

MBHASHE MUNICIPALITY

BY-LAWS RELATING TO UNSIGHTLY AND NEGLECTED BUILDINGS AND PREMISES THIS BY-LAW IS GAZETTED

NB: The sections or wording in **black** are the sections in the current gazetted by-law.
The sections in **dark red/maroon** are proposed additional sections to the by-law.
The wording in **red** is commentary or guidelines to assist with understanding.
The sections in *“italics”* are sections to be removed entirely

BY-LAWS

To provide for the prevention of neglected and unsightly buildings and premises within the municipal area of the Municipality and to provide for matters incidental thereto.

BE IT ENACTED by the Council of Mbhashe Local Municipality, as follows:

Definitions

1. In these By-Laws –

“building” has the meaning assigned thereto in section 1 of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977) and includes fencing;

“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, including a building as defined in paragraph (a);
- (c) a unit as defined in the Sectional Title Act, 1986 (Act No. 95 of 1986); and;
- (d) any vacant, unoccupied erf;

“National Building Regulations” means regulations issued in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

“Council” means —

- (a) Municipal Council of Mbashe Local Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title;
- (c) a 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 referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws;

“Municipality” means Mbashe Local Municipality and its legal successors, and when referred to as-

- (a) **“a legal entity”**, means Mbashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) **“ a geographic area”**, means the municipal area of the Mbashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

“municipal area” means the area under the jurisdiction and control of Mbashe Municipality;

"nuisance" means any conduct or condition which brings about or may bring about a state of affairs or condition which is obnoxious and, or constitutes a health risk or a source of danger to human lives or property or which interferes or may interfere with the ordinary comfort, convenience, peace or quiet of persons;

“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 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 1073), 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; or
- (g) the Municipality in question is unable to determine the identity of such person, any person who is entitled to the benefit of the use of such building who enjoys such benefit;

“Premises” means any land, whether vacant, occupied or with buildings thereon, situated within the municipal area.

“unsightly and neglected building” includes any:

- (a) building or land that have 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 is showing signs of becoming unhealthy, unsanitary, unsightly or objectionable;
 - (c) building or land that is the subject of numerous complaints from the public including complaints in respect of any criminal activity;
 - (d) building or land that is illegally occupied;
 - (e) building or land where refuse or waste material is accumulated, dumped, stored or deposited; or
 - (f) building partially completed, abandoned or structurally unsound and that shows signs of any of the risks contemplated in paragraphs (a) to (e).

Control of neglected and unsightly buildings and premises

2. *Where any building or premises, in the opinion of the Municipality,*

—

- (a) *is unsightly, neglected or offensive and which causes the value of surrounding properties to be detrimentally affected;*
- (b) *is neglected and over-grown;*
- (c) *is a nuisance;*
- (d) *has an unsightly accumulation of papers, cartons, garden refuse, rubble and/or other waste material thereon, and*

- (e) *has an accumulation of motor wrecks or used motor parts thereon which –*
 - (i) *detracts from the amenity or appearance of surrounding properties, or*
 - (ii) *is offensive to the owners or occupiers of adjacent premises,*

the Municipality may give notice in writing to the owner or occupier of such premises requiring him or her to improve such building or the condition of such premises within a period prescribed in such notice so that the appearance or condition of such building or premises will comply with the standards required by the Municipality.

THE WHOLE OF SECTION 2 SHOULD FORM PART OF THE PROPOSED DEFINITION OF “UNSIGHTLY AND NEGLECTED BUILDINGS” SAVE FOR THE PROCEDURES BY THE MUNICIPALITY

2. Principles, objectives and application

(1) The purpose of this by-law is to provide for the identification, control and management of dilapidated, unsightly and neglected buildings and land in the area of jurisdiction of the Municipality. This is done with the aim of protecting and promoting the interests of all people in the area of jurisdiction of the municipality by providing, in conjunction with applicable laws, a legal and administrative framework within which the municipality can develop and manage its constitutional and other legislative obligations.

(2) In the implementation of this by-law, the municipality shall not overlook nor lose sight of the infrastructural, social and economic disparities and inequalities resulting from previous local government

dispensations. It shall strive to overcome such disparities and inequalities by supporting the new goals for local government as laid down in section 152 of Act 108 of 1996.

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

(4) This By-law applies to all unsightly and neglected buildings situated within the area of jurisdiction of the municipality.

3. Entry of buildings and land by authorised officials

(1) Any authorised official may enter any building or land at any reasonable time, with or without prior notice, with a view to –

- (a) inspect or determine whether the building or land complies with any provision of this By-law; or
- (b) serve the owner of the building or land with a compliance notice contemplated in section 5.

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

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

4. Declaration of a building as an unsightly and neglected building

(1) The authorised official may, subject to subsections (2), (3) and (4) below, if a building falls within the definition of unsightly and neglected building as defined in section 1, declare such building an unsightly and neglected building.

(2) The authorised official shall, before declaring such building an unsightly and neglected building, inform the owner of his or her intention to declare such building an unsightly and neglected building.

(3) The authorised official shall give the owner a period of seven working days from date of notice of the intention of the declaration, to make representations on why the building should not be declared a problem building.

(4) The owner shall, in respect of a declaration made 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).

5. Compliance notice

(1) The authorised official may serve a written notice on the owner of any building or land which has been declared an unsightly and neglected building as referred to in section 4, requiring such owner within a specified period to –

(2)

- (a) clean, repair, renovate, repaint, alter, close, demolish or secure such unsightly and neglected building;
- (b) complete the problem building or any structure of such building;
- (c) enclose, fence or barricade such unsightly and neglected building or land;
- (d) instruct, at the cost of such owner, an architect or other registered person, to investigate such unsightly and

neglected building and to report to the authorised official on the nature and extent of the steps to be taken to render such unsightly and neglected building safe or to rectify the deficiency which caused the building to be declared a problem building;

- (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 unsightly or is likely to constitute an obstruction; 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), clean, repair, renovate, repaint, alter, close demolish or secure any unsightly and neglected building at the cost of the owner.

(3) The Municipality may, if the owner fails to pay the cost contemplated in subsection (2), recover the cost in terms of the ***Customer Care and Revenue Management By-law***.

(4) If the condition of any building is such that it poses a danger to life or the building itself, the authorised official may take any steps necessary to prevent the danger to life or the property without serving the notice contemplated in subsection (1) on the owner of such building and the municipality may recover the cost of such steps taken from such owner.

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

- (a) order the owner of any unsightly and neglected building to remove, within the period specified in such notice, any person who, for whatever purpose is in such unsightly and neglected building, and to take care that no person who is not authorised by the Municipality enters such unsightly and neglected building; and
- (b) order any person who for whatever purpose is in any unsightly and neglected building, to vacate such building.

(6) No person shall occupy, use or permit the occupation or use of any unsightly and neglected building or continue to occupy, use or permit the occupation or use of any unsightly and neglected building in respect of which a notice of compliance was served in terms of subsection (1) or steps were taken by the Municipality in terms of subsection (2) without the written approval of the Municipality.

6. Restriction of Liability

No authorized employee of the municipality, acting in good faith, shall be liable in respect of anything done in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

7. 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 posted in a conspicuous place on the land or business 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 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.

Offences and penalties

3. (1) If the owner fails to comply with the requirements of the notice served in terms of section 2 within the period specified in such notice, such owner is guilty of an offence and, on conviction, be liable to a fine as determined by a competent court.

(This sub section excludes the municipality from giving the owner a fine but yet an option of a fine should be available before court prosecution prosecution.)

(1) Any person who contravenes a provision of this By-law commits an offence.

(2) A person who has committed an offence in terms of this by-law is, on conviction, and subject to penalties prescribed in any other law, liable to a fine, or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment

(2) The Municipality may, instead of instituting a prosecution and unless written objection from such owner has been received before the expiry date of the period specified on the notice served on him or

her, assume that such owner has no objection and tacitly agrees that the Municipality may, without further notice, enter upon such premises and through its officials or a contractor whose tender the Municipality has accepted, and at the cost of such owner execute the work necessary to comply with the requirements of the said notice.

(This has been catered for under Section 5 above and becomes irrelevant in this section)

(3) In addition to any penalty imposed in terms of subsection (2), 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.

4. Repeal of By-Laws

All Municipal By-Laws, and amendments thereto, relating to Unightly and Neglected Buildings and Premises are repealed.

Short Title and Commencement

5. By-laws Relating to Unightly and Neglected Buildings and Premises, 2015 and will come into operation on the date of publication in the *Provincial Gazette*.