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XIFUNDZANKULU XA LIMPOPO
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VUNDU LA LIMPOPO
IPHROVINSI YELIMPOPO

**Provincial Gazette • Provinsiale Koerant • Gazete ya Xifundzankulu
Kuranta ya Profense • Gazethe ya Vundu**

(Registered as a newspaper) • (As 'n nuusblad geregistreer)
(Yi rhijistariwile tanihi Nyuziphepha)
(E ngwadisitšwe bjalo ka Kuranta)
(Yo redzhistariwa sa Nyusiphepha)

POLOKWANE,

30 JUNE 2011
30 JUNIE 2011
30 KHOTAVUXIKA 2011
30 JUNE 2011
30 FULWI 2011

Vol. 18

Extraordinary

**Ku katsa na Tigazete to
Hlawuleka hinkwato**

No. 1945

Buitengewoon

**Hu tshi katelwa na
Gazethe dza Nyingo**

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LOCAL AUTHORITY NOTICES

LOCAL AUTHORITY NOTICE 212

LEPHALALE LOCAL MUNICIPALITY IMPOUNDMENT OF ANIMALS BY-LAW

The Municipal Manager of Lephalale Local Municipality hereby in terms of section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) publishes Impoundment of Animals By-law for the municipality as approved by its council, as set out hereunder.

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1. Definitions

In this by-law, unless the context otherwise indicates –

"**animal**" means any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person;

"**cattle**" means bulls, cows, oxen, heifers, steers and calves;

"**goat**" means an adult male or female goat, a wether and a kid;

"**horse**" means a stallion, mare, gelding, colt, filly, donkey and mule;

"**municipality**" means the Municipality of Lephalale and includes any political structure, political office bearer, municipality or duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, municipality, agent or employee;

"**occupier**" means any person in actual occupation of land or entitled as owner to occupy land;

"**owner**", in relation to an animals, means any person having possession, charge, custody or control of such animal;

"**pound**" means a fenced-off area consisting of one or more camps under the control of a pound master, which was established by the municipality for the housing and care of animals which are astray, lost or at large;

"**pound master**" means a person who may be –

- (a) a part-time or full-time employee of a municipality, or
- (b) appointed under a service delivery agreement to keep and operate a pound;

"**proprietor**" means any owner, lessee, or occupier of land;

"**sheep**" means a ram, an ewe, a wether and a lamb;

"**stallion**" means a male horse, donkey or mule not castrated or partially castrated;

"**veterinary surgeon**" means a person who is qualified as such in accordance with the provisions of the Veterinary and Para-Veterinary Professions Act, 1982 (Act 19 of 1982).

2. Purpose of by-law

The purpose of this by-law is to promote the achievement of a safe, and healthy environment for the benefit of residents within the area of jurisdiction of the municipality, and to provide for procedures, methods and practices to regulate the impoundment of animals.

3. Establishment of a pound

The municipality must for the purpose of impounding animals establish a pound in its area of jurisdiction.

4. Impoundment for trespassing

Any person may impound animals found abandoned upon any street, road, road reserve or other public place.

5. Pound to which animals are to be sent

Any proprietor upon whose land an animal is found trespassing may send such animal to such pound as is nearest by a passable road or thoroughfare to the land trespassed upon, or such other pound designated by the municipality.

6. Offer by owner before impoundment of animals

The owner of an animal liable to impoundment may, before the animal is removed from the property trespassed upon, offer to the person complaining of the trespassing a sum of money in compensation of the damage suffered by him or her, and such offer may be made to the complainant himself or herself or to his or her servant or agent charged with the duty of taking the animal to the pound.

7. Receiving of animals by pound master

It is the duty of every pound master to receive into his or her charge, for impoundment, all animals brought to the pound, during such hours as the municipality may determine.

8. Receipt for impounded animals

A pound master must give the person delivering an animal into the pound a written receipt, indicating the number and description of the animal so delivered, and specifying the trespassing for which the animal, as reported, is to be impounded.

9. Number of enclosures

(1) A pound master must maintain in good repair and, as far as possible, free from all infection, separate enclosures for-

- (a) ostriches and horses;
- (b) cattle;
- (c) sheep, goats and pigs;
- (d) dogs; and
- (e) cats,

provided that a municipality may in regard to any pound in its area give permission to the pound master to maintain a smaller number of enclosures thereon.

10. Destruction of dangerous or contagious animals

- (1) A pound master may cause to be destroyed any impounded animal suffering from a contagious disease, or which may prove dangerous to human life or other animals impounded, however, no such animal may be destroyed unless a veterinary surgeon has examined it and has agreed with the pound master as to the necessity for its destruction.
- (2) If any animal suffering from a contagious disease is brought to the pound, or becomes infected while impounded, such animal must be kept separate from other impounded animals.

11. Notice of impounded animals

- (1) A pound master who knows the name of the owner of an animal must forthwith give written notice to such owner that the said animal has been impounded.
- (2) Where the owner of an impounded animal is not known to the pound master, the pound master must upon receipt of such animal report the impoundment to the nearest South African Police Services office.

12. Keeping of pound register

- (1) A pound master must keep a pound register with the following particulars:
 - (a) the date when and the cause for which, all animals received are impounded;
 - (b) the number and description of such animals;
 - (c) the name and residence of the person impounding such animals, and the name and residence of the owner or supposed owner;
 - (d) the date and particulars of the release or sale of the animals, as the case may be; and
 - (e) any other matters which he may be directed by the municipality to ascertain and record.
- (2) The entries under subsection (1)(a), (b) and (c) must be made at the time the animals are impounded and the entries under subsection (1)(d) and (e) must be made as soon as the pound master obtains the necessary information, provided that no entry may be made after the particulars in (a) to (e) has been placed in dispute by any person.

- (3) In case of the death or injury of any impounded animal, the pound master shall enter in his pound register a description of such animal and the cause of its death or injury.

13. Inspection of and extracts from pound register

- (1) A pound register must be kept at the pound or any other approved place and must at all reasonable times be open for inspection, free of charge, to any authorized officer of the municipality, veterinary surgeon, an authorised official in terms of the Animal Diseases Act, 1984 (Act 35 of 1984), any member of the police service or the public.

14. Submission of pound register entries after pound sales

- (1) A pound master must within 14 days after the date of each pound sale submit to the municipality a copy of all entries in the register made since the date of the preceding submission, and the municipality must preserve all such copies for inspection by any person.

15. Inspection of pound register at place of sale

- (1) Whenever a sale of impounded animals is to take place, the pound master or a person authorized to conduct the sale, must take the pound register to the place of sale, and such register must be open for inspection, free of charge, at the place of sale to all persons desirous of inspecting it.

16. Pound master's fees

- (1) The municipality shall fix fees, charges or tariffs for the keeping of animals in a pound and may in determining such fees, charges or tariffs, distinguish between different kinds of animals and provide for the keeping and feeding of animals in separate enclosures.
- (2) Every pound master is entitled to claim the fees, charges or tariffs determined by the municipality in terms of subsection (1) for every animal impounded.

17. Fees payable

- (1) The fees, charges or tariffs determined by the municipality in terms of section 16 must be paid to the pound master by the owner of the animals impounded.

- (2) The said fees, charges or tariffs, together with any costs which the pound master may have incurred, as well such animals, may be detained by the pound master in security of payment of the said fees, charges or tariffs, provided that if the value of the animals impounded is in excess of the total amount due thereon, as determined in terms of this by-law, and if the owner is unable to pay the said amount, the pound master may detain only so many of the said animals as may be sufficient to secure the total amount due for all the animals, and must deliver the remainder of the animals to the said owner.
- (3) A pound master who retains any greater number of such animals than is reasonably necessary to secure such amount is liable to the owner for any damages sustained on account of such retention.
- (4) The pound master must pay the fees, charges or tariffs received into the revenue of the municipality.
- (5) No pound master may release any impounded animal until the prescribed fees, charges or tariffs have been paid.

18. Notice of sale

- (1) Every pound master must –
 - (a) whenever any impounded animal has not been released within seven days from the date of its impoundment, forward to the municipality a notice setting forth the species, marks and distinguishing features (if any) of such animal, and in regard to horses and cattle their colour also, and stating that the animal mentioned therein will be sold at the next sale of impounded animals, as well as the time and place of such sale;
 - (b) upon sending such notice to the municipality, post a copy thereof in some or other conspicuous place at or near a pound, there to remain until the day of the sale; and
 - (c) cause to be published in a newspaper circulating in the area of jurisdiction of the municipality where the pound is situated a notice of the sale of an impounded animal, provided that the cost of such notice is recoverable from the owner of the impounded animal and is deemed to be part of the amount to be deducted from the proceeds of the sale of an animal and it is recoverable from the owner of such animal if the said proceeds are less than the amount due, provided further that –
 - (i) if such notice refers to more than one animal, the municipality shall in its discretion, divide the cost of such notice pro rata in respect of the animals referred to therein; and
 - (ii) if the owner of an impounded animal is unknown, and the proceeds of the sale do not cover the amount as aforesaid, the municipality shall make good the deficiency.

19. Auctioneer

- (1) Every sale of impounded stock must -
 - (a) be conducted by the pound master or some other person duly authorized thereto by the municipality; and
 - (b) commence at the time and date mentioned in the notice in terms of section 18 (1)(a).
- (2) No person conducting a pound sale may have any direct or indirect interest in any purchase at any sale so held.

20. Sale of animals

- (1) At every sale-
 - (a) no animal may be put up for sale unless impounded for at least two weeks;
 - (b) all animals, except sheep and goats must be sold individually;
 - (c) sheep and goats must be sold in lots of not more than ten, and sheep and goats, or sheep or goats with different marks or brands may shall in no circumstances be sold together in the same lot;
 - (d) animals must be sold for cash, and the proceeds, less the amount of the pound fees and other fees, charges or tariffs payable in respect of such animals must forthwith upon receipt, be handed by the pound master to the municipality, to be paid to the owners of the animals sold according to their respective rights, provided that -
 - (i) if in any particular case the animals sold do not realise sufficient to yield the sum of pound fees and other fees, charges or tariffs as aforesaid, the proceeds must be first utilized for the payment of the compensation due to the pound master, and if the said proceeds are insufficient to cover such compensation, the balance of compensation must be paid to the pound master by the municipality;
 - (ii) any money, being the proceeds of the sale of any impounded animal as aforesaid, which remains in the hands of the municipality for a period of 12 months without being claimed by the owner of such animal, becomes the accrues to such municipality;
 - (iii) it shall be competent for the municipality to make good to the pound master any loss which he or she may incur in the keeping of animals where the selling price does not cover the costs incurred;
 - (iv) the municipality or an authorized officer may fix a reserve price for any animal offered for sale; and

- (v) the auctioneer may withdraw any animal from the sale if the highest bid received is not in his or her opinion satisfactory, irrespective of whether or not a reserve price has been fixed by the municipality.

21. Recovery of loss in respect of impoundment of animals from area of another municipality

- (1) Any loss suffered by a municipality as a result of the impounding in a pound under its management and control of animals found trespassing within the area of jurisdiction of another municipality, may be recovered from such other municipality.

22. Use, detention and ill-treatment of animals

- (1) No person may furiously drive away any animal found trespassing, worry or ill-treat it.

23. Exemptions

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.
- (2) The municipality may –
 - (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2)(a), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

24. Offences and penalties

Any person who contravenes or fails to comply with the provisions of this by-law shall be guilty of an offence and liable to a fine.

25. Repeal of By-law

Any by-law on impounding of animals previously made by the municipality or its constituent predecessors in respect of any portion of the area of the Lephalale Local Municipality, is repealed upon promulgation of this by-law in so far as they are inconsistent with the provisions of this by-law.

26. Short title and commencement

This by-law is called the Lephalale Municipality Impoundment of Animals by-law and shall come into operation on the date of publication thereof in the Provincial Gazette.

LOCAL AUTHORITY NOTICE 213

**LEPHALALE LOCAL MUNICIPALITY
STORMWATER MANAGEMENT BY-LAWS**

The Municipal Manager of Lephalale Local Municipality hereby in terms of section 13(a) of the Local Government Municipal Systems Act , 2000 (Act 32 of 2000) publishes Stormwater Management By-law for the municipality as approved by its council, as set out hereunder.

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1. Definitions

In this by-law, unless the context otherwise indicates –

“**floodplain**” means land adjoining a watercourse which is predisposed to flooding up to the 100 year recurrence interval;

“**municipality**” means the municipal council of Lephalale Local Municipality, or any political structure, political office bearer, committee, councilor, official or employee of the municipality, delegated to exercise powers or perform duties in terms of this by-law;

“**private stormwater system**” means a stormwater system which is owned, operated or maintained by a person and not the municipality;

“**pollute**” bears the meaning assigned to it in the National Water Act, 1998 (Act 36 of 1998);

“**stormwater**” means water resulting from natural rainfall or the accumulation thereof and includes groundwater and spring water ordinarily conveyed by the stormwater system, but excludes water in a drinking water or waste water reticulation system;

“**stormwater system**” means both the constructed and natural facilities, including pipes, culverts, watercourses and their associated floodplains, whether over or under public or privately owned land, used or required for the management, collection, conveyance, temporary storage, control, monitoring, treatment, use or disposal of stormwater;

“**watercourse**” bears the meaning assigned to it in the National Water Act, 1998 (Act 36 of 1998);

“**organ of state**” bears the meaning assigned to it in the Constitution

2. **Purpose**

The purpose of this by-law is to regulate stormwater management and activities which may have an adverse impact on the development, operation and maintenance of the stormwater system.

3. **Prohibited conduct**

- (1) No person may, except with the written consent of the municipality first having been obtained –
 - (a) discharge, place or permit to enter into the stormwater system –
 - (i) anything other than stormwater;
 - (ii) anything likely to damage the stormwater system or interfere with the operation thereof; and
 - (iii) anything likely to pollute the water in the stormwater system;
 - (b) discharge from any place, or place onto any surface, any substance other than stormwater, where that substance could reasonably be expected to find its way into the stormwater system;
 - (c) undertake any action whatsoever that is likely to destroy, damage, endanger or interfere with the stormwater system or the operation thereof, which action includes, but is not limited to -
 - (i) obstructing or reducing the capacity of the stormwater system;
 - (ii) opening a pipe, culvert or canal which forms part of the stormwater system;

- (iii) constructing or erecting any structure or thing over or in such a position or in such a manner as to destroy, damage, endanger or interfere with the stormwater system or the operation thereof;
 - (iv) draining, abstracting or diverting any water directly from the stormwater system;
 - (v) filling, excavating, shaping, landscaping, opening up or removing the ground above, within, under or immediately next to any part of the stormwater system;
 - (vi) changing the design or the use of, or otherwise modify any feature of the stormwater system which alone or in combination with other existing or potential land uses, may cause an increase in flood levels or create a potential flood risk; or
 - (vii) any activity which alone or in combination with other existing or future activities, may cause an increase in flood levels or create a potential flood risk.
- (2) When an incident contemplated in subsection (1)(a) or (b) occurs without the consent of the municipality contemplated in subsection (1) –
- (a) if the incident is not the result of natural causes, the person responsible for the incident; or
 - (b) the owner of the property on which the event took place or is taking place,
- must immediately report the incident to the municipality and take, at own cost, all reasonable measures to contain and minimize the effects of the incident, which measure include, but are not limited to, the undertaking of cleaning up operations including the rehabilitation of the environment.

4. Application and conditions which municipality may impose

- (1) A person who wishes to obtain the consent of the municipality as contemplated in section 3, must submit an application to the municipality and the municipality may request from the applicant any further information which may assist the municipality in its decision.
- (2) Should the municipality grant consent, it may impose conditions as it may deem necessary, such as, but not limited to –

- (a) the undertaking of impact assessments, environmental impact studies or environmental impact investigations which are required by environmental legislation; and
- (b) the establishment of flood lines.

5. Stormwater systems on private land

- (1) An owner of property on which a private stormwater system is located –
 - (a) may not carry out any activity which may impair the effective functioning of the stormwater system or which could reasonably be expected to impair the effective functioning of the stormwater system; and
 - (b) must, at own cost, keep the stormwater system functioning effectively, including undertaking, on written instruction by the municipality, the refurbishment and reconstruction thereof if the municipality deems it necessary that the stormwater system be refurbished or reconstructed.
- (2) Subsection (1)(b) does not apply in the instance where the municipality has accepted responsibility for any of the duties contained in a maintenance agreement or in terms of a condition of a servitude.
- (3) Should an owner fail or refuse to comply with an instruction by the municipality made in terms of subsection (1)(b), the municipality may undertake measures to refurbish or reconstruct the stormwater system and the municipality may recover from the owner all reasonable costs incurred as a result of action taken.

6. Powers of municipality

- (1) An employee of the municipality or contractor acting on its behalf, authorized thereto in writing by the municipality, may at all reasonable times enter upon any premises or any portion thereof with the aim of carrying out any inspection or test which he or she deems necessary or expedient in order to determine the current status of a stormwater system.
- (2) The municipality may, for the purpose of providing the necessary infrastructure for the stormwater system and maintaining such infrastructure –
 - (a) construct, expand, alter, maintain or lay any drain, pipe or other structure related to the stormwater system on or under any immovable property and may do any other thing necessary or desirable for or incidental, supplementary or ancillary to such construction, expansion, alteration or maintenance and ownership of such drain, pipe or structure vests in the municipality;

- (b) drain stormwater or discharge water from any municipal service works into any watercourse;
 - (c) repair and make good any damage done in or damage resulting from a contravention of section 3(1)(a)(ii) or 3(1)(c), such as, but not limited to –
 - (i) demolishing, altering or otherwise dealing with any building, structure or other thing constructed, erected or laid in contravention of section 3(1)(c)(iii);
 - (ii) filling in, removing and making good any ground excavated, removed or placed in contravention of section 3(1)(c)(v);
 - (d) remove anything –
 - (i) discharged or permitted to enter into the stormwater system or watercourse in contravention of section 3(1)(a) or (b);
 - (ii) damaging, obstructing or endangering or likely to obstruct, endanger or destroy any part of the stormwater system;
 - (e) seal off or block any point of discharge from any premises, irrespective of whether the point is used for lawful purposes;
 - (f) cancel any consent granted in terms of section 4 if any condition under which the consent was granted is not complied with;
 - (g) by written notice, instruct any owner of property –
 - (i) to retain stormwater on such property or to lay, at the cost of such owner, a stormwater drain pipe or gutter to a suitable place indicated by the municipality, irrespective of whether the course of the pipe or gutter will run over private property or not; and
 - (ii) to allow the owner of a higher lying property to lay a stormwater drain pipe or gutter over his or her property for the draining of concentrated stormwater; and
 - (h) discharge stormwater into any watercourse, whether on private land or not.
- (3) Should an owner of property fail to comply with an instruction contemplated in subsection (2)(g)(i), the municipality may undertake measures to retain such stormwater or to lay such stormwater drain pipe or gutter.

- (4) Where it seems that any action or neglect by a person or owner of property may lead to a contravention of a provision of this by-law, the municipality may notify, in writing, such person or owner to comply with such requirement as the municipality may deem necessary to prevent the occurrence of such contravention.
- (5) The municipality may recover all reasonable costs incurred as a result of action taken –
 - (a) in terms of subsection (2)(c) or (d), from the person who was responsible for a contravention of the provisions of this by-law or the owner of the property on which a contravention occurred; or
 - (b) in terms of subsection (3), from the owner of the property.

7. Authentication and service of notices and other documents

- (1) A notice or other document requiring authentication by the municipality must be signed by the municipal manager or by a duly authorised officer of the municipality, such authority being conferred by resolution of the municipality or by a by-law or regulation, and when issued by the municipality in terms of this by-law is deemed to be duly issued if it is signed by an officer authorised by the municipality.
- (2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been served –
 - (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgment of the posting thereof from the postal service is obtained;
 - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates;
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or

- (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document must be authorised or served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question and it is not necessary to name that person.
- (5) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

8. Exemptions

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.
- (2) The municipality may –
 - (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

9. Offences and Penalties

Any person who contravenes the provisions of this by-law shall be guilty of an offence and liable to a fine.

10. Repeal of by-law

By-laws on stormwater previously made by the municipality or its constituent predecessors in respect of any portion of the area of the Lephalale Local Municipality are hereby repealed in so far as they are inconsistent with the provisions of this by-law.

11. Short title and commencement

This by-law is called Lephalale Local Municipality Stormwater Management By-law and commence on the date of publication thereof in the Provincial Gazette.

LOCAL AUTHORITY NOTICE 214

**LEPHALALE LOCAL MUNICIPALITY
FENCES AND FENCING BY-LAWS**

The Municipal Manager of Lephale Local Municipality hereby in terms of section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) publishes Fences and Fencing by-law for the municipality as approved by its council as set out hereunder:

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Schedule

1. Definitions

In this by-law, unless the context otherwise indicates –

"**boundary**" means the real or notional line marking the limits of premises;

"**Council**" means the council of the Lephale Local Municipality;

"**fence**" means any fence, together with any necessary gate or any contrivance forming part or serving the purpose of such a gate, erected as a boundary between any erven, lots or stands within the municipal area, and includes a fence which is not erected on a boundary, such as a garden fence or a free-standing wall on an erf, lot or stand;

"**ground level**" means the natural level of the ground, except where such level has been disturbed, in which case the street level is to be regarded as the ground level;

"**municipality**" means the Municipality of Lephale and includes any political structure, political office bearer, municipality or duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, municipality or, agent or employee;

"**public land**" means land of which the ownership is vested in an organ of state;

"**repair**" means putting and maintaining fence in good order by trimming, cutting or any other means;

"**the act**" means Fencing Act, 1963 (Act 31 of 1963)

2. Purpose

To regulate fences and fencing within the municipality.

3. Fences

- (1) No person may, without the consent of the municipality –
 - (a) erect or cause, allow or permit to be erected a fence which is more than 1.8 metres in height from ground level on a boundary of a premises;
 - (b) alter, make or cause, allow or permit to be altered or made an addition to an existing fence which is more than 1.8 metres in height from ground level on a boundary of a premises;
 - (c) erect or cause or permit to be erected on a boundary, or may have on a boundary, an electrified fence, electrified railing or other electrified barrier, unless –
 - (i) the electrified fence, electrified railing or other electrified barrier is erected on top of a wall which may not be less than 1.8 metres high and built of brick, cement, concrete or similar material; and
 - (ii) the electrified fence, electrified railing, or other electrified barrier is designed and installed in accordance with the Electrical Machinery Regulations; and
 - (d) subject to subsection (9), erect or cause or permit to be erected on a boundary a barbed-wire fence, railing, paling, wall or other barrier with spikes or other sharp or pointed protrusions.
- (2) A person who wishes to obtain the approval of the municipality must submit building plans on the application form as contained in the Schedule.
- (3) The municipality has right to approve or disapprove a plan.
- (4) Should the municipality disapprove the plan, it must, on request, supply the person in writing with the reasons for the disapproval.
- (5) Should the municipality grant consent, it may do so subject to such conditions, requirements or specifications which it may determine in each individual case, and subject to the provisions of SANS Code No. 1372, Prefabricated Concrete Components for Fences, as published on 20 May, 1985 in the Government Gazette, and the consent must be entered in Item C of the form contemplated in subsection (2), and a person who has obtained consent, must at the request of an authorised official, immediately produce the form.
- (6) A person who has obtained approval in terms of subsection (5) must ensure that the fence is maintained in a good condition.
- (7) No person may –
 - (a) without the consent of the municipality first having been obtained, demolish, interfere with or damage a fence for which an approval has been granted in terms of subsection (5);
 - (b) having opened a gate in a fence, leave such gate open or unfastened;
 - (c) climb over or crawl through a fence without the permission of the owner or occupier of the land upon which such fence is situated, first having been obtained;
 - (d) erect or cause to be erected a fence covered with –
 - (i) canvas, reeds, grass or any combustible material, except poles or split poles, or approved wood, which may not be erected within 4,5 m of any street and which may not exceed 1,8 m in height; or

- (ii) sheet iron, corrugated galvanised iron or any other sheeting along or within 4,5 m of any street;
 - (e) allow a fence to fall into disrepair; and
 - (f) affix to or allow to be affixed to a fence any posters, placards or similar notices, or draw or apply or allow to be drawn or applied any graffiti or drawing on a fence.
- (8) The municipality may, whenever it appears that, in the interests of safety, vehicular, pedestrian or otherwise –
- (a) a fence needs to be erected or repaired, instruct the owner or occupier on whose premises such fence needs to be erected or repaired, to undertake such steps as stipulated in the instruction; or
 - (b) the height of a wall, hedge or fence at a street corner needs to be reduced, by order in writing instruct the owner or occupier property to reduce the height of such wall, hedge or fence to a height specified in such order.
- (9) In the instance where a barbed-wire fence, railing, paling, wall or other barrier with spikes or other sharp or pointed protrusions does not exceed 1,8 meters in height from ground level, the consent of the municipality is not required.
- (10) Should a person fail to comply with a provision of subsection (1), with a condition, requirement or specification contemplated in subsection (5), subsection (6) or an instruction issued in terms of subsection (8), the municipality may serve a notice of compliance or a demolition order on the person, as the case may be.

4. Notice of compliance and representations

- (1) The notice of compliance must state –
- (a) the name, residential or postal address of the affected person;
 - (b) the requirement which has not been complied with;
 - (c) having in detail the measures required to remedy the situation;
 - (d) that the person must within a specified period take the measures to comply with the notice and to complete the measures before a specified date; and
 - (e) that the person may within 14 days make written representations in the form of a sworn statement or affirmation to the municipality at a specified place.
- (2) The municipality, when considering any measure or period envisaged in subsection (1)(c) or (d), must have regard to the principles and objectives of this by-law, the nature of the non-compliance, and other relevant factors.
- (3) Where a person does not make representations in terms of subsection (1)(e) and the person fails to take the measures before the date contemplated in subsection (1)(d), he or she commits an offence, and the municipality may, irrespective of any penalty which may be imposed act in terms of subsection (5).
- (4)
- (a) Representations not lodged within the time contemplated in subsection (1)(e) will not be considered, except where the person has shown good cause and the municipality condones the late lodging of the representations.
 - (b) The municipality must consider timely, representations and any response thereto by an authorized official.

- (c) The municipality may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the permit holder, who must be given an opportunity of making a further response if he or she so wishes, and the municipality must also consider the further response.
 - (d) The municipality must, after consideration of the representations and any response and further response make an order in writing and serve a copy of it on the person, which order must confirm, in whole or in part, alter, or set aside the notice of compliance, and where the notice of compliance is confirmed, in whole or in part, or altered, the municipality must inform the person that he or she must, within the period specified in the order, discharge the obligations set out in the order and that failure to do so constitutes an offence.
 - (e) Where a person fails to discharge the obligations contemplated in subsection (4)(d), he or she commits an offence and the municipality may, irrespective of any penalty which may be imposed act in terms of subsection (5).
- (5) The municipality may take such measures as it deems necessary to remedy the situation, including the demolition of the fence, and the cost thereof must be paid to the municipality in accordance with section 5.

5. Costs

- (1) Should a person fail to take the measures required of him or her by a notice of compliance contemplated in section 4, the municipality may, subject to subsection (3) recover, as a debt, all costs incurred as a result of it acting in terms of section 4(5) from that person and any or all of the following persons:
- (a) the owner of the land, building or premises; or
 - (b) the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.
- (2) The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs incurred by the municipality under section 4(5).
- (3) If more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take the required measures.

6. Demolition order

- (1) A person on whom a demolition order has been served in terms of section 3(10), must demolish the fence and remove the materials.
- (2) Should a person fail to act in accordance with subsection (1), the municipality may demolish a fence, and it may dispose of the whole or any part of the materials from any fence, whether wholly or partly removed or demolished, by public auction or public tender.
- (3) The municipality may deduct from the proceeds of any materials so disposed of the costs of any such pulling down, removal or demolition and the costs incurred in so disposing of the said materials and the surcharge thereon and shall thereafter pay any balance to the owner of the fence removed or demolished.
- (4) The exercise of any powers set forth in subsection (2) and (3) shall not prejudice or diminish the rights of the municipality to recover in terms of other provisions of this by-law.

7. Authentication and service of notices and other documents

- (1) A notice issued by the municipality in terms of this by-law is deemed to be duly issued if it is signed by an officer authorised by the municipality.

- (2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served –
- (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic to a person apparently over the age of 16 years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;
 - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or
 - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question and it is not necessary to name that person.

8. Implementation and enforcement

- (1) The municipality may appoint and mandate an official to administer the implementation and enforcement of this by-law.
- (2) Upon appointment the municipality must issue the official with an identity card which must state the name and function of the official, and which includes a photograph of the official.
- (3) An official, acting within the powers vested in him or her by this by-law, must on demand by a person produce the identity card and proof of identity.
- (4) An official, within his or her mandate in terms of subsection (1) –
- (a) must monitor and enforce compliance with this by-law;
 - (b) may investigate an act or omission which on reasonable suspicion may constitute an offence in terms of this by-law;
 - (c) may, for the purposes of paragraphs (a) and (b), enter upon premises on which a business is carried on with the aim of ascertaining if an offence in terms of this by-law has been or is being committed; and
 - (d) may request the owner or occupier to provide such information as he or she deems necessary.

9. Transitional provision

An owner or occupier whose premises, at the date of commencement of this by-law, do not comply with the provisions of this by-law, must within a period of 3 years, ensure that his or her premises comply with the provisions of this by-law.

10. Exemptions

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.
- (2) The municipality may –
 - (a) grant an exemption in writing and the conditions in terms of which, if any and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

11. Offences and Penalties

Any person who contravenes the provisions of this by-law shall be guilty of an offence and shall be liable to a fine.

12. Repeal of by-laws

By-laws on fencing and fences previously made by the municipality or its constituent predecessors in respect of any portion of the area of the Lephalale Local Municipality shall be repealed on the date of promulgation of this by-law in so far as they are inconsistent with the provisions of this by-law.

13. Short title and commencement

This by-law is called the Lephalale Local Municipality Fences and Fencing By-law and commence on the date of publication in the Provincial Gazette.

SCHEDULE

APPLICATION TO ERECT FENCE

A. OWNER OR OCCUPIER

Surname and first names of person

I.D. Number

Address: Postal address:

.....

.....

Residential address:.....

.....

.....

Telephone number: Business Residential

B. PARTICULARS OF PREMISES AND FENCE

Erf Number

Address where the premises can be inspected

.....

.....

NATURE OF FENCE TO BE ERECTED/ALTERED

.....

.....

C. ISSUING LOCAL AUTHORITY

Consent is hereby granted in terms of section 3(5) of the Lephalale Fences and Fencing By-law that the above-mentioned fence may be erected on above-mentioned premises

Conditions, requirements or specifications in terms of section 3(5):

.....

.....

.....

.....

.....
SIGNATURE OF INSPECTOR

.....
DATE

Name of inspector:

Official designation:

LOCAL AUTHORITY NOTICE 215**LEPHALALE LOCAL MUNICIPALITY
STREET TRADING BY-LAW**

The Municipal Manager of Lephalale Local Municipality hereby in terms of section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) publishes the Street Trading By-Law for the Municipality as approved by its Council, as set out hereunder.

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1. Definitions

In this by-law, unless the context otherwise indicates –

“**approval**” means approval by the municipality and “**approve**” has a corresponding meaning;

“**Council**” means the Lephhalale Municipal Council;

“**garden**” means a garden to which the public has a right to access;

“**goods**” means any movable property;

“**intersection**” means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act 93 of 1996);

“**licence holder**” means a person who is the holder of a hawker’s licence;

“**Linear Market**” means a Designated Area located in pedestrianised environments

“**litter**” means any object or matter which is discarded, abandoned or left behind by a person trading of his or her customers.

“**motor vehicle**” means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

“**municipality**” means the Lephhalale Local Municipality and includes any committee or person to which or whom an instruction has been given or any power has been delegated or sub-delegated by the Council in terms of, or as contemplated in, section 59 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), or a service provider in respect of any power, function or duty of the Council assigned by it for the purposes of this by-law to that service provider in terms of Section 81(2) of the Local Government: Municipal Systems Act, 2000;

“**Municipal Manager**” means municipal manager of Lephhalale Local Municipality;

“**official**” means a designated officer who is authorized by the municipality to perform and exercise any or all of the functions and powers contemplated in this by-law;

“**park**” means a park to which the public has a right to access;

“**premises**” means any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

“**prescribed**” means prescribed by the municipality by resolution;

“**property**”, in relation to a street trader, means goods in which a street trader trades, and includes any article, container, vehicle or structure used or intended to be used in connection with street trading by the street trader;

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

“**regulations**” means regulations made in term of the National Health Act, 2004;

“**roadway**” means a roadway as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

“**sell**” includes barter, exchange, hire out, display, expose, offer or prepare for sale, store with a view to sell, or provide a service for reward, and “**sale**” or “**selling**” has a corresponding meaning;

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

“street furniture” means any furniture installed by the municipality on the street for public use;

“street trader” means a person who, as hawker, vendor or pedlar as contemplated in the Businesses Act, 1991 (Act 71 of 1991), carries on the business of the selling of any goods or the supplying of or offering to supply any service for reward in a public road or public place;

“street trading” means the carrying on of the business as a street trader;

“the Act” means the Businesses Act, 1991 (Act 71 of 1991), and includes the regulations promulgated under the Act;

“trade” means sell goods or services in a public road or public place;

“verge” means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996), and any word or expression to which a meaning has been assigned in the Businesses Act, 1991, (Act 71 of 1991) has a corresponding meaning in this by-law.

2. Purpose of the By-law

The purpose of this By-law is to regulate Street Trading within the jurisdictional area of the Lephalale Municipality.

3. Application

This by-law apply to all persons who carry on the business of street trading within the area of jurisdiction of the Lephalale Local Municipality.

4. Forms of street trading

- (1) Street trading include any of the following forms:
 - (a) the selling of goods and supply of services for reward in public road;
 - (b) selling of goods in linear places;
 - (c) sale of goods or services in public places;
 - (d) mobile trading such as caravans and light mobile vehicles;
 - (e) selling of stalls or kiosks; and
 - (f) selling of goods at special events.

CHAPTER 2 GENERAL PROVISIONS APPLICABLE TO STREET TRADING

5. Restricted and prohibited areas

- (1) The municipality may, in terms of section 6A(2)(a) of the Act and subject to the provisions of paragraphs (b) - (j) of the act, by resolution declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited.

- (2) The municipality must by erected sign in the area indicate such area, and the sign must indicate –
- (a) the restriction of prohibition against street trading;
 - (b) if street trading is restricted –
 - (i) the boundaries of the area or stand set aside for restricted street trading;
 - (ii) the hours when street trading is restricted or prohibited; and
 - (iii) the goods or services in respect of which street trading is restricted or prohibited; and
 - (c) that the area has been let or otherwise allocated.
- (3) The sign serves as sufficient notice to a street trader that street trading is restricted or prohibited in the area concerned.

6. Places where street trading is prohibited

- (1) Unless the municipality has so permitted in terms of an agreement or by means of the display of a sign, no person may carry on the business of a street trader in any of the following places:
- (a) in a garden or a park to which the public has a right of access; or
 - (b) on a verge contiguous to –
 - (i) a building belonging to, or occupied solely by, the State or the municipality;
 - (ii) a church or other place of worship; or
 - (iii) a building declared to be a public monument under the National Heritage Resources Act, 1999.
- (2) No person may carry on the business of a street trader in any of the following places:
- (a) in a place declared by the municipality under section 6A(2)(a) of the Act as a place in which street trading is prohibited;
 - (b) at a place where street trading obstructs the use of the sidewalk by pedestrians or interferes with the ability of persons using the sidewalk to view the goods displayed behind a shop display window or obscures such goods from view;
 - (c) within 5 metres of an intersection as defined in National Road Traffic Act, 1996 Regulations;
 - (d) at a place where street trading obstructs –
 - (i) a fire hydrant;
 - (ii) the entrance to or exit from a building;
 - (iii) vehicular traffic;
 - (iv) access to a pedestrian crossing, a parking or loading bay or any other facility for vehicular or pedestrian traffic;

- (v) access to or the use of street furniture or any other facility designed for the use of the general public;
 - (vi) or obscures a road traffic sign that is displayed in terms of the National Road Traffic Act, 1996; or
 - (vii) obscures a marking, notice or sign displayed or made in terms of this by-law;
- (e) that half of a public road contiguous to a building which is used for residential purposes, if the owner or person who is in control or any occupier of the building objects thereto; or
- (f) on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the municipality for the purposes of this by-law.
- (3) A person to whom an area or stand has been let or allocated under paragraph (c) of section 6A(3) of the Act must –
- (a) comply with conditions of the lease or allocation; and
 - (b) be in possession of written proof that municipality has let or allocated the area or stand to him or her.

7. Duties of street trader

- (1) A street trader must –
- (a) when he or she concludes business for the day, remove his or her property, except any structure permitted by the municipality, to a place which is not part of a public road or public place;
 - (b) when requested by an official of the municipality or a by a person who has been authorized to provide municipal services, move his or her property so as to permit the official or other person to carry out any work in relation to a public road, public place or service;
 - (c) keep the area or stand occupied by him or her in a clean and sanitary condition;
 - (d) ensure that the area is free of litter and must, when he or she concludes business for the day, dispose of litter generated by his or her business –
 - (i) at the dumping sites of the municipality; or
 - (ii) in receptacles provided by the municipality for the public;
 - (e) on request by an official of the municipality, move his or her property so as to permit the cleansing of the area where he or she is trading;
 - (f) regarding the size and location of the area or stand occupied by him or her –
 - (i) ensure that the area which he or she uses does not exceed 6 m² in size and not exceed 3 metres in length;
 - (ii) ensure that a space of not less than 1,5 metres is left between the wall of the shop (contiguous to which he or she conducts his or her business) and himself or herself; and
 - (iii) leave a space of not less than 0,5 metre from the kerb of the roadway.

8. Prohibited conduct

(1) A street trader may not:

- (a) sleep overnight at the area where he or she is trading or at the area where another street trader is trading;
- (b) place or stack his or her property in such a manner that it –
 - (i) constitutes a danger to any person or property; or
 - (ii) is likely to injure any person or cause damage to any property;
- (c) dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
- (d) release onto a public road or public place or into a storm water drain fat, oil or grease in the course of conducting his or her business;
- (e) allow smoke, fumes, noise, smells, or other substance arising from his or her activities to cause a nuisance or pollution of any kind;
- (f) erect a structure for the purpose of providing shelter;
- (g) place his or her property in a public road or public place;
- (h) park the vehicle or trailer in such a manner as to obstruct pedestrians or vehicular traffic and must ensure that he or she complies with the provisions of the National Road Traffic Act, 1996; if he conducts his or her business from a vehicle.
- (i) place on a public road or public place, his or her property that cannot be easily removed to a place of safety, which may not be a public road or public place, at the end of the day's business;
- (j) display his or her goods or other property on or in a building, without the consent of the owner, lawful occupier or person in control of such building or property;
- (k) attach an object by any means to a building, structure, sidewalk, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place;
- (l) carry on his or her business in such a manner as to –
 - (i) create a nuisance;
 - (ii) damage or deface the surface of a public road or public place or public or private property; or
 - (iii) create a traffic or health hazard;
- (m) make an open fire that poses a health or environment hazard to any person or property or to street furniture;

- (n) other than in a refuse receptacle approved or supplied by the municipality, accumulate, dump, store or deposit (or cause or permit this to be done) any litter on –
 - (i) any land or premises;
 - (ii) any public road or public place or;
 - (iii) any public or private property;
- (o) store his or her property in a manhole, storm water drain, public toilet, bus shelter or in a tree; and
- (p) carry on such business in a place or area in contravention of any prohibition or restriction approved by the municipality in terms of section 6A(2)(a) of the Act.

9. Removal and impoundment

- (1) An official who reasonably suspects that property is being used or intended to be used in, or in connection with, street trading, whether or not the property is in possession or under the control of any person may, subject to subsection (2), remove and impound the property which he or she finds at a place where street trading is restricted or prohibited and which constitutes an infringement of any such restriction or prohibition.
- (2) An official who acts under subsection (1) must, except in the case of goods that have been left or abandoned, issue to the street trader a receipt for the property so removed and impounded and the receipt must contain the following particulars:
 - (a) the address where the impounded property will be kept and the period it will be kept;
 - (b) the conditions for the release of the impounded property; and
 - (c) that unclaimed property will be sold by public auction.
- (3) If any impounded property is attached to immovable property or a structure, and the impounded property is under the apparent control of a person present at that place, an official may order the person to remove the impounded property.
- (4) When a person fails to comply with an order to remove the impounded property, an official may take such steps as may be necessary to remove the impounded property.
- (5) The municipality is not liable for any loss of or damage to any property lawfully removed and impounded in terms of this by-law.

CHAPTER 3

SPECIFIC PROVISIONS APPLICABLE TO STREET TRADING OF MEALS OR PERISHABLE FOODSTUFFS

10. Applicable provisions

The provisions in this Chapter apply to a street traders who sells meals or perishable foodstuffs, in addition to the provisions in Chapters 1 and 2 of this by-law and the provisions of the Businesses Act, 1991, the National Health Act, 2004, and the Regulations.

11. Hawker's licence

- (1) No person without a hawker's licence issued by the municipality may, whether as principal, employee or agent, carry on the business of selling any foodstuff in the form of meals or any perishable foodstuff –
 - (a) which is conveyed from place to place, whether by vehicle or otherwise;
 - (b) on a public road or at a public place; or
 - (c) in, or from a movable structure or stationary vehicle.
- (2) A person who wishes to obtain a hawker's licence must apply on an application form contained in Schedule 1, and submit the completed form to the office of the Municipal Manager.
- (3) After consideration of an application for a licence, the municipality may –
 - (a) grant the licence if any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs comply with the requirements of sections 2 to 5 inclusive of the Foodstuffs, Cosmetics and Disinfectants Act, 1972, and the regulations, National Health Act, 2004; and
 - (b) issue the licence subject to any condition specified in the licence in terms of which the licence holder must, in connection with the business premises or any such apparatus, equipment, storage, space, working surface, structure, vehicle, conveyance, article or place comply, or within a specified period comply, with a specific requirement relating to town planning or the safety or health of the public of a law contemplated in paragraph (a) which apply to those premises.
- (4) Subject to section 2(10) of the Act, the municipality may refuse to issue a licence if –
 - (a) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law contemplated in subsection (3)(a) relating to the health of the public;
 - (b) any foodstuff sold by the licence holder does not comply with a requirement of a law contemplated in subsection (3)(a) relating to the health of the public; or
 - (c) a licence of which the applicant was the holder, was at any time during the preceding 12 months, withdrawn due to non-compliance with a requirement contemplated in subsection (3).
- (5) The municipality may at any time, after giving the licence holder a reasonable opportunity to be heard –
 - (a) withdraw or suspend a licence on the ground that –
 - (i) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law contemplated in subsection (3)(a) relating to the health of the public;
 - (ii) any foodstuff sold by the licence holder does not comply with a requirement of a law contemplated in subsection (3)(a) relating to the health of the public; or
 - (iii) the person did not comply with a condition imposed by the municipality in terms of subsection (3)(b).

- (b) if it considers it necessary on the ground of changed circumstances in relation to a business or the premises, by way of endorsement on the licence amend a condition or impose a condition, and –
 - (i) may for these purposes require a licence holder in writing to produce his or her licence; and
 - (ii) must act in terms of section 2(10) of the Act.

12. Certificate of acceptability, application and exemptions

- (1) No person may carry on the business of street trader in foodstuffs without being in possession of a certificate of acceptability issued by the municipality in terms of regulation 3 of the Regulations.
- (2) A person who wishes to apply for a certificate of acceptability in respect of food premises of a street trader, must apply therefore in writing to the municipality on the application form contained in Schedule 2.
- (3) The completed application form must be submitted to office of the Municipal Manager.
- (4) Should a person, in terms of regulation 15(1) of the Regulations, wish to be exempted from any of the regulations contained in the Regulations, he or she must, in the application form, specify the particulars of the exemption being applied for.
- (5) Should the municipality decide to grant the certificate of acceptability to the person, it must issue to the person a certificate in a form contained in Schedule 3.

CHAPTER 3

MISCELLANEOUS PROVISIONS

13. Vicarious liability of persons carrying on street trading

- (1) When an employee of a person who trades ("the employer") performs an act which contravenes a provision of this by-law, the employer is deemed to have committed the contravention himself or herself, unless he or she proves to the satisfaction of the court that –
 - (a) he or she did not permit such act;
 - (b) he or she took all reasonable steps to prevent the performance of the act, however the fact that he or she issued instructions forbidding an act, is not sufficient proof that he took all reasonable steps to prevent the performance of the act; and
 - (c) it was not in the scope of the authority or the course of employment of the employee to perform an act which contravenes this by-law.

14. Exemptions

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.

- (2) The municipality may –
- (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2)(a), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

15. Offences and Penalty

Any person who contravenes the provisions of this by-law shall be guilty of an offence and liable to fine.

16. Repeal

This by-law repeals the street trading by-law published under Local Authority notice 26 gazette number 130 dated 26 January 1996 and its amendments.

17. Short title and commencement

This by-law is called Lephalele Street Trading By-law, and commence on the date of publication in the Provincial Gazette.

SCHEDULE 1

APPLICATION: HAWKER'S LICENCE FOR STREET TRADING IN MEALS AND PERISHABLE FOODSTUFFS

A person who wants to obtain a hawker's licence to hawk, sell or pedal meals or foodstuffs as a street trader, must supply the following information:

Name:

ID:

Address:

.....

Contact numbers (e.g. telephone):

Area/s in which you want to trade:

.....

Description of the food that you want to trade in:

.....

Description of all equipment that you are going to use:

.....

Description of the shelter, structure or vehicle in or from which you are going to

trade:

.....

.....
MUNICIPAL MANAGER

.....
DATE

SCHEDULE 2

APPLICATION FORM FOR A CERTIFICATE OF ACCEPTABILITY FOR FOOD PREMISES OF STREET TRADER

A. PERSON IN CHARGE

Surname and first names of person in whose name the certificate of acceptability must be issued

.....

I.D. Number

Address: Postal address:

.....

.....

Residential address:

.....

.....

Telephone number: Business Residential

B. PARTICULARS OF FOOD PREMISES

Name of food premises (if any)

Erf No. (if applicable)

Type of food premises, (e.g. building, vehicle, stall)

Location address or address where the food premises can be inspected

.....

.....

If the following are not situated on the food premises, note the address or describe the location of each:

Erf No. Address

(a) Sanitary (latrine) facilities

(b) Cleaning facilities (wash-basins for facilities)

(c) Hand-washing facilities

(d) Storage facilities for food/facilities

(e) Preparation premises

C. FOOD CATEGORY

List and describe the food items or the nature or type of food involved

.....

.....

D. NATURE OF HANDLING

List and describe what your activities will entail (e.g. preparation or packing and processing)

.....

.....

.....

E. STAFF

Number of persons employed or to be employed Men..... Women

F. PARTICULARS OF EXEMPTION BEING APPLIED FOR

.....
.....
.....

G. PARTICULARS OF APPLICANT

Name:

Capacity (e.g. owner, managing director, secretary, manager)

.....

Postal address

Telephone number

Date of application

Signature

SCHEDULE 3

CERTIFICATE OF ACCEPTABILITY FOR FOOD PREMISES OF STREET TRADER

A. ISSUING LOCAL AUTHORITY:
CERTIFICATE NUMBER:

NAME **Telephone number**

OFFICIAL
DATE
STAMP

B. FOOD PREMISES

Name (if any)

Address (Location or trading area, erf no. or vehicle registration no.)

Address where food is processed:

C. PERSON IN CHARGE

Name:

I.D. Number:

D. CERTIFICATION AND RESTRICTION

Restrictions, conditions or stipulations in terms of regulation 3(1)(b);
.....
.....
.....

E. SIGNATURE OF INSPECTOR DATE
.....

Name of inspector:

Official designation:

F. ENDORSEMENTS/EXEMPTIONS

.....
.....
.....

.....
DATE **SIGNATURE OF INSPECTOR**

LOCAL AUTHORITY NOTICE 216**LEPHALALE LOCAL MUNICIPALITY
WASTE MANAGEMENT BY-LAW**

The Municipal Manager of Lephalale Local Municipality hereby in terms of section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) publishes the Waste Management By-Law for the Municipality as approved by its Council, as set out hereunder.

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1. Definitions

In this by-laws, unless the contents otherwise indicates, any word or expression to which a meaning has been assigned in the National Environment Management Act, shall bear the same meaning –

“**approved**” in the context of bins, bin liners, containers, receptacles and wrappers, means approved by the municipality or a licensee for the collection and storage of waste;

“**authorised official**” means an official who has been authorised by the municipality to perform and exercise any or all of the functions and powers specified in and subject to the provisions of this by-law;

“**bin**” means an approved receptacle for the storage of less than 1,5 cubic metres of waste, which may be supplied by the municipality to premises in terms of this by-law;

“**building waste**” means all waste produced during the construction, alteration, repair or demolition of any structure, and includes building rubble, earth, vegetation and rock displaced during such construction, alteration, repair or demolition;

“**bulky waste**” means waste which by virtue of its mass, shape, size or quantity is inconvenient to remove in the routine door-to-door municipal service provided by the municipality or a licensee;

“**commercial services**” means any service, excluding municipal services, relating or connected to accumulating, collecting, managing, recycling, sorting, storing, treating, transporting, disposing, buying or selling of waste or any other manner of handling waste;

“**commercial waste**” means solid waste generated on premises used for non-residential purposes such as office buildings, stores, markets, theatres, hotels, warehouses, industrial operations and manufacturing processes, which are occupied by wholesale, retail, institutional, or service establishments, and includes waste generated by office workers or employees of the establishments;

“**container**” means an approved receptacle having a capacity greater than 1,5 cubic metres for the temporary storage of waste in terms of this by-law;

“**Council**” means the Council of the Lephalale Local Municipality;

“**council services**” means a municipal service relating to the collection of waste, provided exclusively by Council in accordance with the provisions of the Municipal Systems Act, 2000 (Act 32 of 2000) and this by-law;

“**DEAT**” means the Department of Environment and Tourism;

“**domestic waste**” means waste such as dust, ash, rubbish or other refuse arising or incidental to the normal occupation of premises ;

“**DWAF**” means the National Department of Water Affairs and Forestry;

“**garden waste**” means waste generated as a result of normal domestic gardening activities, including grass cuttings, leaves, plants, flowers and other similar small and light organic matter, but does not include tree branches with a diameter thicker than 40 mm at any point of its length, or any other category of waste or waste generated as a result of garden service activities;

“**garden service**” means the provision of gardening services by a licensee, including the cutting of grass, pruning of trees or any other horticultural activity including landscaping, to any domestic, business, commercial or industrial premises;

“**household bin**” means an approved receptacle for the storage of 240 litres of domestic waste, which may be supplied by the municipality to premises in terms of this by-law;

“**hazardous waste**” means waste containing or contaminated by poison, a corrosive agent, a flammable substance having an open flash-point of less than 90° C, an explosive, radioactive material, a chemical or any other waste that has the potential even in low concentrations to have a significant adverse affect on public health or the environment because of its inherent toxicological, chemical and physical characteristics;

“**industrial waste**” means waste generated as a result of manufacturing, maintenance, fabricating, processing or dismantling activities, but does not include any other category of waste such as building waste or domestic waste;

“**level of service**” means the frequency of municipal service and the type of service point;

“**litter**” means any object or matter which is discarded by a person in any place except in an approved receptacle provided for that purpose or at a waste disposal or processing facility;

“**medical waste**” means waste generated by a hospital, clinic, nursing home, doctor's offices, medical laboratory, research facility, dental practitioner, medical practitioner, and veterinarian and which are infectious or potentially infectious;

“**municipality**” means the Lephalale Local Municipality, and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“**nuisance**” means any injury, harm, damage, inconvenience or annoyance to any person which is caused in any way whatsoever by the improper handling or management of waste, including but not limited to, the storage, placement, collection, transport or disposal of waste or by littering;

“**occupier**” means any person in actual occupation of premises or part thereof without regard to the title under which he or she occupies

“**owner**” means --

- (a) a person in whom the legal title to a premises is vested;

- (b) in a case where the person in whom the legal title is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- (c) in the case where the municipality is unable to determine the identity of the person in whom a legal title is vested, the person who is entitled to the benefit of such premises or a building thereon;
- (d) in the case of premises for which a lease of 30 years or more has been entered into, the lessee thereof;
- (e) in relation to –
 - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), and without restricting the above, the developer or the body corporate in respect of the common property; or
 - (ii) a section as defined in such Act, the person in whose name such section is registered under a sectional title deed and includes the lawfully appointed agent of such a person;
- (f) any legal person including, but not limited to –
 - (i) a company registered in terms of the Companies Act, 1973 (Act 61 of 1973), Trust inter vivos, Trust mortis causa, a Closed Corporation registered in terms of the Closed Corporation's Act, 1984 (Act 69 of 1984), a voluntary association;
 - (ii) any Department of State;
 - (iii) any Council or Board established in terms of any legislation applicable to the Republic of South Africa;
 - (iv) any Embassy or other foreign entity; or
- (g) a lessee of municipal property, who will be deemed to be the owner for the purposes of rendering a municipal account;

“pollution” means any change in the environment caused by –

- (a) substances; or
- (b) radioactive or other waves; or
- (c) noise, odours, dust or heat, emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

“premises” means an erf or any other portion of land, including any building thereon or any other structure utilised for business, industrial or residential purposes;

“public place” means any public building, public road, overhead bridge, subway, foot pavement, footpath, sidewalk, lane, square, open space, garden, park, enclosed space vested in the municipality, and any road, place or thoroughfare however created which is in the undisturbed use of the public or which the public has the right to use or the right to access;

"public road" means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access

"resident" means, in relation to the municipality, a person who is ordinarily resident in the municipal area;

"solid waste" means waste of a solid nature generated by a person or business

"Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

"tariff" means tariff imposed by the municipality in its tariff policy;

"the act" means National Environmental Management Act;

"waste", means an undesirable or superfluous by-product, emission, residue or remainder of any process or activity, any matter, gaseous, liquid or solid or any combination thereof.

"waste collector" means a person who is registered under the provisions of this by-law as a waste collector;

"waste disposal or processing facility" means any facility or site which receives waste for disposal thereof, and which is operated in terms of a permit obtained from DEAT or any other competent authority or where such a facility is an incinerator, registration or such permission as is required by law and includes waste transfer and recycling stations;

"waste handling charge" means a sum of money that is levied by the municipality on a producer of waste and which the producer must pay to the municipality;

"waste generator" means any person or firm that generates or produces waste;

"waste management services" means services that relate to any one or more of the waste management activities;

"waste oil" means mineral or synthetic oil which is contaminated, spoiled or otherwise unfit for its original purpose; and

"waste transfer and recycling station" means a waste handling facility that receives and temporarily stores garden and bulky waste or any recyclable waste, or a combination of garden, bulky and recyclable waste;

2. Objectives of this by-law

(1) The objectives of this by-law are to:

(a) provide for the effective delivery of the municipal service;

- (b) protect the environment by providing reasonable measures for -
- (i) ensuring that waste management, including the storage, collection, transportation, treatment and disposal of waste, is undertaken in a comprehensive and responsible manner;
 - (ii) minimising the consumption of natural resources;
 - (iii) the minimisation of the generation of waste;
 - (iv) the reuse and recycling of waste; and
 - (v) the safe disposal of waste.

2. Application of by-law

This by-law apply to all areas under the control of Lephalale Local Municipality and are limited to regulate the generation, storage and collection of solid, non-hazardous waste.

CHAPTER 2

WASTE MANAGEMENT PLANNING

4. Development of Waste Management Plan

- (1) The Municipality must include in its integrated development plan contemplated in Chapter 5 of the Systems Act, a waste management plan for its area of jurisdiction.
- (2) The Municipality may amend a waste management plan from time to time and must review a waste management plan at least every five years.

5. Contents of Waste Management Plan

- (1) The waste management plan must be consistent with any relevant provincial waste management plan and must –
 - (a) seek to –
 - (i) give effect to the objectives of this By-law;
 - (ii) identify and address the negative impact of poor waste management practises on health and the environment;
 - (iii) provide for the implementation of waste minimisation, recycling and re-use programmes;
 - (iv) provide for the delivery of waste management services to all residential and business premises;
 - (v) ensure that there are adequate disposal facilities for the disposal of waste;
 - (vi) identify measures that are required to give effect to the objects of this by-law;
 - (vii) ensure that members of the public have access to education and awareness initiatives on waste management matters; and
 - (viii) give effect to best environmental practice in respect of waste management.
 - (b) include such other matters as may be required by any other legislation; and
 - (c) describe how the Municipality will give effect to its waste management plan.

CHAPTER 3**WASTE INFORMATION SYSTEM****6. Establishment of waste information system**

1. The Municipality must establish and maintain a waste information system for the collection and management of information.
2. The waste information system must comply with the requirements of any national or provincial legislation regulating the collection and management of information on waste and may include information on –
 - (a) significant sources of waste generation;
 - (b) the quantity, type, characteristics and composition of waste generated, re-used, recycled, recovered, transported, treated and disposed of;
 - (c) the impacts of the generation, storage, re-use, recycling, recovery, treatment and disposal of waste on the environment;
 - (d) matters that are necessary for waste management planning and service delivery; and
 - (e) any other matter that is necessary for the purposes of administering an effective waste management system.

7. Purpose of waste information system

- (1) The purpose of the waste information system is to –
 - (a) record and provide data and information for waste management planning undertaken by the Municipality;
 - (b) monitor waste management generally;
 - (c) provide information to organs of state and the public –
 - (i) for education, research and development purposes;
 - (ii) for planning and the undertaking of environmental impact assessments;
 - (iii) for public safety and disaster management;
 - (vi) on the status of waste generation, transportation, treatment and disposal; and
 - (v) on the impacts of waste on the environment.

CHAPTER 4**PROVISION OF MUNICIPAL SERVICES****8. Duties and powers of municipality**

- (1) The municipality as the primary service provider in the municipal area has a duty to the local community to progressively ensure efficient, affordable, economical and sustainable access to waste management services in its area or a part of its area.
- (2) This duty is subject to –
 - (a) the duty of members of the local community as users of the municipality's waste management services or any other person making use of the municipality's waste management services to pay, for the provision of the services, the prescribed charges, which must be priced in accordance with any nationally prescribed norms and standards for rates and tariffs; and
 - (b) the right of the municipality to differentiate between geographical areas when providing types of waste management services, without compromising on service equity in line with the Constitution.
- (3) The municipality must as far as is reasonably possible and subject to the provisions of this by-law provide, at a cost to users of the services prescribed by the municipality –
 - (a) for the collection of waste on a regular basis, except waste in its area, which is situated at a place which is so isolated or inaccessible that the cost of collecting it would be unreasonably high; and
 - (b) access to facilities for the recovery and disposal of waste.
- (4) The municipality must notify all users of its waste management services of any decisions taken in terms of this by-law.

9. Charges and fees

- (1) The occupier of premises must pay to the municipality the determined and prescribed rates and charges for the provision of waste management services and he or she is not entitled to exemption from the liability to pay the prescribed fee by reason of not making use of or making a partial or limited use of the municipality's waste management services, regardless of whether the municipality provides such services directly or through a licensee.
- (2) The prescribed fee becomes due and payable on a date as determined by the municipality.
- (3) Should a person fail to pay the fee on the date determined by the municipality, the municipality may apply the debt collection procedures.

CHAPTER 5**WASTE MANAGEMENT****Part 1****Categories of waste****10. Categories of waste**

(1) For the purposes of this by-law, waste is categorised as either –

(a) general waste, which consists of one or more of the following:

(i) Paper;

(ii) metals;

(iii) glass;

(iv) plastic;

(v) organic materials; and

(vi) inert materials, which includes builders rubble; or

(b) hazardous waste, as described in the DWAF Minimum Requirements documents or more recent guidelines.

(2) Within these two categories, waste is categorised according to its source namely:

(a) domestic;

(b) commercial; or

(c) industrial.

Part 2**General provisions relating to non-hazardous waste****11. Provision of receptacle for storage of waste**

(1) The owner of premises must provide on such premises at his or her own expense a sufficient number of portable, covered receptacles of a size and design approved by the municipality for the reception of the maximum quantity of waste that is likely to accumulate on the premises during any period of seven days.

(2) The municipality reserves the right to determine the size and types of receptacles to be used.

(3) The municipality may, where special receptacles are necessary, prescribe special receptacles for the reception and storage of such types of refuse as it may specify and may by written notice to be served on the occupier of premises require the occupier to provide at his or her own expense such number of special receptacles as are specified in the notice, and the occupier must forthwith comply with the notice.

- (4) Where any refuse receptacle provided on premises is –
- (a) of a size likely to hinder the efficient removal of refuse therefrom by the employees of the municipality;
 - (b) insufficient for the reception of all refuse which is to be removed from such premises by the municipality;
 - (c) dilapidated; or
 - (d) likely to cause a nuisance,
- the municipality may serve a written notice on the occupier of the premises requiring him or her to provide –
- (i) such number of receptacles; or
 - (ii) racks or other means of storing receptacles or packages or bundles of waste,
- as may be stated in the notice within a period stated therein being not less than 14 days from date of service of such notice, however the municipality may in the notice require or authorise in writing the provision of refuse receptacles of such different sizes or design as may be specified by the municipality where the prescribed standard receptacles would not be practical.
- (5) No person may dispose of any refuse by placing it anywhere else than in a receptacle or other container provided or approved by the municipality.
- (6) Where a receptacle is supplied free of charge, or at a hire tariff determined by the municipality, such receptacle remains the property of the municipality and the owner of the premises –
- (a) is liable to the municipality for the loss or damage to such receptacle; and
 - (b) must keep the said receptacle in a clean and sanitary condition.
- (7) The owner of the premises must ensure that any waste which is blown off the premises is promptly retrieved.
- (8) Every receptacle containing waste, except plastic bags, which is to be collected, must be clearly marked on it the name and telephone number of the person or company in control of the receptacle.

12. Location of receptacle

- (1) The occupier of premises must provide adequate space on the premises where a receptacle for the purpose of depositing waste or a specific category of waste, or packages or bundles of refuse required to be packed or bundled in terms of this by-law are kept and the place must –
- (a) comply with requirements imposed by the municipality by notice to the occupier;
 - (b) be constructed in accordance with the requirements of any applicable building regulations;
 - (c) be so located that the receptacle or racks are not visible from a street or public place;
 - (d) where applicable, be so located as to permit convenient access to and egress from such place for a waste collection vehicle; and

- (e) be in a location convenient for the use by users or occupants of the premises so as to discourage littering or the unhealthy accumulation of waste.
- (2) In the case of multi-storey buildings, the municipality may approve the installation of refuse chutes, subject to the submission and approval of the plans for such installation.
- (3) The occupier of premises must place or cause the receptacle to be placed in the space provided and must at all times be kept there.
- (4) In the event of the municipality or a licensee being unable to collect and remove waste from the space provided, the occupier may place the receptacle at a place stipulated by the municipality.

13. Standards which receptacles must meet

- (1) The municipality may –
 - (a) provide plastic bags or bins, which meet the standards set by national or provincial legislation; and
 - (b) authorise the use of bins and lids constructed of rubber or other material where the design and construction meet the standards set by national or provincial legislation.

14. Maintenance of receptacle

- (1) The occupier of a premises must place the receptacle in which waste or a specific kind of waste or packages or bundles of refuse are required to be packed or bundled in terms of this by-law, in the space provided and must –
 - (a) at all times keep it there;
 - (b) take reasonable steps to ensure that a sufficient number of receptacles are provided on the premises for the discarding of waste; and
 - (c) ensure that the receptacle is –
 - (i) at all times be maintained in good order and repaired and in a clean and hygienic condition;
 - (ii) at all times suitably weighted and anchored so that it cannot be inadvertently overturned;
 - (iii) at all times on weatherproof and animal proof;
 - (iv) emptied and cleansed periodically or when full, so that its contents do not become a nuisance or provide grounds for complaint;
 - (v) kept close when waste is being deposited into it or discharged from it; and
 - (vi) protected against unauthorised disturbance or interference at all times when refuse is not being deposited into it or discharged from it.

15. Contents of receptacle

- (1) No material, including any liquid, which by reason of its mass or other characteristics is likely to render a receptacle unreasonably difficult for employees of the municipality to handle or carry, may be placed in a receptacle.

- (2) Organic waste such as food scraps and similar waste likely to rapidly decompose and cause a nuisance must, before being deposited in the receptacles, be sealed in a bag which is disposable and water-tight.
- (3) A receptacle provided by the municipality may not be used for any purpose other than the storage of waste.
- (4) No person may –
 - (a) light a fire in a receptacle;
 - (b) deposit in a receptacle burning or glowing coal, ashes or other burning material; or
 - (c) deposit in a receptacle any material that is likely to –
 - (i) cause damage to the receptacle;
 - (ii) cause injury to the municipality's employees while carrying out their duties; or
 - (iii) hinder or delay work by the municipality's employees undertaken in terms of this by-law,unless suitable steps have been taken to avoid damage to the receptacle or injury to the municipality's employees collecting it or to the vehicle in which it is placed for removal.
- (5) Waste oil must be stored in leak proof metal, plastic or concrete containers, which are not subject to fire or accidental spillage, and the storage or disposal of waste oil in earth pits or upon the surface of any plot, street or public area is prohibited.

16. Collection of waste

- (1) The municipality may, having regard to the avoidance of nuisance and the convenience of collection of waste, indicate a position within or outside the premises where the receptacle must be placed for the collection and removal of the waste, and the receptacle must then be placed in that position at the times and for a period as the municipality or the licensee may require.
- (2) The municipality shall collect all waste placed in portable receptacles from all premises upon which a compulsory domestic refuse removal tariff or charge has been levied and as frequently as may be determined by the municipality.
- (3) The municipality shall collect only waste placed in a receptacle or other container approved by it or which is bundled or packaged in a manner approved by the municipality.
- (4) Where a particular kind of waste as stipulated by the municipality is not collected by the municipality from premises, the owner of the waste must arrange for the collection and transport of the waste, as often as may be necessary to prevent undue accumulation or any nuisance arising therefrom, to a waste disposal or processing site under the control of the municipality, or to such other place as may be approved by the municipality.
- (5) The municipality shall stipulate separate times on which particular categories of waste are to be collected.
- (6) The municipality may –
 - (a) cause collections to be made at regular periods weekly or otherwise, and may alter dates of collection;
 - (b) increase the number of collections as it may deem necessary or desirable; and
 - (c) from time to time make additional collections should it be desirable.

- (7) In the event of any additional collection being required by the occupier of premises, the additional collection will be subject to the approval of the municipality and each additional collection must be paid for by the occupier of premises from which the waste is collected at such rate as the municipality may fix by resolution.
- (8) A person requiring commercial services must ensure that the waste collector is licensed to collect and dispose of the category of waste, and the person must take reasonable steps to ensure that the relevant waste is collected and disposed of in terms of this by-law.

17. Access to premises

- (1) Except where otherwise approved by the municipality, taking into account physical accessibility, an owner must –
- (a) provide access from the nearest public road to the waste storage area on a premises, which access must be independent and unimpeded;
 - (b) provide access from the nearest public road to the waste storage area on a premises, which access may not lead through any aperture less than 1 metre wide and 2,5 metres high;
 - (c) ensure that the area and all parts of the access thereto is on the same level as the road; and
 - (d) ensure that the area and all parts of the access thereto is not more than 18 metres from the entrance to the premises from which the collection of waste is made.

18. Right of entry

- (1) Any duly authorised employee of the municipality is entitled to enter, at any time, premises in respect of which the municipality's waste management services are rendered -
- (a) for collecting and superintending the collection of waste;
 - (b) for inspecting or replacing receptacles, containers or bundles;
 - (c) for inspecting the means of access to the premises in general or the place where refuse receptacles or containers are kept so as to ensure that they are accessible and convenient for the collectors; and
 - (d) generally for ensuring that the provisions of this by-law are complied with.
- (2) An occupier of premises may not –
- (a) refuse access to the premises to an authorised employee of the municipality in the performance of their duties;
 - (b) obstructs or impedes an authorised employee of the municipality in the performance of their duties; or
 - (c) omit or refuse to give to an employee of the municipality any information lawfully required for the proper discharge of the employee's duties or supplies false information.

19. Inaccessible premises

- (1) The owner or occupier of premises whom the municipality has notified that the premises are dangerous because of -
- (a) the existence on the premises of a vicious animal; or
 - (b) any other reason which renders the premises dangerous;

must on the day on which waste is collected from the premises, place for collection all receptacles or other containers, packages or bundles of waste outside the premises at a time and for a period as specified in the notice.

20. Interference with receptacle

- (1) No person other than a person employed by the municipality in connection with the municipality's waste management services may, where a receptacle placed in a street or public place for the purpose of its contents being removed by the municipality, sort over, interfere with or disturb the contents of the receptacle.

21. Transport of waste

- (1) A person removing or conveying waste along any public place in or through an area owned or managed by Council -
- (a) must ensure that the receptacle, vehicle or conveyance in which the waste is carried is of a type and design approved by the municipality;
 - (b) must ensure that receptacle, vehicle or conveyance has a body of adequate size and construction for the type of waste being transported;
 - (c) must remove or convey the waste in such a manner as will prevent any nuisance resulting therefrom or the escape of the contents or materials therein;
 - (d) must maintain the receptacle, vehicle or conveyance in a clean, sanitary and roadworthy condition at all times;
 - (e) may not cause or permit any waste being transported to become detached, leak or fall from the receptacle, vehicle or conveyance transporting it, except at a waste disposal facility; and
 - (f) must ensure that the waste is deposited at a waste disposal facility that is permitted to accept such waste.

Part 3**Specific provisions relating to domestic waste****22. Specific provisions relating to generation, storage, collection and transport of domestic waste**

- (1) The occupier of premises used for residential purposes or for purposes of public worship from which waste is to be collected must –
- (a) except where, on written application to the municipality, the municipality has indicated in writing that it is clear that a person is physically infirm or otherwise incapable of complying with the notice, place the receptacle or bag on the pavement in front of the premise, however the municipality may, having regard to the avoidance of nuisance and the convenience of collection of waste, indicate a position within or outside the premises where the receptacle must be placed and the receptacle must then be placed in that position;
 - (b) place the receptacle or bag before a time and on a day of the week specified by the municipality by notice to the occupier;
 - (c) ensure that the receptacle or bag is undamaged and properly closed so as to prevent the dispersal of its contents; and
 - (d) ensure that the emptied receptacle is removed within a reasonable time, and that the immediate area around the spot where the receptacle or bag was placed, is free from waste that may have been spilled during collection.
- (2) An occupier of premises may not deposit or allow to be deposited in any receptacle for domestic refuse the contents of which are removable by the municipality, any waste other than domestic waste.

Part 4**Specific provisions relating to industrial and commercial waste****23. Collection of waste**

- (1) The occupier of premises on which industrial or commercial waste is generated must ensure that –
- (a) the container in which the waste is stored may not be kept in a public place except as required for collection.

24. Compaction of waste

- (1) Where –
- (a) the quantity of waste generated on premises requires daily removal of more than the equivalent of eight 240-litre bins; and

- (b) the major portion of the waste is compactable;

the municipality may require from the generator of the waste to compact that portion of the waste that is compactable, and the generator of the waste must compact any volume of the waste and place it into an approved receptacle or wrapper approved by the municipality, subject to the provisions that –

- (i) the capacity of the wrapper may not exceed 85 litres; and
 (ii) the mass of the wrapper and contents may not exceed 35 kilograms.

- (2) After the waste has been compacted and put into the wrapper as contemplated in subsection (1), it must be placed in the approved receptacle and must be stored so as to prevent damage to the wrapper or any nuisance arising until collected.

Part 5

Specific provisions relating to other types of waste

25. Garden waste

- (1) The occupier of premises on which garden waste is generated but not composted must ensure that the waste is collected and disposed of at a waste transfer and recycling station or licensed waste disposal site within a reasonable time after the generation thereof.
- (2) An occupier may compost garden waste on the property, provided that –
- (a) such composting does not cause a nuisance; and
 (b) he or she registers with the municipality.
- (3) Any person or a waste collector may remove garden waste, provided that once such waste has been collected from the premises on which it was generated, it is disposed of at a waste transfer and recycling station or licensed waste disposal site.
- (4) The municipality, in the course of collecting domestic waste, may collect a limited amount of garden waste, equal to two 70-litre bags, if the waste has been placed in an approved receptacle in the space designated for domestic waste, in which event the tariff for domestic waste, read with the necessary changes, will apply.

26. Building waste

- (1) The owner of premises on which building waste is generated must ensure that –
- (a) until disposal, all building waste, together with the containers used for the storage, collection or disposal thereof, is kept on the premises on which the waste was generated; and
 (b) pursuant to any instructions from the municipality, any structure necessary to contain the building waste is constructed.
- (2) The occupier of premises on which building waste is generated may dispose of the waste or must ensure that the waste is collected and disposed of by a waste collector registered with the municipality for this purpose.
- (3) All building waste must be disposed at a waste disposal facility designated for that purpose by the municipality, unless the municipality has given written consent for the building waste to be used for the purpose of land reclamation or for recycling.

27. Bulky waste

- (1) An article of waste which does not fit, or cannot be fitted into –
- (a) a receptacle for domestic waste;
 - (b) a cylindrical container 750 millimetres in diameter and 1 metre in length where no such receptacle is provided,
- is treated as bulky waste.
- (2) The occupier of the premises on which bulky waste is generated must ensure that the waste is collected and disposed within a reasonable time after the generation thereof at a waste transfer and recycling station or licensed waste disposal site.

Part 6**Littering and dumping****28. Littering**

- (1) No person or firm may –
- (a) discard waste on municipal land other than in a receptacle provided or approved by the municipality for the discarding of waste by the public;
 - (b) disturb anything in or remove anything from any receptacle which has been placed for the purposes of collecting waste; or
 - (c) sweep any waste into a gutter onto a road reserve or onto any other public place.
- (2) An occupier of a premise or the owner of a plot must monitor the premise or plot for acts of littering by another person or firm and must forthwith report such act of littering to the municipality.

29. Dumping

- (1) No person may –
- (a) except by permission of the owner or of the person or authority having control thereof; or
 - (b) unless authorised by law to do so;
- dump, accumulate, place, deposit, leave or cause or allow to be dumped, accumulated, placed, deposited or left on or in –
- (i) any road, public footway, pavement or any road verge;
 - (ii) any commonage land, village green, park, recreation ground or other open space to which the public have access;
 - (iii) any drain, watercourse, flood prone areas, tidal or other water in or abutting on any road, highway, street, lane, public footway or pavement, roadside or other open space to which the public have access; or

- (iv) private or municipal land,
any waste whatsoever, whether for gain or otherwise.
- (2) Should a person do any of the acts referred to in (1), the municipality may by written notice require -
- (a) the person directly or indirectly responsible for dumping, accumulating, placing, depositing, or leaving the waste;
 - (b) the owner of the waste, whether or not he or she is responsible for dumping, accumulating, placing, depositing or leaving the waste; or
 - (c) the owner or occupier of the land or premises on which the waste was dumped, accumulated, placed, deposited, or left, whether or not he or she is responsible therefor,
- to remove the waste within the period stated in the notice.
- (3) If a person fails to comply with the requirements of a written notice, the municipality may dispose of, destroy or remove the waste and may recover the cost of doing so from the person or persons to whom the notice was issued.
- (4) If waste has been deposited in or on any land in contravention of subsection (1) and -
- (a) in order to remove or prevent pollution of land, water or air or harm to human health, it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both;
 - (b) there is no occupier of the land; or
 - (c) the occupier neither made nor knowingly permitted the deposit of the waste,
- the municipality may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit or as the case may require, to remove the waste and take those steps and is entitled to recover the cost incurred by it in removing the waste or taking the steps or both and in disposing of the waste -
- (i) from the occupier of the land, unless he or she proves that he or she neither made nor knowingly caused nor knowingly permitted the deposit of the waste; and
 - (ii) from any person who deposited or knowingly caused or knowingly permitted the deposit of any of the waste.
- (5) Any waste removed by the municipality belongs to the municipality and may be dealt with accordingly.

Part 7

Burning of waste

30. Burning of waste

- (1) No person may burn waste except at -
- (a) an authorised incinerator operated by the municipality; or
 - (b) a place designated by the municipality for such purpose.

CHAPTER 6**COMPLIANCE AND ENFORCEMENT*****Part 1: General duty*****31. Duty of care**

- (1) Any person who generates waste has a duty to manage that waste in such a manner that the waste does not endanger health or cause pollution or degradation of the environment and must take all reasonable measures to –
 - (a) reduce the generation of waste;
 - (b) re-use and recycle waste;
 - (c) ensure that, where waste must be disposed of, it is disposed of in an environmentally sound manner;
 - (d) manage the waste in such a manner that it does not cause a nuisance through noise, dust or odour; and
 - (e) prevent the waste from being used for a purpose or in a manner not permitted by law.
- (2) No person may generate, collect, store, transport, sort, recycle, re-use, recover, treat, dispose of or otherwise manage waste in a manner that results in, or creates a risk of harm that is not insignificant to human health or the environment.
- (3) Every person who generates, collects, stores, transports, sorts, recycles, re-uses, recovers, treats or disposes of waste shall take all reasonable measures to prevent any other person from contravening subsection (2) in relation to that waste.
- (4) Where any waste management activity has been authorised by law, the person so authorised shall minimise and remedy any pollution or degradation to the environment.
- (5) Without limiting the generality of the duties imposed in this section, the persons on whom subsections (1), (2), (3) and (4) imposes a duty shall include an owner of land, premises or equipment, a person in control of land, premises or equipment, a person who has a right to use the land, premises or equipment or a person who owns or controls equipment or vehicles on which or in which –
 - (a) any activity or process is or was performed or undertaken that results in the generation of waste;
 - (b) waste is transported, managed, treated or disposed of; or
 - (c) any other situation exists;

which causes, or is likely to cause harm to human health or pollution or degradation to the environment.

- (6) The measures that are required in terms of this section include –
 - (a) investigation, assessment and evaluation of the impact of the waste on the environment;
 - (b) informing and educating employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing pollution or degradation to the environment;
 - (c) ceasing, modifying or controlling any act or activity which causes pollution or degradation;
 - (d) containing or preventing the movement of pollutants or the causes of degradation or damage to the environment;
 - (e) eliminating any source of the pollution or degradation; and
 - (f) remediating the effects of the pollution or degradation.
- (7) The Municipality may issue a Code of Practise to provide guidance on how duty imposed by this section must be discharged.

- (8) The Municipality may, after consultation with any other organ of state concerned and after having given adequate opportunity to affected persons to inform it of their relevant interests, direct any person who fails to take the measures required under subsection (1) to—
- (a) cease an activity;
 - (b) investigate, evaluate and assess the impact of specific activities and report thereon;
 - (c) commence taking specific reasonable measures before a given date;
 - (d) diligently continue with those measures; and
 - (e) complete them before a specified reasonable date;
- provided that if urgent action is necessary for the protection of the environment, the Municipality may issue such directive and give the person an opportunity to comment as soon thereafter as is reasonable.
- (9) Should a person fail to comply, or inadequately comply, with a directive under subsection (8), the Municipality may take reasonable measures to remedy the situation.
- (10) The Municipality recover all costs incurred as a result of it acting under subsection (9) from —
- (a) any person who is or was responsible for or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;
 - (b) the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred or that owner's successor in title;
 - (c) the person in control of the land or any person who has or had a right to use the land at the time when—
 - (i) the activity or the process is or was performed or undertaken; or
 - (ii) the situation came about; or
 - (d) any person who negligently failed to prevent—
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about.

Part 2

Powers and representations

32. Notice of compliance and representation

- (1) If a person is contravening a provision of this by-law, an official may in writing issue a compliance notice and serve it on the person concerned to take remedial measures.
- (2) A notice must state —
- (a) the name, residential and postal address of the affected person;
 - (b) the nature of the nuisance, harm to human health or damage to the environment that the affected person is causing or is likely to cause;

- (c) in sufficient detail to enable compliance with the notice, the measures required to forestall or remedy the nuisance, harm to human health or damage to the environment; and
 - (d) that the person must within a specified time period take measures to comply with the notice, to diligently continue with the measures and to complete the measures before a specific date.
- (3) If the person fails to comply within the stipulated time period with the requirements stipulated in the notice –
- (a) the municipality may perform the steps required in the notice and should the municipality incur any costs as a result of performing such steps, it may recover any reasonable costs irrespective if criminal proceedings have been or not been instituted against a person.
- (4) A person may within the time period stipulated by the municipality make representations, in the form of a sworn statement or affirmation to the municipality at the place specified in the notice.
- (5) Representations not lodged within the time period will not be considered, except where the person has shown good cause and the municipality condones the late lodging of the representations.
- (6) The municipality must consider the representations and any response thereto by an authorised official or any other person, if there be such a response.
- (7) The municipality may, on its own volition, conduct any further investigations to verify the facts if necessary and the results of the investigation must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and the municipality must also consider the further response.
- (8) The municipality must, after consideration of the representations and response, if there be such a response, make an order in writing and serve a copy of it on the person.
- (9) The order contemplated in subsection (8) must –
- (a) set out the findings of the municipality;
 - (b) confirm, alter or set aside in whole or in part, the notice of compliance; and
 - (c) specify a period within which the person must comply with the notice or order made by the municipality.
- (10) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, the municipality will inform the person that he or she –
- (a) must discharge the obligations set out in the notice; or
 - (b) may elect to be tried in court.
- (11) If the person elects to be tried in court he or she must, within seven calendar days, notify the municipality of his or her intention.
- (12) If the person does not elect to be tried in court, he or she must, within the prescribed manner and time discharge his or her obligations under the notice.

33. Costs

- (1) Should a person fail to take the measures required by written notice, the municipality may, subject to subsection (4) recover all costs incurred from that person and any or all of the following persons:
 - (a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;
 - (b) the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner's successor in title;
 - (c) the person in control of the land or any person who has or had a right to use the land at the time when the activity or the process is or was performed or undertaken.
 - (d) any person who negligently failed to prevent the activity or the process being performed or undertaken.
- (2) The municipality may furthermore, in respect of the recovery of costs, claim proportionally from any other person who benefited from the measures undertaken by the municipality.
- (3) The costs claimed must be reasonable and may include, without being limited to, labour, administrative and overhead costs.
- (4) If more than one person is liable for costs incurred, the liability must be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the required measures.

CHAPTER 7**ADMINISTRATIVE AND OTHER MATTERS****34. Authentication and service of order, notice or other document**

- (1) Any notice or other document that is served on a person in terms of this by-law, is regarded as having been served-
 - (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgment of the posting thereof from the postal service is obtained;
 - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate.
- (2) Service of a copy shall be deemed to be service of the original.

- (3) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

35. Regulations, legal documents and steps valid under certain circumstances

- (1) A regulation or notice, or an authorisation, permit or other document, purportedly made or issued in terms of this by-law or Environmental Management Act –
- (a) which does not comply with a procedural requirement of the relevant Act, is nevertheless valid if the non-compliance is not material and does not prejudice any person; or
 - (b) may be amended or replaced without following a procedural requirement of the relevant Act if –
 - (i) the purpose is to correct an error; and
 - (ii) the correction does not change the rights and duties of any person materially.
- (2) The failure to take any steps in terms of this by-law or the act as a prerequisite for any decision or action does not invalidate the decision or action if the failure –
- (a) is not material;
 - (b) does not prejudice any person; and
 - (c) is not procedurally unfair.

36. Limitation of liability

- (1) The municipality is not liable for any damage or loss caused by –
- (a) the exercise of any power or the performance of any duty in good faith under this by-law; or
 - (b) the failure to exercise any power, or perform any function or duty in good faith under this by-law.

37. Exemptions

- (1) The municipality may exempt activities from any one or more of the provisions of this by-law in the following circumstances:
- (a) start-up periods;
 - (b) shut-down periods;
 - (c) planned maintenance periods; and
 - (d) periods of reasonable breakdown of pollution control equipment.

38. Waiver

- (1) The municipality may waive compliance with or permit deviations, exceptions and exemptions from any provisions of this by-law subject to such conditions as it may deem fit.
- (2) The municipality shall serve a signed written notice upon the person and the notice must cite –
 - (a) the provision that was waived or relaxed; and
 - (b) the extent to which it has been waived.
- (3) The municipality must keep a record, which contains a copy of the notice and the public may, at all reasonable hours, inspect this record at the offices of the municipality.
- (4) A person whose rights are adversely affected by the waiver or relaxation is not bound thereby.

39. Offence and Penalties

- (1) Any person who contravenes or fails to comply with any provision of this by-law is guilty of an offence and on conviction liable to a fine or imprisonment.

40. Repeal of By-Law

By-law on Waste previously made by the municipality or its constituent predecessors in respect of any portion of the area of the Lephalale Local Municipality, are hereby repealed .

41. Short title and commencement

This by-law is called the Waste Management By-Law and comes into operation on the date of publication in the Provincial Gazette.
