



## **BA-PHALABORWA LOCAL MUNICIPALITY**

### **INFORMAL TRADING BY-LAWS**

The Municipal Manager of the Ba-Phalaborwa Local Municipality hereby in terms is section 13(a) Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), publishes Informal Trading By-laws for the of the Ba-Phalaborwa Local Municipality as approved by its Council, as set out hereunder.

## **BA-PHALABORWA LOCAL MUNICIPALITY COUNCIL**

### **INFORMAL STREET TRADING BY-LAWS**

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## Purpose of the By-Law

Ba-Phalaborwa Municipal council recognises the key role that informal trading plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal trading has on historically disadvantaged individuals and communities;

The municipality recognises the need to adopt a developmental approach to informal trading within a well-managed municipal area. This requires that, in managing informal trading, consideration must also be given to –

- (a) the promotion of social and economic development;
- (b) the promotion of a safe and healthy environment;
- (c) municipal planning;
- (d) the licensing and control of undertakings that sell food to the public; and
- (e) the management of public places and public roads;

Ba-Phalaborwa Municipal Council has competence, in terms of section 156 (2) of the Constitution of the Republic of South Africa, to make and administer by-laws for the effective administration of the matters which it has the right to administer;

Therefore the Ba-Phalaborwa Municipal Council, acting in terms of section 156 read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law.

## Chapter 1- Interpretation

### 1. Definitions

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

**"Abandoned goods"** means any goods which have been left unattended for more than 24 hours and whose owner cannot be located.

**"Authorised official"** means a person authorised to implement the provisions of this Bylaw, including but not limited to: -

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) municipal police/traffic officer as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and
- (c) business (trade licence) inspectors as contemplated in section 8(1) of the Limpopo Business Registration Act, 2003 (Act No 5 of 2003).

**"Black person"** means a black person as defined in the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

**"Event"** means an event as defined in the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010), namely sporting, entertainment, recreational, religious, cultural, exhibition, organisational or similar activities hosted at a stadium, venue or along a route or within their respective precincts.

**"Foodstuff"** means foodstuff intended for human consumption as defined in section 1 of the Foodstuff, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

**"Goods"** means any movable property displayed or kept by a person in a public place or public road used or intended to be used in connection with carrying on the business of an informal trader and includes any article, container, vehicle, movable structure or living thing.

**"Illegal goods"** means –

- (a) goods which may not lawfully be sold or bought including, but not limited to, counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);
- (b) goods that are bought or sold in an unlawful manner; or
- (c) goods that have been acquired in an unlawful manner.

**"Impoundment fee"** means the applicable tariff charge, as determined by the council from time to time, for the impounding and storing of goods impounded in terms of this By-law, as well as the disposal or releasing of the impounded goods.

**"Informal trader"** means a person who carries on the business of informal trading.

**"Informal trading"** means the trading in goods and services in the informal sector by an informal trader in a public road or public place, and which typically includes, without limitation, the following types of trading:

- (a) street trading;
- (b) trading in pedestrian malls;
- (c) trading at markets or flea markets;
- (d) trading at transport interchanges;
- (e) trading in public places;
- (f) mobile trading, such as caravans and light delivery vehicles;
- (g) trading from kiosks, stalls or containers;
- (l) car wash;
- (j) hair dressing;
- (k) photography;
- (l) roving traders, including without limitation, trading from trolleys; and
- (m) trading at special events.

**"Intersection"** means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

**"Kerb line"** means the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

**"Litter"** includes any container, wrapping or other waste which has been discarded or left behind by an informal trader or by his or her customers.

**"Market"** means an area within an informal trading area which is designated as a market on an informal trading plan and which is managed in a co-ordinated manner.

**"Municipality"** means the Ba-Phalaborwa Municipality, a category B Municipality as contemplated in section 155(1) of the constitution.

**"Municipal manager"** means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

**"Municipal property"** means property owned by, leased by or under the control of the Ba-Phalaborwa Municipality.

**"Non-municipal property"** means property that is situated within the area of jurisdiction of the Ba-Phalaborwa Municipality but which is not owned by, leased by or under the control of the Ba-Phalaborwa Municipality.

**"Nuisance"** means any conduct or behaviour by any person or the use, keeping, producing, by-producing, harbouring or conveying, as the case may be, of any item, substance, matter, material, equipment, tool, plant or animal or causing or creating any situation or condition in or on private property or in a public place or anywhere in the Ba-Phalaborwa Municipality which causes damage, annoyance, inconvenience or discomfort to the public or to any person, in the exercise of rights common to all or of any person.

**"Obstruct"** means to do anything which blocks or is likely to block vehicular or pedestrian traffic flow on a public road.

**"Once-off event"** means an event that occurs only once annually.

**"Park"** means a garden or park to which the public has a right of access, and "garden" has the same meaning.

**"Permit-holder"** means an informal trader who has been granted a permit by the Ba-Phalaborwa Municipality, to conduct informal trading from a designated site situated in an informal trading area on Ba-Phalaborwa municipal property.

**"Prescribed"** means as determined by resolution of the council from time to time.

**"Public building"** means a building belonging to or occupied solely by any sphere of the government, including the Ba-Phalaborwa Municipality.

**"Public parking space"** means any space in a public place designated by the Ba-Phalaborwa Municipality for the parking of a motor vehicle.

**"Public place"** means:

- (a) a public road;
- (b) a public parking space; and
- (c) any square, park, recreation ground, sports ground, shopping centre, municipal cemetery, open space, or vacant municipal land which is vested in the Ba-Phalaborwa Municipality, or in respect of which the public has the right of use, or which is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's office as having been provided for the use of the public or the owners of erven in such township;

**"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, and includes—

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

**"Roadway"** means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic, which is between the edges of the roadway, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

**"Sell"** includes-

- (a) bartering, exchanging or hiring out;
- (b) displaying, exposing, offering or preparing for sale;
- (c) storing on a public road or in a public place with a view to selling; and
- (d) providing a service for reward, and "sale" or "selling" has a corresponding meaning;

**"Services"**, in relation to an informal trader, includes any advantage or gain given or supplied by the trader in return for consideration or reward.

**"Shoulder"** means that portion of the road, street or thoroughfare between the edge of the roadway and the kerb line, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996).

**"Sidewalk"** means that portion of a verge intended for the exclusive use of pedestrians, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

**"Street trading"** means the selling of goods or the supply of services for reward in a public road.

**"Trading hours"** means the hours between 05h00 and 22h00, or extended hours in case there are events as stipulated by the Ba-Phalaborwa Municipality.

## 2. Interpretation of By-law

If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

## 3. Objects of By-law

The object of this By-law is to regulate informal trading in a manner which –

- (a) ensures that informal trading is conducted in an orderly manner;
- (b) enables access to job and entrepreneurial opportunities within the informal trading sector;
- (c) harmonises the relationship between the informal trading sector and the formal trading sector; and
- (d) ensures the health and safety of the public.

#### 4. Application of By-law

This By-law applies to all areas which fall under the jurisdiction of the Ba-Phalaborwa Municipality (excluding areas under the traditional authorities) and is binding on all persons to the extent applicable.

### Chapter 2- Freedom to trade informally

#### 5. Freedom to engage in informal trading

Subject to compliance with the provisions of –

- (a) this By-law;
- (b) any other applicable law; and
- (c) any applicable informal trading permit, any person is permitted to engage in informal trading within the area of jurisdiction of the Ba-Phalaborwa Municipality.

#### 6. Trading areas and trading sites

(1) The Ba-Phalaborwa Municipal council may, by resolution—

- (a) set apart informal trading areas on municipal property within any area designated as an informal trading area in terms of an informal trading policy; and
- (b) demarcate informal trading sites within informal trading areas.

(2) The Ba-Phalaborwa Municipality council may, by resolution –

- (a) extend, reduce or disestablish any informal trading area or informal trading site; or
- (b) lease any verge or any portion of a verge to the owner or occupier of any contiguous land on condition that the owner or occupier must allow a specified number of informal traders to trade from sites on such verge on such terms and conditions as the Ba-Phalaborwa council may determine.

(c) The Ba-Phalaborwa Municipality has established the following areas; as informal trading sites

- (i) Markets at Checkers Centre in Phalaborwa.
- (ii) Space between the Phalaborwa Taxi Rank and Bus stop.
- (iii) Markets at the Taxi Rank in Phalaborwa.
- (iv) Space behind the Shoprite Centre in Phalaborwa.
- (v) Demarcated area at Namakgale mall
- (vi) Demarcated area at Spar complex in Lulekani
- (vii) Demarcated area at Shoprite centre in Lulekani
- (viii) Demarcated area at Akanani Shopping Centre in Lulekani
- (xi) Gravelotte markets opposite Viva Garage.
- (xii) Stalls at Namkgale Taxi rank
- (x) Stalls at Lulekani Taxi rank

#### 7. Trading hours and other conditions

The Ba-Phalaborwa Municipality may when setting apart informal trading areas, or at any time thereafter on reasonable notice, impose –

- (a) trading days and hours; and
- (b) any other conditions.

### **Chapter 3- Trading Permits**

#### **8. Prohibition: informal trading on Ba-Phalaborwa Municipal property without permit**

No person may conduct informal trading on Ba-Phalaborwa municipal property without a valid informal trading permit from the Ba-Phalaborwa Municipality.

#### **9. Informal trading permits**

(1) A person may apply for an informal trading permit, to conduct informal trading on Ba-Phalaborwa municipal property, if that person—

- (a) is an informal trader or a person who wants to become an informal trader;
- (b) does not already hold a permit in respect of any other informal trading site within the area of jurisdiction of the Ba-Phalaborwa Municipality;
- (c) is a South African citizen or, failing which, has a valid work permit which includes, but is not limited to, a refugee permit;
- (d) does not employ more than 10 persons;
- (e) does not have an interest in more than one (1) entity or partnership which conducts informal trading; or
- (f) is currently unemployed, and on becoming gainfully employed surrender such permit.

(2) An application for an informal trading permit must be on the form prescribed by the Ba-Phalaborwa Municipality from time to time.

(3) The Ba-Phalaborwa Municipality must consider any application for an informal trading permit and may—

- (a) approve it subject to any conditions;
- (b) request that additional information be furnished within a specified time frame; or
- (c) reject the application and provide reasons thereof.

(4) The Ba-Phalaborwa Municipality may take into account the following factors when considering an application for an informal trading permit:

- (a) the need to give preference to applicants who—
  - (i) are black persons;
  - (ii) are unemployed;
  - (iii) are entering the informal sector for the first time;
  - (iv) do not share a household with an existing permit-holder, unless the applicant is not a dependant on or financially reliant upon that permit-holder; and
  - (v) are physically challenged;

(b) whether the goods which the applicant intends selling, or the services which the applicant intends providing, fit with those sold or supplied by other informal traders in the informal trading area or other traders in the immediate vicinity of the informal trading area;

(c) whether the applicant has, in the two (2) year period prior to his or her application, been convicted of an offence relating to informal trading or has had his or her informal trading permit revoked or suspended;

(d) the applicant's ability to meet the trading hours for the relevant informal trading area as the Ba-Phalaborwa Municipality's council may determine

(5) The Ba-Phalaborwa Municipality may, when issuing an informal trading permit, impose any reasonable conditions, including but not limited to—

(a) minimum or maximum trading hours;

(b) restrictions regarding the type of goods or services in which the permit-holder is permitted to trade;

(c) an expiry date for the permit; and

(d) conditions regarding the type of structure or structures, if any, which may be erected on an informal trading site or in an informal trading area.

(6) An informal trading permit –

(a) must refer to a specified trading bay, as identified by its allocated number, to which the permit relates; and

(b) gives only the permit-holder, and his or her employees, the right to use that trading bay subject to the conditions of the permit, the provisions of an applicable informal trading policy and any other conditions imposed in terms of this By-law.

## 10. Informal trading fees

The Ba-Phalaborwa Municipality is entitled to charge –

(a) any person who applies for an informal trading permit, an application fee on submission of each application for an informal trading permit; and

(b) any informal trading permit-holder, an annual rental in respect of the informal trading site to which the permit relates.

## 11. Transfer of informal trading permits

(1) A permit is non-transferable and may not be leased, sold or otherwise disposed of except with the prior consent of the Ba-Phalaborwa Municipality in terms of this section.

(2) A permit may, with the prior written approval of the Ba-Phalaborwa Municipality, be temporarily or permanently transferred to a person nominated by a permit-holder in writing, and subject to the provision of any information which the Ba-Phalaborwa Municipality may reasonably require from time to time.

(3) If the Ba-Phalaborwa Municipality consents to the temporary or permanent transfer of an informal trading permit, the—

(a) Ba-Phalaborwa Municipality may impose such requirements as it deems fit; and

(b) person replacing the permit-holder will be entitled to trade, if the transfer is temporary, for the period of time indicated by the Ba-Phalaborwa Municipality.

## 12. Removal and suspension of informal trading permits

The Ba-Phalaborwa Municipality may, on reasonable notice to an informal trader and after having given the informal trader an opportunity to make written representations, revoke or suspend an informal trading permit if the informal trader has—

- (a) breached any conditions of his or her informal trading permit;
- (b) breached the provisions of this By-law or of any other law;
- (c) been convicted of trading in illegal goods or of providing a service unlawfully; or
- (d) found to have wilfully supplied incorrect information to the Municipality when required to provide that information.

## 13. Temporary relocation and suspension

(1) The Ba-Phalaborwa Municipality may, on reasonable notice to an informal trader, temporarily—

- (a) relocate a permit-holder;
- (b) suspend the validity of a permit; or
- (c) suspend informal trading from an informal trading area or a particular trading site or sites, if the continuation of trading from an informal trading area or trading site is impractical or inconvenient to the activities of the Ba-Phalaborwa Municipality, any sphere of government or any public entity, including their respective service providers.

(2) No compensation is payable by the Ba-Phalaborwa Municipality to an informal trader in the event that—

- (a) the trader is relocated;
- (b) the permit is suspended; or
- (c) trading is suspended from a particular informal trading area or trading site.

(3) No informal trading fee shall be payable during any period where –

- (a) the validity of an informal trading permit is suspended; or
- (b) informal trading in an informal trading area or from a particular informal trading site is suspended or prohibited, without an alternate site being provided to the permit holder concerned.

## Chapter 5- Restrictions

### 14. Restricted or prohibited areas for informal trading

(1) The Ba-Phalaborwa council may, by resolution, declare any place in its area of jurisdiction to be an area in which informal trading is restricted or prohibited.

(2) The Ba-Phalaborwa council may, in restricting or prohibiting informal trade, indicate places where—

- (a) informal trading is prohibited; or
- (b) informal trade in specified goods or services is prohibited.

(3) The Ba-Phalaborwa Municipality must erect signs, markings or other devices to indicate the boundaries of—

- (a) areas where informal trading is restricted or prohibited (and the nature of any restriction); and
- (b) informal trading areas and informal trading sites.

(4) Any sign erected in terms of this By-law or any other law, shall serve as sufficient notice to an informal trader that informal trading is prohibited or restricted in that area.

(5) An informal trader must not trade in any place or area where informal trading is restricted or prohibited in terms of this By-law.

### 15. Restricted conduct: erection of structures

An informal trader must not erect any structure, whether movable or immovable, other than a device approved by the Ba-Phalaborwa Municipality.

### 16. Restricted conduct: use of the site overnight

(1) An informal trader must not sleep overnight at the place where he or she carries on informal trading.

(2) An informal trader must not, on concluding business for the day, leave his or her goods at an informal trading site which is part of a public road or public place, except any structure permitted by the Ba-Phalaborwa Municipality.

### 17. Restricted conduct: fires

An informal trader must not make a fire at any place unless authorised to prepare foodstuffs by utilising open-flame fire or gas-fired equipment and, where the informal trader is authorised to make a fire, he or she must not make a fire in circumstances where it could harm any person or damage any building, structure, vehicle or other property.

### 18. Restricted conduct: litter

(1) An informal trader must dispose of litter generated by his or her informal trading in a refuse receptacle approved or supplied by the Ba-Phalaborwa Municipality.

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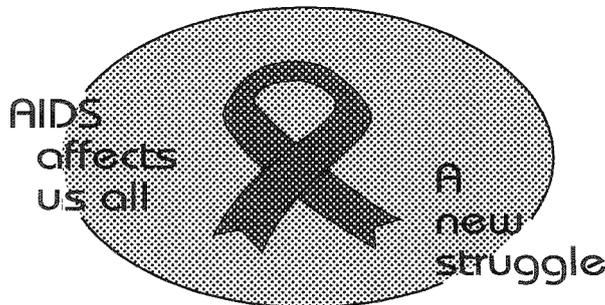
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(2) An informal trader must not, other than in a refuse receptacle approved or supplied by the Ba-Phalaborwa Municipality, accumulate, dump, store, deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property.

### **19. Restricted conduct: alcohol, sound-emitting devices and electricity**

An informal trader must not—

- (a) sell or promote alcoholic products;
- (b) use bells, hooters, amplified equipment or similar devices which emit sound, in order to attract customers; and
- (c) use any electrical supply or a power generator, unless expressly approved by the Ba-Phalaborwa Municipality.

### **20. Restricted conduct: general**

An informal trader must not carry on informal trading—

- (a) in a place or area in contravention of any prohibition or restriction imposed by the Ba-Phalaborwa Municipality; or
- (b) in such a manner as to—
  - (i) create a nuisance;
  - (ii) damage or deface the surface of any public road or public place, or any public or private property;
  - (iii) create a traffic or health hazard or a health risk;
  - (iv) contravene any of the terms and conditions of his or her informal trading permit; or
  - (v) act in a way which disturbs the reasonable peace, comfort or convenience and well-being of any other person.

### **21. Environmental health**

An informal trader must –

- (a) keep the informal trading site or area occupied by him or her for the purposes of conducting informal trading in a clean and sanitary condition;
- (b) keep his or her goods in a clean and sanitary condition;
- (c) ensure that, on completion of business each day –
  - (i) the informal trading site or area occupied by him or her for the purposes of conducting informal trading is free of litter and other waste; and
  - (ii) all his or her goods are collected and removed from any public road or public place and stored in a suitable facility;
- (d) take necessary precautions in the course of conducting his or her business as may be necessary to prevent the spilling of fat, oil or grease onto a public road, or public place, or into a storm water drain;
- (e) carry on business in a manner which does not cause a threat to public health or public safety; and
- (f) at the request of an authorised official of the Ba-Phalaborwa Municipality, move or remove any object so that the area or informal trading site from which informal trading is conducted may be cleaned.

## 22. Temporary relocation

An informal trader must, on request by an authorised official or a service provider appointed by the Ba-Phalaborwa Municipality, move his or her goods so as to permit the carrying out of any work in relation to a public road, public place or any work.

## Chapter 6- Enforcement

### 23. Lawful instructions

Failure to comply with a lawful request of an authorised official is a contravention of this By-law.

### 24. Recovery of costs

(1) If an informal trader contravenes any provision of this By-law, an applicable informal trading policy or his or her permit and fails or refuses to cease the contravention, or to take steps to rectify any contravention, then the Ba-Phalaborwa Municipality may take those steps itself and recover the costs from the informal trader.

(2) The costs mentioned in subsection (1) is in addition to any fine which may be imposed on the informal trader.

### 25. Removal and impoundment

(1) Subject to subsection (3), an authorised official may, in terms of the Criminal Procedure Act, 1977 (Act No 51 of 1977), remove and impound any goods of an informal trader which he or she reasonably suspects is being used, has been used or is intended to be used for or in connection with—

(a) trading in a place or area—

(i) where informal trading is prohibited or restricted by Ba-Phalaborwa Municipality or any other law of the Republic of South Africa.

(b) trading without a valid informal trading permit issued by the Ba-Phalaborwa Municipality, or

(c) trading in illegal goods.

(2) The removal and impoundment of goods in terms of subsection (1) may be carried out irrespective of whether or not such goods are in the possession or under the control of any third party at the time.

(3) Any authorised official who removes and impounds goods in terms of subsection (1) must, except where goods have been abandoned in terms of section 26, issue the informal trader a receipt which—

(a) captures the full name, identity number and contact details of the informal trader;

(b) states the relevant section of the by-law contravened by the informal trader;

(c) itemises the goods to be removed and impounded;

(d) states the period of impoundment;

- (e) states the terms and conditions which must be met to secure the release of the impounded goods;
- (f) states the impoundment fee to be paid to secure release of the impounded goods;
- (g) states the place at which the goods will be kept and where representations may be made for the payment of the fee and release of such goods;
- (h) contains an acknowledgement signed or marked by the informal trader confirming that—

- (i) the contents of the receipt are correct;
- (ii) the contents of the receipt have been explained to him or her; and
- (iii) he or she understands the consequences of impoundment and the requirements for the release of such impounded goods; and
- (iv) contains the name of the authorised official concerned and the time and date of impoundment.

(4) The Ba-Phalaborwa Municipality must upon the presentation of such goods at the place of impoundment—

- (a) keep a register of impounded goods;
- (b) immediately enter in the register the—

- (i) details of the informal trader as per subsection (3)(a);
- (ii) details of the goods removed and impounded, including the condition of such goods;
- (iii) place and area where such goods were removed from;
- (iv) name of the authorised official who attended to the removal and impoundment of the goods; and
- (v) date and time of such removal and impoundment.

(5) Goods which have been impounded must, subject to subsection (9), be released upon presentation of proof of ownership in the form of the receipt contemplated in subsection (3) together with—

- (a) proof of payment of the impoundment fee;
- (b) proof of payment of a fine imposed; or
- (c) where applicable proof of payment of both the impoundment fee and the imposed fine.

(6) Where perishable goods and foodstuffs were impounded, the Ba-Phalaborwa Municipality may, subject to subsection (7), sell, destroy or dispose of such goods and foodstuffs if the informal trader did not secure the release of such perishable goods and foodstuffs in terms of subsection (5) within 24 hours of such impoundment.

(7) Subject to subsection (6) and (9), the Ba-Phalaborwa Municipality may at any time after the impoundment sell, destroy or otherwise dispose of impounded—

- (a) perishable goods if the goods represent or might represent a health risk or a nuisance; and
- (b) foodstuffs which are unfit for human consumption

## 26. Abandoned goods

(1) The Ba-Phalaborwa Municipality shall regard the following as abandoned goods:

- (a) goods found on a public road or public place that do not appear to be under the control of any person; or
- (b) goods found in a manhole, storm water drain, public toilet, public transport shelter or in any tree or shrub.

(2) Any abandoned goods found by the Ba-Phalaborwa Municipality may be removed and immediately delivered to a place of impoundment.

(3) The Municipality must—

- (a) keep a register of abandoned goods at all places of impoundment;
- (b) immediately enter in the register the—

- (i) details of the goods removed, including the condition of such goods;
- (ii) place and area where such goods were removed from;
- (iii) name of the authorised official who attended to the removal of the goods; and
- (iv) time and date of such removal, upon the presentation of such goods at the place of impoundment.

(4) Where abandoned goods have not been claimed within 14 days from the date of removal, the Ba-Phalaborwa Municipality may—

- (a) destroy the goods where the sale of such goods is not feasible; or
- (b) sell such goods.

(5) Where abandoned goods have been sold in terms of paragraph 4(b), the proceeds of such sale are to be forfeited to the Ba-Phalaborwa Municipality.

## 27. Vicarious liability

(1) When an employee or agent of an informal trader contravenes a provision of this Bylaw, any informal trading policy or informal trading permit, the informal trader shall be deemed to have committed such contravention himself or herself unless such informal trader satisfies the court that he or she took reasonable steps to prevent such contravention.

(2) The fact that the informal trader issued instructions to the employee or agent, prohibiting such contravention, shall not in itself constitute sufficient proof of such reasonable steps.

## 28. Offences

(1) A person is guilty of an offence if he or she—

- (a) trades without an informal trading permit;
- (b) contravenes any provision of this By-law;
- (c) contravenes any condition on which a permit has been issued to him or her;
- (d) contravenes any provision of an applicable informal trading policy;
- (e) fails to comply with any lawful instruction given in terms of this By-law;

(f) threatens, resists, interferes with or obstructs any authorised official in the performance of official duties or functions in terms of or under this By-law; or  
(g) deliberately furnishes false or misleading information to an authorised official.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

## 29. Penalties

(1) Any person who is convicted of contravening paragraph 28(1)-

(a) shall be liable to a fine of an amount not exceeding R30.00 or to imprisonment for a period not exceeding 3 months, or to both such fine and imprisonment.

(2) Subject to subsection (1), any person who is convicted of an offence under this By-law shall be liable to a fine of an amount not exceeding R150.00 or to imprisonment for a period not exceeding 1 month, or to both such fine and imprisonment.

(3) In the case of a continuing offence, an additional fine of an amount not exceeding R100 or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

## 30. Exemption from liability

The Ba-Phalaborwa Municipality shall not be liable for damages or compensation arising from anything lawfully done in good faith by it or any authorised official or employee thereof in terms of this By-law.

## Chapter 7- Miscellaneous provisions

### 31. Delegations

(1) Subject to the Constitution and applicable national and provincial laws, any –

(a) power, excluding a power referred to in section 160(2) of the Constitution;

(b) function; or

(c) duty, conferred, in terms of this By-law, upon the council, or on any of the Ba-Phalaborwa Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor, or staff member, to an entity within, or a staff member employed by, the Ba-Phalaborwa Municipality.

(2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the –

(a) entity or person issuing the delegation or sub-delegation;

(b) recipient of the delegation or sub-delegation; and

(c) conditions attached to the delegation or sub-delegation.

## 32. Appeals

(1) A person whose rights are affected by a decision taken by the Ba-Phalaborwa Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The Ba-Phalaborwa municipal manager must promptly submit the appeal to the LED Manager.

(3) The LED Manager must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The LED Manager must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

(5) The LED Manager must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsection (1) to (5).

## 33. Transitional provisions

Notwithstanding the enactment of this By-law—

(a) any declaration of an area within the jurisdiction of the Ba-Phalaborwa Municipality as an area in which the carrying on of the business of street vendor, peddler or hawker may be restricted or prohibited, shall remain valid until such time as the council adopts an informal trading policy in respect of such area in terms of this By-law;

(b) where an informal trader had been issued with a lease or permit prior to the enactment of this By-law which permits trading from a particular site, such lease or permit shall remain valid until a new permit system is adopted by the council which complies with the permit system as contemplated in this By-law.

## 34. Short title and commencement

This By-law is called the Ba-Phalaborwa Municipality: Informal Trading By-law, 2024 and takes effect on the date on which it is published in the Provincial Gazette of Limpopo Province.