



Newcastle Municipality

Street Trading By-Laws  
Amended

M.N. 232/2000

Published: 19.06.2003

THE Newcastle Local Council, acting under the authority of section 268 of the Local Authorities Ordinance, No. 25 of 1974, read together with section 6A (1) of the Businesses Act No. 71 of 1991, hereby publishes Street Trading Bylaws made by the Council at its meeting held on 25 October 2000, which bylaws shall come into operation on the date of publication of this notice.

## STREET TRADING BYLAWS

### 1. Definitions

- (1) In these bylaws, except as otherwise expressly provided or unless the context otherwise requires —  
 “approval” means approval by the authorized official and “approve” has a corresponding meaning;

“authorized official” means an official of the Council to whom it has delegated a duty, function or power under these bylaws, in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official;

“Council” means the Council of the Newcastle Local Council and includes, in relation to a duty, function or power under these bylaws, a committee or official of the Council to whom it has delegated that duty, function or power;

“local authority service” means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse, sewage or stormwater or for the generation, impounding, storage, purification or supply of water, gas or electricity;

“local authority service works” means all property or works of whatsoever nature necessary or desirable for or incidental to any local authority service;

“nuisance” bears the meaning given to it by the Ordinance;

“Ordinance” means the Local Authorities Ordinance, 25 of 1974;

“prescribed” means prescribed by the Council by resolution;

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

“public place” means a public place as defined in section 1 of the Ordinance;

“public road” means a public road as defined in section 1 of the Road Traffic Act, 93 of 1996;

“roadway” means a roadway as defined in section I of the Road Traffic Act, 93 of 1996;

“sell” includes —

- (a) barter, exchange or hire;
- (b) display, expose, offer or prepare of sale;
- (c) store with a view to sell; or
- (d) provide a service for reward,

and “sale” has a corresponding meaning;

“sidewalk” means a sidewalk as defined in section 1 of the Road Traffic Act, 93 of 1996;

“street trader” means a person who carries on the business of street trading;

“street trading” means the selling of any goods or the supplying or offering to supply any service for reward, as a street vendor, peddler or hawker in a public road or public place but does not include the sale of newspapers only;

“the Act” means the Businesses Act, 71 of 1991, and includes the regulations made thereunder;

“vehicle” includes —

- (a) a self-propelled vehicle;
- (b) a trailer;
- (c) a hand-drawn or propelled vehicle; and

“verge” means a verge as defined in section 1 of the Road Traffic Act, 93 of 1996.

- (2) In these bylaws, unless the context otherwise indicates, any word or expression defined in the Act shall bear the meaning so given to it.

- (3) For the purposes of these bylaws a single act of offering for sale or of selling goods or services in or from a public road or public place constitutes the carrying on of the business of a street trader.

- (4) For the purposes of these bylaws a reference to a person carrying on the business of street trader shall include any employee of any such person.

### 2. Prohibitions

No person shall carry on the business of a street trader —

- (a) at a place or in an area declared under section 6A(2)(a) of the Act as a place or area in which the carrying on of street trading is prohibited;

- (b) on a verge, contiguous to

- (i) a building belonging to, or occupied solely by, the State or the Council;
- (ii) a church or other place of worship; or
- (iii) a building declared to be a national monument under the National Monuments Act, 28 of 1969,

except to the extent that the carrying on of such business is permitted by a notice of sign erected or displayed by the Council and in compliance therewith;

- (c) on a verge contiguous to a building in which business is being carried on by any person who solely or mainly sells goods of the same or similar nature as goods being sold by the street trader concerned, without the consent of that person;

- (d) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;

- (e) at a place where it substantially obstructs pedestrians in the use of a sidewalk or take up a position or deposit his property on a sidewalk so as to do so;

- (f) at a place where it causes an obstruction to vehicular traffic;

- (g) at a place where it causes an obstruction in front of —

- (i) an entrance to or exit from a building;
- (ii) a fire hydrant;

- (h) on a stand or in any area contemplated in section 6A(3)(b) of the act if he is not in possession of written approval of the Council that he has hired such stand, structure or area from the Council or that it has otherwise been allocated to him.”

- (i) in contravention of the terms and conditions of the lease or allocation to him of a stand or area contemplated in section 6A(3)(b) and (c) of the Act.

### 3. Restrictions

- (1) No person carrying on the business of a street trader shall —
  - (a) if such business is carried on any public road or public place
    - (i) sleep overnight at the place of such business; or
    - (ii) erect any permanent structure at the business site for the purpose of providing shelter; without prior written approval of the Council;
  - (b) carry on such business in such a manner as to —
    - (i) create a nuisance;
    - (ii) damage or deface the surface of any public road or public place or any public or private property; or
    - (iii) create a traffic hazard;
  - (c) other than in a refuse receptacle approved or provided by the Council, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any litter on any land or premises or on any public road or public place;
  - (d) obstruct access to a service or to service works of the Council or of the State or any statutory body;
  - (e) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
  - (f) obstruct access to a pedestrian arcade or mall;
  - (g) carry on business or take up a position or place his property on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the Council for the purposes of these bylaws;
  - (h) carry on such business in a place or area in contravention of any restriction imposed by Council resolution in terms of section 6A(2)(a) of the Act;
  - (i) obstruct access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;
  - (j) obstruct access to or the use of street furniture such as bus passenger benches or shelters and queuing lines, refuse disposal bins, and other facilities designed for the use of the general public; or
  - (k) obscure any road traffic sign displayed in terms of the Road Traffic Act, 1996, and regulations made thereunder or any marking, notice or sign displayed or made in terms of these bylaws.
- (2) The Council shall reserve the right to restrict the number of street traders

### 4. Cleanliness of place of business and protection of public health

Every street trader shall —

- (a) unless prior written approval exempting him from the provisions of this paragraph has been given by the Council, daily remove from any public road or public place at the end of each trading day or at the conclusion of trading all goods, moveable structures, waste, packaging material, stock and equipment of whatsoever nature which are utilized in connection with such trading;
- (b) carry on this business in such a manner as not to be a danger or threat to public health or public safety;
- (c) at the request of an officer or an employee of the Council move or remove anything so that the place of business may be cleaned;
- (d) keep the area or stand occupied by him for the purpose of his business as well as his property in a clean and sanitary condition and free of litter; or
- (e) if his activities involve the cooking or other preparation of food, take steps to ensure that no fat, oil or substance drops or overflows onto the surface of a sidewalk or splashes against a building or other structure.

### 5. Trading in parks and gardens

No street trader shall carry on business in a garden or park to which the public has the right of access except with the prior written approval of the Council's Director of Community Services or other authorized official and in compliance with any conditions imposed by him when granting such consent.

### 6. Objects used for display of goods

A street trader shall ensure that any structure, container, surface or other object used by him for the preparation, display, storage or transportation of goods —

- (a) is maintained in a good state of repair and in a clean and sanitary condition; and
- (b) is not so placed or stacked so as to constitute a danger to any person or so as to be likely to injure any person.

### 7. Removal and impoundment

- (1) For the purpose of this bylaw "goods" includes any receptacle, vehicle or movable structure.
- (2) An officer may remove and impound goods —
  - (a) which he reasonable suspects are being used or are intended to be used or have been used in or in connection with the carrying on of any business of a street trade, and
  - (b) which he finds at a place where the carrying on of such business is restricted in terms of bylaw 3(h) or bylaw 5 or prohibited in terms of bylaw 2(a) to (g) and which in his opinion constitutes an infringement of such provision.whether or not such goods are in the possession or under the control of any person at the time of such removal or impoundment.
- (3) Any officer acting in terms of sub-bylaw (2) shall
  - (a) except in the case of goods which have been left or abandoned, issue to the person carrying on the business of street trader a receipt of any goods so removed and impounded; and
  - (b) forthwith deliver any such goods to the authorized official.
- (4) Neither the Council nor a councillor, official, officer or employee of the Council shall be liable for any loss of or damage to any goods removed and impounded in terms of this section.

### 8. Disposal of impounded goods

- (1) Any perishable goods removed and impounded in terms of section 7(2) may at any time after the impoundment thereof be sold or destroyed by the Council and in the case of a sale of such goods the proceeds thereof, less any expenses incurred by the Council in connection with the removal, impoundment and sale of such goods, shall, upon presentation of the relevant receipt issued in terms of section 7(3)(a), be paid to the person who was the owner of such goods when such goods were impounded. If such owner fails to claim the said proceeds within three months of the date on which such goods were sold, such proceeds shall be forfeited to the Council.
- (2) The owner of any goods (other than perishable goods), dealt with by the Council in terms of subsection 1, impounded in terms of section 7(2) who wishes to claim the return of such goods shall, within a period of one month of the date of the impoundment of such goods, apply to the Council and shall present the relevant receipt issued in terms of section 7(3)(a), failing which such goods may be sold by the Council and in the event of sale of such goods the provisions of subsection (1) relating to the proceeds of a sale shall apply.
- (3) If the owner of any goods impounded in terms of section 7(2) claims the return of such goods from the Council and such owner is unable or refuses to refund any expenses incurred by the Council in connection with the removal and impoundment of such goods, such goods may be sold by the Council and the proceeds of any sale of such goods less any such expenses and the costs of such sale shall be paid to such owner.

(4) In the event of the proceeds of any sale of goods contemplated by this section not being sufficient to defray any expenses incurred by the Council in connection with the removal, impoundment and sale of such goods, the owner of such goods shall remain liable for so much of such expenses as is not defrayed by the proceeds of the sale of such goods.

9. General offences and penalties

(1) Any person who-

- (a) contravenes or fails to comply with any provision of these bylaws;
- (b) ignores, disregards or disobeys any notice, sign or marking displayed or erected for the purposes of these bylaws;
- (c) contravenes or fails to comply with any approval or condition granted or imposed in terms of these bylaws;
- (d) for the purpose of these bylaws makes a false statement knowing it to be false in a material particular or deliberately furnishes false or misleading information to an authorized official or officer;
- (e) threatens, resists, interferes with or obstructs an authorized official, officer or employee of the Council in the performance of his powers, duties or functions under these bylaws,

shall be guilty of an offence and on conviction be liable to a fine or imprisonment for a period not exceeding three months.

(2) When an employee of a street trader performs any act or is guilty of any omission which constitutes an offence under these bylaws the employer shall be deemed to have performed the act or to be guilty of the omission himself and he shall be liable on conviction to the penalties mentioned in sub-bylaw (1) unless he can prove that —

- (a) in performing the act or being guilty of the omission the employee was acting without his knowledge or permission;
- (b) all reasonable steps were taken by him to prevent the act or omission in question; and
- (c) it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.

(3) The fact that an employer issued instructions forbidding any act or omission referred to in sub-bylaw (2) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of that sub-bylaw.

(4) When an employer is by virtue of the provisions of sub-bylaws (2) liable for anything done or omitted by his employee, then that employee shall also be liable to prosecution for the offence.

M.N. 232, 2000

14 Desember 2000

Die Newcastle Plaaslike Raad, handelende ooreenkomstig artikel 268 van die Ordonnansie op Plaaslike Owerhede, Nr. 25 van 1974, saamgelees met artikel 6A (1) van die Wet op Besighede, 71 van 1991, publiseer hiermee Verordeninge betreffende Straathandel soos aangeneem deur die Raad tydens 'n vergadering gehou op 25 Oktober 2000, welke verordeninge in werking sal tree op die datum van publikasie van hierdie kennisgewing.

## VERORDENINGE BETREFFENDE STRAATHANDEL

## 1. Woordomsrywings

- (1) In hierdie verordeninge, tensy dit anders uitdruklik bepaal word of tensy die samehang anders vereis, beteken —
- “die Wet” die Wet op Besighede, 71 van 1991, en sluit dit die regulasies daarkragtens uitgevaardig, in;
- “eiendom” met betrekking tot 'n straathandelaar, enige goedere, 'n vergaarbak, voertuig of verplaaasbare stellasië wat in verband met die bedryf van sy besigheid as sodanig gebruik word of daarvoor gebruik staan te word;
- “gemagtigde beampte” 'n beampte van die Raad aan wie die Raad kragtens hierdie verordeninge 'n plig, funksie of bevoegdheid gedelegeer het met betrekking tot die uitoefening of verrigting van genoemde plig, funksie of bevoegdheid en sluit dit 'n werknemer wat onder die beheer en in opdrag van so 'n beampte optree, in;
- “goedkeuring” goedkeuring deur die gemagtigde beampte en het “goedkeur” 'n ooreenstemmende betekenis;
- “oorlas” die betekenis wat in die Ordonnansie daaraan gegee word;
- “openbare pad” 'n openbare pad soos in artikel 1 van die Padverkeerswet, 93 van 1996, omskryf;
- “openbare plek” 'n openbare plek soos in artikel 1 van die Ordonnansie omskryf;
- “Ordonnansie” die Ordonnansie op Plaaslike Owerhede, 25 van 1974;
- “plaaslike owerheidsdiens” 'n stelsel wat deur of namens 'n plaaslike owerheid bedryf word vir die versameling, vervoer of afvoer, behandeling of wegdoen van afval, riool- of stormwater, of vir die produksie, opdamming, berging, suiwering of voorsiening van water, gas of elektrisiteit;
- “plaaslike owerheidsdienswerke” alle eiendom of werke van watter aard ook al wat nodig of wenslik is vir, of gepaard gaan met 'n plaaslike owerheidsdiens;
- “Raad” die Stadsraad van die Newcastle Plaaslike Raad en sluit dit met betrekking tot 'n plig, funksie of bevoegdheid kragtens hierdie verordeninge, 'n komitee of beampte van die Raad in aan wie die Raad so 'n plig, funksie of bevoegdheid gedelegeer het;
- “ryvlak” 'n ryvlak soos in artikel 1 van die Padverkeerswet, 93 van 1996, omskryf;
- “soom” 'n soom soos in artikel 1 van die Padverkeerswet, 93 van 1996, omskryf;
- “straathandel” die verkoop van enige goedere of die lewer of aanbied van 'n diens vir vergoeding deur 'n straatverkoper, venter of marskramer in 'n openbare pad of op 'n openbare plek, maar dit sluit nie die verkoop van slegs nuusblaaie in nie;
- “straathandelaar” 'n persoon wat op straat handel dryf;
- “sypaadjie” 'n sypaading soos in artikel 1 van die Padverkeerswet, 93 van 1996, omskryf;
- “verkoop” sluit in —
- ruil, verruil of verhuur;
  - vir verkoop, vertoon, uitstal, aanbied of voorberei;
  - berg met die voorneme om te verkoop; of
  - 'n diens vir vergoeding lewer-
- en het “verkoping” 'n ooreenstemmende betekenis;
- “voertuig” sluit in —
- 'n selfgedrewe voertuig;
  - 'n sleepwa;
  - 'n voertuig wat met die hand getrek of aangedryf word;
- “voorgeskryf” deur die Raad by besluit voorgeskryf.
- (2) Tensy die samehang anders bepaal, het enige woord of uitdrukking wat in die Wet omskryf is, in hierdie verordeninge die betekenis wat as sodanig daaraan gegee is.
- (3) By die toepassing van hierdie verordeninge maak 'n enkele handeling van goedere of dienste te koop aan te bied of te verkoop in of van 'n openbare pad of openbare plek af, die bedryf van 'n straathandelaarsbesigheid uit.
- (4) By die toepassing van hierdie verordeninge sluit 'n verwysing na iemand wat 'n straat-handelaarsbesigheid bedryf, 'n werknemer van enige sodanige persoon in.

## 2. Verbodsbepalings

Niemand mag as 'n straathandelaar handel dryf-

- op 'n plek of binne 'n gebied wat kragtens artikel 6A(2)(a) van die Wet as 'n plek waar-op of 'n gebied waarbinne straathandel verbode is, verklaar is nie;
- op 'n soom aanliggend aan —
  - 'n staats- of raadsgebou wat uitsluitlik deur die Staat of die Raad geokkupeer word;
  - 'n kerk of ander plek vir godsdiens-beoefening nie; of
  - 'n gebou wat kragtens die Wet op Nasionale Gedenkwaardighede, 28 van 1969, tot 'n nasionale gedenk-waardigheid verklaar is nie.

behalwe in die mate waarin die bedryf van sodanige besigheid veroorloof word by wyse van 'n deur die Raad opgerigte of vertoonde kennisgewing of teken, en dit daaraan voldoen;
- op 'n soom aanliggend aan 'n gebou waarin 'n besigheid bedryf word deur iemand wat uitsluitlik of hoofsaaklik goedere van die-selfde of 'n soortgelyke aard verkoop as goedere wat deur die betrokke straathandelaar verkoop word nie, tensy sodanige persoon se toestemming daartoe verkry is;

- (d) op sodanige helfte van 'n openbare pad aanliggend aan 'n gebou wat vir woondoel-eindes gebruik word nie, indien die eienaar of persoon in beheer of enige okkupeerder van die gebou beswaar daarteen aanteken;
  - (e) op 'n plek waar dit voetgangerverkeer op 'n sypaadjie weselik belemmer of 'n plek op 'n sypaadjie inneem of sy eiendom sodanig daarop neersit dat dit sodanige verkeer belemmer nie;
  - (f) op 'n plek waar dit voertuigverkeer belemmer nie;
  - (g) op 'n plek waar dit 'n versperring veroorsaak voor —
    - (i) 'n ingang tot of uitgang uit 'n gebou; of
    - (ii) 'n brandkraan nie;
  - (h) *op 'n standplaas of binne enige in artikel 6A(3)(b) van die wet bedoelde gebied indien hy nie oor 'n skriftelike bewys van die Raad beskik dat hy so 'n standplaas, struktuur of gebied van die Raad gehuur het of dit andersins aan hom toegewys is nie.*
- (i) in stryd met die huurbepalings en —voorwaardes betreffende, of die toewysing aan hom van, 'n in artikel 6A(3)(b) and (c) van die Wet bedoelde standplaas of gebied nie.

### 3. Beperkings

- (1) Niemand-wat 'n straathandelaarsbesigheid bedryf, mag —
- (a) indien sodanige besigheid op 'n openbare pad of openbare plek bedryf word —
    - (i) oornag op die plek waar sodanige besigheid bedryf word, slaap nie; of
    - (ii) enige permanente struktuur op die besigheidsterrein oprig met die doel om skuiling te voorsien nie;
 tensy hy vooraf die Raad se skriftelike goedkeuring bekom het;
  - (b) sodanige besigheid op so 'n wyse bedryf dat dit —
    - (i) 'n oorlas veroorsaak nie;
    - (ii) die oppervlak van 'n openbare pad of openbare plek of enige openbare of private eiendom beskadig of skend nie;
    - (iii) verkeersgevaar daarstel nie;
  - (c) enige rommel op 'n stuk grond of op 'n perseel of op 'n openbare pad of openbare plek in enigets behalwe in 'n vullis-opgaarbak wat deur die Raad goedgekeur of voorsien is, opgaar, stort, berg of gooi of veroorloof of toelaat dat dit daarop opgegaar, gestort, geberg of gegooi word nie;
  - (d) toegang tot 'n diens of tot dienswerke van die Raad of van die Staat of van 'n statutêre liggaam versper nie;
  - (e) dit vir persone wat 'n sypaadjie gebruik, moeilik maak om uitgestalde goedere in die vertoonvensters van sakeonder-nemings te besigtig of die sigbaarheid van sodanige goedere belemmer nie;
  - (f) toegang tot 'n voetgangersdeurloop of —wandellaan versper nie;
  - (g) in stryd met 'n kennisgewing of teken wat die Raad by die toepassing van hierdie verordeninge opgerig het of vertoon, 'n besigheid op 'n gedeelte van 'n sypaadjie of openbare plek bedryf of sy plek daarop inneem of sy eiendom daarop plaas nie;
  - (h) so 'n besigheid op 'n plek of binne 'n gebied bedryf sodat dit in stryd is met enige beperking van die Raad ingevolge artikel 6A(2)(a) van die Wet by besluit gestel het nie;
  - (i) toegang tot voetgangeroorgange, parkeer- of laaivakke of ander geriewe vir voertuig- of voetgangerverkeer versper nie;
  - (j) toegang tot, of die gebruik van, straattoehore soos buspassasiers-banke of —skuilings en toustaanbiede, asook vulliswegdoenblikke en ander geriewe wat vir die breë publiek se gebruik bestem is, belemmer nie;
  - (k) die sigbaarheid van enige padverkeerstekens wat ingevolge die Padverkeerswet, 1996, en die regulasies daar-kragens uitgevaardig, vertoon word, of enige merk, kennisgewing of teken wat ingevolge hierdie verordeninge vertoon word of aangebring is, belemmer nie.
- (2) Die Raad behou die reg voor om die aantal straathandelaars te beperk.

### 4. Sindelikhed van besigheidsplek en beveiliging van openbare gesondheid

Elke staatshandelaar moet —

- (a) aan die einde van elke handelsdag of na afloop van sake vir die dag, alle goedere, verplaasbare stelliasies, afval, verpakkings-materiaal, voorraad en enige toerusting van watter aard ook al wat vir sodanige handel-dryfdoeleindes gebruik word, van 'n openbare pad of openbare plek af verwyder, tensy hy vooraf die Raad se skriftelike goedkeuring waarkragens hy van die bepalinge van hierdie paragraaf vrygestel word, bekom het;
- (b) sy besigheid op so 'n wyse bedryf dat dit nie die publiek se gesondheid of veiligheid in gevaar stel of dit bedreig nie;
- (c) enigets op versoek van 'n beampte of werknemer van die Raad verskuif of verwyder sodat die gebied waar hy handel dryf, skoongemaak kan word;
- (d) die gebied of standplaas wat hy vir handels-doeleindes okkupeer, asook sy eiendom, in 'n skoon, sindelike en rommelvry toestand hou;
- (e) indien sy bedrywighede die gaarmaak of ander bereiding van voedsel behels, stappe doen ten einde toe te sien dat geen vet, olie of ander stof op die oppervlak van die sypaadjie drup of daarvoor uitloop of teen 'n gebou of ander bouwerk spat nie.

### 5. Die handel dryf in parke en tuine

Geen straathandelaar mag in 'n tuin of park waartoe die publiek toegangsreg het, handel dryf nie, tensy hy vooraf die Raad se Uitvoerende Direkteur van Gemeenskaps-dienste of ander gemagtigde beampte se skriftelike goedkeuring daartoe bekom het en aan enige voorwaardes wat laasgenoemde by die verlening van sodanige toestemming stel, voldoen.

### 6. Voorwerpe wat vir die uitstal van goedere gebruik word

'n Straathandelaar moet toesien dat enige stelliasie, houder, oppervlak of ander voorwerp wat hy vir die voorbereiding, uitstalling, berging of vervoer van goedere gebruik —

- (a) in 'n heel, skoon en sindelike toestand gehou word;
- (b) nie so geplaas of gestapel word dat dit 'n persoon in gevaar stel of 'n persoon moontlik kan beseer nie.

### 7. Verwydering en inbeslagneming

(1) By die toepassing van hierdie artikel beteken "goedere" ook vergaarbak, voertuig of verplaasbare stelliasie.

- (2) 'n Amptenaar kan enige goedere verwyder en in beslag neem —
  - (a) wat na sy redelike vermoede gebruik word of bedoel is om gebruik te word of wat gebruik is in of in verband met die dryf van 'n straathandelaarsbesigheid; en
  - (b) wat hy aantref op 'n plek waar die dryf van so 'n besigheid ingevolge artikel 3(h) of artikel 5 beperk of ingevolge artikel 2(a) tot (g) verbied word, en wat na sy mening 'n oortreding van sodanige bepaling uitmaak;
 ongeag of sodanige goedere ten tyde van sodanige verwydering of inbeslagneming aan enige persoon behoort of deur hom beheer word, al dan nie.
- (3) 'n Amptenaar wat ingevolge subartikel (2) optree, moet —
  - (a) behalwe in die geval van goedere wat agtergebly het of agtergelaat is, 'n ontvangsbewys vir enige goedere aldus verwyder of in beslag geneem, uitreik aan die persoon wat as 'n straathandelaar handel dryf; en
  - (b) enige sodanige goedere onverwyld aan die gemagtigde beampte lewer.
- (4) Nog die Raad nog 'n raadslid, beampte, amptenaar of werknemer van die Raad is aanspreeklik ten opsigte van enige verlies of diefstal of ... wat ingevolge hierdie artikel verwyder en in beslag geneem is.

8. **Beslissing oor goedere waarop belag gelê is**

- (1) Enige bederfbare goedere wat ingevolge artikel 7(2) verwyder is en waarop beslag gelê is mag te eniger tyd na die beslag-legging daarop deur die Raad verkoop of vernietig word, en indien sodanige goedere verkoop word sal die opbrengs daarvan, minus enige koste deur die Raad aange-gaan in verband met die verwydering van, beslaglegging op en verkoop van sodanige goedere by die voorlegging van die kwitansie uit-gereik ingevolge artikel 7(3)(a), aan die persoon betaal word wat die eienaar van die goedere was ten tye van die beslaglegging. Indien sodanige eienaar versuim om gemelde opbrengs binne drie maande na die datum van verkoop van sodanige goedere te eis, sal die opbrengs daarvan aan die Raad verbeur word.
- (2) Die eienaar van enige goedere (anders as bederfbare goedere) waarmee die Raad ingevolge subartikel (1) gehandel het, waarop ingevolge artikel 7(2) beslag gelê is wat die teruggawe van sodanige goedere opeis, moet binne een maand na die datum van beslaglegging op sodanige goedere by die Raad aansoek doen en moet die kwitansie wat ingevolge artikel 7(3)(a) uitgereik is voorlê, by ontstentenis waarvan die Raad sodanige goedere mag verkoop, en in geval van die verkoop van sodanige goedere sal die bepalings van subartikel (1) betreffende die opbrengs van 'n verkoop van toepassing wees.
- (3) Indien die eienaar van enige goedere waarop ingevolge artikel 7(2) beslag gelê is die teruggawe van sodanige goedere van die Raad opeis en sodanige eienaar nie in staat is nie of weier om enige onkoste wat deur die Raad in verband met die verwydering van en beslaglegging op sodanige goedere aangegaan is te betaal, mag sodanige goedere deur die Raad verkoop word en die opbrengs van enige verkoop van sodanige goedere minus enige sodanige onkoste en die koste van sodanige verkoping aan sodanige eienaar betaal word.
- (4) Indien die opbrengs van die verkope van enige goedere soos deur hierdie artikel beoog nie voldoende is om die onkoste deur die Raad aange-gaan in verband met die verwydering van, beslaglegging op en verkoop van sodanige goedere gedek word nie.

9. **Algemene misdrywe en strawwe**

(1) Iemand wat –

- (a) enige bepaling van hierdie verordeninge oortree of versuim om daaraan te voldoen;
- (b) 'n kennisgewing, teken of merk wat vir die doeleindes van hierdie verordeninge vertoon word of aangebring is, ignoreer, verontagsaam of nie gehoorsaam nie;
- (c) enige goedkeuring of voorwaarde wat ingevolge hierdie verordeninge verleen of toegestaan is, verontagsaam of ver-suim om daaraan te voldoen;
- (d) by die toepassing van hierdie verorde-ninge 'n vals verklaring doen in die wete dat dit in enige wesenslike besonderheid onjuis is, of opsetlik onjuiste of mis-leidende inligting aan 'n gemagtigde beampte of amptenaar verstrek; of
- (e) 'n gemagtigde beampte, 'n amptenaar of werknemer van die Raad tydens die uitoefening van sy bevoegdheid en pligte of die verrigting van sy funksies kragtens hierdie verordeninge dreig, teenstaan, hom hinder of dwarsboom,

is aan 'n misdryf skuldig en stel hom by skuldigbevinding bloot aan 'n boete of 'n maksimum gevangenisstraf van drie maande.

- (2) Wanneer 'n werknemer van 'n straathandelaar 'n handeling uitvoer of skuldig is aan 'n versuim wat kragtens hierdie verordeninge 'n misdryf uitmaak, word dit geag dat die werkgewer self die handeling uitgevoer het of aan die versuim skuldig was en stel hy hom by skuldigbevinding bloot aan die in subartikel (1) vermelde strawwe, tensy hy kan bewys dat –
  - (a) deur die handeling uit te voer of aan die versuim skuldig te wees, die werknemer sonder sy medewete of toestemming opgetree het;
  - (b) hy alle redelike stappe gedoen het om die betrokke handeling of versuim te voorkom; en
  - (c) die werknemer buite die bestek van sy bevoegdheid of die loop van sy werkverrigting opgetree het deur 'n handeling van sodanige aard uit te voer.
- (3) Die feit dat 'n werkgewer 'n opdrag gegee het waarkragtens 'n in subartikel (2) vermelde handeling of versuim belet word, word nie op sigself as voldoende bewys aanvaar dat by al die stappe waarna in paragraaf (b) van genoemde subartikel verwys word, gedoen het nie.
- (4) Wanneer 'n werkgewer uit hoofde van die bepalings van subartikel (2) aanspreeklik gehou word vir enigiets wat deur sy werknemer verrig of versuim is, stel genoemde werknemer hom ook bloot aan vervolging vir die misdryf.

UMKHANDLU DOLOBHA wase-Newcastle, ngokugunyazwa yisigaba 268 se-Odinensi yoMaziphathe baseKhaya, No. 25 ka 1974, ifundwa noMthetho wezamaBhizinisi, 1991 (uMthetho No. 71 ka 1991) ngalokhu ushicilela iMithetho yedolobha yokuhweba esitaladini eyenziwe nguMkhandlu emhlanganweni wawo owawungomhlaka 25 Okthoba 2000, leyo mithetho yedolobha eyoqala ukusebenza emva kokushicilelwa kwalesi saziso.

### IMITHETHO YEDOLOBHA YOKUHWEDA ESITALADINI

#### 1. Izincazelo

- (1) Kulemithetho yedolobha, ngaphandle uma kuhlinzekwe ngenye indlela noma uma ingqikithi ikhomba okunye:

“imvume” kusho imvume egunyazwe yisiphathimandla; kanti

“ukuvuma” kunencazelo ehambisanayo;

“isiphathimandla esigunyaziwe” kusho isiphathimandla soMkhandlu esinikwe isibopho, umsebenzi noma amandla ngaphansi kwalemithetho yedolobha, maqondana nokwenza lesi sibopho, umsebenzi noma amandla kubandakanya nanoma yimuphi umsebenzi osebenza ngaphansi kwesandla noma oqondiswa yileso siphathimandla;

“uMkhandlu” kusho uMkhandlu wase-Newcastle futhi ubandakanya, maqondana nesibopho, umsebenzi noma amandla ngaphansi kwalemithetho yedolobha, ikomidi noma isiphathimandla soMkhandlu esinikwe lesi sibopho, umsebenzi noma amandla;

“imisebenzi kamaziphathe wendawo” kusho okwenziwa amaziphathe wendawo noma egameni likamaziphathe wendawo ukuqoqwa, ukuthwalwa, ukwelashwa kanye nokulahlwa kwemfucumfucu, ukuchithwa kwendle noma amanzi emvula noma ukwenziwa, ukubanjwa, ukugcina, ukuhlazwa noma ukulethwa kwamanzi, igesi noma ugesi;

“uphiko lwemisebenzi kamaziphathe wendawo” kusho yonke impahla noma imisebenzi yanoma yiluphi uhlubo oludingekayo noma oluthandekayo noma olwenzeka ngengozi kunoma yimuphi umsebenzi kamaziphathe wendawo;

“inkathazo” linencazelo eliyinikwe yi-Odinensi;

“Odinensi” kusho i-Odinensi yoMaziphathe baseKhaya, 1974 (Ordinance No. 25 of 1974) njengoba ichitshiyelwe;

“okunqunywe” kusho okunqunywe uMkhandlu ngesixazululo;

“impahla” maqondana nomhwebi wasesitaladini kusho noma yiziphi izimpahla, isitsha, inqola noma isakhiwo esinokususwa esisetshenzisela noma okuhloswe ukuba sisetshenziswe maqondana nokuqhuba lelo bhizinisi;

“indawo yomphakathi” kusho indawo yomphakathi njengoba kuchazwe kwisigaba 1 se-Odinensi;

“umgwaqo womphakathi” kusho umgwaqo womphakathi njengoba kuchazwe kwisigaba 1 soMthetho wokuHamba kweziMoto, No. 93 ka 1996; njengoba uchitshiyelwe;

“indlela” kusho indlela njengoba kuchazwe kwisigaba 1 soMthetho wokuHamba kweziMoto, No. 93 ka 1993;

“ukudayisa” kubandakanya —

(a) ukuhweba, ukwenana noma ukuqasha;

(b) ukukhangisa, ukuveza, ukunikela noma ukulungiselela ukuthengisa;

(c) ukugcina ngenhloso yokudayisa; noma

(d) ukuhlinzeka umsebenzi ukuthola inzuzo, kanti

“ukuthengisa kunencazelo ehambisanayo;

“unqenqema” kusho unqenqema njengoba kuchazwe kwisigaba 1 soMthetho wokuHamba kweziMoto, No. 93 ka 1993;

“umhwebi wasesitaladini” kusho umuntu oqhuba ibhizinisi lokuhweba esitaladini;

“ukuhweba esitaladini” kusho ukudayiswa kwanoma yiziphi izimpahla noma ukuletha noma ukunikela ukuletha noma yimuphi umsebenzi ukuthola inzuzo njengomthengisi wasesitaladini noma othilazayo emgaqweni womphakathi noma endaweni yomphakathi kodwa okungabandakanyi ukuthengiswa kwamaphephandaba kuphela;

“uMthetho” kusho uMthetho wezamaBhizinisi, 1991 (uMthetho No. 71 ka 1991), njengoba uchitshiyelwe, futhi ubandakanya imithethonqubo eyenziwe ngaphansi kwalokho;

“inqola” kubandakanya —

(a) inqola eqhutshwayo;

(b) inqola;

(c) inqola edonswa ngesandla noma eqhutshwayo; kanti

“unqenqema” kusho unqenqema njengoba kuchazwe kwisigaba 1 soMthetho wokuHamba kweziMoto, No. 93 1996.

- (2) Kulemithetho yedolobha, ngaphandle uma ingqikithi ikhomba okunye, noma yiliphi igama noma isisho esichazwe kuloMthetho liyoba nencazelo elinikezwe yona.
- (3) Ngokwezinhloso zalemithetho yedolobha isenzo sokulinga ukuthengisa noma ukuthengiswa kwezimpahla noma imisebenzi emgwaqeni womphakathi noma endaweni yomphakathi kuhambisana nokuqhuba ibhizinisi lomhwebi wasesitaladini.
- (4) Ngokwezinhloso zalemithetho yedolobha inkomba kumuntu oqhuba ibhizinisi lomhwebi wasesitaladini iyobandakanya noma yimuphi umsebenzi walowo muntu.

#### 2. Ukwengqatshelwa

Akekho umuntu oyoqhuba ibhizinisi lomhwebi wasesitaladini —

- (a) endaweni emenyazelwe ngaphansi kwesigaba 6A(2)(a) soMthetho njengendawo lapho ukuqhutshwa kwebhizinisi lasesitaladini kwengqatshelwe;
- (b) onqenqemeni olwakhelene —
- (i) nesakhiwo sikaHulumeni noma soMkhandlu noma esisetshenzoswa yiwo;
- (ii) nesonto nanoma iyiphi indawo yokukhonza; noma
- (iii) nesakhiwo esimenyazelwe njengendawo yamagugu esizwe ngaphansi koMthetho wamaGugu eSizwe, No. 28 ka 1969, ngaphandle uma ukuqhutshwa kwalelo bhizinisi kuvunywe ngesaziso sophawu oluxhonywe noma olukhangiswe nguMkhandlu kanye nokuhambisana nalokho;
- (c) onqenqemeni olwakhelene nesakhiwo lapho kuqhutshwa ibhizinisi ngayinoma yimuphi umuntu othengisa kuphela noma ikakhulu izimpahla ezifana noma ezizuhlobo olufana nalezo ezithengiswa ngumhwebi wasesitaladini othintekayo, ngaphandle kwemvume yalowo muntu;
- (d) kuleyo ngxenye yomgwaqo womphakathi eyakhelene nesakhiwo esisetshenzisela ukuhlala, uma umnikazi noma umuntu ophethe kanye nanoma vimunhi umhlali wakuleso sakhiwo eneahambisani nalokho;



- (e) endaweni lapho kuthikameza abahamba ngezinyawo ekusebenziseni indlela noma othatha indawo noma ebeka izimpahla zakhe endleleni ukuze enze njalo;
- (f) endaweni lapho kudala ukuthikamezeka kokuhamba kwezimoto;
- (g) endaweni lapho kudala ukuthikamezeka ngaphambi —
  - (i) kwendawo yokungena noma yokuphuma esakhiweni;
  - (ii) kwesicishamilo;
- (h) esiqintini noma kunoma iyiphi indawo ehlongozwe esigabeni 6A(3)(a) soMthetho uma engenabo ubufakazi bokuthi usiqashile lesi siqinti, lolu hlaka noma leyo ndawo eMkhandlini noma kunikezelwe kuye noma yingayiphi enye indlela.
- (i) ngokuphikisana nemibandela yokuqasha noma yokunikezelwa kwakhe isiqinti noma indawo ehlongozwe kwisigaba 6A(3)(b) kanye no-(c) soMthetho.

### 3. Ukunqunyelwa

- (1) Akukho muntu oqhuba ibhizinisi lokuhweba esitaladini —
  - (a) uma lelo bhizinisi liqhutshwa, kunoma iyiphi indawo yomphakathi —
    - (i) oyolala ebusuku endaweni yalelo bhizinisi; noma
    - (ii) amise noma yisiphi isakhiwo (ngaphandle kwalokho okusebenza ngokufana, noma okumise okwesambulela) ngenhloso yokuhandle kwemvume ebhaliwe yoMkhandlu;
  - (b) oyoqhuba ibhizinisi ngendlela —
    - (i) eyodala inkathazo;
    - (ii) eyoimaza noma eyokonakalisa ingaphezulu lomgwaqo womphakathi noma lendawo yomphakathi noma impahla yomuntu; noma
    - (iii) eyodala ingozi yokuhwebelana;
  - (c) ngaphandle kwesitsha esivumelekile sikadoti, noma esihlinzekwe uMkhandlu, oyoqongelela, atshinge, agcine noma abeke noma avumele ukuqongelelwa, ukutshingwa, ukugcinwa noma ukubekwa kwanoma yimuphi udoti kunoma yimuphi umhlaba noma ezakhiweni noma kunoma yimuphi umgwaqo womphakathi noma indawo yomphakathi;
  - (d) oyothikameza ukufinyelela emsebenzini noma ukusebenza koMkhandlu noma kukaHulumeni noma yinoma yiliphi ibandla eliphathelene nomthetho;
  - (e) oyokhubeka abantu ekusebenziseni ungenqema ukubona izimpahla ezikhangiswe ngemuva kwefasitela lokukhangisa esitolo noma ositha lezo zimpahla ekutheni zibonakale;
  - (f) oyothikameza ukufinyelela kwabantu abahamba ngezinyawo emkhatini wezitolo;
  - (g) oyoqhuba ibhizinisi noma athathe indawo noma abeke izimpahla zakhe engxenyeni yomgwaqo ngokuphikisana nesaziso noma nophawu oluxhonywe noma olubekwe nguMkhandlu ngenhloso zalemithetho yedolobha;
  - (h) oyoqhuba ibhizinisi endaweni lapho ephambana nanoma yikuphi ukunqunyelwa okubekwe yizixazululo zoMkhandlu ngokulandela isigaba 6A(2)(a) soMthetho;
  - (i) oyothikameza ukufinyelela ezimpambanweni zabantu abahamba ngezinyawo, endaweni yokupaka noma ezindaweni zokulayisha noma kwezinye izindawo zokuhamba izimoto noma abahamba ngezinyawo;
  - (j) oyothikameza ukufinyelela noma ukusetshenziswa kwefenisha yasesitaladini njengarnabhentshi noma imipheme and nemigqa yokulandela, imigqomo kadoti, nakwezinye izinsiza ezenzelwe ukusetshenziswa umphakathi wonkana; noma
  - (k) oyositha noma yiluphi uphawu lomgwaqo olubekwe ngokulandela uMthetho wokuHamba kweziMoto, 1989, kanye nemithethonqubo eyenziwe ngaphansi kwalokho nanoma yiluphi uphawu, isaziso noma uphawu olubekiwe noma olwenziwe ngaphansi kwalemithetho yedolobha.
- (2) UMkhandlu uyalingodla ilungelo lokunquma isibalo sabahwebi basesitaladini

### 4. Ukuhlazeka kwendawo yebhizinisi kanye nokuvikeleka kwempilo yomphakathi

Wonke umhwebi wasesitaladini —

- (a) ngaphandle kwemvume ebhaliwe emkhulula ezihlinzekweni zalendima ekhishwe uMkhandlu, uyosusa nsukuzonke emgaqweni womphakathi noma endaweni yomphakathi ekupheleni kosuku ngalunye lokuhweba noma ekuqedeni ukuhweba ngazo zonke izimpahla, izakhiwo ezinokususwa, inkucuzo, nezinto zokupakisha kanye nempahla yanoma yiluphi uhlobo okusetshenziswa maqondana nalokho kuhweba;
- (b) uyoqhuba ibhizinisi lakhe ngendlela engeyukubanangozi noma nakwesabisa impilo noma ukuphepha komphakathi;
- (c) ngokucelwa yisiphathimandla noma umsebenzi woMkhandlu uyosusa noma yini ukuze kuhlazwe indawo yebhizinisi;
- (d) uyogcina indawo noma isiqinti asisebenzisayo ngenhloso yokuqhuba ibhizinisi kanye nempahla yakhe isesimeni esihlanzekile futhi ingenakungcola; noma
- (e) uma imisebenzi ibandakanya ukupheka noma okunye ukulungiswa kokudla, uyothatha izinyathelo ukuqikelela ukuthi akukho mafutha, woyela noma olunye uketshezi oluconsela noma oluchichimela phezu konqenqema noma oluchaphazeleka ebholidini noma kwesinye isakhiwo.

### 5. Ukuhwebela emapaki nasezingadini

Akukho mhwebi wasesitaladini oyoqhuba ibhizinisi engadini noma epaki lapho umphakathi ucelengelo lokufinyelela khona ngaphandle kwemvume ebhaliwe yeSikhulu soMkhandlu seMisebenzi yoMphakathi noma esinye isiphathimandla esigunyaziwe nangokuhambisana nanoma yimiphi imibandela ayinqumile ekukhipheni leyo mvume.

### 6. Izinto ezisetshenziselwa ukukhangisa izimpahla

Umhwebi wasesitaladini uyogciniseka ukuthi noma yisiphi isakhiwo, isitsha, indawo yangaphezulu noma enye into esetshenziswa nguye ukulungiselela, ukukhangisa, ukugcina noma ukuthutha izimpahla —

- (a) kugcinwe kusesimweni esigculisayo sokukhandwa nesihlanzekile; futhi
- (b) azibekiwe noma azipakishiwe ngendlela engadala ingozi kunoma yimuphi umuntu noma okungenzeka zilimaze noma yimuphi umuntu.

## 7. Ukususwa nokubanjwa kwempahla

- (1) Ngokwezinhloso zalomthetho wedolobha "izimpahla" zibandakanya noma yisiphi isitsha, imoto noma isakhiwo esinokususwa.
- (2) Isiphathimandla singasusa noma sibambe noma yiziphi izimpahla —
  - (a) esisola sengathi zisetshenziselwa noma kuhloswe ukuba zisetshenziswe noma zisetshenziswe mayelana nokuhweba emgaqweni; futhi
  - (b) esizithola endaweni lapho ukuqhuba lelo bhizinisi kunqunyelwe ngokulandela umthetho wedolobha 3(h) noma umthetho wedolobha 5 noma kwenqatshelwe ngokulandela umthetho wedolobha 2(a) kuya ku (g) futhi ngokubona kwaso zephula lowo mhlinzeko, noma ngabe lezo zimpahla zitholakala noma zingaphansi kwesandla sanoma yimuphi omunye umuntu ngesikhathi salokho kususwa noma ukubanjwa kwempahla.
- (3) Noma yisiphi isiphathimandla ngokulandela umtheshwana wedolobha (2) —
  - (a) ngaphandle kwezimpahla ezishiyiwe noma ezilahliwe, uyonikeza umuntu oqhuba ibhizinisi lomhwebi wasesitaladini irisidi lanoma yiziphi izimpahla ezisusiwe noma ezibanjiwe; futhi
  - (b) khona lapho uyohambisa noma yiziphi lezo zimpahla kwisiphathimandla esigunyaziwe.
- (4) Noma uMkhandlu noma ikhansela, isiphathimandla, ophethe isikhundla noma umsebenzi woMkhandlu uyoba necala ngokulahleka noma ngokulimala kwanoma yiziphi izimpahla ezisusiwe noma ezibanjiwe ngokulandela lomthetho wedolobha.

## 8. Ukulahlwa kwezimpahla ezibanjiwe

- (1) Noma yiziphi izimpahla ezibolayo ezisusiwe noma ezibanjiwe ngokulandela isigaba 7(2) noma yingasiphi isikhathi emva kokubanjwa zingathengiswa noma zishatshalaliswe nguMkhandlu futhi lapho kuthengiswa lokho kudla inzuzo yalokho, kuphungulwe noma yiziphi izindleko uMkhandlu ongene kuzo maqondana nokususwa, nokubanjwa kanye nokuthengiswa kwalezo zimpahla, ekuvezeni irisidi elifanele elikhishwe ngokulandela isigaba 7(3)(a), ziyokhokhelwa umuntu owayengumnikazi walezo zimpahla uma lezo zimpahla zabanjiwa. Uma lowo mnikazi ehlukeka ukufuna leyo nzuzo esikhathini esiyizinyanga ezintathu kusukela osukwini lezo zimpahla ezathengiswa ngalo, leyo nzuzo iyothathwa nguMkhandlu.
- (2) Umnikazi wanoma yiziphi izimpahla (ngaphandle kwezimpahla ezibolayo), eziphethwe uMkhandlu ngokulandela isigatshana 1, ezibanjiwe ngokulandela isigaba 7(2) ofisa ukubuyiselwa lezo zimpahla, esikhathini esiyinyanga kusukela osukwini lokubanjwa kwalezo zimpahla, uyofaka isicelo eMkhandlweni futhi uyoveza irisidi elifanele elikhishwe ngokulandela isigaba 7(3)(a), uma ehlukeka ukwenze njalo lezo zimpahla ziyothengiswa nguMkhandlu, uma kwenzeka kuthengiswa lezo zimpahla izihlinzeko zesigatshana (1) eziphatelene nenzuzo yokuthengisa ziyosebenza.
- (3) Uma umnikazi wanoma yiziphi izimpahla ezibanjiwe ngokulandela isigaba 7(2) efuna ukubuyiselwa lezo zimpahla nguMkhandlu futhi lowo mnikazi engakwazi noma enqaba ukubuyisa noma yiziphi izindleko uMkhandlu ongene kuzo maqondana nokususwa kanye nokubanjwa kwalezo zimpahla, lezo zimpahla zingathengiswa nguMkhandlu kuthi inzuzo yokuthengiswa kwalezo zimpahla kuphungulwe noma yiziphi izindleko zalokho kuthengisa ziyokhokhelwa lowo mnikazi.
- (4) Uma kwenzeka ukuthi inzuzo yanoma yikuphi ukuthengiswa kwezimpahla okuhlongozwe yilesigaba zingeneli ukukhokha izindleko uMkhandlu ongene kuzo maqondana nokususwa, nokubanjwa kanye nokuthengiswa kwalezo zimpahla, umnikazi walezo zimpahla uyokuba nesikweletu saleso samba sezindleko ezingakhokhwanga yinzuzo yalokho kuthengiswa kwezimpahla.

## 9. Amacala ejwayelekile nezinhlawulo

- (1) Noma yimuphi umuntu —
  - (a) owephula noma owehluleka ukuhambisana nanoma yiziphi izihlinzeko zalemithetho yedolobha;
  - (b) oweyisa, onganaki noma ongathobeli nanoma yisiphi isaziso, uphawu noma umaka obekwe noma oxhonywe ngezinhloso zalemithetho yedolobha;
  - (c) owephula noma owehluleka ukuhambisana nanoma iyiphi imvume noma umbandela onikezwe noma ebekwe ngokulandela lemithetho yedolobha;
  - (d) ngokwezinhloso zalemithetho yedolobha owenza isitaimende esingamanga azi ukuthi singamanga ngento ethize noma ngenhloso enika ulwazi olungamanga noma olwedukisayo kwisiphathimandla esigunyaziwe noma kophethe isikhundla; noma
  - (e) owesabisa, owenqaba, okhubeza noma othikameza isiphathimandla esigunyaziwe, ophethe isikhundla noma umsebenzi woMkhandlu ekusebenziseni amandla akhe, ekwenzeni izibopho noma imisebenzi ngaphansi kwalemithetho yedolobha, uyoba necala futhi ekulahlweni yicala uyohlawula noma aboshwe isikhathi esingengaphezu kwezinyanga ezintathu.
- (2) Uma umsebenzi womhwebi wasesitaladini enza noma yini noma enecala lokuphutha okuyicala ngaphansi kwalemithetho yedolobha umqashi uyothathwa njengowenze leso senzo noma abekwe icala lokuphutha futhi ekulahlweni yicala uyohlawula izinhlawulo ezibalulwe kumtheshwana wedolobha (1) ngaphandle uma eveza ubufakazi obanelisa inkantolo bokuthi —
  - (a) ekwenzeni leso senzo noma ekubeni necala lokuphutha umsebenzi ukwenze ngaphandle kolwazi noma kwemvume yakhe;
  - (b) zonke izinyathelo ezifanele wazithatha ukuvimbela ukwenza noma ukuphutha okukhulunywe ngakho; futhi
  - (c) bekungeyona ingxenye yomsebenzi ogunyaziwe noma yomsebenzi womsebenzi ukuthi enze leso senzo okukhulunywa ngaso.
- (3) Isiqinisekiso sokuthi umqashi wakhipha imiyalelo evimbela noma yisiphi isenzo noma ukuphutha okukhulunywe ngakho kumtheshwana wedolobha (2) asiyuthathwa njengobufakazi obenele bokuthi wathatha zonke izinyathelo okukhulunywe ngazo kwindima (b) yalowo mtheshwana wedolobha.
- (4) Uma umqashi ngokwegunya lomtheshwana wedolobha(2) enecala lwanoma yini eyenziwe noma engenziwe umsebenzi wakhe, umsebenzi uyoshushiselwa icala.