	Strengthened governance	All municipalities
	Facilitate joint planning sessions for informal-sector programmes, to develop coherent and aligned sector plans and operational practices.	Strengthened governance	All spheres of government
	Develop efficient and fair dispute-resolution mechanisms for the informal economy (see By-law Guidelines)	Strengthened governance	All municipalities
2. Improve governance at national and provincial government.	Establish a national coordination structure for implementing and monitoring the programme of action (Provincial Economic Development and Tourism, DSBD, COGTA, SALGA)	Strengthened governance	All spheres of government
3. Improve governance of the informal sector.	Provide the means to ensure registration and representation of every trader and trader association.	Strengthened governance	All municipalities and informal traders, traders' forums and associations
	Encourage trader organisations to work closely with law enforcement officers during operations, to witness and ensure adherence to regulations and help to curb corruption.	Strengthened governance	All municipalities, with representatives

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RESPONSIBILITY
4. Ensure alignment of sector governance practices and regulations.	Embed planning for public-space trading within statutory planning tools such as IDPs, SDBIPs, SDFs, SPLUMA and the DDM One Plans.	Strengthened governance	All municipalities
5. Develop and ensure proper informal-sector industry classification.	Review economic and informal sector policies to correctly classify informal trader businesses with formal industries and sectors.	Strengthened governance	DTIC, DSBD and Stats SA
6. Develop and facilitate joint disaster-specific responses for the informal sector.	Develop a joint integrated municipal disaster support plan that includes consideration for the informal sector.	Disaster response and strengthened governance	All municipalities, SALGA, CoGTA
	Provide additional space through allocation of existing public space, especially during the COVID-19 pandemic.	Economic participation and mobility	All municipalities, with SALGA





“Importantly, systemic changes would require the clear assignment of (or inclusion in) line responsibility and accountability for the informal sector at national level.”

16. LONG TERM: Systemic change through a Governance Approach

There are also more systemic issues that will have to be addressed in the medium to long term, some extending beyond the role of local government. They may include inclusion in the mainstream economic system, provision of economic infrastructure, embedding of rights and social protections, and reviews of national legislation and arrangements. Importantly, systemic changes would require the clear assignment of (or inclusion in) line responsibility and accountability for the informal sector at national level.

The ILO acknowledges that “informality is principally a governance issue” (ILO, 2020:25). An effective governance model ensures that policies, systems, structures and frameworks interface with each other, clearly allocating responsibilities and accountabilities. The Constitution of the Republic of South Africa obligates the various spheres of government, and various departments within the spheres, to work both interdependently and within a framework of cooperative governance. This Cooperative Governance Approach is guided by a legal framework that binds all of government together to achieve a common goal of ensuring human dignity and socio-economic development of citizens.

Steering structures comprising all the relevant and mandated stakeholders must be formed at each level of the system (national/regional, local government, and community) to define standards, expectations and performance outcomes according to the aspirations of the Constitution.

16.1 Coordinating structures

The following model is proposed:

- 1) Introduction of a New National Coordinating Structure focused on the informal economy. The structure will include CoGTA, SALGA, DSBD, NT (City Support Programme), DTIC, and DoLE. The complications of vertical misalignment between the three spheres of government have led to numerous challenges in the areas of policy, planning and service delivery. These include misalignment of policy and legislative objectives, and a lack of communication and cooperation in the development of communities, despite the requirement that spheres of government should work through municipal IDPs for local-level projects.

It is the purpose of this structure to bridge those gaps and foster synergies between the various spheres of government. Terms of reference for the structure will be developed and adopted by all stakeholders involved, and will specify its objectives, who will participate, and its accountability lines.

An important role of this structure will be to take the lead on the establishment of clear national responsibilities and accountabilities for the informal economy, as well as embarking on a review of the Business Act.

- 2) Municipal and District Coordination Structures within current economic development structures: the LED Unit of the municipality or one responsible for the issues of the informal economy must establish a Municipal Inter-Departmental Structure that will ensure all relevant departments in the municipality come together, discuss, share information, plan, and align their efforts towards the development of the sector. This will ensure horizontal governance of the informal economy in each municipality.

The same will be done by each district municipality for its own local municipalities, so that each district can have a District Coordinating Structure for all the issues of the informal economy in that district. South Africa has 278 municipalities, comprising eight metropolitan municipalities, 44 districts and 226 local municipalities. The coordination of effort across each local sphere of government therefore becomes a critical success factor in the quest for service delivery.

Not only will this improve governance; it will also provide uniformity of approach and resource efficiency horizontally across neighbouring municipalities. Establishing District Coordinating Structures for the sector will provide a needed vehicle to coordinate development efforts and guide the implementation of these Guidelines.

- 3) Multi-stakeholder platform(s) for engagement between government, informal traders, informal workers and other stakeholders as a platform for ensuring accountability, participation, inclusiveness, responsiveness, coordination,

transparency, etc. (the governance values) – we need to think whether these should be national, regional or local. These engagement platforms might be short- or long-term depending on their objectives, which will be stated on the Terms of Reference agreed on by the various stakeholders involved in them.

16.2 Coordination Practices

The Inter-Governmental Coordinating Structure will be at national level, with representatives who interact with their provincial, local and multi-stakeholder forum counterparts to consult, monitor and give or receive feedback on the implementation of these Policy Guidelines.

Implementation structures (committees, formal partnerships, etc.) should also be created at local level, to ensure that all stakeholders participate in the planning, decisions, monitoring and evaluation of the success of the set objectives, and guide the alignment of instruments and support interventions. Reports from these local committees will be part of the provincial reports tabled at national level, so as to inform, support and provide resources for implementation.

16.3 Enabling Behaviours

Finally, South Africa is infamous for developing world-class legislation and policies, but implementing them poorly. Among other fundamental issues affecting the achievement of policy intentions is institutional culture, which is underpinned by established attitudes and behaviours. No matter how much effort, planning and resources are available for programme implementation, the results will not be achieved if those responsible are not enabled accordingly.

As the executive heads of the municipalities, mayors must therefore take responsibility for political leadership aimed at a new culture of guarding against symbolic change without achieving the spirit of the developmental policy frameworks from which local government was established. Municipal councils and councillors must ensure oversight of these practices, and demand corrective actions where needed. Municipal managers must ensure that all their employees adopt the developmental practices set by the country's Constitution regarding human dignity and adherence to the rule of law.



Practices to be abolished include continuous marginalisation of the poor, especially informal workers, and harsh practice and enforcement of by-laws. Other key aspects of change include:

Culture

The commonly held ideas, values, beliefs and assumptions, standards and practices of individuals in the organisation, which are reinforced and perpetuated by institutional doctrine, actions and leadership;

Empowerment

Activating and enabling the capacity of officials and other key actors to use their talents, knowledge, skills and experience with understanding, agency, urgency and accountability, within the commonly held parameters;

Political will

Political will is critical in ensuring there will be a policy champion for these guidelines. It will also ensure that councils take the necessary resolutions when required, including allocation of budgets and review of by-laws and legislation, at provincial and national level. Political will also assists in driving awareness and understanding on the rights of informal workers and foreign nationals, and ensures adherence to the Constitution;

Commitment

Commitment focuses on the urgency of getting things done. It is most relevant at management or official level, where dedication will ensure proper guidance for political champions and leadership, but also ensure that all plans are executed successfully;

Transparency

Sharing of information such as plans and budgets builds trust and facilitates good working relations between all stakeholders; and

Accountability

Peer accountability is required, to ensure that decisions taken are executed timeously and with quality.

There must be a concerted effort to identify and address these ‘soft’ issues, which may be ensured through a combination of the change management process (see Part III below) and ongoing reinforcement through training and conscious, consistent leadership. Recognising the need for an attitudinal and behavioural shift, and adopting plans to address it, will therefore be crucial in ensuring successful implementation of the programme of action.



PART III: A FRAMEWORK FOR IMPLEMENTATION

17. Uptake and Implementation Approach

South Africa in general, and the issue of informal economy regulation in particular, does not have a strong track record of good policy implementation. Implementation through coherent governance systems and processes is one of the most crucial issues for the country today. Government must “design a coherent policy approach to informality across departments and levels of government and improve co-operation and communication across departments and levels of government to facilitate policy coherence and co-ordination” (Young, 2020:22). This will ensure not only better coordination of efforts, but also consistency in how government addresses the challenges faced and opportunities offered by the informal economy.

This section offers a framework for implementation that is cognisant of that history of poor implementation of policies; a direct approach, with a proposed ‘RACI’ management framework which sets out, for each Implementation action, who is Responsible (does the work to complete the task), Accountable (tasked with ensuring the work is delegated, completed and approved), Consulted (stakeholders who provide input based on their specific roles, interests or experience), and Informed (those who need to be kept in the loop on progress). Some of these areas may also benefit from external support and capacitation, which could potentially be facilitated through SALGA, provincial or national government, or even non-governmental partners or actors (including NGOs, universities or development partners) who may have the relevant knowledge and experience.

17.1 Decision to Act: Launching the Policy

There can be no implementation if there is no political will or definitive commitment to the implementation of the Policy Guidelines’ recommendations by the key responsibility-holders: local government leadership, and the enabling national actors.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RACI - Responsible, Accountable, Consult, Inform	
1. Overall adoption and execution of the policy and its recommendations.	SALGA signs resolution to endorse and promote uptake of the Policy Guidelines.	SALGA Resolution signed.	R	SALGA EconDev
			A	SALGA NWG/NEC
			C	Municipalities
			I	CoGTA, DSBD, NT
	Include in SALGA Strategic Plan 2022-27 and immediate APP 2021-22.	1. SALGA Strategic Goal/Action. 2. APP Target for 2021/2022.	R	SALGA EconDev
			A	SALGA NWG/NEC
			C	Municipalities
			I	CoGTA, DSBD, NT
2. Establish national & provincial cooperation.	National Coordinating Structure (NCS) establishment to drive the national policy and an enabling legislative framework.	1. NCS TOR. 2. NCS established.	R	SALGA EconDev
			A	SALGA NWG/NEC
			C	CoGTA, DSBD, NT
			I	Municipalities
	National resolution, linked to R204.	Memorandum of Agreement / Understanding.	R	SALGA EconDev
			A	SALGA NWG/NEC
			C	Municipalities
			I	CoGTA, DSBD, NT



RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RACI - Responsible, Accountable, Consult, Inform	
2. Establish national & provincial cooperation. <i>contd.</i>	Provincial engagement and alignment, encouraging establishment of Provincial Coordinating Structures (PCS) (linked to national and provincial LED Forums) to direct policy operationalisation and support municipalities.	1. PCS TOR. 2. PCSs established. 3. MOU between PCSs and SALGA.	R	COGTA, DSBD, SALGA EconDev
			A	SALGA PWG/PEC
			C	Municipalities
			I	SALGA NWG/NEC
3. Expedite emergency actions.	1. Relax enforcement during the State of Emergency period. 2. Provide basic services to informal traders.	1. Continued and sustainable local economies. 2. Safe provision of informal trade.	R	Municipalities
			A	SALGA, CoGTA
			C	DSBD, NT
			I	
4. Alignment to national key strategic framework.	DDM/One Plan.	Aligned DDM/One Plans (inclusive of informal economy).	R	SALGA EconDev
			A	SALGA NWG/NEC
			C	CoGTA, DSBD, NT
			I	Municipalities

17.1.1 Cooperative Governance through the new National Coordinating Structure (NCS)

The Cooperative Governance Approach identified seeks to ensure that all stakeholders in the sector are equally involved and accountable for the development of the informal economy within their jurisdictions. It is proposed that these stakeholders should work through a new National Coordinating Structure (NCS) that will develop and support the implementation of strategic frameworks and plans, and provide feedback through the system (provincial and local levels). The NCS will have to structure itself and its modalities in the way that is best to ensure focused and agile action to meet its objectives. Engagement with various implicated institutions and structures (e.g. for bylaws and law enforcement, infrastructure, social protection, etc.) should be facilitated to ensure that all stakeholders participate in the planning, decision making, monitoring and evaluation of the success of the plans to develop the sector.

Reports from the provinces and the NCS's committees or partners should form part of the

ongoing reports tabled at national level, so as to guide the NCS and national government on the support, tools and capacities required for local implementation.

17.2 Initiating Local Adoption and Action

Varying levels of engagement and capacity exist around the informal economy policy and planning arena. These include different interventions championed by various spheres of government, as well as different departments within each sphere. This Policy seeks to complement those by identifying visible gaps and filling those with recommendations and specific actions, aimed at bringing together different stakeholders to work towards a common goal of supporting the development of the informal economy.

By default, local government – as the custodian of local economic development – has a primary role in championing the cause of developing the sector. This puts municipalities at the forefront of implementation, supported by other spheres of government, as the Constitution envisioned.

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RACI - Responsible, Accountable, Consult, Inform	
5. Political alignment to new administrations after elections.	Discussion Paper and Technical process.	Aligned provincial economic strategies (inclusive of informal economy).	R	SALGA EconDeV
			A	SALGA PWG/PEC
			C	Municipalities
			I	SALGA NWG/NEC
	Portfolio induction programmes (for new councillors and officials).	Improved capacity of councillors and officials.	R	SALGA EconDev, MCG
			A	SALGA NWG/NEC
			C	Municipalities
			I	CoGTA, DSBD, NT
6. Develop policy Implementation support package.	Develop customisable policy implementation prototype toolkit for municipalities.	Prototype toolkit for municipalities.	R	SALGA /EDSE/CBPEP
			A	SALGA
			C	Municipalities
			I	CoGTA, DSBD
	Establish implementation support capacity and mechanism.	Improved capacity of councillors and officials.	R	SALGA /EDSE/CBPEP
			A	SALGA
			C	Municipalities
			I	CoGTA, DSBD
	Develop policy implementation support framework for non-governmental stakeholders, including informal traders.	Support framework for non-governmental stakeholders.	R	SALGA /EDSE/CBPEP
			A	COGTA
			C	
			I	
7. Activating local implementation.	Circular to all municipalities with information brief and suggested implementation approach.	Issue of national circular for municipalities.	R	NCS
			A	CoGTA, DSBD, NT, SALGA
			C	SALGA, PCS
			I	Municipalities, Stakeholders
	Pursue early adopters (pilots), possibly informed by DDM/One Plan and local resource frameworks.	Pilot programmes in municipalities.	R	SALGA /EDSE/CBPEP
			A	Municipalities
			C	CoGTA, NT
			I	
8. Expand uptake through documentation and communication.	Document case studies and best practices for publication.	Increased implementation of local activities.	R	SALGA /EDSE/CBPEP
			A	SALGA NWG/NEC
			C	NCS, PCS
			I	Municipalities



17.2.1 Practical Implementation Support

Ensuring practical implementation of the policy will require that the implicated actors are given specific guidance and support on how to take on the recommendations and actions of this Policy Guidelines. The implementation support package is proposed as a way to offer a common framework for action which can be interpreted and customised for application at local or institutional level.

In compiling the implementation toolkit, it will be important to recognise that there are a number of existing strategies, programmes and initiatives across government that can be levered towards enabling and supporting the informal economy. It will be necessary to map through these key tools and resources which can be used to effect a more developmental approach towards the informal economy.

The process may include considering instruments at the different levels, such as:

1. **National:** The newly launched District Development Model (DDM) that is being piloted in South Africa could be an important vehicle to

drive implementation, as it is already aimed at facilitating development at local government level through joint programmes by all spheres of government. Other national programmes such as the Informal Business Upliftment Programme and funding under SEIF and the Neighbourhood Development Programme can be used to drive coordination, funding and support.

2. **Provincial:** Provincial government can support and strengthen the capacity of municipalities through their Provincial Growth and Development Strategies (PGDS') and other targeted initiatives, e.g. focusing on townships or on the informal sector.
3. **Local:** The introduction of Local Informal Economy Sector Plans linked to municipal Integrated Development Plans (IDPs), with their enabling Spatial Development Plans (SDPs) and Service Delivery and Budget Implementation Plans (SDBIPs), is proposed. This is in addition to existing instruments such as the innovations supported by SPLUMA (e.g. using land-use management overlays to specify space for informal trade), inclusive economic plans, and growth and development strategies.

17.3 Change Management

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RACI - Responsible, Accountable, Consult, Inform	
9. Change management programme is developed and implemented for the affected municipal functions focused on the principles, behaviours and processes required by the Policy.	Change Management facilitation team (internal or external).	Change programme for municipalities.	R	SALGA EconDev
			A	SALGA NWG/NEC
			C	NCS
			I	Municipalities
10. Change management interventions are developed and implemented for other key actors (national, provincial and local) to enable their roles in contributing to the Policy outcomes.	Change management facilitation team (national).	Change programme for key stakeholders.	R	NCS
			A	CoGTA, DSBD, NT, SALGA
			C	PCS, Sector stakeholders
			I	Municipalities

The implementation of these guidelines will require a concerted process that does not merely execute discrete tasks mechanically (what is sometimes referred to as ‘malicious compliance’, or a ‘check-box exercise’), but which ensures the institutional understanding, support and action to ensure that the policy intent is actualised. This will also require confronting the issues of attitudinal shift and enabling behaviours discussed previously. This is an area that may typically be capacitated externally, e.g. through SALGA and supporting partners.

A deliberate organizational change management process will therefore be required, and it is proposed that such a process must be initiated as part of the commitment to implementation.

17.3.1 Creating a Climate for Change

The coronavirus pandemic has not only exposed the numerous institutional challenges negatively impacting on the livelihoods of informal traders; it has also offered the sector an opportunity to effect an urgent turnaround on both the regulatory framework and practice geared towards the informal sector. The urgent vision and organising for change must be clearly positioned not as optional but as necessary, in order to save lives and ensure the enablement of those in the informal economy as key socio-economic actors, now and beyond COVID-19.

17.3.2 Engaging and Enabling Governance

Together with their parallel instruments, these Guidelines offer a package of proposals and approaches to enable governance of the informal economy. These must be diffused and adopted within and across all the sector stakeholder organisations. Only when each actor takes responsibility for integrating their revised roles or stances into their day-to-day work can the collective interest be served, and the country can be made more resilient in the face of future public health or socio-economic challenges.

17.3.3 Implementing and Sustaining Change

“A successful change occurs when there is commitment, a sense of urgency or momentum, stakeholder engagement, openness, clear vision, good and clear communication, strong leadership, and a well-executed plan” (Kotter, n.d.). A commitment to implementing all the proposed recommendations and actions with a sense of urgency, and sustain efforts in the long run, will surely effect tremendous changes in the sector.



17.4 A Framework for Assessing Progress and Learning

RECOMMENDATION	SPECIFIC ACTION	OUTCOME	RACI - Responsible, Accountable, Consult, Inform	
11. A robust monitoring, evaluation, reporting and learning framework.	Local assessment and learning.	M&E Framework	R	Municipal M&E team
			A	Municipal Manager, Salga, CoGTA
			C	Sector stakeholders
			I	PCS & NCS
	Provincial assessment and learning, with provincial aggregation and comparative analysis.	M&E Framework	R	PCS
			A	Premier, CoGTA
			C	Sector stakeholders
			I	Municipalities & NCS
	National assessment and learning, with national-level aggregation and comparative analysis.	M&E Framework	R	NCS
			A	CoGTA, NT
			C	Sector stakeholders
			I	Municipalities & PCS



It is imperative to ensure that there is continuous assessment of the implementation of these Policy Guidelines and their envisioned outcomes. This is a crucial way of ensuring efficiency and effectiveness of policy through learning, course correction, and affirmation of successes.

The DPME has tools readily available to monitor and evaluate the effectiveness and efficiency of public policies and programmes in achieving their intended objectives. These can easily be applied gradually during the implementation stages to identify any implementation gaps and allow for improvement.



Figure 3: An outcomes-based framework from the DPME

According to the DPME (2010:10), this government framework:

- focuses on results,
- adds logic to planning for better resource allocation,
- links activities to outputs and outputs to outcomes,
- clarifies expectations,
- facilitates discussions and debates on what needs to be done,
- enables learning and improvement of policy and strategy, and
- makes coordination and alignment easier and possible.

Each particular outcome on the plan may have several activities required for it to be achieved. These activities may require more than one stakeholder, each having a particular activity to be done. The implementation of those activities will be monitored gradually to ensure that there is progress. Once all the activities have been completed, the results will be evaluated to

ascertain whether there has been notable impact. All stakeholders will automatically be part of the process, from planning to implementation, monitoring and impact evaluation.

17.4.1 Monitoring

DPME defines ‘monitoring’ as “the process of collecting information about activities in order to provide managers, decision-makers and other stakeholders with regular feedback on progress in implementation and results and early indicators of problems that need to be corrected”. Monitoring therefore refers to the day-to-day and/or ongoing tracking of project or programme activities undertaken towards the achievement of the overall objectives. It measures progress against the set plans for that particular period, e.g. weekly, monthly or quarterly. This should ideally be done at district or metropolitan level, to ensure that the various activities implemented are supported through the necessary resources (financial and human), and immediate corrective measures taken where needed. These reports should form part of the Steering Committee meetings.

17.4.2 Evaluation

An 'evaluation', on the other hand, is "a time-bound exercise that is done at a particular point in the project or programme to guide decision-making by staff, managers and policymakers. Evaluations may assess relevance, efficiency, effectiveness, impact and sustainability" (DPME, n.d.). It assesses the impact achieved at any point in the project or programme to measure whether overall objectives have been achieved, and their impact on communities. This must be done at national level, where the various programmes can be overseen.

17.4.3 Testing and Learning

However, while this is all very rational, it must be recognised that there is no textbook on how to govern the informal economy. Many of the interventions and innovations performed may lack adequate precedent to fully anticipate whether and how they will work out. Full-scale implementation that means years pass before formal evaluation is inefficient, and possibly destructive. It is therefore critical that during times of disaster, in unusual circumstances, active and cyclical learning is adopted to improve practice and find solutions for emergencies.

As such, it is necessary to support a dispensation of responsible iteration, experimentation and learning, with the systematic documentation of lessons learned as well as of effective solutions that may be suitable for replication. This will require appropriate management and knowledge-management systems. Peer learning between municipalities is also a useful way to disseminate important lessons and effective practices.

17.4.4 Reporting and Engagement

As goals are attained or missed, plans are adjusted and lessons learned, it is very important that there is also a deliberate process of communicating through the governance structures as well as with the public, so that there is collective awareness, understanding and ownership of progress being made. Although this tends to be treated as a public relations exercise, note that it is also a valuable way to give agency to other actors who may be of assistance, and to invite innovation and support from the whole of society.

18. Concluding Recommendations

The informal economy in South Africa is a fast-growing sector and a critical component of the country's economy, employing more than 3 million citizens across the country. Sadly, this sector is not sufficiently supported or prioritised, in either policy or practice. The current COVID-19 pandemic has exposed deeply entrenched systemic issues of marginalisation and exclusion of the sector compared to its counterparts in the formal economy. These are evident in the poor state of informal-sector governance and service delivery.

Among the evident challenges overwhelming the sector are poor intergovernmental relations at vertical and horizontal levels of government. These Policy Guidelines propose developmental principles aimed at fostering a culture of inclusivity and non-discrimination, as proposed by the Constitution. These principles are translated into recommendations and strategic actions aimed not only at dealing with the challenges brought about by the pandemic, but at ensuring that systemic issues – both pre-pandemic and post-pandemic – are gradually attended to by all stakeholders.

The main implementation vehicles proposed are the Coordinating Structures at various levels of government, as well complementary plans linked to the District Development Model in all municipalities. The success of these governance structures will be seen in joint planning and implementation of programmes aimed at developing the sector as a strategic part of the South African economy. Improved governance is one of the key outcomes of these Guidelines.





These are the recommendations that must be carried out to ensure a comprehensive policy response by local government:

I. Urgent Actions:	The COVID-19 pandemic has brought about severe challenges for the informal sector that will be felt for many years to come. During the pandemic, these key actions are proposed as immediate responses to cushion the sector: 1) Relax enforcement during the State of Emergency period. 2) Enable safe trade and provide social protections. 3) Provide direct economic support to the informal sector to mitigate negative disaster impacts. 4) Review Disaster Management Plans to include attention to and emergency support for informal-sector workers in times of disaster.
II. Medium-term interventions:	In addition to immediate actions necessary to deal with the effects of COVID-19, gradual and consistent provision of policies, systems and primary infrastructure is required to support the development of the sector through: 1) a conducive regulatory environment; 2) infrastructure development, and planning and utilisation of space; 3) economic development and enterprise support; 4) organisation and representation; 5) social inclusion and protection; 6) skills development and training; and 7) institutional coordination
III. Long-term systemic change:	The pandemic has exposed many structural and systemic issues that compromise the livelihood of the informal economy. Some of these are the result of poor governance in the sector. To deal with these long-term issues, proper governance is required at all levels and the capacity of the structures must be built up over time. These governance structures will ensure that the following are attended to: 1) Coordinating Structures 2) Coordination practices 3) Enabling behaviors
IV. And finally, uptake and implementation:	Included in these strategic actions, and aimed at ensuring an impact-driven culture of work among stakeholders, the following actions to guide implementations are paramount: 1) Decision to act / Launching the Policy 2) Initiating local adoption and action 3) Change management 4) A framework for assessing progress and learning

Informal-economy issues are complex. Local-government officials cannot deal with them by themselves. The balance required to ensure both service delivery for traders and functional public spaces for all citizens of a municipality can be achieved by adopting a developmental approach to transforming this sector into one which provides dignity and livelihood to millions of households who depend on it for their daily survival. In addition, governance failures in the sector provide an opportunity for all spheres of government to adopt new and innovative ways of doing things – especially in times such as these of the COVID-19 pandemic, when an emergency demands changes in culture and attitude.

GUIDELINE 2

FRAMEWORK BY-LAW GUIDELINE: FOR INFORMAL TRADING IN PUBLIC SPACE



“The informal sector forms a critical part of the South African economy.”



1. Introduction

The SALGA: Guidelines for Public Space Trading consists of the Framework By-law: Informal Trading in Public Space; the Policy Guidelines for Enabling Governance of Informal Trading in Public Spaces; and the Guidelines for Health, Space and Infrastructure: Towards Safe and Viable Public Space Trading. These companion documents ideally should be read together but may also be used independently as reference material as municipalities see fit. They are intended as a tool to assist municipalities in the development of a more enabling environment, as well as an advocacy tool for traders and trader organisations, hopefully facilitating more trans-disciplinary, cross-silo, and collaborative processes.

This Framework By-law for Informal Trading in Public Space draws on the substantive work of the background research paper, policy guideline, the safe and viable public trading space guideline and the sources on which they rely, recent judgments of South African courts relevant to informal trading, an overview of existing local government regulation of informal trading, and the COVID-19 pandemic context.

Overall the guidelines as a whole and this Framework By-law, contribute to the following medium term outcomes:

- *Ensuring Economic Participation and Mobility* – all people in South Africa have the right to participate in the economy, and municipalities should enable paths for economic mobility through economic support measures and options for economic diversification for economic units.
- *Providing for Social Protection and Inclusion* – non-discriminatory public-space trading, and instituting social protection and public safety measures, especially for vulnerable populations.
- *Strengthening Governance* – Local government exercises accountable, coherent, developmentally-oriented governance in respect of the informal sector, within an enabling inter-governmental framework.
- *COVID-19 Pandemic Response* – make provision for relaxation of by-laws and necessary essential service provision to allow for trading continuity while ensuring occupational health and safety measures.

2. Context

The informal sector is a critical part of the South African economy. It impacts on livelihoods, gives access to many people who would otherwise be excluded from the economy, and is crucial to addressing the triple challenge of poverty, unemployment and inequality in South African cities, towns and rural areas. Local government plays a key role in regulating the informal sector, mainly through municipal policies and by-laws on informal trading.

The COVID-19 pandemic has had a devastating impact on the South African economy, including the informal sector. It has thrown a harsh light on structural fault lines in economic supply chains and highlighted the critical role played by the informal sector, particularly regarding food security for the poor. The pandemic will have long-lasting economic effects and the surge in formal sector unemployment has swelled the informal economy.

The combination of an expanding informal economy and the essential health and safety measures required to combat the Covid-19 pandemic have necessitated increased access to public space, and flexible and creative responses to promoting and enabling informal trading in public spaces. Despite the devastation caused, the pandemic provides a new lens through which to view public space and the important and integral role of public space trading in the urban environment while maintaining community health and safety.

Internationally, in response to the pandemic, some urban leaders are re-imagining their cities as more sustainable, resilient and pedestrianised urban spaces that are less compact and feature more breathing space, including larger sidewalks, so that the potential for rapid transmission of disease is reduced.

Local government is a key site of service delivery and economic development, at the centre of meeting this challenge. Its constitutional mandate includes providing services to communities in a sustainable manner, promoting social and economic development, promoting a safe and healthy environment, and encouraging community participation.

In addition, several South African court judgments have highlighted fault lines in municipalities' approach to informal trading. Our courts have emphasised local government's legal and constitutional obligations to informal traders, including foreign nationals, and have criticised the heavy-handed approach by some officials responsible for the implementation and enforcement of municipal by-laws.

In this context, there is an urgent need for municipalities to review their policies and by-laws regulating informal trading in public space.

3. Status of this Framework By-Law

This framework by-law seeks to guide the review on key themes of existing municipal by-laws regulating informal trading in public space, and to assist municipalities to make reasoned decisions on the regulatory options suitable to their context. Importantly, it deals only with selected topics that are of common interest across municipalities regarding informal trading in public space.

This framework by-law is not a standard draft by-law (as contemplated by sections 14(1) or (2) of the Local Government: Municipal Systems Act 32 of 2000), or a model draft by-law to be

used as a template for a municipality's own by-law-making process. In reviewing their by-laws, municipalities⁸ must take care to ensure that their revised by-laws are appropriate to local conditions and circumstances and provide a coherent and complete regulatory framework.

In the pages that follow, for every topic there is a text box headed 'GUIDELINE EXAMPLE' that contains suggested by-law text to deal with the thematic issue being discussed. Municipalities must apply their minds to the issues in their context and develop relevant by-laws that are suitable to local conditions and promote rather than hinder informal trading.

4. Framework By-Law Themes

4.1 Guiding Principles for Informal Trading in Public Space

Guiding principles in regulatory instruments serve as a general framework for their interpretation and application. They also perform an important symbolic and educative role in the application and interpretation of the law. In the context of informal trading in public space, they seek to guide the interpretation, administration and implementation of by-laws by municipalities and their authorised officials.

GUIDELINE EXAMPLE

Guiding Principles for Informal Trading in Public Space

- (1) The interpretation and application of these by-laws must be guided by the following principles –
 - (a) The municipality has a duty to promote social and economic development, including the duty to support and promote informal trading as a vital part of the economy;
 - (b) The municipality recognises that Informal traders have rights to trade, to dignity and to pursue their livelihoods, and has
 - (c) a duty to respect, protect and promote these rights;
 - (c) Within its financial and administrative capacity, the municipality must provide access to public space, infrastructure and basic services to promote and increase opportunities for informal trading;
 - (d) The municipality must involve informal traders and their representative organisations in informal trading matters; and
 - (e) The municipality must manage public space in the interests of all users, including informal traders.

⁸ This framework by-law refers to 'municipality' as a generic term and does not distinguish between municipal councils and authorised officials. In reviewing their by-laws, municipalities should give careful consideration on whom a specific power or duty should be conferred: the municipal council, an authorised municipal official, or in some cases both.



4.2 Increasing Public Space for Informal Trading

The *Guideline for Safe and Viable Public Trading Space* points out that before the COVID-19 pandemic, most towns and cities had inadequate suitable space and amenities to accommodate everyone wanting to take advantage of the economic opportunities in public space. This

has been compounded by the COVID-19 health imperative to keep people physically distanced and the dramatic increase in the demand for trading space.

Municipalities must find innovative ways to maximise public-space trading opportunities.

GUIDELINE EXAMPLE

Identifying Suitable Public Space for Informal Trading

- (1) The municipality must identify suitable and sufficient public space for the purpose of informal trading, considering –
 - (a) the demand for informal trading opportunities;
 - (b) the need to accommodate new entrants to informal trading;
 - (c) the concentration of potential customers for informal trading;
 - (d) the proximity of support infrastructure and services, or the potential to provide support infrastructure and services;
 - (e) existing land-use arrangements and the need to adapt these arrangements to accommodate informal trading, where necessary; and
 - (f) the health and safety of the public.
- (2) In identifying suitable and sufficient public space for informal trading, the municipality must –
 - (a) consult informal traders and their representative organisations; and
 - (b) follow the notice and comment procedure in this by-law.

Designating Trading Areas and Demarcating Trading Sites

- (1) The municipality may designate trading areas for informal trading, and demarcate trading sites within designated trading areas.
- (2) Before designating a trading area for informal trading, the municipality must –

- (a) consult informal traders and their representative organisations; and
 - (b) follow the notice and comment procedure in this by-law.
- (3) A trading area designated in terms of subsection (1) may include non-municipal property, subject to the consent of the owner of the property.

Infrastructure and Services at Designated Trading Areas

- (1) The municipality must provide adequate infrastructure and services at designated trading areas, within the municipality's available resources.
- (2) The infrastructure and services contemplated in subsection (1) should include –
 - (a) potable water, maintenance, waste disposal and public safety services;
 - (b) sanitation and electricity infrastructure, including public lighting;
 - (c) support structures, including trading stalls with shelter;
 - (d) facilitating access to storage facilities; and
 - (e) facilitating access to childcare facilities
- (3) The municipality –
 - (a) may charge fees for services provided at designated trading areas;
 - (b) in determining the amount of these fees, must consider their affordability for informal traders.

4.3 Equal Protection and Benefit of the Law

The Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law, and prohibits unfair discrimination on any ground, including race, gender, sex, ethnic or social origin. To promote the achievement of equality, the Constitution authorises measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination, and prohibits unfair discrimination.

In *Somali Association of South Africa and Others v Limpopo Department of Economic Development, Environment and Tourism and Others*,⁹ the Supreme Court of Appeal affirmed that foreign nationals (asylum seekers and refugees) were entitled to apply for or renew business or trading licences in terms of the Businesses Act¹⁰ or relevant municipal by-laws, and accordingly to trade informally.

This case affirms that foreign nationals have a right to participate in and conduct informal trade, and is consistent with the approach adopted by our courts in other cases related to the rights of foreign nationals.

GUIDELINE EXAMPLE

Applying for Trading Permits

- (1) Any person who wants to conduct business as an informal trader in a designated trading area may apply to the municipality for a trading permit and for the allocation of a demarcated trading site, by -
 - (a) completing and submitting the application form provided by the municipality; and
 - (b) submitting a copy of a document verifying their identity and two passport-sized photographs of the applicant.
- (2) The municipality must -
 - (a) provide application forms in English and the vernacular language most spoken in the municipality, at each municipal office;
 - (b) ensure that the application form explains the steps that an applicant must take to be allocated a trading permit; and
 - (c) assist applicants who need help to complete the application form.

Criteria for Allocating Trading Permits

- (1) When considering an application for a trading permit, the municipality must give preference to applicants who are existing street traders in the designated trading area, historically disadvantaged persons, women, persons with disabilities, single parents, unemployed persons and persons entering the informal trading sector for the first time.

- (2) The municipality may not unfairly discriminate against any applicant or informal trader on the basis of their nationality.

Allocating Trading Permits

- (1) The municipality must allocate trading permits and demarcated trading sites in a transparent manner and within a reasonable period of receiving the application for a trading permit.
- (2) If the municipality approves the application, the municipality -
 - (a) must issue the informal trader with a trading permit;
 - (b) may allocate a demarcated trading site to the informal trader and require the informal trader to conclude a lease agreement for the trading site;
 - (c) may impose reasonable conditions relating to trading hours, time-sharing arrangements, trading in foodstuffs, structures that may be erected on demarcated trading sites, and the period of validity of the trading permit.
- (3) The municipality may allocate a demarcated trading site to more than one informal trader on a time-share basis.
- (4) If the municipality refuses the application, the municipality must notify the applicant in writing with reasons for the decision and advise the applicant of their right to appeal the decision in terms of this by-law.

⁹ 2015 (1) SA 151 SCA.

¹⁰ Act 71 of 1991.



Register of Informal Traders

- (1) The municipality must maintain a register of all persons who apply for trading permits and all persons who are allocated trading permits, and make the register available at the municipal offices for inspection by the public.



4.4 Rights and Duties of Informal Traders

Our courts recognise that there is a general right for informal traders to make a living through trade as part of the constitutional right to human dignity. At the same time, informal traders have responsibilities to trade in accordance with legal requirements and in a manner that promotes public health and safety.

GUIDELINE EXAMPLE

Rights of Informal Traders

- (1) Every informal trader has the right to conduct business subject to the terms of any trading permit, this by-law, or any other relevant law.
- (2) Despite subsection (1), no informal trader may trade in an area that the municipality has declared as a prohibited trading area in terms of this by-law.

Duties of Informal Traders

- (1) Informal traders must -
 - (a) ensure that their goods and equipment are placed within the boundary of the demarcated trading site allocated to them;
 - (b) ensure that they trade within the boundary of the demarcated trading site allocated to them;
 - (c) ensure that goods, equipment or any other thing used on their demarcated trading site does not pose a danger to the health and safety of any person;
 - (d) ensure that the stand or equipment used is sturdy, and that any structure erected on the demarcated trading site does not unreasonably obstruct the sight of pedestrians in the public space;
 - (e) trade in a manner that does not cause a hazard to pedestrians and vehicles;
 - (f) maintain a clean, tidy and hygienic

trading site by ensuring that all refuse and litter produced in the course of trade is placed in refuse bins approved of or provided by the municipality;

- (g) ensure, when trading involves the cooking or preparation of food, that any food, oil or other substance that drops onto the surface of the demarcated trading site is promptly removed;
- (h) at the end of any trading day or time-sharing period allocated to them, remove all their goods and equipment from the demarcated trading site;
- (i) pay such periodic fees and charges reasonably required by the municipality;
- (j) comply with the terms and conditions of any trading permit;
- (k) familiarise themselves with the penalties for failure to comply with any term or condition of the trading permit, this by-law or any other law;
- (l) ensure that any assistant employed by the trader is properly supervised and is aware of the terms and conditions of the trading permit and this by-law.

Code of Good Practice for Informal Trading

- (1) The municipality may issue a code of good practice for informal trading, after consulting informal traders and their representative organisations.

4.5 Cancellation of Trading Permits

Municipal officials must act in a lawful, reasonable and procedurally fair manner. By-laws should provide clear guidance on when particular measures may be used by officials and should ensure that officials consider the potential negative impact of the decision on informal traders, particularly where decisions may result in great hardship. Trading permits should be cancelled only after less restrictive measures have been unsuccessful.

GUIDELINE EXAMPLE

Cancelling Trading Permits

- (1) After a hearing, the municipality may cancel a trading permit if it is satisfied that –
 - (a) the informal trader or their assistant has repeatedly traded in a manner that causes a hazard to the general public or creates a danger to other informal traders;
 - (b) the informal trader has failed to comply with material terms of this by-law or their trading permit on three separate occasions, and after receiving a written warning in respect of the first and second failures;
 - (c) the informal trader or their assistant has repeatedly failed to produce the trading permit issued in terms of this by-law despite being issued two warnings and a fine;
 - (d) the informal trader secured the trading permit through misrepresentation or fraud; or
 - (e) the informal trader has repeatedly failed to pay the fees or charges required by the municipality, despite the municipality exploring alternative arrangements in terms of this by-law.
- (2) The municipality may not cancel a trading permit unless it has given the informal trader or their assistant (which service is deemed to be service on the trader) 2 written warnings within a period of 6 months that –
 - (a) describes the conduct that constitutes non-compliance with this by-law or with a material term and condition of the trading permit;
 - (b) calls on the trader to comply within 7 days; and
 - (c) specifies the penalties that attach to such non-compliance.
- (3) If a trader gives notice of intention to cease trading or the permit is cancelled by the municipality, then that trading opportunity must be re-allocated in terms of this by-law.

4.6 Restricting or Prohibiting Informal Trading

The Businesses Act provides for municipalities to restrict or prohibit informal trading in certain places, but only after taking into account the impact on informal traders. Municipalities may only relocate or evict informal traders under limited circumstances.

GUIDELINE EXAMPLE

Declaring Restricted or Prohibited Areas

- (1) After consulting affected informal traders and their representative organisations, the municipality may declare any place to be an area in which informal trading is restricted or prohibited.
- (2) Before the municipality does so it must –
 - (a) consider the effects of the declaration on existing informal traders in the area;
 - (b) consider whether better supervision or control of informal trade in the area will make the declaration unnecessary;
 - (c) consider whether the declaration may drive existing informal traders out of business;
 - (d) comply with the applicable provisions of the Business Act 71 of 1991.
- (3) The municipality must make and display



signs, markings or other devices indicating the restriction or prohibition, and the locations and boundaries of areas where informal trading is restricted or prohibited.

Relocating or Evicting Informal Traders

- (1) The municipality may not relocate or evict any informal trader unless the municipality has declared the place in which they trade as a restricted or prohibited area in terms of this by-law.
- (2) Any relocation or eviction of informal traders must comply with the following principles -

- (a) relocation must be avoided as far as reasonably possible, unless there is a clear and urgent need to relocate the informal traders in question;
- (b) the affected informal traders or their representative organisations must be involved in the planning and implementation of an alternative demarcated trading area;
- (c) the livelihoods of affected informal traders must be restored as far as reasonably possible, to pre-relocation or pre-eviction levels.

4.7 Institutional Co-ordination and Alignment

Informal trading often falls under a range of municipal departments, leading to a lack of coordination and unfocused municipal strategy. Municipal departments often work in silos with contradictory policies and misaligned practices, resulting in informal traders becoming the victims of governance and capacity shortcomings.

There is also a lack of alignment between different municipal legislative instruments such as informal trading, public space, traffic and transport and environmental health by-laws. Other municipal by-laws are often restrictive of or hostile to informal economic activity.

There is also little co-ordination of policies, by-laws and practices between neighbouring municipalities regarding informal trading.

GUIDELINE EXAMPLE

Co-ordination and Alignment of Policies, By-Laws and Practices

- (1) The municipality must -
 - (a) align its policies, by-laws and practices to ensure coherent and consistent promotion of informal trading by the municipality;
 - (b) ensure effective coordination of its departments and other administrative components to promote a coherent and consistent municipal strategy regarding informal trading and the consistent enforcement of by-laws; and
 - (c) coordinate its activities with neighbouring municipalities, while addressing local circumstances and conditions and promoting local innovation regarding informal trading.
- (2) The municipality must establish a coordinating forum consisting of senior municipal officials representing all relevant municipal departments or components whose activities impact on informal traders, to promote the alignment and coordination contemplated in subsection (1).
- (3) The municipality must review and amend any integrated development plan adopted in terms of the Local Government: Municipal Systems Act 2 of 2000, to ensure that spatial planning in the municipality supports and promotes informal trading.
- (4) The municipality must review and amend any disaster management plan prepared in terms of section 53 of the Disaster Management Act, 2002, to include measures to reduce the vulnerability of informal traders.

4.8 Capacity Building and Public Awareness

Municipalities must facilitate training of municipal officials, informal traders and representative informal trading organisations in order to build the needed capacity and knowledge base to protect, develop and promote informal trading.

GUIDELINE EXAMPLE

Capacity Building and Public Awareness

(1) The municipality must -

- (a) ensure that municipal officials responsible for implementing or enforcing this by-law or any other by-law impacting on informal traders are properly trained on the lawful exercise of their powers and the performance of their functions, the rights of informal traders, the management of informal trade in public spaces, and dispute resolution;

- (b) provide capacity building training to informal traders and their representative organisations on urban management matters, such as waste management, safety and security on the street, environmental health and safety, and financial management;
- (c) promote public awareness regarding the role of informal trading in the economy, the municipality's policy to promote informal trading and the rights of informal traders.

4.9 Dispute Resolution Mechanisms

The courts have criticised informal trading by-laws on the basis that they fail to provide meaningful dispute resolution mechanisms to appeal and challenge the decisions of officials charged with implementing by-laws. In *Makwickana v eThekweni Municipality and others*,¹¹ the court commented on the dysfunctionality of the dispute system design and how this frustrated attempts at the peaceful resolution of conflict.

The courts have called for a functional, accessible and expeditious dispute system design. Municipal by-laws should therefore include accessible and speedy dispute resolution mechanisms.

While section 62 of the Municipal Systems Act provides for appeals by persons whose rights are affected by decisions made by a municipality, the applicable time periods and appeal authorities contemplated by the section are not conducive to accessible and speedy dispute resolution.¹²

GUIDELINE EXAMPLE

Written Notice of Decisions and Reasons

- (1) The municipality must notify any informal trader in writing of any decision of the municipality that has legal consequences for the informal trader.
- (2) The notice must inform the informal trader that they have the right to request reasons for the decision and the right to appeal against the decision, within the time limits set out in this by-law.
- (3) Any informal trader who is aggrieved by a decision of the municipality may request

reasons for the decision within 10 days after receiving notice of the decision. The municipality must furnish reasons in writing within 10 days of receiving the request.

Appeals

- (1) An informal trader who is aggrieved by a decision of the municipality may appeal the decision to an appeals committee in terms of this by-law.
- (2) The aggrieved informal trader must lodge the appeal with the municipality within 10

¹¹ 2015 (3) SA 165 (KZD).

¹² Section 62(6) of the Municipal Systems Act provides that the provisions of the section do not detract from any appropriate procedure provided for in any other applicable law.



days of receiving written reasons for the decision and specify the grounds for the appeal.

- (3) The appeals committee must dispose of the appeal within 30 days of the notice of appeal being lodged.

Urgent Appeals

- (1) An aggrieved informal trader may apply for the appeal to be heard urgently by specifying in writing why the appeal is urgent and why the ordinary appeal process would not provide adequate redress.
- (2) The appeals committee must consider the application urgently; and if it decides that the appeal is urgent, it must give directions on the urgent appeal process, including urgent time limits.

Appeals Committee

- (1) The municipality must establish an appeals committee to consider and decide appeals lodged in terms of this by-law.
- (2) The appeals committee must consist of at least 3 members, with the following composition -
 - (a) one member nominated by the municipality;
 - (b) one member nominated by informal traders or their representative organisations;
 - (c) one member who is experienced in legal matters, agreed to by both the municipality and informal traders or their representative organisations;
 - (d) any additional member or members agreed to by the municipality and informal traders or their representative organisations.
- (3) The appeals committee must appoint a chairperson and deputy chairperson from its members. In the absence of the chairperson, the deputy chairperson performs the chairperson's duties.
- (4) The appeals committee may co-opt any person with expertise or knowledge that

may assist the appeals committee. The co-opted person may advise on any matter on which their expertise or knowledge is sought, but may not participate in the decision of the appeals committee.

- (5) The appeals committee must endeavour to reach unanimity on its decision, but if this is not possible, must decide the appeal by majority vote.
- (6) The quorum for the appeals committee is 3 members, including either the chairperson or deputy chairperson.

Appeal Procedure

- (1) The chairperson must notify the aggrieved informal trader of the date, time and place of the appeal hearing, and the opportunity to present evidence and argument at the hearing.
- (2) The aggrieved informal trader may appear personally or may appoint a legal representative, paralegal or any other person to appear on their behalf.
- (3) The chairperson -
 - (a) must preside at the appeal hearing;
 - (b) may call upon any person to present evidence, to produce any document or other property in their possession or control, or to be questioned.
- (4) The aggrieved informal trader and the municipality may give evidence before the appeals committee, give evidence by way of witnesses, and produce documentary or any other evidence.
- (5) The appeals committee must -
 - (a) conduct the appeal hearing in an inquisitorial manner to ascertain the relevant facts;
 - (b) deal with the substantial merits of the appeal with the minimum of legal formalities; and
 - (c) decide the appeal fairly and quickly.
- (6) If the appeals committee is of the *prima facie* view that a matter may be resolved in a less restrictive or burdensome manner, it must canvass the views of the parties as

to the viability of such resolution before making a decision.

Appeal Decisions

- (1) The appeals committee must consider the appeal, having regard to -
 - (a) the evidence presented by the appellant and the municipality;
 - (b) the guiding principles in this by-law;
 - (c) whether the decision of the municipality was fair and equitable, in the circumstances;
 - (d) how the decision will affect the aggrieved informal trader's ability to trade; and
 - (e) whether less restrictive or burdensome alternatives could be adopted to resolve the matter.

- (2) The appeals committee may -
 - (a) uphold the appeal;
 - (b) dismiss the appeal; or
 - (c) direct that the appeal be resolved in any other manner it deems appropriate.
- (3) The appeals committee must notify the aggrieved informal trader and the municipality of its decision with written reasons within 10 days of the appeal hearing.
- (4) The decision of the appeals committee takes effect and binds all parties from the date that they receive notice of the decision.¹³

Mediation

- (1) The municipality and any aggrieved informal trader may at any time agree to refer any dispute between them for mediation by an independent mediator.

4.10 Meaningful Engagement and Public Participation

Municipalities are obliged to encourage the involvement of communities and community organisations in matters of local government, and to provide meaningful opportunities for the community to engage with critical decisions and processes. Municipalities must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality.

In the context of informal trading, municipalities should enable meaningful, structured engagement with informal traders and their representative organisations.

GUIDELINE EXAMPLE

Informal Trading Stakeholder Forums

- (1) The municipality must establish one or more informal trading stakeholder forums¹⁴, for the purposes of -
 - (a) meaningful engagement with informal trading stakeholders on any matter concerning informal trading;
 - (b) promoting a co-operative relationship between the municipality and informal traders; and
 - (c) consulting on specific matters provided for in these by-laws.
- (2) An informal trading stakeholder forum must consist of -
 - (a) authorised representatives of membership-based organisations representing informal traders in the municipality,

- including organisations representing foreign nationals where applicable;
 - (b) one or more senior officials of the municipality with the necessary authority, knowledge and expertise;
 - (c) at least one municipal councillor;
 - (d) any other interested or affected person or persons appointed by the municipality; and
 - (e) any other person or persons appointed by agreement between the members referred to in paragraphs (a) and (b).
- (3) The authorised representatives of membership-based organisations representing informal traders must constitute at least 50% of the members of an informal trading stakeholder forum.

¹³ Larger municipalities should consider establishing local and central appeal committees.

¹⁴ Larger municipalities should consider establishing more than one stakeholder forum to accommodate local informal trading areas and sectors.



- (4) The members of an informal trading stakeholder forum may be assisted by technical advisors on matters requiring specialised knowledge.
- (5) Where applicable, senior officials of the municipality serving on a forum must be drawn from all relevant municipal departments or components whose activities impact on informal traders.
- (6) An informal trading stakeholder forum must function in accordance with rules adopted by the municipality after -
 - (a) consulting membership-based organisations representing informal traders in the municipality; and
 - (b) following the notice and comment procedure in this by-law.
- (7) The rules of an informal trading stakeholder forum must provide for the appointment and terms of office of members, the appointment of a chairperson or chairpersons, the replacement of members, meeting procedures and frequency, minutes, the establishment of committees, and any other matter required for the effective functioning of the forum.
- (8) The minutes and resolutions of an informal trading stakeholder forum must be -
 - (a) submitted to the municipal council and the executive committee of the municipality where applicable; and
 - (b) published on the municipality's official website or made available for inspection by the public at the offices of the municipality.
- (9) The members of an informal trading stakeholder forum may not receive any remuneration or allowances from the municipality by virtue of their membership,

but may be compensated by the municipality for out-of-pocket expenses.

- (10) The municipality must provide the assistance necessary for an informal trading stakeholder forum to perform its functions effectively.

Notice and Comment Procedure

- (1) The municipality must publish, in at least 2 newspapers circulating within its jurisdiction and on its official website, any proposals regarding public space that may be identified as suitable for informal trading; the designation of trading areas; the declaration of areas where trading is restricted or prohibited; and the levying of rentals, fees and charges.
- (2) Such proposals must be accompanied by reasons or motivations as may be necessary; while in relation to the proposed rent, fees and charges, the municipality must publish a statement of how these are calculated.
- (3) Interested and affected persons must be invited to make written comment on the proposals within a period of 30 days of publication. After the expiry of the period of 30 days, the municipality must consider any comment received, and if necessary, revise the proposals in question.
- (4) In order to ascertain whether the proposals are reasonable, any interested and affected person may request the municipality to furnish such further information or explanation with regard to the proposals as they may reasonably require.
- (5) In addition, the municipality must consult with informal traders and their representative organisations.



4.11 Distinguishing Between More and Less Serious Contraventions

In *Makwickana v eThekweni Municipality*, the court took issue with by-laws that failed to distinguish between more and less serious contraventions of the by-law. The court found that this inconsistency meant that both the by-law and the actions of officials taken in terms of the by-law were unlawful.

Municipal by-laws governing public space trading should distinguish between serious contraventions and less serious failures to comply with the by-law, and should provide for a range of measures that officials could use to encourage informal traders to comply with the by-law. These measures should range in their severity and impact on informal traders, and may include warnings and smaller fines for minor infractions (e.g. not being able to produce a copy of a permit or lease agreement), progressively heavier fines for repeat offenders, or in the case of serious infractions (e.g. trading in a way that poses a threat to the public), the impounding of a trader's goods.

GUIDELINE EXAMPLE

Offences

- (1) A person is guilty of an offence if that person -
 - (a) trades in an area where informal trading is prohibited; or
 - (b) contravenes the terms of a trading permit.
- (2) A person is guilty of a continuing offence if that person continues with an offence after -
 - (a) notice has been served on that person in terms of this by-law; or
 - (b) that person has been convicted of such offence.

Warnings and Fines

- (1) The municipality may issue a written warning to any person who trades in a way that contravenes their trading permit, any provision of this by-law, or any other law.
- (2) In the event of a person continuing to contravene or repeating a contravention in respect of which 2 written warnings have already been issued, an authorised official may issue such person with a fine not exceeding R500, and a further fine not exceeding R10 for every day such contravention continues after notice has been served on such person in terms of this by-law.

Removal and Impounding Property of Informal Traders

- (1) The municipality may not remove and impound moveable property used by an informal trader to carry on trade, unless the

property -

- (a) poses an imminent danger to the health and safety of the public; or
 - (b) has been abandoned.
- (2) For purposes of subsection (1), the municipality may regard as abandoned any moveable property found in a public space that does not appear to be under the control of any person.
- (3) If the municipality impounds the property of a person in terms of subsection (1), the municipality must -
 - (a) complete a full inventory of the impounded property;
 - (b) immediately store the impounded property in an area designated by the municipality for the storage of impounded property;
 - (c) in the case of subsection (1)(a), provide the person with a signed copy of the inventory, which must include information on how the person can reclaim their property and what will happen to their property if they do not collect it and pay the impoundment costs;
 - (d) in the case of subsection (1)(b), display a signed copy of the inventory in a conspicuous manner at the municipal offices, where it can be examined by the public.
- (4) An informal trader whose property has been impounded in terms of subsection (1) may reclaim their property -



(a) in the case of subsection (1)(a), by presenting the copy of the inventory and paying the impoundment costs;

(b) in the case of subsection(1)(b), by presenting proof of ownership of the property to the satisfaction of the municipality and paying the impoundment costs.

(5) The municipality must release the property on the same day that the owner of the property reclaims it.

(6) The municipality may sell perishable goods that have been impounded at any time after impoundment. The municipality may

destroy the goods if their condition renders them unfit for human consumption.

(7) The municipality may sell non-perishable goods that have been impounded if the owner does not reclaim them and pay the impoundment costs within 2 months from the date of impoundment, and if the impoundment is not subject to an appeal in terms of this by-law.

(8) If the impounded property is sold by the municipality in terms of subsections (6) or (7) and the trader presents the copy of the inventory, the municipality must pay the owner the proceeds of the sale less any outstanding impoundment costs.

4.12 Accountability of Municipal Officials

The courts have criticised the harassment and intimidation of informal traders by some municipal officials. In *Makwickana v eThekweni Municipality and others*, the court stated that unless officials are oriented to be empathetic towards street traders, the risk of powerful officials mistreating powerless, poor people is real.

Municipalities should adopt mechanisms to hold accountable those officials who conduct themselves in an unlawful manner, and should compensate for damages suffered by informal traders arising from the unlawful conduct of officials.

GUIDELINE EXAMPLE

Accountability of Municipal Officials

(1) The municipality must adopt a code of conduct for municipal officials responsible for implementing or enforcing this by-law or any other by-law impacting on informal traders.

(2) Any person who is aggrieved by the conduct of a municipal official responsible for implementing or enforcing this by-law or any other by-law impacting on informal traders may lodge a complaint in writing with the municipality, specifying the grounds for the complaint.

(3) The municipality must investigate the complaint and provide the complainant with the result of the investigation in writing within 10 days of receiving the complaint.

(4) The municipality must -

(a) keep a register of all complaints lodged in terms of subsection (2);

(b) make the register available for inspection by the public at the offices of the municipality; and

(c) submit a periodic report to the municipal council, the executive committee where applicable, and the informal trading stakeholder forum on complaints lodged in terms of subsection (2) and the result of investigations into the complaints.

(5) The municipality must take appropriate steps against any municipal official who contravenes the code of conduct.

(6) The municipality is liable for any loss or damage suffered by an informal trader arising from the unlawful conduct of any municipal official.

(7) A municipal official is personally liable for any loss or damage suffered by an informal trader arising from the official's unlawful conduct in bad faith.

4.13 Flexible Regulatory Instruments

Municipal by-laws can authorise a range of flexible regulatory instruments to promote different aspects of informal trading. By way of example, instruments could include codes of conduct for municipal officials responsible for informal trading, codes of good practice for informal traders, health and safety guidelines, and guidelines for designated trading zones and markets. These instruments can be adopted or issued or amended without amending the by-law, provided that the required consultations have taken place with interested stakeholders.

These kinds of instruments can be used to innovate, and to address changing conditions and circumstances as they evolve.

GUIDELINE EXAMPLE

Codes of Conduct, Codes of Good Practice and Guidelines

- | | |
|---|--|
| <p>(1) The municipality may adopt codes of conduct and issue codes of good practice or guidelines –</p> <ul style="list-style-type: none">(a) that are consistent with this by-law; | <ul style="list-style-type: none">(b) concerning any matter that may facilitate the application of this by-law;(c) after consulting the informal trading stakeholder forum or forums; and(d) after following the notice and comment procedure stipulated in this by-law. |
|---|--|

4.14 Crisis Intervention Mechanisms

The Disaster Management Act¹⁵ provides the means for municipalities to prepare local disaster management plans, for the declaration of local states of disaster, and for mechanisms to deal effectively with declared local disasters. Based on their experience of the COVID-19 pandemic, municipalities need mechanisms to intervene, in the interests of preserving the livelihoods of informal traders and public health and safety, when a crisis arises that may not amount to or be declared a local state of disaster.

GUIDELINE EXAMPLE

Crisis Intervention Mechanisms

- | | |
|--|--|
| <p>(1) In any emergency which threatens the livelihoods of informal traders or the health and safety of the public, and after consulting the informal trading stakeholder forum or forums, the municipality may issue directions –</p> <ul style="list-style-type: none">(a) to relax the application and enforcement of these by-laws to allow for informal trading continuity, while ensuring appropriate health and safety measures;(b) to provide temporary alternative and accessible arrangements for the registration of or issuing of trading permits to informal traders;(c) to ensure the availability and accessibility of municipal officials to advise and assist informal traders;(d) to release available resources of the municipality to deal with the emergency, and mitigate its impact on the livelihoods | <ul style="list-style-type: none">of informal traders and on the health and safety of the public;(e) to provide temporary alternative arrangements for the control and management of designated trading areas;(f) to provide for the temporary evacuation of informal traders from a designated trading area to a suitable alternative trading site;(g) to provide for any other matter which may be necessary to mitigate the impact of the emergency on the livelihoods of informal traders and the health and safety of the public. <p>(2) Directions issued in terms of subsection (1) lapse 3 months after they are issued.</p> <p>(3) After consulting the informal trading stakeholder forum or forums, the municipality may withdraw the directions or extend the directions for one month at a time before they lapse.</p> |
|--|--|

¹⁵ Act 57 of 2002.



CONCLUSION

Municipalities face a substantial challenge in reviewing and revising their by-laws to meet the challenge posed by the long-lasting health and safety and economic impacts of the COVID-19 pandemic. This framework by-law seeks to guide the review on key themes, and to assist municipalities to make reasoned decisions on the regulatory options most suitable to their local conditions and circumstances.



GUIDELINE 3

GUIDELINE FOR HEALTH, SPACE AND INFRASTRUCTURE:

TOWARD SAFE AND VIABLE PUBLIC SPACE TRADING



“In the throes of a crisis, it is necessary to think from first principles again, to promote a supportive and enabling environment for the informal sector to thrive in public space even in a pandemic.”

Cover Picture: Angela Buckland by permission Asiye eTafuleni



“Generally, there is a need to deepen the contextual understanding of informal work in public space... This would include... creating space (in terms of budgets, planning, urban form, access, and other support mechanisms) to make this happen.”



1. Background and the Role of these Guidelines

The SALGA: Guidelines for Public Space Trading consists of the Framework By-law: Informal Trading in Public Space; the Policy Guidelines for Enabling Governance of Informal Trading in Public Spaces; and the Guidelines for Health, Space and Infrastructure: Towards Safe and Viable Public Space Trading. These companion documents have been iteratively developed and should be read together, however they can also be used as stand-alones reference documents. They are intended as a tool to assist municipalities in the development of a more enabling environment, as well as an advocacy tool for traders and trader organisations, hopefully facilitating more trans-disciplinary, cross-silo, and collaborative development of regulatory environments within their municipalities.

Generally, there is a need to deepen the contextual understanding of informal work in public space (street vendors, market traders, informal recyclers, barrow-operators, etc.). This would include understanding their value, challenges, opportunities and solutions – i.e. the whole ecosystem – and creating space (in terms of budgets, planning, urban form, access, and other support mechanisms) to make this happen. At the same time, understanding the challenges within the local government and intergovernmental system are also required in order to make system wide improvements to the regulatory system and tools and particularly how this impacts on the use of public space for informal economic activity.

The first informal economy policy in South Africa, formulated in 1999 and adopted by eThekweni in 2000, had to be developed from first principles because there was no precedent. Now, in the throes of a crisis, it is necessary to think from first principles again, to promote a supportive and enabling environment for the informal sector to thrive in public space even in a pandemic, and increase resilience in the face of other crises. This includes addressing occupational health and safety, space, infrastructure, and the institutional framework that governs how space is used and managed.

The guidelines have been developed with COVID-19 in mind, but it is important to note

that the pandemic has exacerbated existing fault-lines in the system, and has exposed underlying prejudices and attitudes that have always been a key barrier to unlocking and promoting the economic opportunities inherent in the informal sector. The current emergency is the economic crisis precipitated by the pandemic, as much as the virus itself; the pandemic has made the broader issues of poverty, unemployment and inequality even more urgent – and also more pressing for everyone, because the informal sector is both a potential health risk and an under-estimated economic opportunity to assist our recovery.

Today's 'COVID moment' is similar to South Africa's 'democracy moment' of 1994 – except that this time, the whole world has changed. It is an opportunity to re-boot attitudes and perspectives, and provokes a necessary review.

2. Project Strategic Focus Areas

The overall project is framed around four Strategic Focus Areas, which all of the work-streams together address in different ways.

2.1 Broadening Economic Participation and Mobility

This is the driving focus of the overall project and is about supporting the right to livelihood, with a particular focus on public space trading. Recognising the opportunity presented by public space and the informal sector to respond quickly to the economic crisis, this guideline specifically addresses ways in which space can be made available for public space trading, and how a developmental approach to investment in appropriate infrastructure strengthens informal trading and provides pathways to growth and progression.

2.2 Providing for Social Protection and Inclusion

This guideline does not address the institutional aspects of social protection and inclusion. But the provision of adequate space and amenities to provide more opportunities facilitates inclusion; water, sanitation and hygiene (WASH) facilities contribute to public health; and good public lighting and universal access to public space also play a significant role in public safety, especially for women, as well as for inclusion. This guideline



Picture by permission Asiy e Tafuleni

also includes ideas for innovative provision of social infrastructure, such as childcare facilities.

2.3 Strengthening Governance

The governance recommendations in this guideline focus specifically on planning tools and on governance of the space itself (urban management), both during a crisis such as the COVID-19 pandemic and in general; and they are applicable mainly in the local sphere. Ideas for improving or achieving more collaborative governance of the informal sector are suggested. The recommendations in the separate Policy guideline address the broader governance, co-ordination and institutional issues across spheres.

2.4 Responding to Emergency: The COVID-19 Pandemic

This guideline is firstly a response to the COVID-19 pandemic, and thus addresses this focus area directly. The need to address the health challenges associated with allowing as many traders as possible to work safely in public space is urgent. As mentioned in the introduction, the pandemic has exacerbated existing issues as well as raising new challenges. Responding to the health and safety issues requires innovation and new ways of accommodating public space traders, who need more space to comply with physical distancing



dictates. New entrants into the sector must also be accommodated. The spatial and infrastructure guidelines address this in particular. It is hoped that the tools, innovation and learning that result from emergency responses contribute to a review of policy and practice towards a more enabling environment for public sector trading in the longer term.

3. Understanding the Problem

COVID-19 lockdown regulations drastically decimated incomes, and revealed the existing lack of support, social protection and resilience in the sector. Even now that traders may work again, changes in commuter patterns, and the impact of the pandemic on the economy at large, mean that customer numbers and spending power are down. Government initiatives in response to COVID-19 were ill-conceived for this sector, and have not reached many informal workers. Many municipalities continue to emphasise enforcement over support – now, with added regulations around health – to devastating effect. The Policy and Framework By-law guidelines address the policy approach and make legal provision for, however this guideline document focuses on health and safety, and the spatial dimensions of public-space trading.

The very necessary health protocols are often impossible to adhere to in a context where basic infrastructure is inadequate or completely absent, and where trading space is tightly constrained; however, when health protocols *can* be observed, it is safe for people to work, which mitigates the severe impacts of poverty and hunger. There must be health protocols applicable to work carried out in public space, just as there are for formal workplaces; but at the same time, opportunities must be maximised. Health and safety guidelines are a tool for local government and traders to make safe trading possible.

In most towns and cities there was already too little suitable public space to accommodate everyone wanting to take advantage of the economic opportunities there; and now, simultaneously, there is a health imperative to keep people physically distanced, while the economic imperative has dramatically increased demand for trading space. The spatial guidelines are a tool

to assist local government to identify, allocate and provide infrastructure for additional space for trading – both as a short-term emergency response, and to support the sustainable growth of the sector in the longer term.

A significant increase in the number of informal traders operating in public space implies an increased urban management burden for municipalities. For municipalities, urban management challenges are the most common point of resistance to the expansion of the informal sector. Overly defensive techniques focused on enforcement are neither effective nor sustainable, and unfortunately the rigid, top-down administrative approach evidenced in South African towns and cities (described in the Background Research Paper developed in support of this project) has significantly eroded the social capital that could – and used to – allow the informal sector essentially to manage itself. In many instances, it has made way for gate-keeping, corruption, resistance, and the use of inappropriate force.

These guidelines include suggestions intended to provide enough of a framework to facilitate a more collaborative developmental approach to the urban management of public space trading areas, which could be based on negotiated social compacts; with the aim of streamlining the urban management burden through a minimum-enforcement/maximum-compliance approach. This would also allow for flexibility, adaptation and resilience, for the sector and for local government.

4. Crisis Responses vs Systemic Responses

Notwithstanding that the challenges that have now become a priority due to the
COVID-19 pandemic
are mostly pre-existing challenges, it is useful to frame responses to the pandemic in a phased approach over time.

The guidelines envisage phases, which may not be linear. Even the current pandemic will progress through peaks and troughs, second and third waves, and possible further lockdowns. The guidelines respond to issues during what we

have termed the ‘Emergency phase’, as well as to the more systemic issues which persist outside of the emergency. The emergency in this case is the COVID-19 pandemic, and the economic crisis that it has precipitated.

Adaptive responses to other potentially recurring disruptive events that may have significant impacts on public sector traders must also be considered, such as temporary or permanent displacement of traders due to public works or road infrastructure projects, climate change, natural disasters and macro-economic shocks, etc.

4.1 Emergency Phase

Managing the COVID-19 pandemic requires specific personal health responses, as well as degrees of lockdown. Given that when lockdown is imposed the consequences for informal workers who cannot trade are severe, it is imperative that periods of lockdown must be as short-lived as possible. During the first hard lockdown, the refrain that ‘hunger will kill us sooner than the virus’ was common.

The imposition of severe restrictions and limiting mechanisms on public-space trading – even for essential services, and once lockdown regulations were progressively relaxed – resulted in inappropriate enforcement and penalties and damaging losses for traders, and this course of action is not recommended. In order to avoid this situation, flexible regulations (triggered by the emergency, and applicable to other crises

or shocks too) must be put in place. This is recommended in the *Policy Guidelines*, and some proposals for how to do this are included in the *By-Law Guidelines*.

Different ground rules and new systems should apply regarding access to space and trading opportunities, and temporary infrastructure provision may be needed as a short-term response. This is an opportunity for experimentation, mapping, documenting and learning, in order to inform the future. Specific proposals related to health and safety and the space itself are unpacked in more detail in the sections that follow in this guideline.

Figure 4 below shows a typical situation during lockdown. The pre-pandemic trading space (both physical, and metaphorical or opportunity space) is restricted by health dictates and reduced to the central circle. Many traders lose their livelihood altogether during this time.

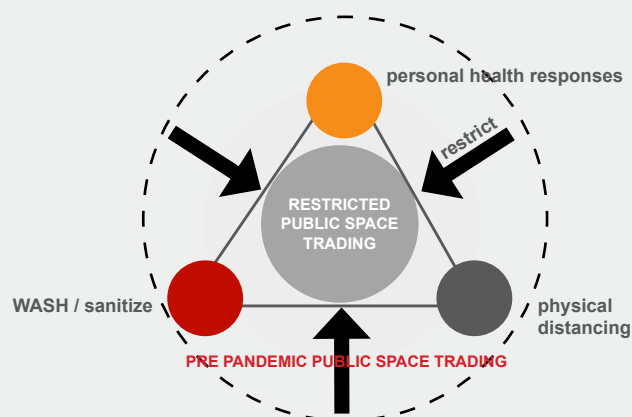


Figure 4: Lockdown

Picture by permission Asiyé eTafuleni



Brook Street Market, Warwick Junction, Durban: lockdown impact.



Photographs: (left) by permission Asiyé eTafuleni; (right) Xolani
Dlamini by permission Asiyé eTafuleni



4.2 The Future

The 'future phase' refers to a post-pandemic state, which unfortunately will be characterised by 'new' joblessness caused by dramatically shrinking formal employment opportunities, and the consequent new demand for informal sector opportunities. We are reluctant to use the term 'new normal': going back to what was previously regarded as 'normal' is not good enough. This has been clearly articulated in the Background Research Report for this study, which draw heavily on prior work done by SALGA and SERI, and is described more fully there. The limited uptake of the recommendations in that work has contributed to the now-obvious vulnerability of the informal sector, exposed by the pandemic crisis. The guidelines developed for this project are intended as tools to assist municipalities to make systemic changes that build on learnings from the emergency, and thus endure.

Our future aspiration is for a post-emergency state where the governance environment (compared to the pre-emergency state) is improved, and where policy and regulation prioritises the informal sector so that it thrives and is more resilient to future crises. How this objective might be achieved is described in detail in the Policy and Framework By-Law Guideline documents. Additionally, health and safety protocols achieved through regulation during the emergency phase must be adopted as standard behaviours, contributing to improved occupational health and safety going forward.

It is important to take the wider impacts of informal activities in public space into account as well, as large numbers of formal workers and commuters pass through informal loci as they are usually concentrated around transport nodes, which could be conduits for infection. In this phase, the emphasis must shift from personal to community and institutional systemic responses. Tools for this are described later in this guideline.

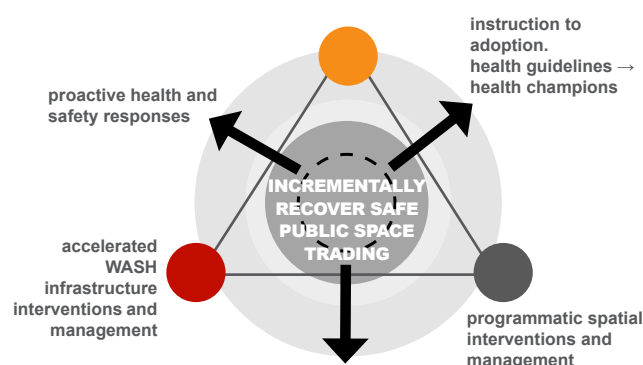
Ideally in the imagined future state:

- Municipalities embrace the informal economy as a socio-economic priority, and are inclusive in their planning and budgeting.
- Investment in new and appropriate infrastructure is prioritised.
- Local government demonstrates the qualities of a developmental state – evolving towards participatory strategies and collaborative governance of public space wherever possible.
- Municipalities assign clear departmental mandates around managing informal trading in public space that align with the point above, and allow for flexibility and adaptation within broadly agreed parameters.
- Officials responsible for managing informal trading and public space are trained in and have the capacity to support a developmental approach.
- Health practices shift from prescribed to being adopted as 'normal', with the active engagement of community-based initiatives.



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Figure 5 below shows that through adoption and implementation of health, space and infrastructure guidelines, safe public space trading is increased and the environment is improved beyond the emergency.



Picture by permission Asiye eTafuleni

Figure 5: Progressive recovery towards a more resilient future state

5. Structure of the Guidelines

Because health and safety guidelines must address physical distancing, a comprehensive enquiry into the spatial dimension is required; equally, one cannot anticipate an increase in the presence of informal workers in newly identified public spaces without definite urban management and spatial governance proposals. Therefore, this Guideline document is organised into two sections:

1. Health and Safety guidelines	- Ensuring safe livelihood opportunities in public space - during the pandemic - ongoing improved occupational health and safety
2. Space, planning and infrastructure guidelines	- Planning and design recommendations and ideas for optimising the economic benefits of public space - planning for physical distancing - planning for a more resilient sector going forward - Infrastructure provision and management - crisis response - systemic response - Sustainable urban management and spatial governance guidelines - Towards effective and efficient urban management of public space - Maximising compliance and minimising enforcement

¹⁶ WIEGO. 2020. COVID-19 and the Informal Economy: Durban

6. Guideline 1: Health and safety

6.1 Objectives of the Health and Safety Guidelines

The first big objective for the health and safety guidelines is to enable as many informal workers as possible to get back to work, safely, as soon as possible. Despite the health risks of a pandemic, people still need to work. Research conducted during the first months of the pandemic¹⁶ clearly shows that the most profound consequences of COVID-19 were loss of livelihood and food insecurity.

A secondary objective of these guidelines is to intentionally move from 'instruction to adoption' of the recognised infection-prevention protocols. In addition to isolating oneself if infected, the key health guidelines for preventing COVID-19 infection are mask wearing, frequent hand washing or hand sanitising, sanitising of surfaces, and physical distancing. These seem simple; yet in the context of informal work in public space, this is not at all the case. The Guideline is intended as a tool to assist in the achievement of this objective.

Ideally, different types of informal work require specific guidelines; for example, protocols applicable to fresh-produce selling will be different from those for trading in second-hand clothes. However, developing specific guidelines for types of trading and different goods is beyond the scope of this project.

The third important objective is the progressive improvement of public space infrastructure; addressing backlogs is now urgent. Appropriate infrastructure, especially in the context of the pandemic, is vital to ensure trading can be safely sustained during the crises and ultimately contributes to the long-term success of the informal sector.

6.2 Domains of Responsibility

There are three domains of responsibility for the adoption of the health protocols: individual, community, and government. Many people cannot afford masks, although this is by far the easiest protocol to comply with. Hand sanitiser is expensive, and even soap is unaffordable for many. Water for hand washing is not available to



everyone, as many informal traders live in informal settlements where amenities are shared if they are available at all. WASH research¹⁷ published by Infrastructure for Cities and Economic Development (ICED) in July 2019 showed that public amenities are often the only WASH facilities available to people living in informal settlements, highlighting their importance.

In general, public WASH amenities are grossly under-provided, even in a metro such as Durban. Traders in Durban report buying water in an attempt to curb infection, and complain that it is unreasonably expensive¹⁸. Infrastructure provision (appropriate public space and associated facilities) sits firmly in the government domain. This is another important existing challenge that has become much more urgent due to the pandemic, and will be even more pressing in the future, as more people seek livelihood opportunities in public spaces due to the contraction of the formal economy.

6.2.1 Individual Responsibility

- Mask wearing is an individual and community responsibility – ‘My mask protects you, your mask protects me’.
- Sanitising or washing is an individual responsibility but is subject to availability of sanitiser (expensive and unsustainable in the long term), or soap and water.
- Maintaining social and physical distancing is only possible for individuals to comply with to the extent that sufficient space exists.

We know that public spaces that are desirable trading sites were already crowded before the pandemic. This is a key concern, because we know

that people are working even when infected. They do not have the option of staying at home, because the lack of social protection for this sector means they have no other income.

An individual trajectory – from following regulations for fear of penalties, towards the adoption of new attitudes and practices – is desired; but interventions beyond the individual domain are required for this to be possible.

6.2.2 Community Responsibility

Communities can be self-organising and self-policing, and can quickly disseminate health guidelines – collectively increasing awareness and adoption of commonly accepted rules for behaviour in public space (subject to the constraints described above). Community-based ‘health champions’ (described more fully below) would fast-track this, and possibly carry out a measure of tracking and tracing as well. A new, community-led governance regime is desired over time.

6.2.3 Government Responsibility

Government is responsible for making policy and regulations, implementing emergency interventions, and providing funding for and implementation of infrastructure. From a health and safety perspective, provision of new WASH facilities and/or maintenance and management of existing facilities is most urgent. Making sufficient space available for the sector to operate at safe distances is also urgent, and innovative proposals for this are discussed more fully in Guideline 2 below. Local government should also offer information dissemination, education and support.



“Mask wearing is an individual and community responsibility – ‘my mask protects you, your mask protects me.’”

¹⁷ licedfacility.org/resource/revealing-strengthening-links-wash-productivity-well-informal-vendors-south-africa-kenya/

¹⁸ WIEGO. 2020. COVID-19 and the Informal Economy: Durban.

6.3 Personal Health Guidelines

Numerous COVID-19 safety guidelines have been produced, locally and internationally, and disseminated to workers in the informal sector, mainly via trader organisations and social media. The three pillars of prevention – masks, washing/sanitising, and physical distancing – underpin the guidelines. As discussed above, these personal health responses require government intervention to be adopted widely; however, there are actions that individuals can take. The

guideline document below was prepared by WIEGO, and has been distributed in multiple languages via various social media platforms. Traders and trader organisations have found these guidelines invaluable.

6.3.1 Masks

Traders should always wear masks, and encourage their customers to wear masks. Stocking affordable masks alongside other goods is a potential business opportunity.

COVID-19 GUIDELINES FOR INFORMAL TRADERS (in streets, markets and spaza shops)

COVID-19 is highly infectious.

It spreads through contact with people who have the virus - even those who do not show symptoms. COVID-19 is spread mainly via respiratory droplets. When someone coughs, sneezes or speaks, they spray small droplets from their nose or mouth.

The virus spreads in spaces with little or no proper and little movement of air. The particles disperse slowly if you are outdoors, particularly if there is a breeze, making controlling the virus less likely.

COVID-19 can also spread from touching contaminated surfaces and then touching your nose, mouth or eyes. The virus sticks to surfaces and can survive for hours, and even days, on materials, toys, clothes and other things.

Elderly people (over the age of 60) people with diabetes, high blood pressure, heart disease, HIV/AIDS or cancer, and pregnant women are particularly at risk if they catch COVID-19.

If you are already pregnant or have any of these conditions, or live with someone who is, you should take extra precautions.

If you show these symptoms, you may have COVID-19, which means you will not be able to go to work, and you will affect other jobs.






Other people infected with COVID-19 may also be infected. If you have a cough, fever, loss of taste or smell, or difficulty breathing, seek medical attention. See [here](#) for more information on symptoms and treatments.

You must avoid contact with people who have COVID-19 symptoms

IF SAFETY GUIDELINES ARE FOLLOWED, INFORMAL TRADERS CAN TRADE AS SAFELY AS FORMAL TRADERS:

1. Wear a cloth mask that covers your mouth and nose. Avoid touching the mask. Wash and reuse every day. Have a new mask so that you have a clean one to wear every day. Instruct your customer wear masks too. Consider wearing a scarf to protect your nose.

2. Avoid touching your face - especially your nose, mouth and eyes. When you cough or sneeze, cover your face with the inside of your elbow.

3. Avoid hugging people. Do not greet people by touching them. Even from within your own family. Where this is impossible, then at least keep at arm's length.

4. Wash your hands with soap and water often:

- When you handle for at least 20 seconds. Clean all parts of your hands and forearms, including fingers and fingertips and between your fingers.
- Wash your hands before you start your workday, throughout the day, and especially before eating.
- Wash your hands after coughing or sneezing.
- Wash your hands after any exchange with customers (of products and cash).
- Wash your hands as soon as you get home.

5. Street and market traders must to trade two metres apart, as local governments need to be flexible with trader layouts and locations.

6. Customers should keep two metres distance from each other in getting additional food or household goods or multiple items. Drawing lines on the ground is a simple way to show how people should queue and from here they should also leave one and one stall shop.



7. Give attention to high-risk customers such as pensioners, people with disabilities and pregnant women by giving them preference in queues.

8. Ask customers not to touch products.



9. Clean all frequently touched surfaces with sanitizer or disinfectant. This includes your cash drawers and also door handles and walkways.

10. Street and market traders: Cover your tables and trays with products with disinfectant. **Close shop windows and entrances.** Wipe down surfaces such as counter-tops, till and handles with disinfectant. **Serve customers from behind.**

11. Avoid handling cash. Encourage customers to deposit cash in an envelope, box or jar. COVID-19 droplets can be on coins and banknotes. Consider keeping today's money separate from yesterday's. Wash your hands or use sanitizer between customers. Use digital payment methods where possible. Consider signing up for SnapScan or Zapper. If you need cash payment be direct, clear these with tiller or teller before and after each use.

12. Be used plastic bags can carry the virus. If customers use their own bags, avoid touching them. If you provide plastic bags, avoid re-use ones.

How to make your own disinfectant:
If you do not have sanitizer, 8 litres of bleach in 1 litre of water is an effective disinfectant. See [here](#).



How to build a wash station:
If you do not have running water in the place for your customers, consider building a wash station. See [here](#) for more info.



INFORMAL TRADERS NEED GOVERNMENTS TO:

DO NO HARM

- Refuse and/or enforce officials must stop harassing traders.
- Provide identification of trader's goods during lockdown.

ENCOURAGE BARTENDING

- Provide controlled water points so that traders can wash their hands, themselves and produce frequently.
- Provide containers and/or bins as a shelter of activities.
- Be flexible about trading hours so that street and market traders can produce physical distancing. Some food vendors have allocated routes for trading.
- Provide healthy screening at trading sites.

IMPROVE LIVING AND RESPOND FASTER

- Make the housing of informal traders safe and fair.
- Screened trading hour while traders are essential themselves.

PROVIDE FINANCIAL SUPPORT AND GRANTS

- Informal traders have been particularly hard hit by measures to prevent the spread of COVID-19 and need direct financial support.
- Traders have used their lost earnings over lockdown and need cash grants for start trading again.

PROVIDE SUPPORT WITH TRADERS AND LOCAL GOVERNMENT OFFICIALS

- Traders need to be involved in planning and policy-making and also have a say in their own future. Traders need to be involved in planning and policy-making and also have a say in their own future.

KNOW YOUR RIGHTS:

Even under lockdown, all government officials must respect the right to just administrative action when issuing or enforcing licenses, enforcing trading laws, allocating trading space, conducting checks, and enforcing or enforcing measures.

Any action taken by a municipal or law enforcement official is an administrative action and it must be "just", according to the law. This right is protected in the Constitution (S23) and detailed in the Promotion of Administrative Justice Act (PAJA) of 2000.

TO BE "JUST", THESE ACTIONS MUST:

- **BE LAWFUL.** Officials must act within the confines of the law: be authorized to take action and not abuse or exceed their authority.
- **BE REASONABLE.** Administrative actions taken must be rational and based on the facts.
- **BE PROCESSIONALLY FAIR.** They must be able to be heard, meaningful consultation with affected traders, and the decision-making must be unbiased.

NOTE: If an official enforces your goods, you must give you a receipt. This receipt must include the details of what the goods are, the address where they will be stored and how long they will be kept.

Your rights as being traded, with the lockdown measures and what

TO PROTECT YOURSELF, MAKE SURE THAT YOU:

- Follow the health guidelines.
- Always keep a copy of your permit and your documents in your shop.
- Keep up to date with the current regulations. These may change during different lockdown stages.

IF AN OFFICIAL MAKES A DECISION THAT AFFECTS YOU

- Ask them for reasons.
- Ask them which law gives them the authority to act.
- Take photographs or video actions such as enforcing goods.

ACCESSING FINANCIAL SUPPORT:

If you need work, you can apply for the special COVID-19 Social Relief of Distress Grant, of R350 per month. Bachelors, masters students and people with special dispensation permits may apply until the end of October 2020. For details, see [https://srd.sassa.gov.za/](#).



sassa
South African Social Security Agency

These guidelines were developed by WIEGO in close consultation with experts in public health (Professors Rajan Neelima and Leslie Lombard) and the informal economy/food systems. July 2020.






The WIEGO guideline document for informal traders





6.3.2 Wash/Sanitising

Traders should wash or sanitise their hands regularly, and ask their customers to do the same – if possible, providing some means for their customers to do so. Traders should touch their merchandise as little as possible, and ask their customers not to touch it. All parties should handle cash as little as possible, washing or sanitising when they do. Given the shortage of WASH infrastructure and the costs of chemical sanitisers, provision of temporary hand-washing stations is an appropriate emergency response. Examples are shown below. A pilot project in Durban has shown that traders providing a sanitising opportunity at their stalls are attracting more customers.

6.3.3 Physical Distancing

Traders must keep as far apart from their neighbours as possible, and demarcate queuing space for their customers, using the opportunity to keep raising awareness around this key infection-prevention principle. As mentioned above, this is very difficult where there simply is not enough space, and municipalities must plan innovatively to create more space. This is discussed in more detail in Guideline 2 below.

6.4 WASH Guidelines

Local government is responsible for providing adequate WASH facilities in public spaces. Even in pre-pandemic times, the infrastructure deficit – and WASH infrastructure in particular – was an issue for public space trading. Apart from the obvious need for sufficient provision of public toilets, wider acknowledgement is necessary that people need water on the street for cooking, drinking, and washing; and this is the focus of this guideline.



Water dispensing machines in India

Pictures (left) Richard Dobson by permission Asiye eTafuleni

The supply of water need not be free. In India, water-dispensing machines are common, and various water-vending arrangements (e.g. water bailiffs) have been tried in a number of South African cities. Health imperatives have now made this even more critical, as lack of access to WASH infrastructure is a serious obstacle to the adoption of health and safety protocols by public space traders and their customers. The use of chemical sanitisers is expensive; and for outdoor traders, there is the added risk of the alcohol content evaporating in the sun, rendering chemical-based sanitisers ineffective.

The fatty outer layer of the novel SARS-CoV-2 virus that causes COVID-19 is easily broken down by ordinary soap and water, which is a more sustainable solution in the long term.



Physical distancing guidelines for traders

Picture by permission Asiye eTafuleni

6.4.1 Performance Guidelines for WASH Facilities

Norms and standards must be developed for the provision of WASH facilities in public spaces. They must:

- be easily accessible in public spaces, within a few minutes' walk of trading areas, and inside designated markets and transport nodes,
- be open at hours that align with trading times – commonly, very early in the morning until evening,
- provide access to potable water as well as toilet facilities, and
- be robust, safe, well managed and maintained, with clear and accountable delegation of authority; and mechanisms for reporting faults should also be simple.

6.4.2 Temporary Facilities

Where facilities are not available, temporary facilities should be provided as an urgent response (in parallel with plans for scaled up permanent provision).

We propose that there are two typologies for temporary intervention: 'street corner' and 'table-top'. Whether the philosophy behind the response is top-down or collaborative is important; and it is argued that a collaborative response is more likely to be successful, especially from a management perspective.

Temporary provision must be affordable, easy to make or procure, convenient, and easy to store

or secure – noting that this proposal is not about providing water for the homeless which has a completely different set of criteria.

There is a current ILO (International Labour Organisation) initiative to provide a larger 'street corner' solution, but this is being delayed by administrative issues.



Temporary WASH stations in use in Durban

Temporary WASH Stations

Asiye eTafuleni has been experimenting in Durban with a range of designs for both street-corner and table-top wash stations made from recycled materials, and has developed instruction manuals for self- or street carpenter assembly (shown below). These are currently being tested on the streets of Warwick Junction in Durban. Initial feedback has been good. The five-litre version has an added attraction for fresh-produce traders, as it allows them to wash a piece of fruit purchased as a street snack at their table, offering an additional competitive advantage (although it is more bulky to store than the smaller versions).





Build a wash station: *Street corner*

You will need:

Pallet wood



5ℓ plastic jerry can



Bucket and small basin with hole



Soap in plastic netting



Remember to wash your hands for at least 20 seconds!



Build & assemble:

- 1 Build a wooden frame as indicated with two uprights to hold bottle of water and platform to support bucket



- 2 Create support on each upright -one u-shaped indent to one side, one hole opposite, both to pivot the yoke of the bottle



- 5 Place bucket in stand, attach soap and fill the bottle with water



- 3 Create yoke to sit between two uprights and attach an arm to hold soap and a lever to connect the yoke to the forearm lever



- 4 Place yoke between supports and connect the yoke to the forearm lever with a nylon cord



Build a wash station: *Table top – Small upright*

You will need:

Pallet wood



2ℓ coke bottle and small coke bottle



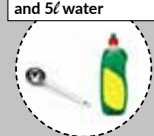
Sunlight (or similar) dishwasher 'click' cap



2ℓ ice cream tub



Soap mixture: 2 tablespoons soap and 5ℓ water



Build & assemble:

- 1 Build a squared frame from wood with an inverted L and create a hole for the bottle rest in



- 2 Shape the hole in the wooden stand to receive the profile of the neck of the bottle



- 3 Cut a hole in the base of the coke bottle and attach the top of a smaller bottle to form a funnel to fill the bottle; screw on the click cap



- 4 Create an additional wooden 'key' to slide between the neck of the bottle and the underside of the support arm



- 5 Screw the key to the underside of the support arm



- 6 Insert assembled bottle and ice cream tub



Remember to wash your hands for at least 20 seconds!



6.4.3 Management Arrangements for WASH Facilities

Good management of WASH infrastructure is vital, and a key challenge for municipalities. Some ideas for minimising the management burden:

- Ideally, a single properly resourced department should be responsible for managing all public sector WASH facilities.
- Rationalise fittings specifications across all public sector WASH facilities in a municipality, to simplify maintenance and repairs.
- Use technology (phone-based, QR codes, embedded chips, etc.) for simple reporting and locating of faults, and for alerts regarding supplies. (Access to certain facilities, especially water, could even be linked to a smart trading permit system).
- Deploy street-based maintenance plumbers connected to the smart-alert system, and equip them with an inventory of commonly needed spares.
- Train toilet attendants to deal with the most common faults.
- Treat WASH facilities as a micro-business opportunity, by partnering with informal traders in the vicinity.
- Contract out the attendant/management opportunity (with cost parameters defined by local government so that access is not exclusionary).

6.5 Physical Distancing Guidelines

The most difficult recommendation for public space traders to adhere to is physical distancing. If distancing guidelines (2m) are followed, there simply is not enough space for current trading locations to accommodate everyone – traders, customers, pedestrians, and commuters. Asiye eTafuleni's engagement with traders confirms that traders mostly understand the imperative,

although it is impossible to achieve. Strategies that formal businesses deploy (such as working from home, and staggering attendance at the workplace) are not available to informal traders, who depend on being present in a particular location to trade. The temptation for municipalities to reduce the number of traders in public space must be great; however, with no social protection in place for this sector, this would cause huge suffering.

This has major spatial implications for our towns and cities, if the economic opportunity of public space trading is to be maximised. This is dealt with below in Guideline 2.

6.6 Community Health Champions Concept

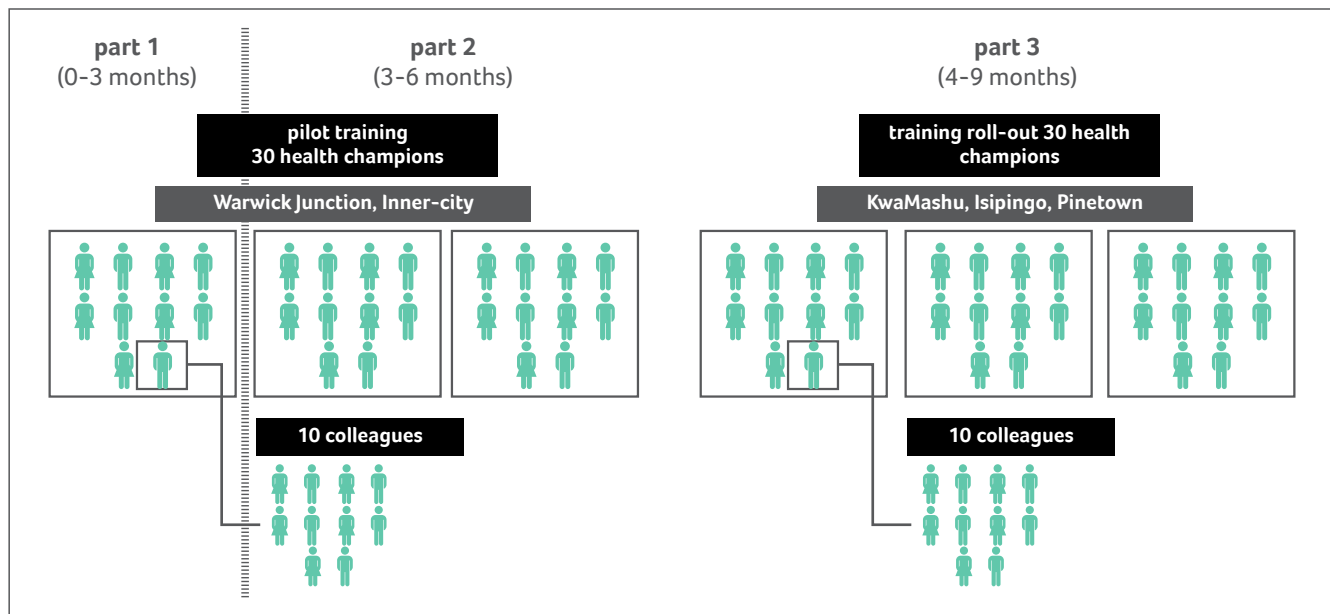
A key contribution towards safe public space trading is encouraging consciousness of occupational health and safety. This is important to ensure the sustainability of good hygiene in urban public workplaces, both during the pandemic and beyond. The most effective response would be a community-based programme.

The immediate objective would be to empower community volunteer 'health champions' to:

- understand the nature and characteristics of the coronavirus infection and the pandemic;
- understand how this poses a risk in the informal working environment;
- identify basic approaches to controlling or reducing risk of exposure to the virus;
- recognise their role in providing a link to informal workers and to the network of support available for workers and their families.

The longer-term objective would be to embed occupational health and safety in urban public workplaces.





Picture by permission Asiy eTafuni

Community health champion training methodology

7. Guideline 2: Space, Planning and Infrastructure

7.1 Understanding the Problem

There was already too little space and too few amenities to accommodate everyone wanting to take advantage of the economic opportunities in public space before the COVID-19 outbreak. Now there is a simultaneous health imperative, to keep people physically distanced, and an economic imperative that has dramatically increased demand for trading space. There must be health protocols applicable to work in public space, just as there are for formal workplaces; but at the same time, opportunities must be maximised.

We must urgently redefine the role of public space in towns and cities as an economic asset, and re-imagine our concept of public space and our whole urban vision towards transformation, from 'Northern' concepts to contextually and culturally appropriate places that perform optimally where they are, in the global South.

Informal trading is a pre-existing strategy for livelihood creation that has provided for millions of people despite generally unsupportive regulation and enforcement – even more so with COVID-19, and potentially for many more people. As the formal sector sheds jobs (over 3 million already) there will be new entrants into the informal sector, all desperate for a livelihood.

Municipalities might be tempted to fall back on the old (and debatable) arguments about limited 'carrying capacity', and try to manage the health risks by further limiting trader numbers. This is not a viable or sustainable strategy going forward. Even before the pandemic it was impossible to manage, and often led to exclusion and additional prejudice against so-called illegal traders – including foreign nationals who cannot get permits, and yet somehow are all there on the streets, mainly because they have no alternative.

To maximise opportunities, the question needs to be turned on its head. Instead of asking how many traders can be accommodated in the available public space, the question needs to be: how can we create more space, to accommodate as much safe and viable public space trading as possible?

Since 2000, when the first informal economy policy was adopted, the administrative focus has been on legal and regulatory interventions. Local government has devoted a significant amount of effort to continuously reviewing and updating the regulations managing informality, while at the same time these same regulations are being monitored and challenged by informal workers, public interest lawyers and activists. A critical critique could be that this progressively results in a non-productive outcome – the stifling of the informal sector, and adversarial relationships between the informal sector and local

government. Given the increasing limitations of exclusively legal and regulatory interventions to productively and inclusively develop the informal sector, an opportunity exists to explore an additional dimension of administrative intervention: that of spatial planning.

For the foreseeable future, physical distancing will be an imperative; both to sustain the livelihoods of those already in public spaces, and to accommodate the newly unemployed seeking survival incomes. In many instances local government has not engaged with all aspects of spatial planning to accommodate, integrate and transform the informal economy, often leaving it to the line department directly assigned to manage the informal sector; i.e. the full skills capacity of local government is not applied to this vital task. In addition, the detail of how public space is used in practice often resides within the informal sector itself. This presents an opportunity for participative, collaborative action between local government and the informal sector to co-design public spaces, and so transform apartheid-endemic city and town planning. The joint process of (for example) preparing spatial and management overlays could be a vehicle for invigorating meaningful inter-communication between local government and the informal sector that would off-set the current focus on legal and regulatory interventions.

The health dictate that requires spatial intervention is clearly an opportunity for both innovative and inclusive transformation of historic and ideologically compromised urban form, and for the long-awaited foregrounding of urban informality.

7.2 Objectives of the Space Planning and Infrastructure Guideline

Public space is an economic asset immediately available to municipalities. The main objective of the guidelines is to assist municipalities in re-conceptualising the space they have available, with a view to recovering all opportunities that may exist for accommodating safe and viable public space trading; giving examples of how they might implement this effectively, and offering tools and performance criteria for the planning and design of different types of public space trading, as well as suggestions for the inclusion of public space

trading in the planning system, and strategies for the appropriate provision and management of the range of infrastructure necessary to support sustainable trading in public space.

7.3 Spatial Guideline Principles

These principles are aligned with the principles for the overall project, but are more focused on the spatial dimensions.

7.3.1 Employment Promotion and Economic Participation is a Priority

- balance formal and informal needs, and understand the dynamic between them. A better environment with better infrastructure for informal businesses is better for formal businesses as well.

7.3.2 Support Developmental Pathways Towards Successful Enterprises

- provide certainty and predictability (e.g. giving shack dwellers tenure)
- provide appropriate infrastructure and sufficient space
 - infrastructure enables business growth
 - trading infrastructure for different types and sizes of operation
 - a range of space sizes

7.3.3 Inclusivity

- public space ‘belongs’ to everyone – it is a ‘commons’
- access and opportunities for anyone
 - fair and transparent allocations
 - consider ‘smarter’ alternatives to traditional permits
- collaborative planning and urban management
- consider the whole supply chain, including barrow operators, water carriers etc.

7.3.4 Align with the Constitution and Jurisprudence

- pro-active not reactive
- adaptable, flexible, dynamic
- minimal enforcement, maximum compliance (with a few simple rules)

7.4 Making Space for Public Space Trading

To achieve the overall objectives of maximising



public space trading opportunities, municipalities must initiate the innovative recovery and use of all existing public space opportunities. The most obvious are existing sidewalks, undeveloped verge space, and over-wide median island spaces. All these are part of the road reserve, i.e. the space between site boundaries. There may be other un-subdivided public spaces (which may also form part of the road reserve cadastre), existing market spaces, designated public open spaces including under-utilised park edges, unused open spaces in front of public buildings on state land, taxi ranks or other transport nodes (both formal and informal), or vacant municipal or government-owned sites. There may even be well located privately owned vacant land, the temporary or permanent use of which could be negotiated. Guidelines to the identification of spaces are discussed in 7.4.1 below.

There are other, less obvious ways of making space, such as extending trading hours, allowing sharing of opportunities and shared periodic use of spaces; these are expanded on in 7.4.2.

7.4.1 Guideline for the Identification of Suitable Public Space for Trading

Think expansively about what is possible to maximise opportunities, noting that spaces can be reconfigured to transcend pre-conceived ideas, allowing for innovative urban design interventions that will enhance existing and provide new opportunities for income generation.

- Prioritise locations where there are concentrations of potential customers
- Identify spaces that are level and well drained, or that can be made level and well drained. This is a basic minimum requirement.
- Consider the proximity of infrastructure such as public toilets and storage, and/or the possibility of providing temporary infrastructure where there is none.
- Do not allocate trading spaces where there is no foot-traffic, in an attempt to de-densify congested trading areas. This will not work, and is likely to result in significant loss of income.
- Integrate public space and transport planning, including temporary arrangements during the pandemic when it is necessary to space commuters out to achieve physical distancing.

This may make previously unviable spaces viable for trading.

- Consult widely and listen carefully to traders, who are best positioned to understand what will work for them. Building trust secures buy-in, uptake, and the potential for shared management responsibilities.
- Re-think how use of public space is prioritised and for whom; in particular, re-prioritise vehicular uses, e.g. demarcate under-utilised traffic lanes and/or parking bays. Traffic patterns have changed since lockdown and may never return to exactly how they were.
- Provide diverse opportunities and spatial typologies (see 7.4.4 below).



Wider sidewalk



Underutilised road



A decommissioned road



A motorway



Use of parking bays



Edge of a park

- Consider creating specialist markets that facilitate and dignify particular activities (e.g. traditional cooked food, or herb and 'muti' trading) that may become destination or anchor activities.
- Test new arrangements and be prepared to change tack if they do not work. Allow for flexibility and 'settling in'.
- Consider the periodic use of space for trading at certain times of the day or week, which may include periodic street closures.

Many creative strategies have emerged in Asian countries; this street in Myanmar has been demarcated for suitably spaced-out trading.



Picture: Thauang Tun (Twitter)

Around the world, formal businesses – particularly restaurants and cafés – are spreading into public space as a response to pandemic-related health protocols. This provides some interesting precedents for innovative new uses of space such as street parking, and promoting this for formal businesses dignifies it for informal business; however, it is the municipality's role to manage this in an inclusive way that does not prejudice informal traders.



Picture: EDSA (Craig Stoner, Terni Wu)



Picture: Department Design Office (Maggie Tsang, Isaac Stein)



7.4.2 Other ways of 'Creating Space'

There are ways other than allocating physical space to create more public space trading opportunities



Picture: Dirty Linen (Leonard Rosenberg, Goolam Vahed)

Some traders operate only at certain times of the day; the rest of the time their spaces remain empty, because they hold the sole permit to operate from that particular location. When a permitted trader is ill, their space may remain vacant because of the same permit specificity. Introducing more flexibility into allocations and permits could create 'space' for more opportunities.

Periodic markets or market days are common the world over, and often involve the periodic use of a busy street or public space for particular trading activities at particular times. Such 'markets' become attractive shopping destinations for locals and visitors alike. This example is the Victoria Street market in Durban. The street is closed to traffic from 4am to 9am daily.

Extending permitted trading hours to include night trading also potentially creates additional 'space'. Public space traders, particularly near transport nodes, would generally prefer to set up in the dark, early-morning hours, and pack up into the evening, in order to catch their commuter customers. However, where public lighting is inadequate, this is unsafe. Good public lighting extends trading opportunities, creating more 'space', and makes trading and commuting safer. Ensuring public amenities are open for the full trading day also extends trading opportunities.

7.4.3 Accommodating Public Space Trading in Land Use Management Schemes

Public space is highly contested, and gives rise to many of the management issues that bedevil the

informal sector. Because space itself is so critical to managing public space trading, it is better to explicitly plan for public space trading rather than 'allowing' it as an (often unwelcome) afterthought activity to be accommodated. The current need for physical distancing and the anticipated increase in demand for trading space brings this even more to the fore.

Research shows that in general, people are psychologically predisposed to feeling imposed on and aggressively defensive in congested space, so planning to properly accommodate all activities in public space, including trading, will ease tensions between competing stakeholders even when physical distancing is not an urgent health imperative.

Most public space used for informal economic activity, except specifically designated market space, is part of the road reserve and falls under the auspices of the Road and Traffic Safety Act. In town planning schemes, public space may be assigned land-uses such as 'public open space/park', or transport uses such as 'taxi rank'. Public trading space is usually not specifically assigned a land-use, and consequently the parameters defining the use are unclear. This is further compounded by the fact that informal trading falls under a range of departments who may or may not provide strategic direction, and is often managed by a range of different departments, depending on the resources of the specific municipality; so feedback up the line to inform strategy is also unfocused. There are existing planning processes that can accommodate public space trading, and it is imperative that it is included in formal planning mechanisms if it is to be prioritised as envisaged by the overall project.

The policy recommendations in the *Policy Guidelines* that accompany these *Safety, Space and Infrastructure Guidelines* propose that public space trading is included in planning processes such as IDPs, which also ensures that it is covered by the requisite public participation processes. The policy recommendations also propose specific Sector Plans, which should include or refer to spatial and land-use planning proposals.

In terms of the Spatial Planning and Land Use Management Act (SPLUMA), town planning by-

laws can allow for management overlays or overlay zones as a land-use planning mechanism. Overlays are a tool to provide for specific deviations from a Town Planning Scheme or Land Use Management Scheme, providing clarity and certainty on additional provisions or aspects that may not be dealt with in detail in a Scheme. Such an overlay draws its authority from town planning by-laws and town planning schemes. For example, the City of Cape Town's Town Planning Scheme provides for a range of seven specific types of overlay zone, including heritage and environmental overlays. eThekweni Municipality's Metropolitan Open Space System is one of two management overlays provided for in the scheme. This mechanism allows more flexibility and adaptability, because by-laws and overlays can be changed more easily than schemes can. This flexibility is necessary, to entrench the progressive approach to change proposed in the *Policy Guidelines* into spatial planning responses.

It is proposed that this overlay mechanism could be used to plan explicitly for activities in public space, including public space trading. Together with associated by-laws, this may be the most appropriate strategy for providing the missing spatial regulatory framework for trading in public space. If the town planning scheme or planning by-law for a city or town does not allow for overlays, an amendment may be necessary.

7.4.4 Planning and Design

Many of the inadequacies of public spaces in terms of accommodating trading are because the form of our public spaces was never intended to accommodate trading activities. Since the 1990s, there has been huge and unprecedented pressure on well located public space, from competing traders as well as a wide range of other users; and municipalities have been playing catch-up, attempting (to various degrees) to accommodate the complex dynamics that comprise public sector trading. The new health and safety protocols only add to the complexity; but there are tools and

examples that can assist in improving design for public space trading.

In order to make sense of apparent chaos, and to find workable ways to integrate complexity, the authors have found that using typologies is useful as a tool for analysing existing trading patterns and designing new arrangements. Different contexts have different typologies, and it is important to clarify that the typologies do not necessarily progress in a linear manner (i.e. towards formalisation).

At one end of the spectrum are the survivalist traders, living hand to mouth; at the other, there are sophisticated and lucrative informal businesses, with an array of variations in between. Also, different traders (scale and type) have different priorities – e.g. shelter vs. location, or access to services. Understanding these priorities is critical to design, and health and safety prerogatives must be built in.

Planning Typologies:

Broadly speaking, three spatial typologies occur at different scales in most towns and cities:

These are:

- Strips – rows of traders along a linear sidewalk, bridge link, taxi-rank edge, etc.
- Nodes – clusters or multiple rows of traders where the public space is wider.
- Markets – designated spaces for trading, usually but not always with some formal facilities.

Spatial typologies such as strips, nodes and markets are particularly useful at a broader planning scale. At the scale of a particular street or market, the detailed design response, especially for infrastructure and detailed urban design (shelter, lighting, landscaping, sidewalk width, configuration, etc.) must be micro-contextual. Each of the two sides of the same street could require completely different treatment, e.g. one side might be very exposed to the sun, while the opposite sidewalk is covered.





Typology	Concept Analysis	Example	Planning Proposal
Strips			
Nodes			
Markets			

Pictures by permission Asiyee Tafari

Trader Sector and Display Typologies

One size does not fit all. Analysis as well as planning and design must be specific and appropriate.

Typology	Examples showing different display typologies	Key considerations
Fresh produce		Is the floor/ground surface conducive (the most basic requirement) – is it hardened, is there stormwater drainage? Shade for produce traders, sufficient space allocation, infrastructure design; e.g. tables, the need for cold storage.
Prepared food		Appropriate size of spaces, shelter requirements – usually under some form of cover, infrastructure such as water for washing up, energy, convenient storage for equipment.

Pictures by permission Asiyee Tafari

Typology	Examples showing different display typologies	Key considerations
Specialised products	 	Special infrastructure requirements for specialist products (water, energy, security), potential for destination markets for specialised products with appropriate infrastructure.
Clothing/shoes		Ask questions about why traders display the way they do. It may be customer-focused; but it may relate to permits and enforcement.
Other non-perishables: chips and sweets, electronic goods, toiletries, etc.	 	Note the range of goods as well as the scale of different operations and their needs, from survivalist to more established.
Services: sewing, hair salons, printing and copying, traditional healers, shoeshine, etc.	 	Services traders usually need more enclosed spaces to protect equipment and customers, as well as access to services such as electricity. The kiosk spatial typology is prevalent.
Itinerant/mobile	 	Note where people move and what they are trading. Why do they need to be mobile? To follow customers, or to escape enforcement? Does the infrastructure support the movement of trolleys: stepped, uneven surfaces are a problem.

Pictures: Asijye eTafuleni; Specialised products (right) Andrew Griffin; all by permission Asijye eTafuleni



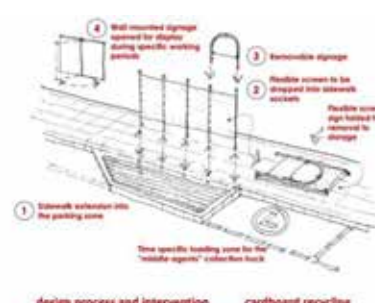
Better 'presentation' of trading in public space might make 'space' for this activity in other ways than the obvious; i.e. proper urban design and infrastructure that specifically addresses the needs of the sector sends important signals about legitimacy and acceptance, and may be a pathway to acceptance of more space being allocated to this activity over time.

provides services and/or makes things work better. Importantly, it also dignifies the activity, and establishes the right of traders to be there. The provision of appropriate trader infrastructure has a major impact on the overall urban aesthetic, so it is essential to appoint experienced professionals to do the design.

The most basic requirement for public space trading is a level, well drained, preferably hardened trading area. Typically, WASH, storage and shelter are needed, in addition to street furniture such as lighting (particularly important for security, and extending trading hours), rubbish bins and seating. Many traders have their own tables and gazebo-type shelters; although for urban aesthetic and management reasons, it may be better to provide these as part of integrated urban place-making infrastructure.

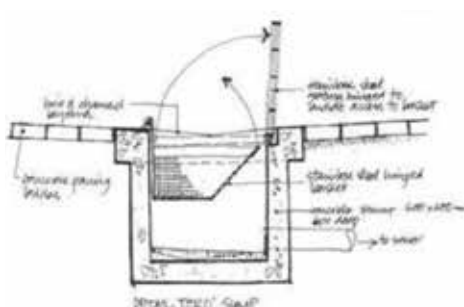
Sidewalks

Bare minimum: hardened, level space that has basic stormwater management, and access to toilets and water. Traders can use their own tables, etc.; and some will also provide their own gazebo-type shelters if this is allowed. Sufficient basic space – in good locations – to accommodate distancing requirements, in addition to existing trading space (as long as public amenities are open and working) would be a good emergency provision.



Lessons in innovation: innovations around removable street furniture

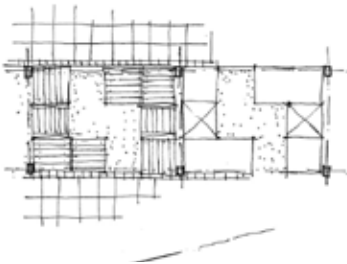
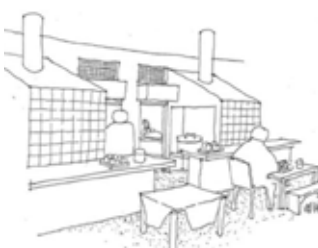
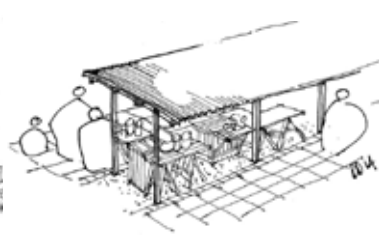
Good stormwater drainage is essential. In some instances, specialised drainage solutions are required. The sump example below was designed to catch the waste from mielie-cooking drums. Grease traps may also be required.



WASH

Temporary WASH facilities would suffice in the short term as an emergency response. Guidelines for WASH facilities are included in section 2.1.4 above.

Infrastructure Guidelines

Storage	Overnight storage makes it more feasible for traders to bring their own tables, gazebos, etc. and if secure enough, to carry more stock than they would sell in a day or carry in one trip from home. Consider the following: How much space do people need? How much can traders pay? Do some traders need cold storage? How do they move their goods between their trading location and their homes or storage areas?  
Lighting	Public lighting is crucial and has both economic and safety implications. For traders who set up and pack away in the dark, it improves safety. Good public lighting in areas that are busy outside of daylight hours (e.g. transport nodes) extends trading hours, effectively creating more trading 'space'.
Shelter	Provision of trading shelters must respond to micro-contextual issues, such as sun and shade, driving rain, pedestrian routes, etc. Shelter provision ranges from very basic covered tables, through linear roof structures and large covered markets, to kiosks or micro-shops. Different scales and types of trading have different needs and different levels of affordability.
	      

Pictures: Richard Dobson; Dennis Gilbert; Asiyeh Taflieni; all by permission Asiyeh Taflieni

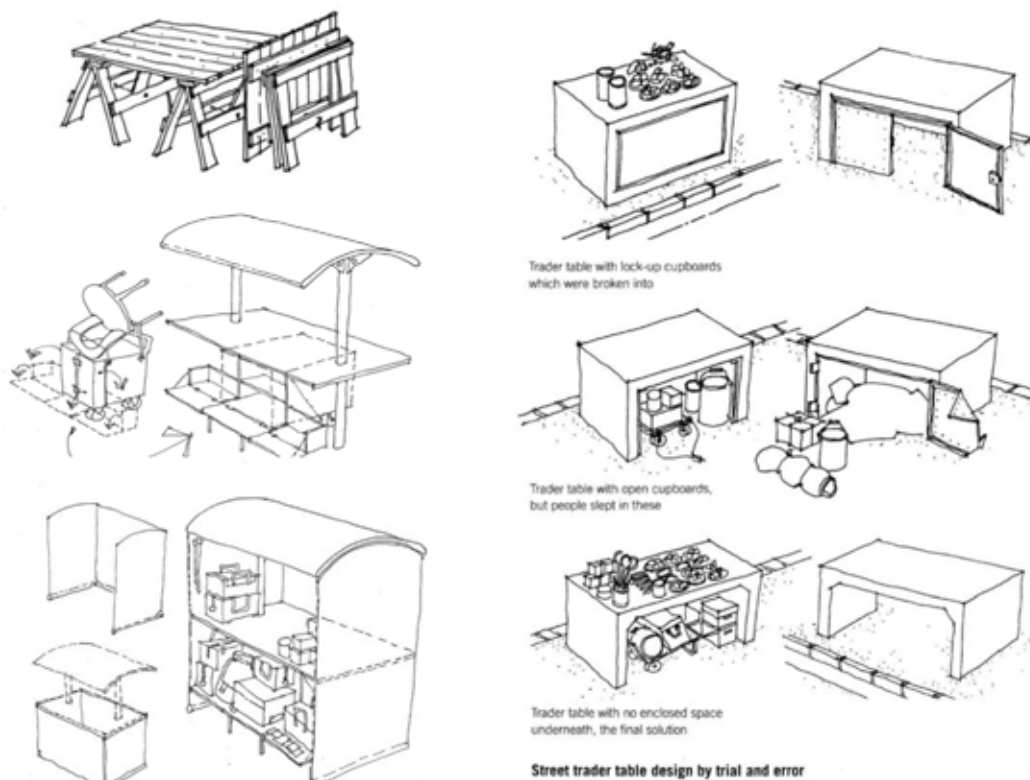


Infrastructure Guidelines

Tables

The most basic form is simple trestle tables that can be packed away daily. Provision of dedicated trader tables helps to create a uniform size and aesthetic; however, the design should be carefully considered. Where these are installed in the road reserve, it is generally necessary to ensure that street furniture such as this is removable.

The examples below are not intended as a template, but to illustrate some optional approaches.



Market facilities

Dedicated market spaces with cover, toilets, storage (unless the market is locked after hours) and (depending on scale) a management structure are an important part of the spectrum of infrastructure provision, and have some distinct advantages for both municipalities and traders (assuming the location is good for business), but it is important to remember that it is not necessary to make this level of infrastructure investment to provide livelihood opportunities.

Business hives

Business hives usually comprise a series of tiny shops (often containers), and are appropriate for specific circumstances. Not everyone – even a trader successful enough to afford it easily – wants this kind of space. An open space in a particularly good location on a street corner or near a commuter hub would out-do a business hive that is more of a destination for many types of trade.

Pictures: (left) Asje e Tafelen; (right) Working in Warwick (Richard Dobson & Caroline Skinner with Jillian Nicholson, 2009, School of Development Studies, UKZN)



Childcare

Childcare is a commonly expressed need in the informal sector, and is a particular challenge because of cost and regulations. An innovative approach is required.

POP-UP CHILDCARE FACILITIES

Asiye eTafuleni is in the process of piloting a 'pop-up' childcare facility that can be erected on the street or in a market, adopting the same philosophy as informal traders. Initial project research showed that the priorities are proximity between primary carer and child, and affordability. This proposal is a potentially sustainable solution.



Pictures: Jo Lees by permission Asiye eTafuleni



7.4.6 Agility and Reversibility in Infrastructure Planning

Because much public space is un-subdivided and therefore part of the road reserve, there are complex issues involved in building permanent infrastructure in that space, and around asset ownership. Rather than regarding trader infrastructure as temporary, there is merit in exploring shorter investment lifecycles, which allows for a future that is unknowable. A shorter 'pay-back' or 'return on investment' period builds in resilience and adaptability, allowing for agile responses as circumstances and demands change. This must be balanced against providing certainty for traders, who must be supported to invest in their businesses; though there are ways other than through building permanent infrastructure to signal certainty, e.g. a different permit regime.

In *The informal Economy Revisited* (Ed Martha Chen & Francois Carre, Routledge, 2020), Rahul Mehrotra writes of "offering alternatives of how to embed softer but perhaps more robust systems in urban form otherwise imagined with aspirations for more permanency". He goes on: "Andrea Branzi advises us on how to think of cities of the future. He suggests that we need to learn to implement reversibility, avoiding rigid solutions and definitive decisions. He also suggests approaches which allow space to be adjusted and reprogrammed with new activities not foreseen and not necessarily planned. Thus, urban design as a practice must acknowledge the need to re-examine permanent solutions as the only mode for the formulation of urban imaginaries, and instead imagine new protocols that are constantly reformulated, readapted, and re-projected in an iterative search for a temporary equilibrium that reacts to a permanent state of flux."

7.5 Sustainable Urban Management and Spatial Governance

The ILO Resolution 204 aims for progressive formalisation of the informal sector. This requires moving away from previous assumptions about how informality must be tolerated, controlled and managed, towards a more developmental

approach. Informal businesses should be embraced and conceptualised as businesses on a trajectory. It is our experience that against all odds, traders continuously try to make their offerings and environment more attractive to their customers, just as formal businesses do. There is a need to understand the challenges of the sector, be responsive in trying to solve them, and provide support, rather than imposing a draconian administrative mindset. The path from survivalist to success must be cleared and supported.

Stakeholder feedback has clearly shown that collaborative governance, as recommended in the Policy guideline, would be much more acceptable to traders and their representative organisations than the top-down governance currently deployed by municipalities.

7.5.1 Consultation, Participation and Buy-in

In order to get buy-in to bring about change and develop new behaviours, trust is essential. Even the most well-meaning initiative or project can result in a disappointing outcome, wasted resources, and/or ongoing conflict. This may be because of a poorly developed brief, lack of understanding of the brief, poor communication, a patronising approach from delivery agents and/or their appointed consultants, and/or unresolved underlying conflicts. Sometimes the issues that arise and sabotage a project do not even seem directly related to the project itself.

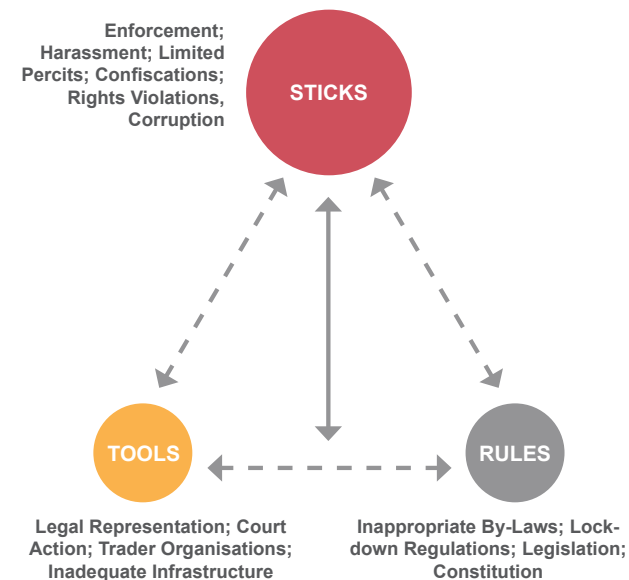
To achieve successful project implementation, joint learning and policy formulation, local government must consult and collaborate meaningfully with affected traders, who are best placed to know their needs and who probably have solutions in mind. The default position is usually that traders must be 'accommodated' and 'provided with' infrastructure; but they are seldom engaged with – despite being a key stakeholder group – around planning and design, even when they would have valuable contributions to make.

Trader organisations such as SAITA, SAITF and StreetNet International, and organisations such as Asiye eTafuleni or WIEGO who work alongside traders, can assist in convening and/or facilitating such engagements.

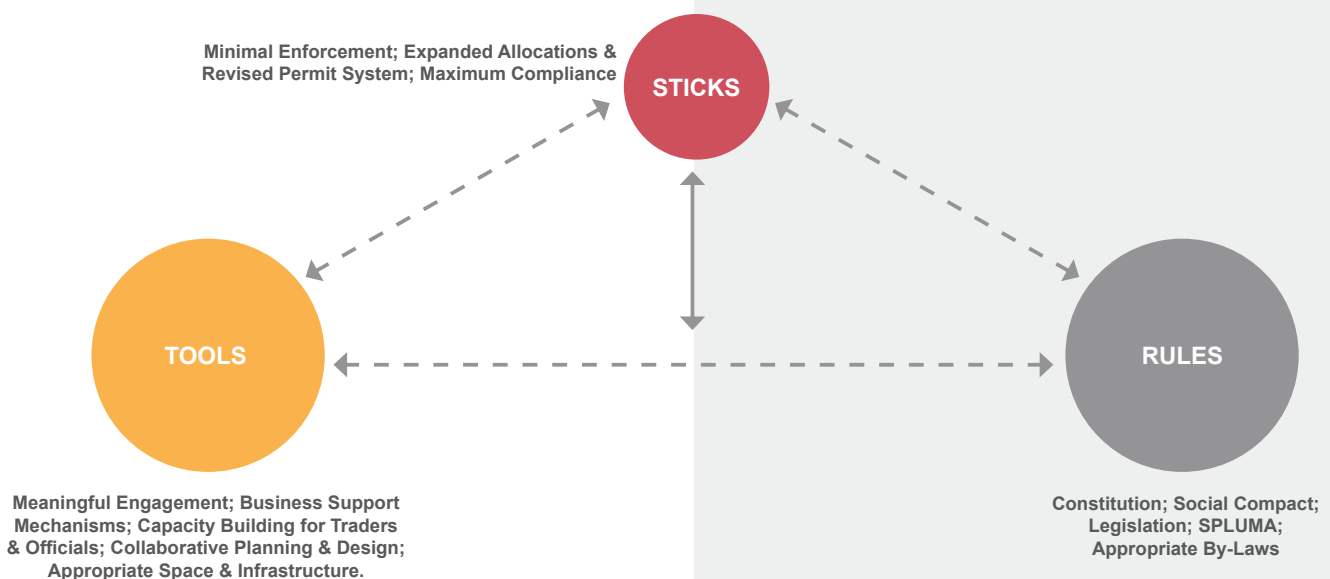
7.5.2 Collaborative Governance

Balancing Regulation, Management and Enforcement

In a dysfunctional (adversarial) relationship, the rules are often inappropriate, and misaligned with the Constitution and administrative justice; the tools are inadequate (infrastructure deficits) and the wrong tools are deployed, such as reverting to court action rather than constructive engagement; and as a result, there is too much emphasis on enforcement. This potentially leads to harassment, punitive actions not commensurate with the infraction (e.g. seizure of goods/termination of livelihood), rights violations and corruption; this is currently the common situation on the ground.



Balancing regulation (rules), management (tools) and enforcement (sticks): Current scenario



Balancing regulation (rules), management (tools) and enforcement (sticks): Desired scenario

In a functional relationship, guided by an embracing rather than a resistant attitude, there are appropriate rules (and only the few that are really necessary), aligned with the constitution, inclusive, and broadly accepted as being in the collective interest; and tools that include proper support mechanisms and infrastructure, meaningful engagement, and appropriate dispute resolution. These allow the role of the stick in the dynamic to be reduced, and for a situation where maximum compliance with minimal enforcement prevails. Social capital grows, and the informal sector can flourish.

Code of Conduct

The Framework By-Law recommendations include the proposal that some form of code of conduct is developed to guide the behaviour of government as well as traders.

Public space is a resource that belongs to everyone – ‘the public’ – but there is clearly a need for appropriate rules (in addition to health protocols that are a priority now) for the uses of this resource, to avoid a ‘tragedy of the commons’ scenario, i.e. one in which the resource is abused and ends up not working for anyone. (Note that all public space is not equal – location is key.) The guidelines in this report are intended to provide enough of a framework to facilitate a collaborative developmental approach to making these ‘rules’, which should include the proposed Code of Conduct; aim for minimum enforcement, and maximum compliance; and allow for flexibility, adaptation, and resilience.



Public Space as a Commons

The obligations of the SDGs, and the UN Habitat's Global Public Space Toolkit, are an important point of reference.

The Toolkit quotes the UN-Habitat's 2012 State of the World Cities Report 14, and advocates for: "...the need of cities to enhance the public realm, expand public goods and consolidate rights to the 'commons' for all as a way to expand prosperity. This comes in response to the observed trend of enclosing or restricting these goods and commons in enclaves of prosperity, or depleting them through unsustainable use."

(unhabitat.org/sites/default/files/2019/10/global-public-space-toolkit-from-global-principles-to-local-policies-and-practice.pdf)

Many arguments against public space trading are based on trading spaces that are currently dysfunctional, without acknowledging that in most of these instances, trading is poorly retrofitted into spaces and urban form never designed to accommodate these activities. The opportunity now is to pilot and test ideas in order to learn by doing, which may lead to long-term and long overdue urban transformation.

The Warwick project in Durban, which gave rise to the first informal economy policy, is a useful case-study. It began as a post-apartheid pilot in intentional inclusion of (and significant investment in) informality in urban public spaces; and its lessons continue to influence policy and thinking around the informal economy, both in South Africa and abroad.

The *Policy Guidelines* acknowledge that the public sector trading environment is fluid, especially in the context of an emergency, and recommends

that ongoing experimentation, pilot projects and learning should inform governance, regulation, and spatial planning responses to support the informal sector.

8. A Proposition for the Future

There is huge potential for multiple positive outcomes as the result of a proactive local government health and safety pandemic response.

Urban spatial transformation is possible. Urban management can be enhanced through innovation tested during the emergency. The informal sector can recover and thrive, providing opportunities for the existing and 'new' jobless, thus assisting the broader economic recovery. Public health will improve beyond the sector through provision of public WASH infrastructure. Collaborative management aligned to constitutional obligations will significantly reduce the administrative and enforcement burden on municipalities.



THOUGHT EXPERIMENT: AN EMERGENCY RESPONSE WITH LEARNING POTENTIAL

What if all current permits for a pilot project area were abolished?
What if new spaces are created, including some space never used for trading before?
The space has a hard ground surface and is well drained.
WASH infrastructure is provided.

In a part of Barcelona, street parking bays are embedded with smart chips that connect to a phone app. Drivers use the app to locate vacant bays.

Imagine if, for a defined period, anyone who agrees to participate in the pilot could apply for permission to trade, and was issued with a geo-referenced smart permit that was linked to electronic chips embedded in the area – but not linked directly to a specific trading site.

What if the permit holders could self-organise around a few key rules that they participate in establishing? The rules must encompass the pandemic health protocols, including physical distancing. Only the health and safety rules are enforced by the municipality. People can arrange themselves as they wish, within the few agreed rules.

The smart permits track their position and time at that position. Planners map the trading patterns using the smart data collection and photographs of the trading activities. Permit holders agree to a monthly qualitative survey.

Imagine what everyone would learn?
Imagine the collaborative management process design that could emerge?





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NOTES





“ Due to the complexities of issues in the informal economy, local government officials cannot succeed by themselves in dealing with these overwhelming issues.




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