

**LOCAL AUTHORITY NOTICE 46****UMZIMVUBU MUNICIPALITY**

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act 1996 [Act No. 108 of 1996] the By-Laws Relating to Unsightly and Neglected Buildings and Premises that come into operation on the date of publication thereof.

**BY-LAWS RELATING TO UNSIGHTLY AND NEGLECTED BUILDINGS AND PREMISES****PREAMBLE**

**WHEREAS** the Council of the Municipality is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996];

**AND WHEREAS** the Council of the Municipality in the exercise of its functions has the right to regulate practices that detract from the aesthetic appearance of areas within the jurisdiction of the Municipality and to provide for practices and procedures in relation thereto;

**NOW THEREFORE** be it enacted by the Council as follows:

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**[1] DEFINITIONS**

In these by-laws-

**"administrative unit"** means a former municipality as envisaged in section 14[3] of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998];

**"authorized official"** means –

- [a] an official who has been authorized by the Council to administer, implement and enforce the provisions of these by-laws;
- [b] a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996;
- [c] a member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995; or
- [d] a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977.

**"building"** has the meaning assigned thereto in section 1 of the National Building Regulations and Building Standards Act, 1977 [Act No. 103 of 1977], as amended;

**"Council"** means the Council of the uMzimvubu Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998, and includes any employee to whom the Council has delegated powers to enforce and/or perform duties in terms of these by-laws;

**"municipal area"** means the area under the jurisdiction and control of the Council;

**"owner"** means -

- [a] the person in whom from time to time is vested the legal title to premises;
- [b] in a case where the person in whom the legal title is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- [c] in a case where the Council is unable to determine the identity of such person, a person who is entitled to the benefit of such premises with a building thereon;
- [d] in the case of premises for which a lease of 30 years or more has been entered into, the lessee thereof;
- [e] in relation to –
  - [i] a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act, 1986 [Act No. 95 of 1986], and without restricting the above, the developer or the body corporate in respect of the common property; or
  - [ii] a section as defined in such Act, the person in whose name such a section is registered under a sectional title deed and includes the lawfully appointed agent of such a person.
- [f] any legal person including but not limited to –

- [i] a company registered in terms of the Companies Act, 1973 [Act 61 of 1973], a Trust, a Closed Corporation registered in terms of the Closed Corporations Act, 1984 [Act 69 of 1984] and a Voluntary Association;
- [ii] a state department;
- [iii] a Council or Board established in terms of any legislation applicable to the Republic of South Africa;
- [iv] a Embassy or other foreign entity.

**"premises"** means any land, whether vacant, occupied or with buildings thereon, situated within the municipal area.

## **[2] RESTORE TO ACCEPTABLE STANDARD**

[1] The Municipality must serve a notice contemplated in subsection [2] on the owner of premises on which, in the opinion of the Council –

- [a] a building is unsightly, neglected or offensive and causes the value of surrounding properties to be detrimentally affected;
- [b] lawns, trees shrubs or other cultivated vegetation is neglected and overgrown;
- [c] unsightly papers, cartons, garden refuse, rubble and/or other waste material has accumulated; or
- [d] motor wrecks or used motor parts have accumulated, that –
  - [i] detracts from the appearance of surrounding properties; or
  - [ii] is offensive to the owners or occupiers of adjacent premises.

[2] A notice in writing on the owner of premises contemplated in subsection 1[a] to [d] must require such owner to improve the condition of such premises to a standard acceptable to the Council which standard must be stated in the notice within a specified period that may not exceed ninety [90] days from the date of such notice.

[3] If the owner of premises contemplated in subsection [1] fails to comply with the requirements of the notice contemplated in subsection [2] within the specified period, that owner is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding 6 months.

[4] Alternatively and instead of instituting criminal proceedings against the owner in terms of subsection [3] of these by-laws and provided no written objections from such owner have been received before the expiry date of the period specified in the notice, the Municipality may assume that such owner has no objection and tacitly agrees that the Municipality

may, without any further notice, enter upon such premises and, at such owner's cost and through its officials or a contractor appointed by the Council on a tender or quotation basis, execute the work necessary to comply with the requirements of the said notice.

[5] The Municipality is entitled to recover the cost of the work undertaken in terms of subsection [4] in any court of law from the owner so in default.

[6] A certificate under the hand of the Municipal Manager of the Municipality stating the cost of the work referred to in subsection [5] is conclusive proof thereof.

**[3] WAIVER OF PROVISIONS**

[1] The Municipality may, if it deems it desirable to do so in the public interest, waive compliance with or relax the provisions of these by-laws; provided that any person whose rights are adversely affected by such waiver or relaxation will not be bound thereby.

[2] In each case in which such waiver or relaxation has been granted to any person, the Municipality must serve a written notice upon such person citing the relevant provision waived or relaxed and the extent to which such provision has been waived and, in addition, the Municipality must keep a record containing an identical copy of each such notice, which record must be available for inspection by members of the public at the offices of the Municipality.

**[4] COMPLIANCE NOTICE**

[1] If an authorized official, after inspecting premises contemplated in these by-laws, reasonably believes that a provision of these by-laws is being contravened, he may serve a compliance notice on one or more of the following persons:

[a] the owner of the premises;

[b] the occupier of the premises;

[c] any person apparently in charge of undertaking the aforesaid use on the premises.

[2] A compliance notice must state –

[a] why the authorized official believes that these by-laws are being contravened;



[a] any person apparently in charge of undertaking the aforesaid use on the

- [d] the possible consequences of failing to comply with the notice; and
            - [e] how to appeal against the notice.
- [3] If a person fails to comply with a compliance notice that requires a particular action to be taken, the Municipality may –
  - [a] take the required action specified in the compliance notice; and
  - [b] recover, as a debt, from the person to whom the notice was given, the costs and expenses reasonably incurred in taking the required action; or
  - [c] direct that a prohibition notice be served on such person in terms of section 5 of these by-laws.

**[5] PROHIBITION NOTICE**

- [1] An authorized official may, after inspecting premises contemplated in and contrary to these by-laws, serve a prohibition notice on the owner, occupier or user of such premises prohibiting the conduct proscribed in these by-laws and requiring measures to be taken to ensure that this occurs.
- [2] The authorized official must give the person on whom he intends serving a prohibition notice a reasonable opportunity to make representations before serving the notice.
- [3] A prohibition notice must state –
  - [a] the reasons for serving the notice;
  - [b] whether or not the Municipality will withdraw the notice if certain measures are taken, and if so, the measures that must be taken;
  - [c] the possible consequences of failing to comply with the notice; and
  - [d] how to appeal against the notice.
- [4] Unless a prohibition notice provides otherwise, it comes into effect when it is served under subsection [1] and remains in force until it is withdrawn.
- [5] The authorized official must as soon as possible affix a copy of the notice in a conspicuous position on the premises.

**[6]** It is a defence for anyone charged with failing to comply with a prohibition notice to prove that –

**[a]** he did not know of the existence of the prohibition order and could not reasonably be expected to have known of its existence; and

**[b]** he had complied with the prohibition notice within 48 hours of the time that the notice was affixed to the premises in terms of subsection [4].

**[6] WITHDRAWAL OF PROHIBITION NOTICE**

**[1]** The authorized official must, within 48 hours of receiving a written request for the withdrawal of a prohibition contained in a prohibition notice, carry out an investigation of the premises.

**[2]** After completing the investigation, the authorized official must inform the person on whom the prohibition notice was served or that person's agent in writing, whether or not the prohibition has been removed or withdrawn.

**[3]** The Municipality may charge the owner or occupier of any premises where an investigation is carried out in terms of subsection [1], a fee as prescribed in the applicable tariff policy for undertaking the investigation.

**[7] APPEAL**

**[1]** A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

**[2]** The Municipal Manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

**[3]** When the appeal is against a decision taken by –

**[a]** a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;

**[b]** the Municipal Manager, the Executive Committee is the appeal authority; or

**[c]** a political structure or political officer bearer, or a Councillor Council is the appeal authority.

**[4]** The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

**[8] REPEAL OF BY-LAWS**

- [1]** Any by-law adopted by the Municipality or a municipality now forming an administrative unit of the Municipality and relating to any matter regulated by these by-laws are, from date of promulgation of these by-laws, hereby repealed.
- [2]** Any permission obtained, right granted, condition imposed, activity permitted or anything done under a repealed law is deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision [if any] of these by-laws, as the case may be.