

LOCAL AUTHORITY NOTICE 1263**CITY OF TSHWANE****BY-LAWS ON DERELICT BUILDINGS**

The City of Tshwane Metropolitan Municipality hereby publishes in terms of Section 7 of the Rationalisation of Local Government Affairs Act, 1998 (Act 10 of 1998), read with Section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), and Section 162 of The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the City of Tshwane Metropolitan Municipality: By-Laws on Derelict Buildings, as contemplated hereunder and approved by the Municipal Council on 28 June 2012.

The By-laws will be effective as from date of publication hereof.

MR JASON NGOBENI
CITY MANAGER

(Notice 467 of 2012)
29 August 2012

**CITY OF TSHWANE METROPOLITAN MUNICIPALITY:
DERELICT BUILDINGS BY-LAW****PREAMBLE**

The purposes of these By-laws are to regulate certain matters pertaining to uses of buildings and land in the municipal area; and to provide for incidental matters thereto.

WHEREAS the City of Tshwane has a constitutional mandate in terms of the Constitution of the Republic of South Africa, 1996 to uphold the values and objectives contemplated in the Bill of Rights read with section 152 of the Constitution, 1996 and other legislation;

AND WHEREAS the Municipality has amongst others, a duty to ensure proper municipal planning and to prevent deterioration and dilapidation of buildings and provide for measures in respect of derelict buildings;

BE IT THEREFORE ENACTED by the City of Tshwane Metropolitan Municipality, as follows:

1. DEFINITIONS

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

“abandoned building” means a building that have been deserted or permanently vacated by the owner of such building

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

“building” means a building as defined in the National Building Regulations and Building Standards Act, 1977.

“court” means any Court of law in whose area of jurisdiction the land is situated;

“derelict building” means a building that is inhabitable and unsuitable for occupancy by humans as may be determined by the authorised official and may include a building which in his or her opinion:

- (a) appears to have been abandoned by the owner with or without the consequence that rates or other service charges are not being paid;
- (b) is the subject of numerous complaints of derelict buildings from the public including complaints in respect of any criminal activity attached to such building;
- (c) is illegally occupied in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, as amended.
- (d) refuse or waste material is either accumulated, dumped, stored or deposited in such building; or

- (e) any building either partially completed, abandoned or structurally unsound and posing any risk contemplated in paragraphs (a) to (e).

"**compliance notice**" means a compliance notice issued by a authorised official to the owner of land or buildings to comply with the provisions of this by law or to comply with conditions stipulated in such notice or any other relevant legislation.

"**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;

"**Municipality**" means the City of Tshwane Metropolitan Municipality established by General Notice 6770 in *Provincial Gazette Extraordinary* 141 of 1 October 2000 read with General Notice 1866 in Provincial Gazette 128 of 30 June 2010 in terms of the provisions of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), as amended from time to time;

"**owner**" in relation to a building or land means the person in whose name the land on which such building was or is erected, as the case may be, is registered in the Deeds office in question and includes a person in charge of such building: Provided that 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, then 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 there for;
- (d) in the case of a repossessed property by a financial institution or any other person pursuant to any legal action, such financial institution or other person
- (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, the body corporate responsible for the control, administration and management of the common property; or
- (g) the Municipality 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;

"**person in charge**", in relation to land or buildings, means a person who has the legal authority to give permission to another person to enter onto, reside on or use such land;

"**scheme**" means the Tshwane Town planning scheme, 2008, or any other town planning scheme in operation within the jurisdiction of the municipality, as amended from time to time;

"**structure**" means a construction, permanent or temporary by nature, of any material or combination of materials, with or without a roof.

2. APPLICATION OF BY-LAW

This by-law shall apply to all land and buildings within the area of jurisdiction of the Municipality.

3. DERELICT BUILDINGS

- 3.1 The Authorised Official may, subject to subsections (2) to (4), if a building falls within the definition of derelict building as defined in section 1, declare such building a derelict building.
- 3.2 The Authorised Official shall, before declaring such building a derelict building, notify the owner in writing, subject to section 5, in the format as determined by the Municipality of his or her intention to declare such building a derelict building.

- 3.3 The Authorised official shall give the owner a period of 14 (fourteen) days to make representations in writing to the Strategic Executive Director: City Planning on why the building shall not be declared a derelict building.
- 3.4 The owner shall, in respect of a declaration taken in terms of subsection (1), have a right of appeal in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000).

4. COMPLIANCE NOTICE

- 4.1 The Authorised official shall serve a compliance notice on the owner of any building which has been declared a derelict building as referred to in section 3 directing such owner to within a period specified in such compliance notice-
- (a) clean and or repair and or renovate and or make safe and or repaint and or alter and or close and or demolish, subject to the provisions of the National Building Regulations, 1985 and Building Standards Act, 1977 or any other relevant legislation, or secure such derelict building;
 - (b) complete the derelict building or any structure of such building;
 - (c) enclose, fence or barricade such derelict building or land;
 - (d) instruct, at the cost of such owner an architect or applicable professional person, to investigate such condition and to report to the Authorised official on the nature and extent of the steps to be taken, which in the opinion of such architect or applicable professional person needs to be taken in order to render such derelict building safe;
 - (e) dispose of, destroy or remove any materials or article accumulated, dumped, stored or deposited in any building or land, which is refuse or waste and which is unsightly or is likely to constitute an obstruction; or
 - (f) with regard to a derelict building or land, comply with any provision of this By-law.
- 4.2 The Municipality may, if such owner fails to comply with a notice served on him or her in terms of subsection (1), institute measures to clean and or repair and or renovate and or alter and or close and or demolish or secure any derelict building at the cost of the owner.
- 4.3 Despite subsection (1) and subject to any applicable legislation, if the Authorised official has reason to believe that the condition of any building is such that steps should forthwith be taken to protect life or property, he or she may take such immediate steps as may be necessary in the circumstances without serving or delivering such notice on or to the owner of such building and may recover the cost of such steps from such owner.
- 4.4 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 derelict building to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in such derelict building, and to take care that no person who is not a authorised person employed by the Municipality enters such derelict building;
 - (b) order any person occupying or working, or who for any other purpose is in any derelict building, to vacate such building.
- 4.5 No person shall occupy, use or permit the occupation or use of any derelict building or continue to occupy, use or permit, the occupation or use of any derelict building in respect of which a notice was served or delivered in terms of this section or steps were taken by the Municipality in terms of subsection (2), unless he or she has been granted permission by Municipality in writing that such building may be occupied or used or continue to be occupied or used, as the case may be, in compliance with the conditions stipulated by the Municipality.
- 4.6 Where the Municipality has taken action in terms of subsection (3), the owner of such building shall make provision for transitional accommodation for occupants of a derelict building.

- 4.7 Failure by the owner of a derelict building to comply to subsection (6) shall cause the Municipality to make provision for transitional accommodation for occupants of a derelict building, at a cost determined by the Municipality, for a pre-determined period.
- 4.8 Where the owner of derelict building fails to pay the costs of the Municipality when action has been taken as a result of any provision of this bylaw, the Municipality may recover the cost in terms of the applicable Credit Control By-law.
- 4.9 Notwithstanding the provisions of the City of Tshwane Buildt Environment Management Framework, the stipulations of this bylaw may apply to category (1) and (2) contraventions of the framework.
- 4.10 Services may be disconnected or restricted where a building has been declared a derelict building

5. SERVICE OF A NOTICE OR COMPLIANCE NOTICE

- 5.1 Whenever a compliance notice is authorised or required to be served on a person in terms of this By-law, it shall be deemed to have been effectively and sufficiently served on such person—
- (a) when it has been delivered to him or her personally;
 - (b) when it has been left at his or her 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 his or her last known residential or business address in the Republic and an acknowledgement of the posting thereof is produced;
 - (d) if his or her address in the Republic is unknown, when it has been served on his or her agent or representative in the Republic in the manner contemplated in sub paragraph (a), (b) or (c); or
 - (e) if his or her address and agent in the Republic are unknown, when it has been posted in a conspicuous place on the immovable property, if any, to which it relates.
- 5.2 When a compliance notice as aforesaid is authorised or required to be served on a person by reason of his or her being 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 described as the owner or holder of such immovable property or other right, as the case may be.

6. PENALTIES

- 6.1 A person who contravenes or fails to comply with any provision of this by-law is guilty of an offence and is liable on conviction to a fine not exceeding R100 000 (one hundred thousand rand), or imprisonment for a period not exceeding three (3) years or to both such fine and such imprisonment provided that a law enforcement officer shall be at liberty to issue such spot fines after having consulted the Authorised Official in terms of the Criminal Procedures Act, 1977 as may be approved by the Chief Magistrate of Pretoria.
- 6.2 In the event of a continuing offence, any person who contravenes or fails to comply with any provision of this by-law shall be deemed to be guilty of a separate offence for every period of 24 hours or part of such period during which such offence continues and shall be liable for the penalties contemplated in subsection (1) in respect of each such separate offence.
- 6.3 In addition to any penalty imposed in terms of subsections (2) and (3), the person so convicted shall be liable to pay the cost of repair of any damage caused or costs incurred in remedying any damage resulting from such an offence.

7. SHORT TITLE

This by-law shall be called the *City of Tshwane Metropolitan Municipality: Derelict buildings By-law, 2012*.