



MBHASHE LOCAL MUNICIPALITY

All correspondence to be directed to the office of the Municipal Manager
454 Streatfield Street, Dutywa, Eastern Cape Province
Tel: 047 489 5864/34 • Email: info@mbhashemun.gov.za
www.mbhashemun.gov.za

INFORMAL SETTLEMENT AND UPGRADING POLICY

2018-2019



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INFORMAL SETTLEMENT AND UPGRADING POLICY

1. Purpose

The purpose of this policy is to guide the process to be followed when managing and controlling authorized and unauthorised informal settlement located in Mbhashe Local Municipality.

2. Definitions

“Authorised informal settlement” means any informal settlement which is recognised by the Municipality as an authorised informal settlement and which will be legalised and upgraded as a formal township in terms of the Municipality’s applicable policies, regulations and legislations.

“Consent” means the express or implied consent of the owner or person in charge to the occupation of land by a resident of a shack, irrespective of whether such consent was given in writing or otherwise.

“Contractual agreement” means the contractual agreement entered into between the head of a household and the Municipality in terms of which the household is authorised to occupy a shack in an authorised informal settlement.

“Court” means any division of the High Court or the Magistrate’s court in whose area of jurisdiction the land is situated.

“Eviction” means the permanent removal of a court order, of a person and his or her personal property from occupation of a shack or the land on which the shack is constructed, and includes the demolition and removal from the land of any building materials used to construct the shack, and **“evict”** has a corresponding meaning.

“Head of household” means-

- (a) The father in a household, where the father and mother of the household are legally married;
 - (b) The single parent, where the household has only one parent with dependants living permanently with him or her in the household ; and
 - (c) Any person in the household who has legal capacity to act and is recognised by the majority of the other persons in the household as the person responsible for the maintenance of the welfare and discipline within the household.
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“Informal settlement” means one shack or more constructed on land, with or without the consent of the owner of the land or the person in charge of the land;

“land” means any land within the area of jurisdiction of the Municipality, irrespective of whether such land belongs to the National Government, the Provincial Government, the Municipality or a private individual, company or other legal entity;

“land invasion” means the illegal occupation of the land or any settlement or occupation of people on land without the express or tacit consent of the owner of the land or the person in charge of the land, or without any other right in law to settle on or occupy such land;

“Law enforcement officers” means a group of officers or workers consisting of any combination of one or more of the following components;

- (a) *Members of the South African Police Service;*
- (b) Members of the Municipality’s Traffic Police Service;
- (c) Members of the staff of the sheriff or messenger of the court with jurisdiction in the area;
- (d) Members of a private security company contractually engaged by the Municipality to perform certain duties on its behalf; and
- (e) Any combination of employees of the Municipality,

Which group is designated by the Municipality to assist the Strategic Manager Development Planning: in the execution of his or her duties and to execute any eviction order to terminate an unauthorised informal settlement;

“Municipality” means the Mbhashe Local Municipality established by General in terms of the provisions of the Local Government: Municipal structures Act, 1998 (Act 117 of 1998);

“owner” means the registered owner of the land, irrespective of whether such owner is the National Government, the Provincial Government, the Municipality or a private individual, company or other legal entity;

“person in charge”, in relation to land, means a person who has the legal authority to give permission to another person to enter or reside on the land;

“shack” means any temporary shelter, building, hut, tent, dwelling, or similar structure which does not comply with the provisions of the National Building Regulations and Building Standards Act, 1997 (Act 103 of 1997), the regulations promulgated under that Act and the Municipality’s Building Regulations By-Laws and which is primarily used for residential purposes; and

“unauthorised informal settlement” means any informal settlement which is not recognised by the Municipality as an authorised informal settlement and which will not be



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legalised and upgraded as a formal township in terms of the Municipality's existing housing policies, but will be demolished and removed in terms of this policy.

3. Legislations

Key legislation guiding the development of this policy include but not limited to:

- The Constitution of the Republic of South Africa, Act 108/196
- National Building Regulations and Standards Act, Act 103/1977
- Townships Ordinance 33/1934
- Health Act, Act 63/1977
- National Environmental Management Act (NEMA), Act 107/1998
- Prevention of illegal Eviction and Unlawful Occupation of Land Act, (PE) Act 19 of 1998
- Removal of Restrictions Act, Act 84/1967
- Restitution of Land Rights Act, Act 22 f 1994
- Housing Act, Act 107/1997 plus the housing Amendment Act, Act 4/2001
- Upgrading of Tenure Rights Act, 1991 (Act 112/1991)
- SANRAL and National Road Act 7/1998
- Interim Protection of Informal Land Rights Act, Act 31/1966
- National Housing Consumer Protection Measures Act, Act 95/1998 (NHBRC)
- Spatial Planning and Land Use Management Act, Act 16/2013.

4. Incidents of Land invasion

4.1 The Municipality must, within a period of 24 hours after it becomes aware of an incident of land invasion or the existence of a newly established informal settlement, irrespective of whether such informal settlement was established as a consequence of an incident of land invasion or not-

- (a) Make a determination of the status of the informal settlement as an authorised or an unauthorised informal settlement in terms of the Municipality's existing policies/bylaw; and
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(b) Inform the residents of the informal, settlement of the status of the informal settlement.

- a. In the event of the status of an informal settlement as an authorised informal settlement, the Municipality must deal with the matter in accordance with the applicable provisions and procedures.
- b. In the event of the status of an informal settlement being determined as an unauthorised informal settlement, the Municipality: must deal with the matter in accordance with the applicable provisions and procedures.

5. Procedures relating to the management and control of authorised settlements.

- a. As soon as a determination of the status of an authorised informal settlement has been made the Municipality through its officials must visit the informal settlement and notify the residents of the status of the authorised informal settlement by means of a letter delivered to each shack in the informal settlement, whichever is appropriate in the circumstances.
 - b. The Municipality must compile a comprehensive register of all the residents who are entitled to reside in the authorised informal settlement and the following details must be entered in respect of each shack in the authorised informal settlement:
 1. The number allocated to the stand or site on which the shack is constructed;
 2. The name and identity number of the head of the household who is entitled to occupy the shack;
 3. The names, identity numbers and relationships to the head of the household of each and every other person occupying the shack as a member of the household;
 4. The reference number of the file of the Manager: Informal Settlements that contains a copy if the contractual agreement in respect of the shack
 5. The previous address of the house that is entitled to occupy the shack and
 6. The names, addresses and telephone numbers, if any, of at least two family members of the head of the household who do not live at the same address as the household that is entitled to occupy the shack.
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- c. The Municipality must ensure that the names, addresses and other relevant details of all the residents living in an authorised informal settlement are registered in the Municipality's Housing Waiting List with the purposes of upgrading the informal settlement.
- d. The Municipality must allocate to each site or stand in an authorised informal settlement a unique number as the temporary address of the site or stand and must ensure that the number is legibly painted or inscribed in a prominent place on the site or stand.
- e. Special meetings of residents may be convened from time to time by a residents' committee to communicate with and inform the individual residents of matters relating to the authorised informal settlement.
- f. A residents' committee must give notice of a meeting of the residents of the authorised informal settlement by placing the notice prominently on the official notice board at a venue whose location has been determined by the residents' committee and communicated to the residents at an official meeting of the residents.

6. Procedures relating to the termination of unauthorised informal settlements

6.1 As soon as determination of the status of an unauthorised informal settlement has been made and within the period of the municipality through its officials designated, visit the informal settlement and notify the residents of the status of the unauthorised informal settlement by means of a written notice hand-delivered to each shack in the informal settlement.

- a. The written notice must-
 - a) Notify the residents of a shack in the unauthorised informal settlement that their occupation of the shack and the site or stand on which it is situated is illegal; and
 - b) Request the residents of the shack to vacate the shack and remove any building materials and other personal property from the unauthorised informal settlement within a period of 24 hours after receipt of the written notice.

6.2 If the residents notified cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the Municipality must take such steps as it may deem appropriate to prevent a recurrence of any incident of land invasion or illegal land and occupation on that site, stand or unauthorised informal settlement and must regularly monitor the situation to ensure the non-recurrence of such land invasion or illegal land occupation.



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- 6.3 If the residents fail to cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the Municipality must immediately institute the necessary legal procedures to obtain an eviction order.
- 6.4 Within a period of 24 hours after the expiry of the period stipulated in the written notice the Municipality must lodge an application in a competent court to obtain an eviction order contemplated in section 4, 5 or 6 of the prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998), against any person or persons, jointly or severally, occupying or residing in a shack or on a site or stand in the unauthorised informal settlement.
- 6.5 The Municipality must, within a period of 24 hours after obtaining the eviction order deploy the Municipality Law enforcement officers / Sheriff of the court to execute the eviction order and to terminate the unauthorised informal settlement by;
- a) Evicting the residents of the informal settlement;
 - b) Demolishing and removing all shacks and removing all building materials and other personal property from the unauthorised informal settlement; and
 - c) Disposing of the building materials and other personal property in accordance with the provisions of these by-laws.

7. Disposal of building material and personal property

- 7.1 In the execution of any building materials and other personal property belonging to a resident or occupier of a shack in an unauthorised informal settlement must be removed and stored in a safe by the Municipality.
- 7.2 If the building materials and other personal property are not claimed by their owner within a period of three months after the date of the removal and storage, the building materials and personal property must be sold to the best advantage by the Municipality.
- a) Subject to the laws governing the administration and distribution of estates, nothing in this subsection contained may deprive the heir of any deceased person of his or her right to the balance of the proceeds of the property;
- 7.3 The Municipality must compile and maintain a register in which is recorded and appears-
- a) Particulars of all building materials or other personal property removed and stored in terms of these policy;
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- b) the date of the removal and storage of building materials or other personal property in and the name and site or stand number of the owner of the building materials or personal property;
- c) the signature or left thumb print of the person who is claiming ownership and to whom delivery of building materials or other personal property has been made;
- d) full details of the amount realised on the sale of building materials or other personal property and the date of the sale; and
- e) if building materials or other personal property has been destroyed, abandoned, dumped, or otherwise disposed a letter by the Municipality to the effect that the building materials or personal property was valueless.

7.4 Neither the Municipality nor any of its officials acting within the reasonable scope of their authority are liable for any loss of damage to property or injury to any resident or occupier of a shack in an unauthorised informal settlement or any other person for any reason whatsoever.

8. Prohibition of receipt or solicitation of consideration in respect of unlawful occupation of land

8.1 No person may directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of that land.

8.2 Any person who contravenes is guilty of an offence and liable on conviction to a fine or to imprisonment or both such fine and such imprisonment.

8.3 The court that convicts any person of a contravention of this section must order any money or other consideration which received by that person and which has been seized to be forfeited, and the money and the proceeds of the consideration may be paid to the person or persons from which whom the money or consideration was received, and where such or persons cannot positively identified, such money or proceeds of the consideration must be paid to the Municipality.

8.4 If any money or other consideration has been received, but has not been seized or made available for purposes of confiscation, the court that convicts a person of a contravention of this section may order the amount proved to the satisfaction of the court to have been received by such a person to be paid to the person or persons



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from whom the money or consideration was received, and where such person or persons cannot be positively identified, the money or proceeds of the consideration must be paid into the Municipality. Such order has the effect of a severe judgement and may be executed against such a person who received the money or consideration as if it were a civil judgement in favour of the person or persons from whom the money or other consideration was received or in favour of the Municipality.

9. Policy Endorsement

This policy will be endorsed by the Council of the Municipality to ensure that it is binding.

10. Policy Review

This policy will be reviewed as and when it is deemed necessary.

APPROVED BY THE COUNCIL AND SIGNED BY:

MR NAKO M
MUNICIPAL MANAGER

02 July 2018
DATE

CLLR JANDA S N

02 JULY 2018
DATE