Cape Town, South Africa

Problem Building By-law, 2010

Legislation as at 9 July 2010

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Problem Building By-law, 2010
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Repealed

Cape Town
South Africa

Problem Building By-law, 2010

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[Repealed on 27 November 2020 by Problem Property By-law, 2020]

WHEREAS section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

AND WHEREAS Part B of Schedule 4 to the Constitution lists building regulations as a local government matter to the extent set out in section 155(6) (a) and (7);

AND WHEREAS the City of Cape Town seeks to identify, control and manage dilapidated and problem buildings within its area of jurisdiction to ensure that such buildings comply with this By-law by—

— Formulating a coordinated integrated strategy plan, processes and procedures;

— Turning problem buildings around by rejuvenating and regenerating the buildings rather than demolishing them;

— Redeveloping the property where problem buildings can't be rejuvenated or regenerated after consultation with the owners;

— Facilitating the disposal of problem buildings for the purpose of achieving the objectives of this By-law.

AND NOW THEREFORE, BE IT ENACTED by the Council of the City of Cape Town, as follows:

1. Definitions

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

"**authorised official**" means an employee of the City authorised by the City Manager to implement and enforce the provisions of this By-law;

"**building**" includes—

(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 a building;

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

(d) any vacant or unoccupied erf;

"**City**" means the City of Cape Town established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), by Provincial Notice No. 479 dated 22 December 2000;

"**licensed waste disposal facility**" means a site, or premises which is licensed in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and used for the accumulation or disposal of waste;

"**owner**" in relation to a building means the person in whose name the land on which such building was or is erected, as the case may be, is registered in the deeds office in question and includes a person in charge of such building: Provided that if—

(a) such person, in the case of a natural person, is deceased or was declared by any court to be incapable of managing his or her own affairs or a prodigal or is a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), or if his or her estate has been sequestrated, the executor or curator concerned, as the case may be;

(b) such person, in the case of a juristic person or trust, has been liquidated or placed under judicial management, the liquidator or judicial manager concerned, as the case may be;

(c) such person is absent from the Republic or if his or her whereabouts are unknown, any person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other moneys in respect of such building or who is responsible there for;

(d) in the case of a sectional title scheme, a sectional title unit is registered in the name of a person, that person;

(e) in the case of a trust, the trustees of such trust;

(f) in the case of a sectional title scheme, a body corporate responsible for the control, administration and management of the common property; or

(g) where the City is unable to determine the identity of such person, any person who is entitled to the benefit of the use of such building or who enjoys such benefit;

"**problem building**" includes any building or portion of a building—

(a) that appears to have been abandoned by the owner with or without the consequence that rates or other service charges are not being paid;

(b) that is derelict in appearance, overcrowded or is showing signs of becoming unhealthy, unsanitary, unsightly or objectionable;

(c) that is the subject of written complaints in respect of criminal activities, including drug dealings and prostitution;

(d) that is illegally occupied;

(e) where refuse or waste material is accumulated, dumped, stored or deposited with the exception of licensed waste disposal facilities; or

(f) that is partially completed or structurally unsound and is a threat or danger to the safety of the general public.

2. Application of this by-law

This By-law applies to all problem buildings situated within the area of jurisdiction of the City, except those situated in areas exempted from the application of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977.

Repealed

3. Appointment of authorised officials

The City Manager may appoint authorised officials to implement and enforce the provisions of this By-law.

4. Delegation

The City Manager may exercise all powers, duties and functions conferred upon the City in terms of this By-law and to delegate such powers, duties and functions to authorised officials.

5. Entry by authorised officials of buildings and land

(1) Any authorised official may enter any building at any reasonable time with a view to—

(a) inspect or determine whether the building complies with any provision of this By-law subject to 7 days notice of such intended inspection having been given to the owner; or

(b) serve the owner of the building with the compliance notice as referred to in section 7.

(2) No person shall hinder or obstruct the authorised official in the exercise of his her powers in terms of the By-law.

(3) An authorised official shall, when entering the building, produce a valid identification document issued to him or her by the City to the owner of such building.

6. Declaration of a building, a problem building

(1) The authorised official may, subject to subsections (2) to (5), if a building falls within the definition of "problem building" as defined in section 1, declare such building a problem building.

(2) The authorised official shall, by notice in writing, before declaring such building a problem building, inform the owner of his or her intention to declare such building a problem building, giving the reasons for such declaration.

(3) The authorised official may carry out an investigation in respect of a building which he or she intends to declare a problem building as contemplated in subsection (2), provided that he or she must display a notice of such investigation on the building concerned.

(4) The authorised official shall give the owner a period of seven days to make representations on why the building should not be declared a problem building.

(5) The authorised official shall, after considering the representations referred to in subsection (4), take a decision either to declare or not to declare a building a problem building.

(6) The owner shall, in respect of a declaration in terms of subsection (1), have a right of appeal in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

7. Compliance notice

(1) The authorised official shall serve a written notice on the owner of any building which has been declared a problem building as referred to in section 6, requiring such owner within a specified period to—

(a) repair, renovate, repaint, alter, close, demolish, secure, or remove all refuse from, such problem building;

(b) complete the construction of a problem building or any structure of such building;

(c) enclose, fence or barricade such problem building to the satisfaction of the City;

(d) appoint and instruct, at the cost of such owner, an approved competent person referred to in Part A 19 of the National Building Regulations, to examine a condition that gave rise to the

declaration of a building a problem building and to report to the authorised official on the nature and extent of the steps to be taken, which in the opinion of such approved competent person needs to be taken in order to render such problem building safe;

(e) dispose of, destroy or remove any material or article accumulated, dumped, stored or deposited in any building, which is refuse or waste and which is showing signs of becoming unsightly, insanitary, unhealthy or objectionable or is likely to constitute an obstruction; or

(f) comply with any provision of this By-law.

(2) The City may, if such owner fails to comply with a notice served on him or her in terms of subsection (1), repair, renovate, repaint, alter, close, demolish, remove all refuse or secure any problem building at the cost of the owner.

(3) The City may, if the owner fails to pay such cost, recover the cost in terms of the Credit Control and Debt Collection By-law, 2006.

(4) Despite subsection (1), section 6 and subject to any applicable legislation, if the authorised official has reason to believe that the condition of any building is such that steps should forthwith be taken to protect life or property, he or she may take such steps as may be necessary in the circumstances without serving or delivering such notice on or to the owner of such building and may recover the cost of such steps from such owner.

(5) If the authorised official deems it necessary for the safety of any person, he or she may by notice in writing—

(a) order the owner of any problem building to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in such problem building, and to take care that no person who is not authorised by the City enters such problem building;

(b) order any person occupying or working, or who for any other purpose is in any problem building, to vacate such building.

(6) No person shall 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 or delivered in terms of this section or steps were taken by the City in terms of subsection (2), unless he or she has been granted permission by City in writing that such building may be occupied or used or continue to be occupied or used, as the case may be.

8. Service of a notice

(1) Whenever a compliance notice is authorised or required to be served on a person in terms of this By-law, it shall be 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 with a person apparently over the age of 16 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 and an acknowledgment of the posting thereof is produced;

(d) if his or her address in the Republic is unknown, when it has been served on his or her agent or representative in the Republic in the manner contemplated in paragraph (a), (b) or (c); or

(e) if his or her address and agent in the Republic are unknown, when it has been posted in a conspicuous place on the immovable property, if any, to which it relates.

(2) When a compliance notice as aforesaid is authorised or required to be served on a person by reason of his or her being or having been the owner or holding some other right in respect of immovable property, it shall not be necessary to name him or her, but it shall be sufficient if he or she is therein described as the owner or holder of such immovable property or other right, as the case may be.

Repealed

9. Indemnity

The City or any authorised official of the City shall not be liable to a third party for any damage caused by anything lawfully done or omitted by the City or any authorised official in carrying out any function or duty in terms of this By-law.

10. Offences and penalties

(1) Any person who contravenes any provision, or fails to comply with any notice issued in terms, of this By-law commits an offence.

(2) A person who is guilty of an offence in terms of this By-law is upon conviction liable to a fine not exceeding R300 000.00 or imprisonment for a period not exceeding three years or to both such fine and imprisonment.

(3) In the case of a continuing offence an additional fine or imprisonment for a period not exceeding ten days for each day on which such offence continued may be imposed.

(4) In addition to any penalty imposed in terms of subsections (2) and (3), the person so convicted shall be liable to pay the cost of repair of any damage caused or costs incurred in remedying any damage resulting from such an offence.

11. Short title

This By law is called the City of Cape Town: Problem Building By-law, 2010.