

CAPE AGULHAS MUNICIPALITY

PROBLEM BUILDING BY-LAW**PROBLEM BUILDING BY-LAW****PURPOSE OF REPORT**

The purpose is to submit the Problem Buildings By-law to Council for consideration.

BACKGROUND

Several complaints was received regarding dilapidated buildings and or unsafe building premises within Cape Agulhas Municipality area. The Building Control Officer indicated that this By-law will be able to address some of the complaints received. Other means will also be investigated.

CONCLUSION

That Council consider approving this By-law in order to strengthen the law enforcement activities dealing with non-compliance related to said provisions.

MANAGEMENT RECOMMENDATION

- (a) That council approve the draft By-law ,relating to Problem Buildings in principle; and
- (b) That the Administration be mandated to advertise said By-law for public comment where after same be resubmitted to Council for final approval.

CAPE AGULHAS MUNICIPALITY**PROBLEM BUILDING BY-LAW**

Under the provisions of Section 156 of the Constitution of the Republic of South Africa, 1996, Cape Agulhas Municipality enacts as follows:

TABLE OF CONTENTS

1. Definitions
2. Principles and applications
3. Appointment of authorised officials
4. Delegation
5. Entry by authorised officials of buildings and land
6. Declaration of a building or land, a problem building
7. Compliance notice
8. Recovery of cost
9. Vacation of buildings
10. Service of a notice
11. Restriction of liability
12. Exemption
13. Appeal
14. Offences and penalties
15. Repeal of by-laws
16. Short title

1. Definition

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts, and unless the context otherwise indicates:

“authorised official” means an employee of the Municipality authorised by the Municipality to implement and enforce the provisions of this By-law;

“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 services;
 - iv. Destruction or treatment of refuse or other waste materials;
 - v. Cultivation or growing of any plant or crop;
- b) Any wall, fence 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 or unoccupied erf;

“Municipality” means the Cape Agulhas Municipality established in terms of Section 12 of the Municipality Structures Act, 117 of 1998, and includes any political structure, political office-bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law in virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office-bearer, councillor, agent or employee;

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

“owner” in relation to a building or land means the person in whose name the land on which such building was or erected, as the case may be, is registered in the deeds office in question and includes the person in charge of such building: Provided 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 1973), 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 thereof;
- 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

“**problem 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 showing signs that it is unhealthy, unsanitary, unsightly or objectionable;
- c) Building or land that is the subject of complaints from the public including complaints in respect of criminal activity taking place in or at such building or land;
- 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, or structurally unsound and that shows signs of any of the risks contemplated in paragraphs (a) to (e).

2. Principles and applications

- 1) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Cape Agulhas 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.
- 2) This by-law applies to all problem buildings situated within the area of jurisdiction of the municipality, except those exempted in terms of section 13 of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977).

3. Appointment of authorised officials

The municipal manager may appoint officials to implement and enforce the provisions of this by-law.

4. Delegation

The municipal Manager may exercise all powers, duties and functions conferred upon the municipality in terms of this by-law and may delegate all or any of such powers, duties and functions to authorised officials.

5. Entry by authorised officials of buildings and land

- 1) Any authorised official may enter any building or land at any reasonable time with a view to:
 - a) Inspect or determine whether the building or land complies with the provisions of this by-law; or
 - b) Serve the owner of the building or land with a compliance notice contemplated in section 7.
- 2) No person may hinder or obstruct the authorised official in the exercise of his or her powers in terms of the by-law.

- 3) An authorised official must, 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) A person who contravenes subsection (2) commits an offence.

6. Declaration of a building or land, a problem building

- 1) An authorised official:
 - a) May carry out an investigation of a building or land which he or she intends to declare a problem building;
 - b) May subject to subparagraphs (c), and (d), declare such building a problem building.
 - c) Must, before declaring such building a problem building, inform the owner, in writing of his or her intention to do so; and
 - d) Must give the owner reasonable time to make representations.
- 2) If an owner fails to respond to or make any representation with regard to a notice of intention issued in terms of subsection (1)(c) within the stipulated period, the authorised official may proceed with the declaration of the building as a problem building.
- 3) The owner shall, upon a declaration in terms of subsection (b) have a right of appeal in terms of section 62 of the Municipal Systems Act, 2000 (Act 32 of 2000).

7. Compliance notice

- 1) Subject to the provisions of section 6(1) and (2) of this by-law and section 12 of the National Building Regulations and Buildings Standards Act, 1977 (Act 103 of 1977), an authorised official may serve a written notice on the owner of any building or land which has been declared a problem building, requiring such owner within a specific period to:
 - a) Clean, repair, renovate, repaint, alter, close, demolish or secure such building;
 - b) Complete the building or any structure of such building;
 - c) Enclose, secure, fence or barricade such problem building or land;
 - d) Instruct at the cost of such owner, an architect or other competent person as contemplated in Part A 19 of the National Building Regulations, to investigate such building and to report to authorised official on the nature and extent of the steps to be taken to render such problem 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 or at the building, which is refuse or waste and which is unsightly or is likely to constitute an obstruction or nuisance; 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), take any of the steps contemplated in subsection (1)(a) to (f), or any other steps it may deem necessary, at the cost of the owner, provided that no building may be demolished by the municipality without an appropriate court order to do so.
- 3) If the condition of any building is such that it poses a danger to life or property, and the authorised official has reason to believe that immediate steps are necessary to protect life or property, he or she may take any steps regarded necessary under the circumstances to prevent the danger to life or the property without serving the notice contemplated in subsection (1).
- 4) A person who fails to comply with a notice of compliance issued in terms of this section commits an offence.

8. Recovery of cost

The municipality may, if the owner fails to pay the cost contemplated in section 7 (2), or if costs have been incurred for any steps taken in terms of subsection (3), recover the cost in terms of the Customer Care and Revenue Management By-law which may include the right of attachment and sale in execution of building.

9. Vacation of buildings

- 1) If the authorised official deems it necessary for the safety of any person, he or she may by notice in writing:
 - a) Order the owner of any problem building to remove, within the period specified in such notice, any person who, for whatever purpose is in such building, and to take care that no person who is not authorised by the municipality enters such building; and
 - b) Order any person who for whatever purpose is in any problem building, to vacate such building.
- 2) No person may occupy, use or permit the occupation or use of any problem building or continue to occupy, use or permit the occupation or use of such 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.
- 3) A person who fails to comply with a notice served in terms of this section commits an offence.

10. Indemnity

The Cape Agulhas Municipality or any authorised official of the Cape Agulhas Municipality shall not be liable to a third party for any damage caused by anything lawfully done or omitted by the Cape Agulhas Municipality or any authorised official in carrying out in any function or duty in terms of this By-law.

11 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 left at the 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 therefor 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) on a 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 describe as the owner or holder of such immovable property or other right, as the case may be.

12 Restriction of liability

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

13 Exemption

- 1) Any person may by means of a written application, in which the reason are given in full, apply to the municipality for exemption from any provision of this by-law.
- 2) The municipality may:
 - a) Grant an exemption in written and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - b) Alter or cancel any condition in an exemption; provided that the municipality must give reasonable notice of such intention and give the applicant reasonable time to make representations; or
 - c) Refuse to grant an exemption in which case the applicant must be informed of the reasons of such refusal.
- 3) In order to consider an application in terms of subsection (1), the municipality may obtain the input or comments of the owners or occupants of surrounding premises.
- 4) An exemption does not take effect before the applicant has undertaken in written to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- 5) If any condition of an exemption is not complied with, the municipality may withdraw or cancel such exemption; provided that the municipality must give reasonable notice of such intention and give the applicant reasonable time to make representations.

14 Appeal

A person whose rights are affected by a decision of the municipality in terms of delegated authority may appeal against the decision by giving written notice of the appeal and the reason therefor in terms of section 62 of the Local Government Municipality System Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

15 Offences and penalties

A person who contravenes any provision or fails to comply with any provision of this by-law commits an offence and shall on conviction be liable to:

- a) A fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment;
- b) In the case of a continuing offence, to an additional fine or additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
- c) A further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

16 Repeal of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

17 Short title

This by-law shall be known as the Cape Agulhas Municipality: Problem Building By-law and shall come into operation on the date of publication thereof in the Provincial Gazette.