

eTHEKWINI MUNICIPALITY: PROBLEM BUILDINGS FIRST AMENDMENT BY-LAW, 2023



Adopted by Council on the:

PROBLEM BUILDINGS FIRST AMENDMENT BY-LAW, 2023

GENERAL EXPLANTORY NOTE

[] Words in bold type in square brackets indicate omissions from the existing By-law.

_____ Words underlined with a solid line indicate insertions in existing By-law.

To amend the eThekwini Municipality: Problem Buildings By- law, 2015 so as to insert and amend certain definitions; to provide for the establishment a problem building steering committee; to provide for the appointment of an administrator; to provide standards of maintenance of buildings and consequences where an owner of the building fails to maintain the building according to standards and to provide for matters connected therewith.

BE IT MADE by the eThekwini Municipal Council as follows:

Amendment in the Table of Contents of the eThekwini Municipality: Problem Buildings By-law,2015

1. The Table of Contents of the eThekwini Municipality: Problem Buildings By-law,2015 (hereinafter referred to as the principal By-law) is hereby amended-

(a) by the insertion after section 4 in the Table of Contents of the following sections:

“4A. General maintenance of buildings;
4B. Identification and Initial Assessment”; and

(b) by the insertion after section 12 in the Table of Contents of the following sections:

**“12A. Appointment of an Administrator;
12B. Establishment of the Problem Buildings Steering Committee”.**

Amendment of section 1 of the eThekweni Municipality: Problem Buildings By-law,2015

2. Section 1 of the principal By-law is hereby amended-

(a) by the substitution for the definition of ‘compliance notice’ of the following definition:

““building” [has the meaning assigned to it in section 1 of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);] means, but is not limited to:

(a) any structure whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with the-

(i) accommodation or convenience of human beings or animals;

(ii) manufacture, processing, storage, display or sale of any goods;

(iii) rendering of any service;

(iv) destruction or treatment of refuse or other waste materials;

(v) cultivation or growing of any plant or crop;

(b) any wall or part of building;

(c) a unit or common property as defined in the Sectional Titles Act, 1986 (Act no. 95 of 1986);and

(d) all structures which fall within the definition of "building" in the National Building Regulations and Building Standards Act, (Act 103 of 1977);”;

(b) by the substitution for the definition of ‘compliance notice’ of the following definition:

““compliance notice” means a notice issued to the owner of a problem building to comply with the provisions of this By-law or to comply with conditions stipulated in such notice or any other relevant legislation [in terms of section 10 of this By-law];”;

(c) by the substitution for the definition of ‘hijack’ of the following definition:

“hijack” in relation to a building means to unlawfully take over the management and control of a building, including but not limited to the collection of rentals from the **[owner, occupier]** occupier on behalf of the owner or managing agent;”;

(d) by the substitution for the definition of ‘Municipality’ of the following definition:

“Municipality” means the eThekweni Municipality, a category A Municipality as envisaged in terms of section 155(1) of the Constitution **[and established in terms of Provincial Notice No. 43 of 2000 (KZN)]**;”;

(e) by the substitution for the definition of ‘occupier’ of the following definition:

“occupier” includes any person in actual occupation or use of a building or part of a building regardless of the title under which he or she occupies such building;”;

(f) by the substitution in the definition of ‘owner’ paragraph (i) for the following paragraph:

(i) **[the former members of a close corporation which has been deregistered and in respect of which they have a continuing liability as contemplated in section 26 of the Close Corporations Act, 1984 (Act No. 69 of 1984), read with sections 83(2) and (3) of the Companies Act, 2008 (Act No. 71 of 2008)]** a trustee, where the owner has been declared insolvent; and ; and

(g) by the substitution for the definition of ‘problem building’ of the following definition:

“problem building” means

(1) in relation to a building or portion of a building which accedes to the land which —

(a) is derelict in appearance or is showing signs of becoming unhealthy,

unsanitary, unsightly, or objectionable;

(b) has been abandoned by the owner, or appears to have been abandoned by the owner, regardless of whether or not rates or service charges are being paid;

(c) is overcrowded;

- (d) has been hijacked;
- (e) has been the subject of one or more written complaints, charges or convictions regarding criminal activities being conducted in the building;
- (f) is illegally occupied;
- (g) has refuse or waste material unlawfully accumulated, dumped, stored or deposited;
- (h) has been unlawfully erected or has a part which has been unlawfully erected;
- (i) has been changed and its subsequent usage is unauthorised;
- (j) is partially completed, or structurally unsound or showing signs thereof, and is or may be a threat or danger to life and property; **[or]**
- (jA) is in such a state that it is a fire hazard or has no provision for safety emergency exit in an emergency;
- (jB) has no provision of drainage, both stormwater and waste water;
- (jC) has electricity illegal connections and/or where the meter or main fuse or other protective devices in such building has been breached ; or
- (k) is in contravention of one or more of the Municipality's By-laws.

(2) in relation to developed land which is —

- (a) is derelict in appearance or is showing signs of becoming unhealthy, unsanitary, unsightly, or objectionable;
- (b) has been abandoned by the owner, or appears to have been abandoned by the owner, regardless of whether or not rates or service charges are being paid;
- (c) is overcrowded;
- (d) has been hijacked;
- (e) has been the subject of one or more written complaints, charges or convictions regarding criminal activities being conducted;
- (f) is illegally occupied;
- (g) has refuse or waste material unlawfully accumulated, dumped, stored or deposited;
- (h) has been changed and its subsequent usage is unauthorised; or
- (i) is in contravention of one or more of the Municipality's By-laws.

(3) in relation to vacant land or an open space which is —

- (a) is derelict in appearance or is showing signs of becoming unhealthy, unsanitary, unsightly, or objectionable;

- (b) has been abandoned by the owner, or appears to have been abandoned by the owner, regardless of whether or not rates or service charges are being paid;
- (c) is overcrowded;
- (d) has been hijacked;
- (e) has been the subject of one or more written complaints, charges or convictions regarding criminal activities being conducted;
- (f) is illegally occupied;
- (g) has refuse or waste material unlawfully accumulated, dumped, stored or deposited;
- (h) has been changed and its subsequent usage is unauthorised;or
- (i) is in contravention of one or more of the Municipality's By-laws.”.

Insertion of Section 4A and 4B into the eThekweni Municipality: Problem Building By-law, 2015

3. The principal By-law is hereby amended by the insertion after section 4 of the following sections-

“General maintenance of buildings

4A (1) The owner of any building shall at his or her own expense maintain and repair the building and keep the building in a proper condition and free from obstruction , damage, derelict , structural defects, or unhealthy condition.

(2) The owner of the building must ensure that no waste or litter discarded, dumped, stored, kept or disposed of in such a manner that such waste or litter causes a nuisance and unhealthy condition.

(3) In the event the Municipality is in the opinion that maintenance of the building being neglected, it must serve a written notice informing the owner to-

(i) carry out the maintenance and repairs; and

(ii) remove the obstruction, structural defect, damage or unhealthy condition from the building.

(4) Should the owner fail to comply with a notice issued in terms of subsection (3) the Municipality may act and recover costs from the owner.”

“Identification and initial assessment

4B(1) The authorised official must assess and identify potential problem buildings.

(2) The identification process may include, but not limited to-

(a) complaints received from public or neighbour lodged with the Municipality;

(b) posts or articles placed on various media platforms;

(c) a building sighted by a municipal official; or

(d) enforcement of relevant legislation and/or serving of compliance notices for other non-compliant activities.

(3) When the authorised official believes that the contraventions committed by an owner in respect of a particular building has reached a stage that it could be declared a problem building, the authorised official must submit a case file to the Problem Buildings Steering Committee for consideration.

(4) The Problem Buildings Steering Committee must deliberate on the case file submitted by the authorised official and determine whether a notice in terms of section 5 should be served on the owner.”.

Amendment of section 7 of the eThekweni Municipality: Problem Building By-law,2015

4. The principal By-law is hereby amended by the substitution in subsection (1) paragraph (c) for sub-paragraph (vi) of the following sub-paragraph—

“(vi) the total number of people residing **[in]** and using the building.”

Amendment of section 9 of the eThekweni Municipality: Problem Building By-law,2015

5. The principal By-law is hereby amended by –

(a) the substitution in subsection (2) for paragraph (h) of the following paragraph:

“(h) closing or sealing the problem building;”;

(b) the substitution in subsection (2) for paragraph (i) of the following paragraph:

“(i) removing all refuse, debris or rubble.”;

(c) the substitution in subsection (2) for paragraph (j) of the following paragraph:

“(j) submitting a building plan for approval in terms of section 7 of the National Building Regulations and Building Standards Act, 1977.”; and

(d) the substitution in subsection (2) for paragraph (n) of the following paragraph:

“(n) giving notice to occupiers to vacate or evacuate the problem building within a specified time period; and”.

Amendment of section 10 of the eThekweni Municipality: Problem Building By-law, 2015

6. The principal By-law is hereby amended by –

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) If a problem building is occupied or is in use, the Municipality must serve a compliance notice on the occupiers and affix a copy of the compliance notice at the main entrance to the building or at a clearly visible area, advising that-“ ;

(b) the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) In the event that the owner of a problem building which is occupied by residents fails to comply with the compliance notice, the Municipality must serve a further notice on the occupiers and affix a copy of the notice at the main entrance to the building or in a clearly visible area.”; and

(c) the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) advising that the Municipality intends seeking the eviction or evacuation of the occupiers;”.

Amendment of section 12 of the eThekweni Municipality: Problem Building By-law,2015

7. The principal By-law is hereby amended by –

(a) the substitution in subsection (2) paragraph (a) for sub-paragraphs (i) and (ii) of the following sub-paragraphs:

“(i) remove, within a period specified in the notice, any person residing in or otherwise occupying or in use of such problem building; and

“(ii) take reasonable steps to ensure that no person who is not authorised by the Municipality enters such problem building; **[and]**”;

(b) the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) any person residing in or otherwise occupying a problem building, to vacate such problem building[.]; and”;

(c) the insertion after paragraph (b) of subsection (2) of the following paragraph:

“(c)take immediate steps necessary to remedy the health and safety conditions at the building.”; and

(d) the insertion of the following subsections after subsection (3):

“(4) The Municipality must affix a copy of the compliance notice at the main entrance to the building or in a clearly visible area in order to inform the occupiers of the building the requirements.”

Insertion of Section 12A and 12B into the eThekweni Municipality: Problem Building By-law, 2015

8. The principal By-law is hereby amended by the insertion after section 12 of the following sections-

“Appointment of an administrator

12A. (1) The Municipality may in terms of the Sectional Titles Schemes Management Act, 2011(Act No.8 of 2011) apply to a competent Court for the appointment of an administrator, where a building has been declared a problem building.

(2) The remuneration and expenses of the administrator shall be payable through cost recovery or by the body corporate, and the Municipality shall be exempted from paying such costs.

(3) The municipality may request that the administrator submit the following documents-

(a) A monthly report on the progress;

(b) A final report and account in the completion of the administrator’s mandate.”

“Establishment of the Problem Buildings Steering Committee

12B. (1) The Municipality must establish a Problem Buildings Steering Committee to assist in the identification and management of problem buildings.

(2) The Committee must consist of officials in the full-time service of the Municipality for a term to be determined by the Municipal Manager.

(3) The Committee must consider representations and assessments made pursuant to any notice served in terms of the By-law and to declare a building a problem building.”.

Amendment of section 13 of the eThekweni Municipality: Problem Building By-law,2015

9. Section 13 of the principal By-law is hereby amended by–

(a) the substitution for subsection (1) for the words preceding paragraph (a) of the following words:

“(1) An authorised official may enter at any reasonable time and without prior notice if a person concerned consents, with a view to–“; and

(b) the insertion of the following subsections after subsection (3):

“(4) An owner, managing agent or occupier may where necessary, take all reasonable steps to verify the identification document mentioned in subsection (3) with the Municipality.”

(5) An authorised official may enter and search premises without a warrant if he or she believes on reasonable grounds that–

(a) a warrant would be issued by a judge or magistrate if the authorised official made application for the warrant; and

(b) the delay in obtaining a warrant is likely to defeat the object of the entry and search.”.

Amendment of section 15 of the eThekweni Municipality: Problem Building By-law,2015

10. Section 15 of the principal By-law is hereby amended by–

(a) the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) if his or her address in the Republic of South Africa is unknown, when it has been served on his or her agent or representative in the Republic of South Africa in the manner contemplated in paragraphs (a), (b) or (c); **[or]**” ;

(b) the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) if his or her address and agent or representative in the Republic of South Africa are unknown, when it has been affixed to a conspicuous place on the building[.] ;” ; and

(c) the insertion in subsection (1) of the following paragraphs after paragraph (e):

“(f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate;

(g) when it has been delivered, at the request of that person, to his or her e-mail address; or

(h) if the person so to be served has a nominated address, by delivering or leaving a copy at his or her nominated address.”.

Amendment of section 19 of the eThekweni Municipality: Problem Building By-law,2015

11. Section 19 of the principal By-law is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) No person shall be entitled to compensation for any loss or damage arising out of bona fide action or decision taken by the Municipality or any authorised official in terms of this By-law.”.

Short title and commencement

12. This By-law is called the eThekweni Municipality: Problem Buildings First Amendment By-law, 2023 and comes into operation on the date of publication in the *Provincial Gazette*.