

**eTHEKWINI MUNICIPALITY: PROBLEM BUILDINGS BY-LAW, 2013**



Adopted by Council on the:

Promulgated on:

## **PROBLEM BUILDINGS BY-LAW, 2013**

**To provide for the identification, control and rehabilitation of problem buildings; to create offences and penalties; and to provide for matters incidental thereto.**

### **PREAMBLE**

**WHEREAS** the eThekweni Municipality recognises the need to identify, control and rehabilitate problem buildings;

**AND WHEREAS** the eThekweni Municipality recognises the right to housing, as well as the need to address the infrastructural, social and economic disparities of the past;

**AND WHEREAS** the eThekweni Municipality has competence in terms of Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996 relating to such matters as building regulations and municipal health, and competence in terms of Part B of Schedule 6 of the Constitution of the Republic of South Africa, 1996 relating to such matters as the control of public nuisances;

**AND WHEREAS** the eThekweni Municipality has competence, in terms of the section 156(2) of the Constitution of the Republic of South Africa, 1996 to make and administer By-laws for the effective administration of the matters which it has the right to administer;

**NOW THEREFORE** the eThekweni Municipal Council, acting in terms of section 156 read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996 and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

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## **CHAPTER 1 INTERPRETATION**

### **Definitions**

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

“**approved competent person**” means an approved competent person as contemplated in the National Building Regulations, Government Notice No. R. 2378 of 12 October 1990;

“**authorised official**” means any official of the Municipality who has been authorised by the Municipality to enforce the provisions of this By-law, and for the purposes of search and seizure, where the official is not a peace officer, the official must be accompanied by a peace officer;

“**building**” has the meaning assigned to it in section 1 of the National Building Regulations and Standards Act, 1977 (Act No. 103 of 1977);

**"compliance notice"** means a notice issued to the owner of a problem building in terms of section 10 of this By-law;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"Council"** means the eThekweni Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

**"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 or managing agent;

**"managing agent"** means a person who is appointed by –

- (a) an owner of a building to maintain and manage a building on the owner's behalf; or
- (b) a tenant of the owner who has the power or obligation to sub-let, maintain and manage the building;

**"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);

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

**"owner"** means the person in whose name the land on which a building is situated is registered in the relevant deeds office or –

- (a) in the case of a trust, the trustees of that trust;
- (b) the registered owner of a sectional title unit, where the interior of a sectional title unit is at issue;
- (c) the trustees of a body corporate, where the common property of a sectional title scheme is at issue;
- (d) the administrator of the body corporate of the sectional title scheme where the common property of a sectional title scheme is at issue and there are no elected trustees of the body corporate;

- (e) the executor, where the owner of the building is deceased and the building has not yet been transferred out of the deceased's estate;
- (f) the curator, where the owner of the building, has been declared by any court to be incapable of managing his or her own affairs or a prodigal;
- (g) the administrator, where the owner of the building a mental health care user as defined in section 1 of the Mental Health Act, 2002 (Act No. 17 of 2002);
- (h) the executor, where the estate of the owner has been sequestrated;
- (i) the liquidator, where the owner of the building is a judicial person or a trust and has been liquidated;
- (j) 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);
- (k) the business rescue practitioner, where the owner of the building has been placed under business rescue;
- (l) the managing agent, where the owner of the building is absent from the Republic of South Africa or where the Municipality has, after reasonable attempts, not been able to determine his or her whereabouts; or
- (m) every person who is entitled to occupy or use a building, or who does occupy or use a building, where –
  - (i) the owner of the building is absent from the Republic of South Africa;
  - (ii) the Municipality has, after reasonable attempts, not been able to determine the whereabouts of the owner of the building; or
  - (iii) there is no managing agent; and

**“peace officer”** means a peace officer as defined in the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

**“problem building”** means a building or portion of a building that—

- (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, as confirmed in writing by a member of the Durban Metropolitan Police or the South African Police Service;
- (f) is illegally occupied;
- (g) has refuse or waste material unlawfully accumulated, dumped, stored or deposited;
- (h) has been unlawfully constructed or has a part which has been unlawfully constructed;
- (i) has been unlawfully converted to accommodation; or
- (j) is partially completed, or structurally unsound, and is a threat or danger to property or to the safety of any person.

### **Interpretation of By-law**

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

### **Objects of By-law**

3. The objects of this By-law are to –
  - (a) provide a mechanism for the co-ordinated identification, control and rehabilitation of problem buildings;
  - (b) set minimum standards for consultation with owners, and people who occupy or reside in problem buildings; and
  - (c) ensure the health and safety of the people occupying problem buildings and of the public in general.

### **Application of By-law**

4. This By-law applies to all areas which fall under the jurisdiction of the eThekweni Municipality and is binding on all persons to the extent applicable.

## **CHAPTER 2 IDENTIFICATION OF PROBLEM BUILDINGS**

### **Notice of intention to declare building a problem building**

5. In the event that the Municipality is of the opinion that a building should be declared a problem building, it must serve a written notice on the owner –

- (a) informing the owner that the Municipality is considering taking the step of declaring the building to be a problem building;
- (b) giving reasons why the Municipality is considering this step;
- (c) inviting the owner to make written representations on why the building should not be declared a problem building within seven days of the notice; and
- (d) providing an address, fax number or email address to which representations may be submitted.

### **Declaration of a problem building**

6.(1) The Municipality must, after considering any representations received from the owner, as contemplated in section 5, either –

- (a) decide not to declare the building to be a problem building for the time being; or
- (b) declare the building to be a problem building.

(2) In the event that the Municipality decides to declare a building to be a problem building, the Municipality must give written notice to the owner, together with reasons.

## **CHAPTER 3 CONTROL OF PROBLEM BUILDINGS**

### **Profiling problem buildings**

7.(1) The Municipality must, as soon as is reasonably possible after a building has been declared to be a problem building, undertake an investigation to identify –

- (a) those aspects of the building which are in contravention of this By-law, any other By-law or any law;



(b) any risks to the safety of the occupiers of the problem building or the public; and  
(c) the occupiers of the problem building and, if the occupiers reside at the building, also profile the occupants to determine the following characteristics of the occupiers:

- (i) the number of children;
- (ii) the number of women;
- (iii) the number of disabled people;
- (iv) the number of elderly people;
- (v) the number of people residing per room and the area of each room occupied as a residence; and
- (vi) the total number of people residing in the building.

(2) The owner or the managing agent of the problem building is entitled to be present while the investigation is being undertaken and the profile of the occupants is being prepared.

(3) The owner or the managing agent of the problem building must, if he or she is present, be given the opportunity to make representations while the investigation is being undertaken or the profile of the occupants is being prepared.

(4) Where verbal representations have been made in terms of subsection (3) the authorised official must write down such representations and ensure that the owner or the managing agent, is given an opportunity to sign such representations.

### **Ban on new occupants**

8. The Municipality may, once a problem building has been profiled, apply to court for an interdict restraining the owner and any managing agent from –

- (a) allowing any other people, in addition to those identified in the profile of occupants, from occupying or residing at the building; and
- (b) filling any vacancy which may arise as a result of any person identified in the profile of occupants vacating the building.

## **CHAPTER 4 REHABILITATION OF PROBLEM BUILDINGS**

### **Engagement with owners**

9.(1) The Municipality must, once a problem building has been profiled, as contemplated in section 7, serve a further notice on the owner -

- (a) identifying those aspects of the building which are in contravention of this By-law, any other By-law or any law;
- (b) identifying any risks to the safety of the occupiers of the problem building or the public; and
- (c) specifying steps which the owner is obliged to take, within a reasonable period of time specified in the notice, in order to rectify those contraventions or remove those risks.

(2) The steps referred to in paragraph (1)(c) may include, but are not limited to—

- (a) repairs;
- (b) repainting;
- (c) renovations;
- (d) alterations;
- (e) installing proper ablutions;
- (f) demolition;
- (g) enclosing, fencing or otherwise securing the problem building;
- (h) closing the problem building;
- (i) removing all refuse;
- (j) submitting a building plan;
- (k) removing any source of danger or potential danger;
- (l) completing the construction of the problem building or any part of that building;
- (m) appointing and instructing, at the cost of such owner, an approved competent person to –
  - (i) examine any condition that gave rise to the declaration of a building as a problem building; and
  - (ii) report to the authorised official on the nature and extent of the steps to be taken, which in the opinion of the approved competent person need to be taken in order to make the problem building safe;
- (n) giving notice to occupiers to vacate the problem building within a specified time period; and
- (o) complying with any provision of this By-law or any other law.

### **Engagement with occupiers**

**10.(1)** If a problem building is occupied by people, the Municipality must serve a notice on the occupiers and affix a copy of the notice at the main entrance to the building, advising that–

- (a) the building has been declared a problem building;
- (b) the owner has been instructed to take specified steps within a specified period of time;
- (c) continued occupation of the problem building is unsafe; and
- (d) the Municipality will seek the eviction of the occupiers if the owner fails to comply with the notice.

(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–

- (a) advising that the owner of the problem building has failed to comply with the notice;
- (b) warning that continued occupation of the problem building is not safe;
- (c) advising that the Municipality intends seeking the eviction of the occupiers;
- (d) listing the details of possible alternative accommodation; and
- (e) providing the contact details for a municipal official available to assist the occupiers in finding alternative accommodation.

### **Eviction**

**11.**Where the owner of a problem building fails to comply with a compliance notice, the Municipality may, after having complied with the engagement process contemplated in terms of section 10, apply to court for the eviction of the occupiers.

### **Unsafe problem buildings**

**12.(1)** In the event that the authorised official has reason to believe that the condition of any problem building is such that steps should immediately be taken to protect life or property, he or she may take such steps as may be necessary in the circumstances without having to comply with any other provision of this By-law and may recover the costs incurred from the owner.

(2) In the event that the authorised official deems it necessary for the safety of any person, he or she may by notice in writing order –

(a) the owner of a problem building to –

(i) remove, within a period specified in the notice, any person residing in or otherwise occupying 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) any person residing in or otherwise occupying a problem building, to vacate such problem building.

(3) A person may not occupy, use or permit the occupation or use of any problem building or continue to occupy, use or permit the occupation or use of any problem building in respect of which a notice was served in accordance with subsection (2), unless he or she has been given written permission to do so by the Municipality.

## **CHAPTER 5 ENFORCEMENT**

### **Entry by authorised official**

**13.(1)** An authorised official may enter a building at any reasonable time with a view to–

(a) determine whether the building should be declared a problem building in terms of this By-law;

(b) serve any notice required in terms of this By-law; or

(c) determine whether the owner has complied with any compliance notice issued in terms of this By-law.

(2) A person may not hinder or obstruct an authorised official in the exercise of his or her powers in terms of this By-law.

(3) An authorised official must, when entering the building as contemplated in subsection (1), produce a valid identification document issued to him or her by the Municipality, to the owner and, if applicable, the managing agent, as well as to any occupier who asks to see the identification document.

### **Powers of authorised officials**

- 14.** An authorised official may, when entering a building –
- (a) inspect, monitor and investigate the building;
  - (b) question the owner, the managing agent or any occupier of the building;
  - (c) take photos of the building, whether of the outside of the building or any internal aspect of the building, including any residence; and
  - (d) do anything necessary to implement the provisions of this By-law.

### **Service of notices**

- 15.(1)** Whenever a compliance notice is required to be served on a person in terms of this By-law, it is deemed to have been effectively and sufficiently served on such person –
- (a) when it has been delivered to him or her personally;
  - (b) when it has been left at his or her place of residence or business in the Republic of South Africa with a person apparently over the age of 16 (sixteen) years;
  - (c) when it has been posted by registered or certified mail to his or her last known residential or business address in the Republic of South Africa and an acknowledgement of the posting thereof is produced;
  - (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
  - (e) if his or her address and agent in the Republic of South Africa are unknown, when it has been affixed to a conspicuous place on the building.

### **Combined notices**

- 16.** Nothing prevents the Municipality, when issuing a notice in terms of this By-law for –
- (a) multiple contraventions of the provisions of this By-law or of any other By-law in respect of a problem building; or
  - (b) multiple failures or refusals to comply with a compliance notice in terms of this By-law,
- to serve a combined notice dealing with all of those contraventions, failures or refusals, as the case may be.

### **Indemnity**

**17.** The Municipality and any authorised official is not liable to any third party for any damage caused by anything lawfully done or omitted by the Municipality or any authorised official in carrying out any function or duty in terms of this By-law.

### **Lawful instructions**

**18.** Failure to comply with a lawful instruction of an authorised official constitutes a contravention of this By-law.

### **Recovery of costs**

**19.(1)** In the event that a person –

(a) contravenes the provisions of this By-law or of any other By-law in respect of a problem building; or

(b) fails or refuses to comply with a compliance notice issued in terms of this By-law, such person is guilty of an offence and the Municipality may take any steps required in the compliance notice itself and recover the costs from such person.

(2) The recovery of costs contemplated in subsection (1) is in addition to any fine which may be imposed on the person concerned.

### **Vicarious liability**

**20.(1)** The owner of a problem building whose managing agent or tenant, in the case of a tenant who has the power or obligation to sub-let, maintain and manage the building or portion of the building–

(a) contravenes the provisions of this By-law or of any other By-law in respect of a problem building; or

(b) fails or refuses to comply with a compliance notice issued in terms of this By-law, is deemed to have committed such contravention himself or herself, unless the owner can show that he or she took reasonable steps to prevent such contravention: Provided that the fact that –

(i) the owner issued instructions to the managing agent or tenant, prohibiting such contravention; or

- (ii) a written agreement makes the managing agent, tenant or another third party responsible for compliance,

does not in itself constitute sufficient proof of such reasonable steps.

(2) The managing agent of a problem building or a tenant in a problem building, in the case of a tenant who has the power or obligation to sub-let, maintain and manage the building or portion of the building, is jointly and severally liable with the owner of such building if the owner –

- (a) contravenes the provisions of this By-law or of any other By-law in respect of a problem building; or

- (b) fails or refuses to comply with a compliance notice issued in terms of this By-law, unless the agent or tenant can show that he or she took reasonable steps to prevent such contravention.

### **Offences**

**21.** Any person who –

- (a) contravenes any provision of this By-law;

- (b) fails or refuses to comply with a compliance notice;

- (c) fails to comply with any lawful instruction given in terms of this By-law;

- (d) 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

- (e) deliberately furnishes false or misleading information to an authorised official,

is guilty of an offence.

### **Penalties**

**22.** (1) Any person who is convicted of an offence under this By-law is liable to –

- (a) a fine of an amount not exceeding R300 000;

- (b) imprisonment for a period not exceeding three years;

- (c) both such fine and imprisonment contemplated in paragraphs (a) and (b).

(2) In the case of a continuing offence –

- (a) an additional fine of an amount not exceeding R5 000; or

- (b) 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.

### **Presumptions**

**23.** A person charged with an offence in terms of this By-law who is –

- (a) letting a problem building; or
- (b) acting as managing agent in respect of a problem building,

is deemed, until the contrary is proved, to have knowingly let or managed a problem building.

## **CHAPTER 6 MISCELLANEOUS PROVISIONS**

### **Delegations**

**24.(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 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 Municipality.

(2) A 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.

### **Appeals**

**25.(1)** A person whose rights are affected by a decision taken by a authorised official 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 (twenty one) days of the date of the notification of the decision.

(2) The Municipal Manager must promptly submit the appeal to the appropriate appeal authority.

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

(4) The appeal authority 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 appeal authority must furnish written reasons for its decision on all appeal matters.

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

### **Short title and commencement**

**26.** This By-law is called the eThekweni Problem Buildings By-law, 2013 and takes effect on the date on which it is published in the *Provincial Gazette* of KwaZulu-Natal.