Drakenstein, South Africa

Problem Premises By-law, 2020

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Drakenstein
South Africa

Problem Premises 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

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts, and unless the context otherwise indicates:–

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

"**authorised official**" means an employee or employees of the municipality authorised to implement and enforce any or specific 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, fence or part of a building, including a building as defined in paragraph (a); or

(c) a unit as defined in the Sectional Title Act, 1986 (Act No. 95 of 1986);

"**city manager**" means the person appointed by Council as municipal manager for Drakenstein Municipality in terms of section 56A of the Municipal Systems Act, 2000 (Act 32 of 2000), or his or her delegate;

"**council**" means the municipal council of Drakenstein Municipality;

"**municipality**" means the Drakenstein Municipality established in terms of Section 12 of the Municipal Structures 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;

"**occupier**" means any person who occupies or has control over any premises;

"**owner**" in relation to a building or land 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 or the occupier of such building or land, 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. 17 of 2002), 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, 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) the mortgage bond is registered in favour of a financial institution, that financial institution;

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

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

(g) 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;

"**problem premises**" include any-

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

(b) building or land that is derelict in appearance, overcrowded or showing signs that it is hazardous to human health, unsightly or objectionable;

(c) building or land that is the subject of complaints from the public including complaints in respect of criminal activity taking place in or at such building or land;

(d) building or land that is illegally occupied;

(e) building or land where refuse or waste material is accumulated, dumped, stored or deposited;

(f) building partially completed, or structurally unsound and that shows signs of any of the risks contemplated in paragraphs (a) to (e); or

(g) vacant or unoccupied land.

2. Purpose of by-law and application

(1) This by-law is supplementary to the Act and the NBR to ensure the proper care and maintenance of buildings and premises, whether vacant or occupied and as such giving effect to the provisions of section 12 of the Act.

(2) This by-law does not derogate from the provisions of the Act and the NBR.

(3) This by-law applies to all problem premises as defined in section 1, situated within the area of jurisdiction of the municipality.

(4) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Drakenstein area, the different customs, cultures, circumstances, geographical areas, kinds of premises, levels of development and conventions and the municipality may determine the areas in which the by-law will be applicable.

3. Appointment of authorised officials

The city manager may appoint officials to implement and enforce any or specific provisions of this by-law.

4. Delegation

The city manager may exercise all powers, duties and functions conferred upon the municipality in terms of this by-law and may delegate all or any of such powers, duties and functions to officials of the municipality.

5. Entry by authorised officials of buildings and land

(1) An authorised official may enter any building or land at any reasonable time with the view to -

(a) inspect or determine whether the building or land complies with the provisions of this by-law; or

(b) serve the owner of the building or land with a compliance notice contemplated in section 7.

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

(3) An authorised official must, when entering the building or land, on demand, produce a valid appointment certificate issued to him or her by the municipality.

6. Declaration of problem premises

(1) An authorised official, who has reasonable grounds to believe that a building or land falls within the definition of problem premises-

(a) may carry out an investigation of such building or land in order to make an informed decision on the status thereof;

(b) may subject to sub paragraphs (c), and (d), declare such building or land as problem premises.

(c) must, before such declaration, inform the owner in writing of his or her intention to do so; and

(d) must give the owner reasonable time to make representations.

(2) If an owner fails to respond to or make any representation with regard to a notice of intention issued in terms of sub section (1)(c) within the stipulated period, the authorised official may proceed with the declaration of the building or land as problem premises.

(3) The owner shall, upon a declaration in terms of sub section 1(b), have a right of appeal in terms of section 62 of the Municipal Systems Act, 2000 (Act 32 of 2000).

7. Compliance notice

(1) Subject to the provisions of section 6(1) and (2), an authorised official may serve a written notice on the owner of any building or land which has been declared as problem premises, requiring such owner within a specified period to -

(a) clean, repair, renovate, repaint, alter, close, demolish or secure such building or land;

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

(c) enclose, secure, fence or barricade such building or land;

(d) instruct, at the cost of such owner, an architect or other competent person as contemplated in Part A 19 of the NBR, to investigate such building and to report to the authorised official on the nature and extent of the steps to be taken to render such building safe or to rectify the deficiency which caused the building to be declared as problem premises;

(e) dispose of, destroy or remove any waste, material or article accumulated, dumped, stored or deposited in or at the building or land, and which is unsightly or is likely to constitute an obstruction or nuisance; or

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

(2) The municipality may, if an owner fails to comply with a notice served on him or her in terms of subsection (1), take any of the steps contemplated in sub section (1)(a) to (e), and where necessary, approach a competent court for an order authorising the municipality to take such steps or any other steps it may deem necessary, at the cost of the owner; provided that no building may be demolished by the municipality without an appropriate court order to do so.

(3) If the condition of any building is such that it poses a danger to life or property, and the authorised official has reason to believe that immediate steps are necessary to protect life or property, he or she may take any steps regarded necessary under the circumstances to prevent the danger to life or the property without serving a notice contemplated in subsection (1).

8. Recovery of cost

The municipality may, if the owner fails to pay the cost contemplated in section 7(2), or if costs have been incurred for any steps taken in terms of subsection 7(3), recover the cost in terms of the Customer Care, Credit Control, Debt Collection and Indigent Support By-law which includes the right of attachment and sale in execution of the building.

9. Vacation of buildings

(1) If an authorised official deems it necessary for the safety of any person, he or she may by notice in writing, order the owner of a building which has been declared as problem premises to remove, within the period specified in such notice, any person who, for whatever purpose is in such building, and to take care that no person who is not authorised by the municipality enters such building.

(2) Where an owner fails to comply with a notice in terms of section (1), the municipality may approach a competent court for an order to compel the owner to remove such person or persons or any other form of relief the court may find appropriate.

10. Other applicable by-laws

Nothing in this by-law prevents the municipality to act in terms of any of it's by-laws relating to-

(a) fire safety;

(b) public nuisances;

(c) electricity supply;

(d) water and sanitation services;

(e) waste management; or

(f) land use planning management.

11. Service of a notice

(1) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served –

(a) when it has been delivered to that person personally;

(b) when it has been left at that person's 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 that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;

(d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);

(e) if that person's address and agent or representative in the Republic is unknown, when it has been displayed in a conspicuous place on the premises to which it relates;

(f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or

(g) when it has been delivered, at the request of that person, to his or her e-mail address.

(2) When a compliance notice as aforesaid is 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, and 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.

12. Restriction of liability

No authorised official shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

13. Exemption

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

(2) The municipality may –

(a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;

(b) alter or cancel any condition in an exemption; provided that the municipality 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 subsection (1), the municipality 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 municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.

(5) If any condition of an exemption is not complied with, the municipality may withdraw or cancel such exemption; provided that the municipality must give reasonable notice of such intention and give the applicant reasonable time to make representations.

14. Appeal

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

15. Offences and penalties

(1) A person commits an offence if he or she -

(a) 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;

(b) falsely pretends to be an official;

(c) furnishes false or misleading information when requested to do so by an authorised official;

(d) fails to comply with a request of an authorised official; or

(e) fails to comply with a notice in terms of sections 7 or 9, or any condition imposed by the municipality when considering an application for exemption as contemplated in section 12(2).

(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.

16. Repeal of by-laws

The Problem Building By-law promulgated by the Drakenstein Municipality in *Provincial Gazette* No. 7067. dated 7 December 2012, is hereby repealed as a whole.

17. Short title

This by-law shall be known as the Drakenstein Municipality: Problem Premises By-law: 2020 and shall come into operation on the date of publication thereof in the *Provincial Gazette*.