

Drakenstein, South Africa

Building Control

Legislation as at 13 March 2020

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Drakenstein South Africa

Building Control By-law, 2020

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Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, Drakenstein Municipality enacts as follows:-

1. Definitions

(1) In this by-law, unless inconsistent with the context—

"**Act**" means the National Building Regulations and Building Standards Act, 1977, (Act 103 of 1977);

"**authorised official**" means an employee of the municipality or any other person who is appointed or authorised thereto by the municipality to perform any act, function or duty related to the provisions of this by-law, or exercise any power in terms 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-
 - (i) the accommodation or convenience of human beings or animals;
 - (ii) the manufacture, processing, storage, display or sale of any goods;
 - (iii) the rendering of any service;
 - (iv) the destruction or treatment of refuse or other waste materials;
 - (v) the cultivation or growing of any plant or crop;
- (b) any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith;
- (c) any fuel pump or any tank used in connection therewith;
- (d) any part of a building, including a building as defined in paragraph (a), (b) or (c);
- (e) any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, storm water disposal, electricity supply or other similar service in respect of the building, including but not limited to-
 - (i) water tanks, bore holes or grey water systems;
 - (ii) air conditioning units, generators, pool pumps, heat pumps or other mechanical plant or system;

"**competent person**" means a person who is qualified by virtue of his education, training, experience and contextual knowledge to make a determination regarding the performance of a building or part thereof in relation to a functional regulation or to undertake such duties as may be assigned to him in terms of this by-law and the NBR;

"erect" means, in relation to a building, the alteration, extension, re-building, re-erection, subdivision of, or addition to, or repair of any part of the structural system of any building;

"municipality" means the Drakenstein Municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"National Building Regulations" means regulations issued in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), hereafter referred to as the NBR;

"organ of state"

- (a) any government department or administration in the national, provincial or local government sphere; or
- (b) any other functionary or institution-
 - (i) that performs a power or function in terms of the Constitution or a provincial constitution; or
 - (ii) that performs a public function or power in terms of legislation, but excludes a court or judicial officer.

"owner" in relation to a building or land, means the person in whose name the land on which such building was or is erected or such land, as the case may be, is registered in the deeds office in question, 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 own affairs or a prodigal or is a patient as defined in section 1 of the Mental Health Act, 1973 (Act 18 of 1973), or if his estate has been sequestrated, the executor or curator concerned, as the case may be;
- (b) such person, in the case of a juristic person, 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 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 land or who is responsible therefore;
- (d) the municipality is unable to determine the identity of such person, any person who is entitled to the benefit of the use of such building or land or who enjoys such benefit, shall be deemed to be the owner of such building or land;

"person" includes any natural person, juristic person, association or organ of state;

"structural system" means, in relation to a building, the system of constructional elements and components of any building which is provided to resist the loads acting upon it and to transfer such loads to the ground upon which the foundation of the building rests;

"vehicle" means any self-propelled vehicle and includes-

- (a) a trailer; and
 - (b) a vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such pedals, engine or motor, or both such pedals and engine or motor;
- (2) Any provision in this by-law relating to procedures for the submission of and consideration of applications for approval of the erection of a building as well as compliance requirements, must be interpreted as a reference to applicable corresponding provisions in the Act and the NBR.

2. Purpose of by-law and application

- (1) This by-law is supplementary to the Act and the NBR to ensure uniformity with regard to building standards, the erection of buildings and the submission, consideration and approval of building plans in the jurisdictional area of the municipality.
- (2) Subject to sub section (3), this by-law does not derogate from the provisions of the Act.
- (3) Notwithstanding conflicting provisions in any act, including the Act and the NBR, all persons, including organs of state, must submit building plans and specifications for consideration and approval by the municipality in respect of buildings as provided for in this by-law, the Act and the NBR and must pay the required fees as contemplated in section 8.

3. Interpretation

- (1) Any provision in this by-law relating to procedures for the submission of and consideration of applications for approval of the erection of a building as well as compliance requirements, must be interpreted as a reference to applicable corresponding provisions in the Act and the NBR.
- (2) Where a building as defined in section 1 complies with the definition of problem premises, the provisions of the By-law Relating to Problem premises 2020 shall apply with the necessary changes.

4. Approval required in respect of buildings to be erected

A person who wishes to erect a building as contemplated in section 5, must submit the building plans or documents as required in terms of section 7 for consideration and approval by the municipality prior to commencement with the erection of such building.

5. Buildings that require approval of the municipality

Without derogating from the provisions of section 4(1) of the Act, the NBR or any other law, the erection of buildings listed below require approval of the municipality and may include, but are not limited to-

- (a) containers, irrespective of the materials used in the erection thereof, used temporarily or permanently for purposes including but not limited to storage or habitable purposes;
- (b) storage tanks, irrespective of the materials used in the erection thereof, used temporarily or permanently for purposes including but not limited to storage of water, fuel or any other liquid;
- (c) air conditioning units;
- (d) pool pumps;
- (e) wendy houses, irrespective of the materials used in the erection thereof, used temporarily or permanently for purposes including but not limited to storage or habitable purposes;
- (f) grey water systems used for the reticulation of grey water as defined in the municipality's Water Services By-law;
- (g) bore holes;
- (h) recreational equipment, irrespective of the materials used in the erection thereof, used temporarily or permanently for amusement or recreational purposes;
- (i) solar energy systems whether free standing or attached to a building;
- (j) wind turbines whether free standing or attached to a building;
- (k) communication infrastructure, including but not limited to cellular masts, antennae, satellite dishes, radio masts, whether free standing or attached to a building;

- (l) Informal structures, irrespective of the materials used in the erection thereof, used temporarily or permanently for purposes including but not limited to storage or habitable purposes;
- (m) fencing, irrespective of the material used in the erection thereof, which exceeds the height of 1,8 metres;
- (n) electrical fencing as contemplated in the Electrical Machinery Regulations, published under GN R250 in GG 34154 of 25 March 2011;
- (o) vibracrete structures;
- (p) tents or shade structures, or hydroponic tunnel structures, or similar structures, whether free standing or attached to a building, irrespective of the materials used in the erection thereof, used temporarily or permanently for purposes including, but not limited to storage, production or habitable purposes; and
- (q) temporary buildings as contemplated in Regulation A23 of the NBR;

6. Certificate of occupancy

Subject to the provisions of section 14(1A) of the Act, a certificate of occupancy as contemplated in section 14 of the Act shall not be issued by the municipality unless the owner, where applicable, has provided the municipality with the following information-

- (a) electrical compliance certificate;
- (b) plumbing certificate (coc) – PIRB or IOPSA registered;
- (c) glass certificate issued by a competent person;
- (d) engineer's structural completion certificate (form 4) or (form 3 –applicable on element);
- (e) mechanical engineer's compliance certificate;
- (f) gas installation certificate issued by a competent person;
- (g) lift installation certificate issued by a competent person;
- (h) architectural completion certificate (Form 4);
- (i) energy efficient certificate (form 4)
- (j) beacon certificate issued by a professional land surveyor;
- (k) engineer's drawings relating to reinforced or structural works;
- (l) in relation to fire safety, a certificate by a competent person certifying that the fire protection system, equipment and the fire installation system has been designed and erected in accordance with the application; and
- (m) notification and execution of Regulation A22 completion inspection.

7. Application and requirements

- (1) An application for approval referred to in section 4 must be in writing on a form made available for that purpose by the municipality.
- (2) An application must-
 - (a) contain the name and address of the applicant who must be the owner of the land on which the building in question is to be erected;

- (b) be accompanied by-
 - (i) such plans, drawings and documentation or any additional information in the scale or format as prescribed by the municipality; and
 - (ii) the fees determined by the municipality for the scrutiny of such plans, drawings or documentation.

8. Determination of tariffs and fees

The municipality may, in terms of its Tariff By-law, determine tariffs and fees for any service rendered in terms of this by-law or the Act, which must be reviewed annually during the budget process.

9. Compliance and enforcement

- (1) Where an authorised official has reasonable grounds to believe that a person fails to comply with any requirement of this by-law, or that such a person is in contravention of any provision of this by-law, he or she may serve a notice of compliance on such person which notice must state –
 - (a) the name and residential or postal address of the person;
 - (b) the requirement which has not been complied with or the provision which has been contravened;
 - (c) that the person must within a specified period take measures to comply with the notice and to complete the measures before a specified date; and
 - (d) that the person may within the period specified in the notice respond in writing to the alleged offence.
- (2) The municipality, when considering any measure or period envisaged in subsection (1)(c) or (d), must have regard to the principles and objectives of this by-law, the nature of the non-compliance, and other relevant factors.
- (3) Where the person served with a notice contemplated in sub section (1) fails to comply with such notice, the municipality may institute criminal proceedings, or where applicable, approach a competent court for an order-
 - (a) prohibiting any person from proceeding with the erection of such building;
 - (b) authorising the municipality to demolish such building if the magistrate is satisfied that such erection is contrary to or does not comply with the provisions of this by-law or any approval or authorisation granted there under; or
 - (c) any other form of relief the court may deem applicable, including an order regarding cost.

10. Offences and penalties

- (1) A person commits an offence if he or she –
 - (a) erects or allows a building to be erected, or occupies a building contrary to the provisions of this by-law;
 - (b) threatens, resists, hinders or obstructs, or uses foul, abusive or insulting language towards or at an authorised official in the exercise of his or her powers or execution of his or her duties;
 - (c) falsely pretends to be an official;
 - (d) furnishes false or misleading information when requested to do so by an authorised official; or
 - (e) fails to comply with a request of an authorised official; or

- (f) fails to comply with a notice issued in terms of section 9 of this by-law.
- (2) Failure to comply with a notice, direction or condition referred to in this by-law constitutes a continuing offence.
- (3) A person who contravenes any of the provisions of sub section (1) commits an offence and shall on conviction be liable to-
 - (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment; and
 - (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
 - (c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.
- (4) In addition to any fines imposed in terms of sub paragraphs (a) and (b), a further amount equal to any costs or expenses found by the court to have been incurred by the municipality as result of such contravention or failure, may be imposed by the court.
- (5) The provisions of subsections (1) to (4) shall not apply to an organ of state, in which case the provisions of section 9(3) shall apply.

11. Appeal

A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the city manager within 21 days of the date of the notification of the decision.

12. Short title and commencement

This by-law shall be known as the Drakenstein Municipality Building Control By-law and shall come into operation of the date of promulgation thereof in the *Provincial Gazette*.