



MUNICIPAL MANAGEMENT AND CONTROL OF INFORMAL
SETTLEMENTS **AND LAND INVASIONS** BYLAWS

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MUNICIPAL MANAGER AND CONTROL OF INFORMAL SETTLEMENT BYLAWS NOTICE

Notice is hereby given in terms of Section 13 of the Local Government: Municipal Systems Act, 32 of 2000, as amended, read with Section 156 and 162 of the Constitution of the Republic of South Africa Act, 108 of 1996, as amended, that the eMalahleni Local Municipality resolved to adopt the following Municipal Management and Control of Informal Settlement By-laws.

1. DEFINITIONS

In these by-laws, unless the context otherwise indicates-

“authorized informal settlement” means any informal settlement which is recognized by the Municipality as an authorized informal settlement and which is regarded as a transit camp to house landless people who will be ultimately relocated to a formally established township;

“consent” means the express or implied permission/ approval of the owner or person in charge to the occupation of land by resident of a shack irrespective of whether such permission/ approval was given in writing or otherwise;

“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, in accordance with the provision of a court order, of a person and his or her property from occupation of a shack or the land on which the shack is constructed, and includes a demolition and removal from the land of any building materials used to construct the shack, and “evict” has a corresponding meaning;

“head of the 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 recognized 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;

“informal settlement” means one shack or more constructed on land with or 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 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 to settle on or occupy such land;

“Land Invasion Reaction Unit” 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 Services;
- b) Members of the staff of the bailiff, sheriff or messenger of the court with jurisdiction in the area;
- c) Members of a private security company contractually engaged by the Municipality to perform certain duties on its behalf; and
- d) Any combination of employees of the Municipality,
Which group is designated by the Municipality to assist the Manager: Human Settlements in the execution of his/her duties and to execute any eviction order contemplated by Section 4 to terminate only unauthorized informal settlement;

“Municipal Manager or his/her representative” means the official assigned in terms of Section 2;

“Municipality” means the eMalahleni Local Municipality established in terms of Section 12 of the Municipal Structure Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorized agent thereof or any employee thereof acting in connection with these by-laws 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;

“owner” means the registered owner of land, irrespective of whether such owner is the National Government, the Provincial Government, the Municipal or 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 other person to enter or reside on that 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, 1977 (Act 103 of 1977) and the Regulations promulgated under that Act and which is primarily used for residential purposes; and

“unauthorized informal settlement” means any settlement which is not recognized by the Municipality as an authorized informal settlement which will be demolished and removed in terms of these by-laws.

2. ASSIGNING OFFICIALS TO PERFORM FUNCTIONS RELATING TO INFORMAL SETTLEMENT

The municipality may assign one of its officials from Human Settlements Division to manage and control all the informal settlements in accordance with the provision of these by-laws, as executed by the Municipal Manager or his representative.

3. DUTIES IN RESPECT OF INFORMAL SETTLEMENTS

The Municipal Manager or his/her representative must-

- 1) Conduct regular survey to determine the location, origin and extent of and the conditions prevailing in each informal settlement,
- 2) Monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality.
- 3) Undertake and promote liaison and communication with local communities with a view to obtaining their understanding and cooperation regarding the prevention of land invasion in the area of jurisdiction of the municipality;
- 4) Keep a register of all the residents who are entitled to reside in each authorized informal settlement, and in such register the following details must be entered in respect of each shack in each authorized informal settlement;
 - a) The number allocated to the stand or site on which the shack is constructed;
 - b) The names, and identity number of the head of the household who is entitled to occupy the shack;
 - c) 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;
 - d) The reference number of the municipal file that contains a copy of the contractual agreement in respect of the shack;
 - e) The number of the shack's rental account;
 - f) The number of the shack's municipal services account;
 - g) The previous address of the household that is entitled to occupy the shack; and

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- h) The names, address and telephone numbers, if any, of at least two family members of the head of household who do not live at the same address as the household that is entitled to occupy the shack;
- 5) Ensure that all residents living in an authorized informal settlement are registered in the Municipality's National Housing Needs Register/Housing Demand DataBase;
 - 6) Submit written report on the control and management of any informal settlement, or the conditions prevailing in the informal settlement, if and when required to do so by the Council;
 - 7) For the purpose of informing residents of informal settlement and all other persons visiting informal settlements, ensure that-
 - a) The contents of these by-laws are communicated to all residents of every informal settlement; and
 - b) A copy of these by-laws is posted and maintained in every informal settlement in a prominent place at the venue where the residents' committee contemplated in Section 6 usually holds its meeting;
 - 8) Allocated to each site or stand in an authorized informal settlement an individual number as the temporary address of the site or stand and must ensure that such number is legibly painted or inscribed in a prominent place on the site or stand;
 - 9) Perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.

4. INCIDENTS OF LAND INVASION

- 1) The Municipal Manager or his/her representative must, within a period of 24 hours after he or she 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 authorized or an unauthorized informal settlement; and
 - b) Inform the residents of the informal settlement of the status of the informal settlement in accordance with Section 5 or Section 7, whichever is applicable in the circumstances.

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- 2) In the event of the status of an informal settlement contemplated in subsection (1) being determined as an authorized informal settlement, the Municipal Manager or his/her representative must deal with the matter in accordance with the provisions of Section 5.
 - 3) In the event of the status of an unauthorized informal settlement, the Municipal Manager or his/her representative must deal with the matter in accordance with provisions of Section 7.

5. PROCEDURES RELATING TO THE MANAGEMENT AND CONTROL OF AUTHORIZED INFORMAL SETTLEMENT

- 1) As soon as a determination of the status of an authorized informal settlement has been made and within the period contemplated in Section 4 (1), the Municipal Manager or his/her representative must, personally or through any other Council official designated by the Municipal Manager to assist him or her for that purpose and or elected representative of the Council, visit the informal settlement and notify the residents of the status of the authorized informal settlement in the manner contemplated in Section 6(2) or by means of a letter delivered in the circumstances.
- 2) The Municipal Manager or his/her representative must compile a comprehensive register of all the residents who are entitled to reside in the authorized informal settlement contemplated in subsection (1), and the following details must be entered in respect of each shack in the authorized informal settlement.
 - a) The number allocated to the stand or site on which the shack is constructed;
 - b) The names, and identity number of the head of the household who is entitled to occupy the shack;
 - c) 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;
 - d) The reference number of the file of the Municipal Manager or his representative that contains a copy of the contractual agreement in respect of the shack;
 - e) The number of the shack's rental account;
The number of the shack's municipal services account;
 - f) g) The previous address of the household that is entitled to occupy the shack; and

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- h) The names, address and telephone numbers, if any, of atleast two family members of the head of the household that is entitled to occupy the shack.
- 3) The Municipal Manager or his/her representative must ensure that the names, addresses and other relevant details of all residents living in an authorized informal settlement contemplated in subsection (1) are registered in the Municipality's Housing Demand DataBase.
 - 4) The Municipal Manager or his representative must allocate to each site or stand in an authorized informal settlement contemplated in subsection (1) a unique number as the temporary address of the site or stand and must ensure that the number is legible painted or inscribed in a prominent place on the site or stand.
 - 5) The Municipal Manager or his/her representative must ensure that no new unauthorized shacks are constructed in the authorized informal settlement contemplated in subsection (1) and that no new unauthorized residents take up residence in the authorized informal settlement by implementing appropriate measure to manage monitor and control the occupancy of residents in the authorized informal settlement in general.
 - 6) Any unauthorized occupancy in an authorized informal settlement contemplated in subsection (1) must be dealt with in accordance with the provisions of Section 9.
 - 7) In respect of an authorized informal settlement contemplated in subsection (1),the Municipal Manager or his representative must ensure that-
 - a) The Municipality's Finance Department institutes, operates and maintains an appropriate account for services rendered by the Municipality to each registered shack in the authorized informal settlement and for any charges levied for the right of occupation of particular site or stand in the authorized informal settlement; and
 - b) Such an account is supplied to the head of the household of each registered shack in the authorized informal settlement.

6. WARD COMMITTEES

- 1) The Ward Committee and the Manager or his representative, must meet on a regular monthly basis, and at such meetings the Municipality must consult the resident's committee on all matters relating to the authorized informal settlement and communicate matters of general concern to the residents of an informal settlement on a collective basis.

After such meetings, it is the sole responsibility of the Ward Committee to inform the individual residents of matters discussed at the meetings.

- 2) Specified meetings of residents may be convened from time to time by the Ward Committee to communicate with and inform the individual residents of matters relating to the authorized informal settlement.
- 3) The Ward Committee must give notice of a meeting of the residents of the authorized informal settlement by placing the notice prominently at a venue whose location has been determined by the Ward Committee and communicated to the residents at an official meeting of the residents.

7. UNLAWFUL OCCUPATION

The Emalahleni Local Municipal must:-

- (a) Identify land in its jurisdiction that it reasonably considers may be prone to unlawful occupation taking into account its location, terrain, and previous attempts to occupy it;
- (b) Continuously monitor land in its jurisdiction with a view to:-
 - (i) Identify additional land in its jurisdiction with a view to:-

Identify additional land that may be prone to unlawful occupation; and

- (ii) Detect signs of a potential unlawful occupation; and

- (c) keep a register of the identified land and the details of its owners.

8. STEPS TO PREVENT UNLAWFUL OCCUPATION ON IDENTIFIED LAND

- (1) If the Emalahleni Local Municipality is the owner of the identified land, it must ensure:-

- (a) If it is land to which the public for not have access that measures are taken to prevent unlawful occupation which may include that:-
 - (i) The land is fenced; and
 - (ii) Signage prohibiting authorized entry and occupation is erected;

- (b) If it is land to which the public have access, that appropriately placed signage is erected prohibiting occupation.

- (2) If Emalahleni Local Municipality is not the owner of the identified land, an authorized official must:-

- (a) notify the owner of the land has been identified as land prone to unlawful occupation in terms of section 7(a);

(b) require the owner within a reasonable period stipulated in the notice to take appropriate measures to prevent the unlawful occupation of the land which may include:-

- (i) fencing the land if it is not to which the public do not have access and erecting signage prohibiting authorized entry and occupation; and
- (ii) placing appropriately placed signage prohibiting occupation on land to which the public have access.

9. RESPONDING TO UNLAWFUL OCCUPATION ON LAND UNDER THE CONTROL OF THE EMALAHLENI LOCAL MUNICIPALITY

(1) If the Emalahleni Local Municipality is informed of an ongoing or imminent unlawful occupation on land under its control and jurisdiction, it must:-

(a) Take the necessary steps to prevent persons intent on occupying the land unlawfully from entering the land which may include closing the roads surrounding the land to be, or being, unlawfully occupied in order to prevent vehicles transporting persons carrying their possessions or building materials for the construction of structures from entering the area; and

(b) Immediately inform the intending occupier that their intended occupation of the land is unlawful and serve them with a written instruction to:-

- (i) Not to enter the land; or
- (ii) If they have entered the land, to dismantle any structure and to leave the land with their building materials and possessions.

(2) If the intending occupiers refuses or fails to comply with an instruction given under subsection (1)(b), the authorized official may:-

(a) Arrest the person who intends occupy the land committing an offence in the presence of the authorized official; and

(b) Dismantle the structure of the person who intends to occupy the land and impound the building materials and possessions if the structure is:-

- (i) On land under the Emalahleni Local Municipality's control;
- (ii) On a public thoroughfare; or
- (iii) Not yet capable of constituting a home on any other land.
- (iv)

(3) If an unlawful occupier has established a structure that is capable of constituting a home and fails or refuses to comply with an instruction given under subsection (1)(b), the Emalahleni Local Municipality must initiate eviction proceedings in accordance with the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998).

- (4) If the intending occupier or owner of the building materials and possessions cannot be identified after taking all reasonable steps to identify who the owner of building materials and possessions is, the authorized official may impound them and place a notice in a prominent place at the entrance or boundary of the land indicating the place at which owner of the materials and possessions impounded under this section may, upon proof of ownership and payment of the required fee, recover them in terms of the Emalahleni Local Municipality's standard operating procedure on the impoundment of Goods and animals and Emalahleni Local Municipality 's impoundment policies.
- (5) In taking any of the steps contemplated in this section:-
- (a) every authorized official must:-
- (i) Exercise their powers reasonably with due regard to every person's fundamental rights under Chapter 2 of the Constitution; and
 - (ii) If force is required under the circumstances, ensure that the level of force is justifiable and proportional.
- (6) The authorized official in charge must exercise their duty of care by intervening and taking the necessary steps to curtail any unreasonable exercise of powers or disproportionate use of force by any official under their command.
- (7) The Emalahleni Local Municipality must keep a record of unlawful occupations and include the details in a register including the names and details of the persons removed and possessions impounded.

10. Obligations of owners other than Emalahleni Local Municipality in responding to unlawful occupation;

An owner of land must immediately inform the Emalahleni Local Municipality of any intended or executed unlawful occupation of their land and the measures taken to prevent the occupation.

If the Emalahleni Local Municipality is informed of an intended or executed unlawful occupation, it must:-

- (a) Require the owner to take the necessary measures to prevent any further or subsequent occupation; or
- (b) With the consent of the owner, take the necessary measures set out in section 9 on the owners behalf and at the owner expense.

The Emalahleni Local Municipality may seek a court order permitting it to take the measures contemplated in sub-section (2) if :-

- (a) It is in the public interest; and

(b) The owner fails or refuses to:-

- (i) Take the necessary measures contemplated in subsection (2)(a); a
- (ii) Give the consent contemplated in subsection (2)(b).

11. PROHIBITED CONDUCT, OFFENCES AND PENALTIES

PROHIBITED CONDUCT

1. Any person who contravenes or fails to comply with any provision of this By-law or disobeys any instruction or compliance order by an authorized official enforcing this By-law, shall be guilty of an offence.
2. No person may:-
 - (a) Instigate or organize the unlawful occupation of land;
 - (b) Occupy land unlawfully;
 - (c) Clear land, with the intention of occupying it, by removing vegetation or by any other means,
 - (d) Remove or damage a sign put in a managed settlement;
 - (e) Remove or damage a sign put on land that is not owned by the Emalahleni Local Municipality ;
 - (f) Remove or damage survey pegs installed by the Emalahleni Local Municipality ;
 - (g) Demarcate any land with the purpose of allocating it to unlawful occupiers;
 - (h) Solicit payment for arranging or organizing for a person to occupy land without the consent of the owner of the land;
 - (i) Sell or purport to sell land or structures on land that is or is intended to be occupied;
 - (j) Lease or purport to lease land or structures on land is or intended to be occupied;
 - (k) Transport persons, building materials and personal possessions for the purpose of an unlawful occupation;
 - (l) Erect or occupy a structure on land without the consent of the owner; or
 - (m) Interfere or obstruct an authorized official in preventing the erection or dismantling of a structure or the removal of the building materials and personal possessions of an unlawful occupiers of land.
3. Any person who commits an offence in terms of:-
 - (a) Subsection (a) to (g) and (j) is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment for a period not exceeding two years or to both such fine and imprisonment; and

(b) Subsection (h) and (i) is liable on conviction to a fine or to imprisonment for a period not exceeding 6 months or to both fine and imprisonment.

4. Any vehicle driven in contravention of this By-Law.

(a) Is deemed for the purpose of this By-Law to have been driven, in the absence of evidence to the contrary-

- (i) On the instructions or with the consent of the owner; or
- (ii) By the owner, if a natural person; and

(b) May be pounded together with the building materials and possessions conveyed in the vehicle.

GENERAL

12. IMPOUNDMENT

(1) Subject to subsection (2), building materials and personal possessions impounded in terms of section 9(4) or vehicles impounded in terms of section 11(4)(b) must be stored, returned or disposed of in terms of the Emalahleni Local Municipality's Standard Operating Procedure on the Impoundment of Goods and Animals and the Emalahleni Local Municipality's impoundment policies.

(2) Impounded building materials, possessions or vehicles must release if charges are not laid within 7 days of impoundment and may only be released:-

- (a) if the charges are withdrawn;
- (b) on payment of an admission of guilt fine;
- (c) on payment of impoundment costs incurred by the Emalahleni Local Municipality ; or
- (c) By an order of court.

(2) Impounded building materials and possession under this By-Law a forfeited to the Emalahleni Local Municipality if:-

- (a) a court orders the forfeiture;
- (b) the owner of the materials and possessions cannot be determined after:-
 - (i) posting a notice in a prominent place at the entrance or boundary of

the land;

- (ii) three months from the date of impoundment; or
 - (iii) Reasonable efforts have been taken to determine through publication and other means who the owner is; or

- (d) the owner of the materials and possessions has been convicted and not paid the fines imposed and the impoundment fees within 3 months of conviction.
- (4) An impounded vehicle under this By-Law is forfeited to the Emalahleni Local Municipality if a court orders the forfeiture.
- (5) If any impounded materials, possessions or vehicle are to be forfeited, the Emalahleni Local Municipality :-
- (a) may sell or destroy them; and
 - (b) if sold, must apply any net proceeds from the sale as follows and in this order:-
 - (i) the recovery of costs incurred by the Emalahleni Local Municipality as a result of the impoundment and forfeiture;
 - (ii) the payment of the impoundment fee and any fine imposed in terms of section 6(2); and thereafter
 - (iv) the balance of the proceeds will be forfeited to the Emalahleni Local Municipality ;
- (6) If the owner of the material, possessions or vehicle fails to claim the proceeds derived from any sale contemplated in the sub-section (5) within one months from the date of the sale, the proceeds will be forfeited to the Emalahleni Local Municipality .

13. POWER TO SEARCH AND SEIZE

- (1) An authorized official may without a search warrant search any person, vehicle, or structure for the purpose of seizing any article which is, or on reasonable grounds believed to be, concerned with the commission of an offence in terms of this By-law if:-
- (a) The person consents to the search;
 - (b) The person does not consent, the official, on reasonable grounds believes;-
 - (i) That a search warrant will be issued under paragraph (a) of section 21 (1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) if application is made for a warrant; and
 - (ii) That the delay in obtaining a warrant would defeat the object of the search; or
 - (iii) That the delay in obtaining a warrant would defeat the object of the search; or
 - (c) in terms of section 23 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2) A search of any person must be conducted with strict regard to decency and order provided that:-
- (a) A woman may only be search by a woman;

(b) If no female authorized official is available, the search may be made by any woman designated for that purpose by an authorized official.

(3) The authorized official may seize anything found as a result of the search referred to in subsection (1) which:-

- (a) Is concerned in or reasonable grounds believed to be concerned in the commission or suspected commission of an offence in terms of this bylaw;
- (b) May afford evidence of the commission or suspected commission of such an offence; or
- (c) Is intended to be used or is reasonable grounds believed to be used in the commission of such an offence.

14. INDEMNITY

Neither the Emalahleni Local Municipality nor any authorized official is liable for any damages in respect of anything lawfully done or omitted in the reasonable exercising of any power or carrying out any function in terms of this Bylaw.

15. APPEAL

- (1) A person whose rights are affected by a decision of an authorized official may appeal against that decision by giving written notice of, and reasons for, the appeal in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) to the Emalahleni Local Municipality Manager within 21 days of the notification of the decision.
- (2) Any authorized official making a decision in terms of this By-Law must inform any person affected by the decision of that person's right to appeal in terms of Subsection (1).

15. SHORT TITTLE

This By-law is called the Municipal Management and Control of Informal Settlement Bylaws and shall come into operation on the date of publication in the Provincial Gazette.

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