eThekwini, South Africa

Problem Buildings By-law, 2015

Legislation as at 11 September 2015

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eThekwini
South Africa

Problem Buildings By-law, 2015

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

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

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

WHEREAS the eThekwini Municipality has competence in terms of Part B of Schedule 4 of the Constitution of the Republic of South Africa, relating to such matters as building regulations, municipal planning and municipal health, and competence in terms of Part B of Schedule 5 of the Constitution of the Republic of South Africa, relating to such matters as the control of public nuisances;

AND WHEREAS the eThekwini Municipality 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;

NOW THEREFORE the eThekwini Municipal Council, acting in terms of section 156 read with Parts B of Schedules 4 and 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:

Chapter 1
Interpretation

1. Definitions

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

"**authorised official**" means a person authorised to implement the provisions of this By-law, 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 or metropolitan Police Officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"**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);

"**competent person**" means a competent person as contemplated in the National Building Regulations, Government Notice No. R. 2378 of 12 October 1990;

"**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 eThekwini 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 eThekwini 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#

(i) owner of the building is deceased and the building has not yet been transferred out of the deceased's estate; or

(ii) estate of the owner has been sequestrated;

(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 is a mental health care user as defined in section 1 of the Mental Health Act, 2002 (Act No. 17 of 2002);

(h) the liquidator, where the owner of the building is a judicial person or a trust and has been liquidated;

(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);

(j) the business rescue practitioner, where the owner of the building has been placed under business rescue;

(k) 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

(l) 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; and

(iii) there is no managing agent;

"**problem building**" means a building or portion of a building 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, as confirmed in writing by a member of the Durban Metropolitan Police Service 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 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

(k) is in contravention of one or more of the Municipality's By-laws.

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 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 consultations with owners, and people who occupy or reside in problem buildings; and

(c) ensure the health and safety of people occupying problem buildings and of the public in general.

4. Application of By-law

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

Chapter 2
Identification of problem buildings

5. Notice of intention to declare building a problem building

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 intends to declare the building to be a problem building;

(b) giving reasons why the Municipality intends to declare the building to be a problem building;

(c) inviting the owner to make written representations, within 14 days of the notice, on why the building should not be declared a problem building; and

(d) providing an address, fax number or email address to which representations may be submitted.

6. Declaration of a problem building

(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

7. Profiling problem buildings

(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 or any other applicable 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, if so present, must be given the opportunity to make representations during such investigation.

(3) Where verbal representations have been made in terms of subsection (2) 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.

8. Ban on new occupants

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

9. Engagement with owners

(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 or any other applicable 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, a 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 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.

10. Engagement with occupiers

(1) If a problem building is occupied, 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, 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 compliance 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 of a municipal official available to assist the occupiers in finding alternative accommodation.

11. Eviction

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.

12. Unsafe problem buildings

(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 to act in terms of subsection (1) he or she may for the purposes of ensuring the safety of any person, 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 enter 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

13. Entry by authorised official

(1) An authorised official may enter any 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;

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

(d) enforce any provision of this By-law.

(2) A person may not hinder or obstruct an authorised official in the exercise of his or her powers or duties 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.

14. Powers of authorised officials

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;

(d) remove evidence;

(e) take samples; and

(f) do anything necessary to implement the provisions of this By-law.

15. Service of notices

(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 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.

16. Combined notices

The Municipality is not restricted, 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 Bylaw, to serve a combined notice dealing with all of those contraventions, failures or refusals, as the case may be.

17. Indemnity

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

18. Lawful instructions

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

19. Recovery of costs

(1) In the event that a person–

(a) contravenes the provisions of this By-law or of any other applicable 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 to remedy the contravention 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 and may be charged to the owner's municipal account.

20. Vicarious liability

(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 making 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 applicable 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.

21. Offences

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 his or her 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.

22. Penalties

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

(a) a fine of an amount not exceeding R500 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.

23. Presumptions

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

(a) letting a problem building; or

(b) acting as a 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

24. 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 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.

25. Appeals

(1) A person whose rights are affected by a decision taken by the 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 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.

(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 subsections (1) to (5).

26. Short title and commencement

This By-law is called the eThekwini Municipality: Problem Buildings By-law, 2015 and takes effect six months from the date of publication thereof in the Provincial Gazette or on such earlier date as may be determined by the publication of a commencement notice in the Provincial Gazette.