Cape Town, South Africa

Problem Property By-law

Legislation as at 27 November 2020

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Cape Town
South Africa

Problem Property By-law By-law, 2020

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Noting the constitutional mandate of municipalities to administer the regulation of buildings within their jurisdiction and to control public nuisance;

Noting the need to identify problem properties and to take the necessary measures to ensure compliance with the City's by-laws, policies and plans and legislation related to property and the use of property;

And noting that the principal purpose of this By-law is to secure compliance rather than demolition and re-development;

Be It therefor enacted by the Council of the City of Cape Town as follows: —

1. Definitions

In this By-law, unless the context indicates otherwise-

"**authorised official**" means an employee of the City responsible for carrying out any duty or function or exercising any power in terms of this By-law or any other applicable by-law and includes an employee delegated to carry out such duties, functions or exercise such powers;

"**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 the building;

"**City**" means the City of Cape Town, a municipality established by City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) or any structure or employee of the City acting in terms of delegated authority;

"**licensed waste disposal facility**" means a site, or premises which is licensed in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and used for the accumulation or disposal of waste;

"**National Building Regulations Act**" means the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

"**owner**" means-

(a) the person or trust in whose name the property is registered in the relevant deeds office; or

(b) if the property affected is a sectional title unit, the registered owner of the sectional title;

"**problem property**" means any property that has been declared under section 10 to be a problem property;

"**property**"-

(a) 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

(b) includes any building on that piece of land.

2. Application of this By-law

This By-law applies to all properties within the area of jurisdiction of the City including properties owned by the State.

Part 2 – Duty and liability of owners

3. Duty of owners

(1) Every owner of a property must-

(a) maintain the property in a good state of repair and in a safe condition;

(b) notify the City if the condition of any property is dangerous to life or property in terms of section 12(2) of the National Building Regulations Act;

(c) not permit it to be unlawfully occupied or used for criminal activities; and

(d) not permit the dumping of waste on the property.

(2) During the erection of a building, the owner of the property must proceed with its erection without delay and take reasonable measures during its erection to prevent unauthorised access to the building.

(3) For the purposes of subsection (2), delay means any period in excess of three months.

4. Duty to take measures

(1) If a property is unlawfully occupied or used for criminal activities, the owner must take the necessary measures to evict the occupants.

(2) If waste has been dumped or accumulated on the property, the owner must remove the waste and transport it to a licensed designated disposal facility at the owner's cost.

5. Liability of owners for damages and costs

(1) An owner is liable for the costs incurred by the City to-

(a) maintain, repair, renovate, or alter the property;

(b) secure, close or barricade the property;

(c) demolish a building on the property; or

(d) otherwise enforce compliance with this By-law.

(2) Any damages and costs must be paid by the owner to the City upon demand.

Part 3 – Investigation and compliance orders

6. Investigation

(1) Subject to subsection (2), an authorised official may enter any property at a reasonable time to inspect and determine whether the owner of the property complies with this by-law.

(2) An authorised official may only enter a property in terms of subsection (1)-

(a) with the consent of the owner or occupant;

(b) on 7 days written notice to the owner or occupant of an intention to inspect the property;

(c) with a warrant to enter and search the property issued by a magistrate; or

(d) without a warrant if the authorized official reasonably believes that the delay in the issue of the warrant will defeat the purposes of the entry.

(3) A search warrant may be issued if it appears on information provided on oath that there are reasonable grounds for believing that the property is unlawfully occupied or used for criminal activities.

(4) An authorised official may be accompanied by any approved competent person as contemplated in Part A-19 of the National Building Regulations Act who is instructed to examine the building and report on the state of the building and any measures to be taken.

(5) A notice issued in terms of subsection (2)(b) permits the authorised official to enter the property in terms of subsection (1) more than once provided that it is on written notice that may be less than 7 days.

7. Compliance notice

(1) An authorised official may issue a compliance notice on the owner of a property if that official considers that-

(a) the owner has failed to comply with the duties of an owner under Part 2; and

(b) the failure can be remedied without the declaration of a problem property in terms of Part 4.

(2) The compliance notice must-

(a) specify-

(i) the measures that the owner must take to remedy the non-compliance with the owner's duties under Part 2;

(ii) a reasonable period within which the measures must be taken;

(iii) the amount of the administrative fine imposed, if the owner fails to comply with subparagraphs (i) and (ii); and

(iv) the date by which the owner may make representations to amend or withdraw the notice.

(b) be in the form determined by the City Manager in terms of section 24.

(3) The measures contemplated in subsection (2)(a) include-

(a) cleaning, repairing, repainting, renovating or altering the property;

(b) securing, fencing or barricading the property;

(c) completing the construction of a building or structure on that property;

(d) closing or demolishing a structure, building or part of a building;

(e) disposing of, or removing, any waste dumped or stored on a property.

(4) The authorised official may amend the compliance order after receiving any representations from the owner contemplated in subsection (2)(a)(iv).

8. Failure to comply with compliance order

(1) If the owner of the property fails to comply with a compliance order issued in terms of section 7, an authorised official -

(a) may extend the period or otherwise amend the compliance order;

(b) may declare the property to be a problem property in terms of section 10;

(c) must impose the administrative fine referred to in section 7(2)(a)(iii).

(2) The owner contemplated in subsection (1) is liable for the costs incurred in respect of an approved competent person for examining and reporting on the state of the building and the measures to be taken in terms of section 6(4).

Part 4 – Declaration of a problem property

9. Notice of intention to declare a problem property

(1) An authorised official may issue a notice of intention to declare a property to be a problem property if the official is satisfied that there are good grounds for believing that the property-

(a) is abandoned or derelict;

(b) is unlawfully occupied or overcrowded;

(c) is or is becoming unhealthy, unsanitary, unsightly, dilapidated or objectionable;

(d) is illegally connected to electricity, supplies or sewers;

(e) is being used for criminal activities;

(f) has without, planning permission, been altered so as to have the effect of preventing the South African Police Service, the City Police, its inspection authorities and authorised officials from lawfully entering the property without notice in order to frustrate the purpose of an investigation;

(g) is structurally unsound or is or becoming dangerous to life or property;

(h) is being used to dump waste or allowed to accumulate waste; or

(i) the construction of which is incomplete and has not been proceeded with for more than three months.

(2) The notice in subsection (1) must-

(a) give the owner 7 days within which to make representations as to why the building should not be declared a problem property and why the measures specified in subsection (b) should be amended or withdrawn;

(b) specify the measures and the time period within which the measures must be taken to prevent the building being declared a problem property.

(3) If in the representations the owner undertakes, in writing, to take the measures specified in subsection (2)(b), subject to such conditions that the authorised official may require, the official may defer a decision in terms of section 10(1).

10. Declaration of a problem building

(1) An authorised official may declare a building a problem building if-

(a) the owner fails to comply with a compliance notice issued in terms of section 7(1);

(b) the owner fails to make representations;

(c) representations have been made, but the official is nevertheless satisfied that there are good grounds to declare the building a problem building;

(d) the owner fails to comply with the undertaking given in terms of section 9(3).

(2) The declaration, in a form to be determined by the City Manager in terms of section 24, must set out the measures and the dates within which the measures must be taken by the owner.

(3) The measures contemplated in subsection (2) include-

(a) any measure contemplated in section 7(3);

(b) an order requiring the evacuation of the property if the official has reason to believe that the property is unsafe and requires immediate evacuation;

(c) a requirement that the owner take the necessary steps to evict the occupants of the property.

(4) A measure contemplated in subsection (3)(c) may only require an owner to institute proceedings in a court of law to evict occupants on the property if-

(a) the occupants are unlawfully occupying the property;

(b) the premises are being used for criminal activities;

(c) it is in the interests of safety and security of the occupants or the public or both that occupants are temporarily or permanently evicted; or

(d) one of the measures contemplated in subsection (3)(a) requires that the premises be vacated either temporarily or permanently in order to either effect alterations to the property or to demolish a building or structure on the property.

(5) The City must-

(a) serve the declaration on the owner;

(b) at the owner's cost, erect sign boards and publish advertisements in community newspapers notifying the public that the building has been declared a problem building setting out the measures to be taken and any orders or requirements as to access or occupation in the declaration.

11. Owner's failure to comply with the declaration

(1) If the owner fails to comply with any measure required in section 10(2), the City may-

(a) impose an administrative fine in terms of section 18; and

(b) carry out the measure, including approaching a court for orders contemplated in Part 6; or

(c) apply to court for the appointment of an administrator in accordance with section 12.

(2) If the City gives effect to the measure under subsection (1)(b), the owner is liable for the costs and expenses of effecting the measure.

Part 4 – Appointment of administrator

12. Appointment of administrator

(1) The City may apply to the Court for the appointment of an administrator if the property or building has been declared a problem property in terms of section 10 and the Court may appoint the administrator on such terms as it deems fit in the circumstances to give effect to the measures contained in the declaration.

(2) The remuneration and expenses of the administrator are payable through cost recovery or from the owner.

(3) An administrator appointed by the Court has the powers and duties of the registered owner of the property, including the following powers, or such powers and duties as the Court may direct:

(a) The collection of rental and other charges from the occupiers;

(b) The maintenance, repair or renovation of the problem property utilizing the rental so collected or from other funding as obtained from whatever source;

(c) The payment of charges for the supply of electricity, water, sanitation and rates and taxes from such rental or other funding as obtained from whatever source;

(d) The appointment of a committee to assist in the management of the problem property;

(e) The opening and operating of an account with a bank;

(f) Any other action-

(i) required to give effect to measures contemplated in section 10(2)(a);

(ii) contemplated in Part 5;

(iii) reasonably required to be taken in terms of managing the problem property;

(iv) which the owner would, in normal course of business and management of the problem property, have been able to take.

(4) The administrator must submit the following documents to the owner, the City and the Court-

(a) A monthly report in the form determined by the City Manager in terms of section 24;

(b) A final report and account in the form determined by the City Manager in terms of section 24 on the completion of the administrator's mandate.

(5) The Court may, at its discretion or on the application of the owner or the City -

(a) replace the administrator;

(b) require the administrator to account for and justify any action taken in terms of subsection (3);

(c) reverse or amend any decision taken by the administrator in terms of subsection (3);

(d) terminate the mandate of the administrator.

Part 5 – Evacuation, eviction and demolition

13. Evacuation

(1) If a building has been declared to be a problem property in terms of section 10(1) and an authorised official has reasonable grounds for believing that a building is dangerous to life and property and that the immediate evacuation of the property is necessary-

(a) the official may make an order requiring the evacuation of the property as contemplated in section 10(3)(b); and

(b) if the order is not obeyed, the City may apply to court on an urgent basis for an order-

(i) compelling all persons on the property to evacuate the property;

(ii) prohibiting any person from entering the property.

(2) A court may-

(a) grant an order contemplated in subsection (1)(b) if it is satisfied that the building is unsafe and that the immediate evacuation of the property is necessary;

(b) require the owner to provide temporary accommodation for the occupants to be evacuated;

(c) make, in addition to any order of costs against the owner, an order regarding the costs incurred in implementing the order.

(3) It is an offence for any person not to comply with an order contemplated in subsection (2)(a).

14. Eviction

(1) If an authorised official has reasonable grounds for believing that an eviction is a necessary measure in terms of section 10(3)(c) to achieve the purposes of the By-law, the City may-

(a) require the owner to take all necessary lawful steps to evict the occupants of the property; or

(b) institute eviction proceedings in a court against the occupants on the following grounds-

(i) the occupants are in unlawful occupation of the property;

(ii) the property is being used for criminal activities;

(iii) it is in the interests of the safety or security of the occupants or the public; and

(c) join the owner in the proceedings contemplated in paragraph (b) and seek, in addition to any order of costs against the owner, the costs of implementing the order.

(2) A court may-

(a) grant an order contemplated in subsection (1)(b) and (c) if it is satisfied that eviction is a necessary measure in terms of section 10(3)(c) to achieve the purpose of the By-law;

(b) make, in addition to any order of costs against the owner, an order regarding the costs incurred in implementing the order.

15. Demolition

(1) If an authorised official has reasonable grounds for believing that the demolition of a building is a necessary measure in terms of section 10(3)(a) read with section 7(3)(d), the City may-

(a) require the owner to demolish the structure, building or part of a building; or

(b) institute proceedings in a court to order directing the owner or authorising the City to demolish the building on one or more of the following grounds-

(i) the building or its alteration is without planning permission;

(ii) the building is structurally unsafe and not capable of being made safe;

(iii) the building is or becoming dangerous to life and property;

(iv) the owner has failed to comply with the measures issued in terms of section 10(3)(a) and the costs of complying with those measures exceed the costs of demolition.

(2) A court may-

(a) grant an order for the demolition of a building if it is satisfied that the demolition is a necessary measure in terms of section 10(3)(a) read with section 7(3)(d); and

(b) make an order of costs against the owner including the costs of the demolition.

16. Expropriation

(1) The City may apply to court to expropriate a problem property if -

(a) the owner fails to comply with the measures contemplated in section 10(3)(a); and

(b) it is unlikely that its costs in effecting the measures required in terms of section 10(3)(a) are likely to be recovered from the owner or from a sale in execution of the property pursuant to a court order for the recovery of the City's costs.

Part 6 – Enforcement

17. Civil proceedings

(1) The City or administrator may, by way of civil proceedings and in accordance with the City of Cape Town: Credit Control and Debt Collection By-law, 2006, recover from the owner-

(a) any costs incurred in effecting any measure or performing any function in terms of this By-law; and

(b) any unpaid administrative fine imposed in terms of this By-law.

18. Administrative fines

(1) An authorised official may impose an administrative fine for a failure to comply with this By-law or any notice or declaration made in terms of it.

(2) The amounts of the administrative fines are set out in Schedule A.

19. Offences and penalties

(1) Subject to subsection (5), a person is guilty of an offence and, on conviction, liable to a penalty in terms of subsections (2) and (3), if that person –

(a) contravenes or fails to comply with any provision of this By-law;

(b) contravenes or fails to comply with any requirement set out in a notice served on him in terms of this By-law;

(c) fails to comply with a lawful instruction of an authorised official;

(d) threatens, resists, interferes with or obstructs any authorised official in the performance of that official's duties or functions in terms of this By-law;

(e) knowingly makes a false statement.

(2) Any person who is convicted of an offence under this By-law is liable to-

(a) a fine;

(b) imprisonment for a period not exceeding 3 years; or

(c) both such fine and imprisonment.

(3) In the case of a continuing offence, the court may impose in respect of each day on which the offence continues-

(a) an additional fine;

(b) imprisonment for a period not exceeding 10 days; or

(c) both such fine and imprisonment,

(4) The court may in terms of section 300 of the Criminal Procedure Act 51 of 1977, determine any costs incurred by the City or administrator in effecting any measure or performing any function in terms of this By-law and make an appropriate order including an order for legal costs.

(5) If civil proceedings have been instituted for the collection of an administrative fine in terms of section 18(1) against any person in respect of a contravention contemplated in subsection (1), no criminal proceedings may be instituted against that person in respect of that contravention.

Part 7 – General

20. Appeals

Any person, who objects to a compliance notice, declaration or administrative fine issued by an authorised official, may appeal to the City Manager in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

21. Appointment of authorised officials

The delegated authority may appoint authorised officials to implement this By-law and may appoint such official as a building control officer in terms of section 5 of the National Building Regulations Act.

22. Delegation

The City Manager is authorised to exercise all the powers and perform all the duties and functions conferred on the City under this By-law and may delegate such powers and functions to authorised officials other than the powers and functions contemplated in this section and sections 20.

23. Powers of authorised officials

(1) An authorised official may, when entering a property-

(a) inspect or investigate the property;

(b) question the owner, management agent or occupier of the property;

(c) take photographs of the property;

(d) take samples and remove any document, sample or thing for the purpose of evidence in any civil or criminal proceedings.

(2) Subject to section 6(2), an authorised official may exercise any power conferred on a building control officer in terms of section 15 of the National Building Regulations Act.

24. Form of notices, declarations and sign boards

The City Manager must determine the form of the notices, declarations and sign boards that are required to be issued or erected in terms of this By-law.

25. Service of notices

(1) Whenever any notice or declaration is required to be served on a person in terms of this By-law, it is deemed to have been effectively and sufficiently served-

(a) when delivered to that person personally;

(b) when it has been left with a person apparently over the age of 16 years at that person's place of residence or business or registered address in the Republic of South Africa;

(c) when it is posted by registered or certified mail to that person's last known residential or business address and an acknowledgement of the posting is produced; or

(d) when it is affixed to a conspicuous place on the building or property.

(2) Service on any of the following persons or addresses constitutes service on the owner of the property:

(a) an agent appointed by the owner to sell, lease or manage the property;

(b) a person appointed to supervise the property;

(c) a person seemingly in charge of the property or collecting rent from occupants on the property.

26. Indemnity

The City and any authorised official are not liable for any damages caused by anything lawfully done or omitted by the City or the authorised official in carrying out any function or duty in terms of this By-law.

27. Repeal

The City of Cape Town: Problem Building By-law, 2010 as published in the *Provincial Gazette* 6767 of 31 March 2010 is hereby repealed.

28. Short title

This By-law is called the City of Cape Town: Problem Property By-law, 2019.

Schedule A

Fines

The City may impose the following administrative fines in respect of contraventions of the relevant applicable sections of this By-law.

(1) In respect of section 7(2)(iii) read with section 8(1)(c), if the owner fails to comply with a compliance order, the City may impose an initial fine of between R20 000 and R50 000 and subject to item (2) an additional fine of R10 000 for each day thereafter until the measures as contemplated in the compliance notice are met.

(2) The fines will continue to accumulate until the date that the property is declared a problem property for purposes of section 10.

(3) Once the declaration under section 10 has occurred and the owner continues to fail to take the measures contemplated in subsection 10(2) and (3) a further fine may be imposed, the amount of which is calculated at 10% of the municipal valuation of the property as provided in the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).