
LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 138

LEPHALE LOCAL MUNICIPALITY ENCROACHMENT ON MUNICIPAL PROPERTY BY-LAW

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 the Encroachment on Municipal Property by-law for the Lephale Local 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 --

“Council” means the Lephale Municipal Council;

“encroachment” means a physical object which intrudes on municipal property;

"municipality" means Lephalale Local Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"municipal property" means property which the municipality has control over, or property in respect of which a servitude or other property right has been registered in favour of the municipality;

“prescribed fee” means a fee determined by the council from time to time;

“public road” means any road, public street, cycle path, thoroughfare or any other place, and includes –

- (a) the verge of any such public road;
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such public road;
- (d) any other object belonging to such public road, which has at any time been -
 - (i) dedicated to the public;
 - (ii) used without interruption by the public for a period of at least thirty years;
 - (iii) declared or rendered such by the Municipality or other competent authority; or
 - (iv) constructed by a local authority;
- (e) any land, with or without buildings or structures thereon, which is shown as a public road on –
 - (aa) any plan of subdivision or diagram approved by the Municipality or other competent authority and acted upon; or
 - (bb) any general plan as defined in the Land Survey Act, 1997 (Act 8 of 1997), registered or filed in a deeds registry or Surveyor General’s office, unless such land is on such plan or diagram described as a private public road; and any word or expression that has been defined in the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), has that meaning.

2. Purpose

To regulate and control encroachment on the municipal properties.

3. Application of by-law

- (1) This by-law apply to a person who intrudes, or intends to intrude on municipal property by means of an encroachment in a manner specified in this by-law.

4. Permit and application

- (1) Subject to subsections (4) and (5), no person may, without a permit issued by the municipality –

- (a) construct, erect or allow a projection, structure or thing such as, but not limited to –
- (i) a building;
 - (ii) a platform;
 - (iii) a step;
 - (iv) a ramp;
 - (v) a balcony;
 - (vi) a veranda;
 - (vii) a sign;
 - (viii) a colonnade;
 - (ix) a bay window;
 - (x) a pavement light;
 - (xi) a showcase;
 - (xii) a cat-crane or lifting crane;
 - (xiii) a window on a ground storey level, if the window opens over a public place and the window is at any point lower than 2,3 m measured vertically from the surface of the level of the public place;
 - (xiv) a gate or door which open outwards thus projecting over or across a portion of a public place;
- (b) alter an existing building or structure; or
- (c) allow a branch of a plant such as, but not limited to a tree or shrub, growing on his or her premises, so as to encroach, hang over, suspend or intrude in whatever manner, from his or her premises on, into, over, or under municipal property, such as, but not limited to encroachment beyond the public road line into a public place or over a part of a public road or pavement opening in or under a public road, and a permit issued

by the municipality includes approval by the municipality of the design, arrangement and construction of an encroachment over a public road, as well as the paving, kerb and gutter thereof, and should a person fail to obtain a permit, the municipality may issue a demolition order, as contemplated in section 8, on the person.

- (2) A person who wishes to obtain a permit must submit to the municipality for consideration, a completed form obtained from the municipal offices and the municipality may require, for its consideration, drawings, plans or other information as it may deem fit.
- (3) The municipality may refuse to grant a permit, or may grant a permit and should the municipality grant a permit it may do so unconditionally, subject to the provisions of subsection (4), or upon such conditions as the municipality may deem fit, and subject to the payment of the prescribed fee, as contemplated in section 6, for each encroachment. The municipality shall upon request by the applicant whose application is refused provide the applicant with reasons for refusal.
- (4) In the instance where the municipality grants a permit contemplated in subsection (3), a particular encroachment must comply with the requirements set out in Schedule 1 and should a person fail to comply with requirements set out in Schedule 1, the municipality may issue a demolition order, as contemplated in section 8, on the person.
- (5) The municipality may, instead of issuing a permit or demolition order as contemplated in subsection (1) or (4), require the owner of the premises contemplated in subsection (1) to enter into a lease with the municipality over the portion of the municipal property into which the encroachment encroaches.
- (6) A permit is not required in the instances where an owner has alienated to the municipality an area reserved for road purposes in terms of a scheme and has retained a right to project a portion of a building under or over such area.

5. Tenant at will

- (1) The owner of and the person who has erected or constructed an encroachment on, into, under or over municipal property is a tenant at will in respect of the encroachment.
- (2) The owner of the building in connection with which any encroachment exists must allow the municipality to erect on, or attach to the encroachment anything required in connection with electrical or other services.
- (3) Where an encroachment has been erected or constructed in front of a building which adjoins a footway or building, the owner must at his or her expense, and in accordance with the provisions set out in Schedule 2, which schedule refers –
 - (a) pave the footway or pavement under the encroachment or in front of the building for the full width of the footway or pavement; and
 - (b) lay the public road kerbing and guttering in front of the building for the full width of the footway or pavement.

6. Prescribed fee

- (1) The prescribed fee contemplated in section 4(3), as determined by the municipality, is payable in advance at the beginning of each year which is calculated from date of approval or the period determined by the municipality, and the owner of the encroachment is liable for the payment of the prescribed fee as determined by the municipality from time to time.
- (2) Where a person –
 - (a) requires a special service from the municipality;
 - (b) requests the municipality to attend a building to give advice as to the effect of these by-laws on proposals put forward by architects, builders or owners; or
 - (c) has been ordered by the municipality to attend a building to give advice as to the effect of this by-law on proposals put forward by architects, builders or owners, he or she must pay the prescribed fee before such special service is rendered or before the municipality attends at a building.
- (3) The municipality, in determining the fee to be prescribed, may distinguish and differentiate between types and dimensions of encroachments and the nature of the municipal property.

7. Maintenance of encroachment

- (1) The owner of an encroachment must maintain the encroachment in proper repair and outward appearance, and where an encroachment is not being maintained in such state, the municipality may act in terms of section 9.

8. Demolition order

- (1) A person on whom a demolition order has been served in terms of section 4(1) or 13, must demolish so much of the encroachment as is encroaching in, into, under, over or on municipal property, and remove the materials and restore the surface of the municipal property to its former condition.
- (2) The municipality may dispose of the whole or any part of the materials from any building, 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 building 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.

9. Notice of compliance and representations

- (1) Where a person fails to comply with the provisions of section 7, the municipality may serve a notice of compliance on the person, which notice must state –

- (a) the name and residential or postal address of the affected person;
 - (b) the measures required to restore the encroachment as contemplated in section 7;
 - (c) 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
 - (d) 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)(b) or (c), must have regard to the provisions of these by-laws, the nature of the non-compliance, and other relevant factors.
- (3) (a) Representations not lodged within the time contemplated in subsection (1)(d) 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 the 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.
- (4) The municipality may take such measures as it deems necessary to remedy the situation and the cost thereof must be paid to the municipality in accordance with section 10.

10. Costs

- (1) Should a person fail to take the measures required of him or her by a notice of compliance contemplated in section 9, the municipality may, subject to subsection (3) recover, as a debt, all costs incurred as a result of it acting in terms of section 9(4) 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 9(4).
- (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.
- (4) The owner of the building in connection with which any encroachment exists must defray any cost incurred in connection with wires or property of the municipality.

11. Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of –
 - (a) creating conditions for a local community to participate in the affairs of the municipality;
 - (b) encouraging a local community to participate in the affairs of the municipality; and
 - (c) promoting the achievement of a healthy environment.
- (2) A liaison forum may consist of –
 - (a) a member or members of an interest group, or an affected person;
 - (b) a designated official or officials of the municipality; and
 - (c) a councillor.
- (3)
 - (a) The municipality may, when considering an application for consent, permit or exemption certificate in terms of this by-law, where applicable, request the input of a liaison forum.
 - (b) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative, submit an input to the municipality for consideration.

12. 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 and provide the applicant with reasons.
- (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.

13. 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 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 land or business premises 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.
- (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.

14. Appeal

- (1) An aggrieved person may in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), appeal to the Municipality against a finding of the Municipal Manager.

15. Offences and Penalties

- (1) Any person who fails to comply with the provisions of this by-law commits an offence and shall on conviction be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

16. Saving and transitional provisions

- (1) The owner of an encroachment in existence at the date of commencement of this by-law and for which the municipality has not previously issued a permit must, within six months after the date of commencement of this by-law, notify the municipality and for this purpose must complete and submit to the municipality a form, on notice of the existence of the encroachment and must provide the particulars of the encroachment as specified in the form, and should the owner fail to comply with the provisions of this section, the municipality may issue a demolition order as contemplated in section 8.

18. Repeal of by-laws

- (1) The Building by-laws: Submission and Approval of Plans for Buildings, Notices and Certificates of the Transitional Council of Ellisras/Marapong published are hereby repealed.

19. Short title and commencement

This by-law is called the Lephalale Local Municipality Encroachment on Municipal Property by-law and commence on the date of publication thereof in the *Provincial Gazette*.

SCHEDULE 1**REQUIREMENTS****1. Specific requirements relating to columns**

- (1) A person may not place a veranda column –
 - (a) over a pavement where the pavement is less than 2,6 m wide;
 - (b) more than 3 m from the building line measured to the outside of the column or at less than 3 m centre to centre;
 - (c) over any pavement at the corner of a public road that is beyond the alignment of the building lines;
- (3) A person may not place a portion of a veranda column at a distance lesser than 600 mm back from the front edge of any kerb.
- (4) A person may not place a twin or double veranda column over a public road or pavement.
- (5) Where a veranda is supported on columns –
 - (a) the columns may not have a square arras;
 - (b) no base may project more than 50 mm beyond the bottom diameter of the column; and
 - (c) the maximum horizontal axial dimensions of a base may not exceed 350mm.
- (6) Where the form of a column is classic in character, the shaft must have suitable entasis, and the cap and base must be in due proportions.
- (7) A column, including cap and base, may not be less than 3m or more than 3,6m in height and not more than 4,5m including plinth.
- (8) No person may place a column on a public road where the footway or sidewalk is, or is likely to be occupied by a cable, pipe or other municipal services.
- (9) The minimum height from the footway or sidewalk to the underside of each cantilever or fascia girder is 3m.
- (11) Plain piping or tubing may not be used for a column over or on a public road veranda and balcony unless architecturally treated for aesthetic purposes.
- (12) The coping, blocking course or balustrade, if any, may not extend less than 750mm nor more than 1,05m above the floor of a balcony.
- (13) The consent of the municipality is not required for the erection and use of a party column common to two adjoining verandas if the column stands partly on the extended boundary lines of two properties or adjoins the same.
- (14) If all the other provisions of this by-law are observed, the consent of the municipality is not required where, in the case of adjoining verandas, the placement of any column upon a plinth if this is necessary for alignment.

2. Specific requirements relating to balconies and bay windows

- (1) A balcony or bay window may not overhang a public road if it is at a height of less than 3m above the pavement, and must be constructed of fire-resisting material and supported by cantilevers of reinforced concrete or by masonry or steel.
- (2) A balcony may not encroach more than 1,35m over a public road.
- (3) A bay window may not encroach more than 900 mm over a public road.
- (4) The aggregate horizontal length of a bay window at any level over a public road may not exceed one-third of the length of the building frontage to that road.

- (5) No part of any window in any bay shall be less than 900mm from any party wall of the building to which it belongs nor from any boundary separating stands in separate ownership or any extension of the boundary.
- (6) A balcony superimposed upon a veranda must be set back at least 1,2m from the line of the veranda.
- (7) No part of a balcony that is attached to a veranda, may be carried up to a height greater than two storeys above the pavement level, however, where the top portion of the balcony is roofed with a concrete flat roof forming a floor, a balustrade not exceeding 1 m in height is allowed above the level of the floor.
- (8) A dividing wall across a balcony over a public road may not exceed 1 m in height or 225mm in thickness.
- (9) A balcony over a public road may not be the sole means of access to any room or apartment.
- (10) No erection of any kind is allowed on a balcony, except balustrades and light columns not exceeding 150 mm in diameter, of good architectural design and supporting the roof and upper balcony sufficiently.
- (11) A person may not place or permit or cause to be placed an article upon a balcony over a public road, except an ornamental plant, table, chair, canvas blind or awning that is not used as a sign or advertisement.
- (12) Where a floor of a building is used solely for the parking of a motor vehicle, a bay window at the level of the floor may not project over a public road for more than 1,35m for the full length of the building frontage to that road.

3. Specific requirements relating to plinths, pilasters, corbels and cornices

- (1) No plinth or pilaster beyond building lines carried up from ground level are permitted to encroach on a public road.
- (2) A pilaster, cornice, corbel or similar architectural feature that is at least 3m above the ground may not exceed the following encroachment over a public road:
 - (a) A pilaster: 450mm: The total aggregate frontage length of the pilaster may not exceed one-fifth of the building frontage and bay windows in the same storey must be included in the calculation of the maximum aggregate length for bay windows;
 - (b) a fire-resisting ornamental hood or pediment over a door: 600mm and in any part not less than 2,75m in height above the footway or pavement; and
 - (c) a cornice: 1,05m where not exceeding 10,5m above the footway or pavement and one-tenth of the height from the footway or pavement if exceeding 10,5m with a maximum of 1,8m.

4. Specific requirements relating to verandas around corners

- (1) Where a veranda is built around the corner of a public road it must be properly splayed or rounded to follow the curves of the kerb.
- (2) If corrugated iron is used for covering a veranda, its exposed surfaces must be painted.
- (3) A veranda over a public road must correspond in line, height and detail with an existing adjoining veranda.

5. Specific requirements relating to pavement openings

- (1) A pavement opening, pavement light, wall and basement wall must be made and kept water-tight by the owner.
- (2) No pavement opening may be the sole means of access to any vault or cellar.

- (3) Every such opening must be formed of thick glass and set in iron or reinforced concrete frames flush with the sidewalk and no single piece of such glass may exceed 160cm² in area.
- (4) No pavement opening on any public road may extend more than 1,2m beyond the building line.
- (5) Where flaps are permitted in pavement openings each flap may not exceed 0,75square metres in area and must open upwards and while open, must be provided with stout iron guard rails and stanchions.
- (6) Flap openings may be opened and used only for the purpose of lowering and raising goods and must be kept closed except when lowering and raising operations are in progress.
- (7) The front wall or wall parallel to the kerb in every opening must be built with a suitable batter to the satisfaction of the municipality.
- (8) No pavement opening may be covered with metal bar gratings or with metal plates or with wood.

6. Cat-cranes, lifting cranes and platforms

- (1) A cat-head, lifting crane, platform and other such contrivance may not overhang a sidewalk or road.
- (2) In the instance where the municipality granted a permit, the contrivance contemplated in sub-item (1) may be situated under a balcony and above first floor level, but the contrivance must be capable of being housed in the building to which it belongs, and may only lift goods from outside the line or kerb.

SCHEDULE 2**SLAB FOOTWAYS OR PAVEMENTS**

1. Paving must be of pre-cast slabs, 450mm by 450mm in size with a minimum thickness of 50 mm.
2. The shape of all slabs must be rectangular, and the slabs must be laid with joints parallel and at right angle to kerbing.
3. The backing of the slabs must be 40mm thick and composed of concrete, of which three volumes must be 6mm stone, one volume 3mm stone, free from dust, two volumes drift sand and one volume Portland cement. The topping must be 12mm thick composed of one and a half volumes of granite chippings which pass through a 6mm screen but are retained by a 3 mm screen, and one volume Portland cement. The proportion of any colouring matter introduced into slabs must be such as not to impair the strength of the mixture.
4. Slabs must be laid to the grade, line and cross-fall pointed out by the municipality and must conform to the following further requirements:
 - (a) for ordinary slabs the minimum cross-fall must be 1:100 and the maximum cross-fall 1:25.
 - (b) non-skid slabs of a type to be approved by the municipality must be used for cross-falls between 1:25 and 1:15, provided that the maximum cross-fall may not exceed 1:15.
 - (c) longitudinal grades may not be steeper than 1:20 for ordinary slabs and non-skid slabs must be used for longitudinal grades between 1:15 and 1:20, provided that when the longitudinal grade is steeper than 1:15, asphaltic concrete must be used.
 - (e) prior notice of at least three working days must be given to the municipality of the intention to lay slabs or asphaltic concrete on any footway or pavement.
5. When carriage openings are formed in kerbs and across footways or pavements, such openings must be paved with similar slabs to those hereinbefore described, but such slabs must be of sizes 300mm by 150mm in thickness. All such slabs must be solidly bedded in suitable material and joints between the slabs must be formed in lime mortar consisting of at least one volume lime to three volumes sand, provided that such joints may not exceed 20 mm nor be less than 6mm in width.
6. Should any person desire to lay slabs of any material other than pre-cast concrete slabs, he or she must first submit a sample to the municipality for testing and approval in writing before any such materials are deposited upon a public footway or pavement. Should the material be approved, all the provisions of this schedule in regard to shape, size and laying must be observed as far as applicable.
7. No person may lay or fix any cement concrete bedding under such paving slabs nor cause any joint thereof to be of cement mortar.
8. No person shall lay asphalt, tar macadam, concrete or granolithic in situ in any pavement or any road sidewalk or footway unless specially permitted in writing by the municipality to do so.
9. No person may lay slabs of any other kind, colour, size or shape, or in any manner other than as specified in this schedule, unless duly authorized thereto by the municipality.