

Johannesburg, South Africa

Problem Properties

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Problem Properties

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Johannesburg South Africa

Problem Properties By-law, 2014

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Chapter 1 Introductory provisions

To provide for the identification, control and management of dilapidated, abandoned and problem properties in the City of Johannesburg, and to provide for matters incidental thereto.

1. Preamble

Whereas section 156(2) and (5) of the Constitution of the Republic of South Africa Act 108 of 1996 (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 the City of Johannesburg seeks to identify, control and manage dilapidated and problem properties within its area of jurisdiction to ensure that such properties comply with the relevant legislation by formulating a coordinated and integrated strategic plan, processes and procedures which address the current challenges faced within the its jurisdiction;

And now therefore, be it enacted by the Council of the City of Johannesburg, as follows:

2. Definitions

In this By-law, unless the context otherwise indicates, reference to:

- (1) "**area of jurisdiction**" means the area under the control of the local authority according to the legally determined and declared boundaries of the local authority.
- (2) "**authorised official**" means an employee of the local authority authorised by the local authority or authorised by any delegated official of the local authority, to implement and enforce the provisions of these By-laws.
- (3) "**building**" includes, 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); or
- (d) any vacant or unoccupied erf of whatever nature and size, with or without walls, with or without a roof and if there is a structure, whether or not building plans for such structure are approved by the relevant authority in terms of any legislation;
- (e) any advertising sign, advertising board or other structure as defined in the local authority's advertising sign By-laws, as promulgated from time to time;
- (f) all structures which fall within the definition of "building" in:
 - (i) the National Building Regulations and Building Standards Act, (Act 103 of 1977), any amendments thereto or substitutions thereof, as well as any Regulations promulgated thereunder or any deemed-to-satisfy or similar standards published by the Government Printers;
 - (ii) any town planning scheme in operation in respect of the property;
 - (iii) all regulations and standards issued by the South African Bureau of Standards or related authority.
- (4) "**Court**" means the Magistrates court or High Court or Municipal court having jurisdiction over an area falling within the local authority;
- (5) "**local authority**" means:
 - (a) the City of Johannesburg Metropolitan Municipality, a municipality duly established in terms of items 2 of the Provincial Notice No. 6766 of 1 October 2000, exercising its legislative and executive authority through its municipal council;
 - (b) its successors in title or assigns; or
 - (c) the Executive Committee of the City of Johannesburg Metropolitan Municipality; or
 - (d) any officer employed by the City of Johannesburg Metropolitan Municipality in connection with these By-laws and delegated to him/her by the City of Johannesburg Metropolitan Municipality in connection with these By-laws; or
 - (e) any structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has been delegated or sub-delegated, or an instruction given, as contemplated in Section 59 of the Municipal Systems Act, 2000 (Act no. 32 of 2000);
- (6) "**property**" means any piece of land registered as a separate entity of land in a deeds registry as an erf, lot, plot, farm, stand or agricultural holding and includes any unit and land contemplated in the Sectional Title Act, 1986 (Act No. 95 of 1986) and any public place depicted on the general plan of a township or any piece of land used as if registered as a separate entity of land in a deeds registry as an erf, lot, plot, farm, stand or agricultural holding and includes any unit and land contemplated in the Sectional Title Act, 1986 (act No. 95 of 1986) or used for a similar purpose, and includes any public road, park, private road or any piece of land of whatever nature.
- (7) "**Problem Property**" means any property, building or portion of a property or building that has been declared a problem property in terms of section 7;
- (8) "**responsible person**" means:
 - (a) the person, any or all of the trustees of a trust or body corporate, any or all of the members of an association, any and all members of a partnership, any or all of the directors of a company, any or all of the members of a close corporation, registered as the owner or holder of any property in the relevant deeds registry office; or
 - (b) the person, any or all of the trustees of a trust or body corporate, any or all of the members of an association, any and all members of a partnership, any or all of the directors of a

company, any or all of the members of a close corporation, seemingly in charge of the property, whether due to any reason, including but not limited to:

- (i) the property being abandoned by the registered owner or holder thereof; or
- (ii) the registered owner or holder thereof being absent from the Republic of South Africa or his/her whereabouts are unknown to the local authority; or
- (iii) the property having been taken over by such person with or without consent of the registered owner or holder thereof; or
- (iv) such person collecting or accepting any monetary compensation in respect of the occupation of the building;
- (v) such persons as being appointed by the registered owner or holder thereof to be in charge of the property;

and whether or not such person undertakes or at any time undertook the management, maintenance or collection of rentals or other moneys in respect of such property or who is or was responsible thereof;

- (c) a trustee in an insolvent estate which is the registered owner, registered holder or person in charge of property;
- (d) the liquidator of a company or a close corporation which is a registered owner, registered holder or person in charge of the property;
- (e) the executor of any registered owner, registered holder or person in charge of the property who has died;
- (f) or the representative recognized by law of any registered owner, registered holder or person in charge of the property who is a minor or of unsound mind or is otherwise under disability;
- (g) where the local authority is unable to determine the identity of such person as mentioned in sub sections (a) or (b) above, any person who accepts or is entitled to or who have accepted or were entitled to the benefit of the use of such property or who enjoys or enjoyed such benefit.

3. Application of these by-laws

These By-laws apply to all properties and buildings in the area and jurisdiction of the local authority.

Chapter 2 Authorised official

4. Appointment of authorised official

The City Manager or any other person with the relevant authority delegated to him/her by the local authority or its delegated official, shall appoint so many authorised officials he/she may deem necessary to implement and enforce the provisions of these By-laws.

5. Identification of authorised official

An authorised official shall at all times identify him/herself to the responsible person with an identification card as provided to him/her for this purpose by the local authority at the time of his/her appointment.

6. Entry and inspection by authorised official

- (1) Any authorised official may enter any property or building at any reasonable time with a view to:
 - (a) inspect and/or determine whether the property or building complies with these By-laws and any other legislation;
 - (b) inspect and determine whether the property or building is, in his/her opinion, a problem property;
 - (c) serve the responsible person with a notice contemplated in these or any other By-laws or legislation.
- (2) No persons shall hinder or obstruct the authorised official in the exercise of his/her powers in terms of these By-laws.

7. Powers of authorised official

- (1) The authorised official may, subject to the provisions of this section, declare a property or a building or any part thereof a Problem Property, provided that one or more of the following circumstances exist at the property:
 - (a) the building appears to have been abandoned by the registered owner or responsible person with or without the consequence that rates or other municipal services charges have not been paid for a period of more than three (3) months during any period of twelve (12) months.
 - (b) the building does not comply with existing legislation and/or is not maintained in accordance with the health, fire-safety and townplanning and building control By-laws;
 - (c) the building has no or limited use of lifts installed in the building;
 - (d) is overcrowded as envisaged in any law, By-law, town planning scheme in operation or any other relevant legislation;
 - (e) is unhealthy, unsanitary, unsightly or objectionable as determined by the personnel in the Building Control Sub-Directorate of the City of Johannesburg with formal architectural qualifications and experience ;
 - (f) has overloaded or illegally connected electricity supply;
 - (g) has illegally connected water supply;
 - (h) has no electricity supply;
 - (i) has no water supply;
 - (j) has illegal connections to sewer mains;
 - (k) has overflowed or blocked sewer drains;
 - (l) is subject to complaints of criminal activities, including but not limited to drug dealings, prostitution, money laundering;
 - (m) is occupied illegally;
 - (n) where refuse, waste material, rubble, scrap or any similar material is accumulated, dumped, stored or deposited, unless so stored in terms of a valid approval by the local authority;
 - (o) is partially completed and the responsible person has not complied with a notice issued in terms of Section 11 of the National Building Regulations and Building Standards Act, 1977;
 - (p) is structurally unsound;

- (q) is a threat or danger to the safety of the occupiers, registered owners, responsible person or the public in general.
- (2) The authorised official shall give notice in writing to the responsible person, before so declaring the building or property a Problem Property:
 - (a) stating his/her intention to declare the building or property a Problem Property;
 - (b) providing brief reasons for such intention; and
 - (c) granting the responsible person a period of not less than 10 (ten) days, excluding Saturdays, Sundays and Public Holidays, to provide written representations as to why the building or property is not to be declared a Problem Property
- (3) The authorised official shall:
 - (a) consider the written representations provided to him/her by the responsible person, and;
 - (b) declare the building as:
 - (i) a Problem Property; or
 - (ii) declare it as not being a Problem Property; and
 - (c) forthwith provide the responsible person with his/her written decision by way of service in terms of section 9 below.
- (4) The decision taken in terms of section 7(3)(b) above shall not preclude the authorised official from having the authority to issue spot fines as envisaged in these By-laws or any relevant legislation or By-laws or to take any further action as provided for in these By-laws or any other relevant legislation or By-laws.

Chapter 3

Notice to comply and service of notice

8. Notice to comply

- (1) The authorised official shall serve a written notice on the responsible person that the property has been declared a Problem Property, requiring such responsible person within a specified period to comply with the provisions of these By-laws and any other relevant legislation or By-laws and the responsible person shall forthwith comply with the notice.
- (2) Despite the provisions of sub section (1), and subject to any applicable legislation, if the authorised official has reason to believe that the condition of any building or property is such that steps should immediately be taken to protect the safety and health of persons or property, he or she may take such steps as may be necessary in the circumstances to alleviate that condition, without serving or delivering such notice on or to the responsible person and may recover the cost of such steps from the responsible person.
- (3) If the authorised official deems it necessary for the safety of any person, he or she may, by notice in writing, and subject to any applicable legislation:
 - (a) Order the responsible person of any Problem Property to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in or on the Problem Property, and to take care that no person who is not authorised by the local authority enters the Problem Property;
 - (b) Order any person occupying, operating or working from, or who for any other purpose is in or on any Problem Property, to vacate the Problem Property.

- (4) No person shall occupy, use or permit the occupation or use of any Problem Property or continue to occupy, use or permit, the occupation or use of any Problem Property in respect of which a notice was given of sub section (3) or steps were taken by the local authority in terms of this section, unless he or she has been granted permission by the local authority in writing that the Problem Property may be occupied or used, as the case may be.

9. Service of notices

- (1) All and any notices to be given in terms of these By-laws shall be deemed to be duly given and effectively served on such person:
- (a) When it has been delivered to him/her personally;
 - (b) When it has been delivered to a person, who accepts it on behalf of the responsible and who is apparently over the age of 16 years at found at the problem property or at the responsible person's place of residence or business in the Republic;
 - (c) When it has been posted by prepaid registered or certified mail to the responsible person's last known residential or postal address as in possession of the local authority, 7 (seven) days after such posting;
 - (d) If the responsible person's address in the Republic of South Africa is unknown, when it has been served on his/her representative in the manner set out in subclasses (1), (2) or (3) above;
 - (e) If the responsible person's address and/or agent in the Republic of South Africa is unknown, when it has been posted in a conspicuous place, including but not limited to, the front door or gate to the property, to which it relates.
- (2) It shall be preferable to name the responsible person in the notice, but if his/her full names are unknown to the authorised official, it shall be sufficient if he or she is therein described as the "responsible person" of the property.

Chapter 4 General provisions

10. Appointment of an administrator

- (1) The local authority may apply to the Court for the appointment of an administrator, where the property or building has been declared a Problem Property, and in which event, the Court may in its discretion appoint the administrator on such terms as it deems fit in the circumstances.
- (2) The remuneration and expenses of the administrator shall be payable through cost recovery or responsible persons jointly and severally, excluding the local authority;
- (3) The administrator shall, to the exclusion of the responsible person or responsible persons, have the powers and duties of the registered owner of the property, including without limitation, those powers set out herein below, or such powers and duties as the Court may direct:
- (I) Collection of rental and other charges from the occupiers or the responsible person;
 - (ii) Maintaining, repairing or renovating the Problem Property utilising the rental so collected or from other funding as obtained from whatever source;
 - (iii) Payment of charges for the supply of electric current, gas, water, fuel and sanitary services, rates and taxes from such rental or other funding as obtained from whatever source;
 - (iv) Appointment of a committee to assist in the management of the Problem Property;
 - (v) Open and operate an account with a banking institution or a building society;

- (vi) All other actions reasonably required to be taken in terms of managing the Problem Property; and
 - (vii) Any and all actions which the responsible person would, in normal course of business and management of the Problem Property, have been able to take.
- (4) The Court may, at its discretion and on the application of any interested party, remove from office or replace the administrator or on application by the administrator, replace the administrator.
- (5) Upon the expiry of the appointment of the administrator for any reason whatsoever, the administrator shall hand the property back to the responsible person, provided that all remuneration and expenses of the administrator have been paid by the responsible person or responsible persons jointly and severally.

11. Offences and penalties

- (1) Any person who contravenes any provision or fails to comply with any notice issued in terms of these By-laws commits an offence and may, in the sole discretion of the local authority or the authorised official, be fined on the spot to the extent as stipulated by the local authority from time to time.
- (2) Any person who contravenes any provision or fails to comply with any notice issued in terms of these By-laws, commits an offence and shall be liable for criminal prosecution, in addition to the spot fines as contemplated in sub-section (1), and may, upon conviction be liable for a fine of R300 000,00 or imprisonment for a period not exceeding three years or both such fine and imprisonment.

12. Civil action

- (1) In addition to or instead of the action set out above, the local authority may, in its sole discretion, proceed with civil action against any responsible person or person who contravenes or permits a contravention of the provisions of these By-laws.
- (2) All costs of the civil action on an attorney and client scale shall be recoverable by the local authority from the responsible person or person who contravenes these By-laws in respect of all legal action taken against such responsible person or person by the local authority. Such costs shall be payable upon demand therefor from the local authority.

13. Indemnity

The local authority or any authorised official shall not be liable to the responsible person or any person for any damages of whatever nature caused as a result of any lawful or authorised action of an authorised official or the local authority taken in terms of these By-laws.

14. Damages

Any responsible person or person contravening these By-laws shall be held liable for all damages and actual costs and disbursements the local authority incurs to repair, renovate, alter, close, demolish, remove, secure, maintain, or enforce compliance or payable in terms of these By-laws and such damages, actual costs and/or disbursements shall be paid by the responsible person or responsible persons jointly and severally to the local authority upon demand.

15. Exemptions

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the local authority for exemption from any provision of this By-law.

- (2) The local authority may:-
- (a) Grant an exemption in writing and the conditions which includes the conditions under which, if any, and the period for which such exemption is granted;
 - (b) Alter, or cancel any condition in an exemption; provided that the local authority must give reasonable notice of such intention and give the applicant reasonable time to make representations; or
 - (c) Refuse to grant an exemption in which case the applicant must be informed of the reasons for such refusal.
- (3) In order to consider an application in terms of sub-section (1), the local authority may obtain the input or comments of the owners or occupants of surrounding premises.
- (4) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the local authority under sub-section (2). If an activity is commenced before such undertaking has been submitted to the local authority, the exemption lapses.
- (5) If any condition of an exemption is not complied with, the local authority may withdraw or cancel such exemption; provided that the local authority must give reasonable notice of such intention and give the applicant reasonable time to make representation.

16. Short title

These By-laws are referred to as the City of Johannesburg: By-laws on Problem Properties, 2014 and will come into operation on the date to be promulgated.