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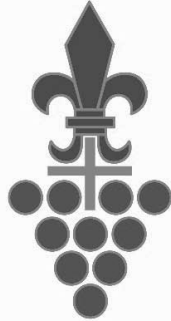
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Stellenbosch Municipality: Problem Property By-law ..... 2



**STELLENBOSCH**

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

## **PROBLEM PROPERTY BY-LAW**

***APPROVED BY COUNCIL: 29 July 2020***

## **PROBLEM PROPERTY BY-LAW**

### **PREAMBLE**

**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 Municipality'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 therefore enacted** by the Council of the Stellenbosch Municipality, it reads as follows:

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## PART 1: DEFINITIONS AND APPLICATION

### 1 Definitions

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

**“authorised official”** means an employee of Stellenbosch Municipality 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;

**“Municipality”** means the Municipality of Stellenbosch, a municipality established in terms of the Local Government: Municipal Structure Act, 1998 (Act No. 117 of 1998);

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

**“owner”** in relation to a building 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:

(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 or trust, 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 therefor;

(d) in the case of a sectional title scheme, a sectional title unit is registered in the name of a person, that person;

(e) in the case of a trust, the trustees of such trust;

(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) where the Stellenbosch Municipality is unable to determine the identity of such person, any person who is entitled to the benefit of the use of such building or who enjoys such benefit;

**“problem building”** means any building that has been declared under section 10 to be a problem building;

**“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**

- (1) This By-law applies to all properties within the area of jurisdiction of the Stellenbosch Municipality including properties owned by the State.
- (2) Where the Stellenbosch Municipality is unable to determine the identity of the owner of a property, any person who is entitled to the benefit of the use of such building or who enjoys such benefit shall be deemed to be the owner of such property.

## **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 Stellenbosch Municipality 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 costs**

- (1) Where the owner has failed to comply with a compliance notice issued by the authorised official, the owner is liable for the costs incurred by the Stellenbosch Municipality 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 will be recovered by the Stellenbosch Municipality in terms of its Credit Control and Debt Collection Policy and the Credit Control and Debt Collection By-law, 2006.

## **PART 3: INVESTIGATION AND COMPLIANCE NOTICE**

### **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; or
  - (c) with a warrant to enter and search the property.

- (3) A search warrant may only be issued if it appears on information provided on oath that there are reasonable grounds for believing that the property is unlawfully occupied, used for criminal activities, or that there is prima facie evidence that there is a contravention of this By-law.
- (4) An authorised official may enter the premises if he reasonably believes that a warrant will be issued in the circumstances contemplated in subsection (3) but that the delay in obtaining such warrant will negate the purpose of such entry.
- (5) 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, or any person necessary for the effective implementation of the provisions of this By-law.
- (6) 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.

## **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 or any other contravention of the By-law which can be remedied by the issuing of a compliance notice; 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;
    - (ii) a reasonable period within which the measures must be taken;
    - (iii) the amount of a fine to be imposed, if the owner fails to comply with subparagraphs (i) and (ii);

- (iv) the amount of the fine to be imposed for the continued contravention of the By-law; and
  - (v) the date by which the owner may make representations to amend or withdraw the notice; and
- (b) be in the form determined by the delegated authority in terms of section 20.
- (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; or
  - (e) disposing of, or removing, any waste dumped or stored on a property.
- (4) The authorised official may amend the compliance notice after receiving any representations from the owner contemplated in subsection (2)(a)(v).

## **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; or
  - (b) may declare the property to be a problem property in terms of section 10; and
  - (c) must impose a fine in terms of section 7(2)(a)(iii) and a fine in terms of section 7(2)(a)(iv).
- (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(5).

## **PART 4: DECLARATION OF A PROBLEM BUILDING**

### **9 Notice of intention to declare a problem building**

- (1) An authorised official may issue a notice of intention to declare a property to be a problem building if the official is satisfied that there are good grounds for believing that the building—
- (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 and water supply system;
  - (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 Stellenbosch Municipality 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 the owner has not taken reasonable measures during its erection to prevent unauthorised access to the building.
- (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 building 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 building.

- (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 property**

- (1) An authorised official may, using the criteria set out in section 9(1) declare a building or property a problem property 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, 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 delegated authority in terms of section 20, 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 authorised 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 Stellenbosch Municipality 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.
- (6) No unauthorised person may enter a property which has been declared a problem property.
- (7) The Stellenbosch Municipality may, on its own accord, or upon written representation authorise a person to enter a property which has been declared a problem property for purposes of renovating, repairing or securing the property.

#### **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 Stellenbosch Municipality may—
- (a) carry out the measure; or
  - (b) appoint a contractor to carry out the measure; and
  - (c) approach a court for orders contemplated in Part 6.
- (2) If the Stellenbosch Municipality gives effect to the measure under subsection (1)(a) and (b), the owner is liable for the costs and expenses of effecting the measure.

## **PART 5: APPOINTMENT OF ADMINISTRATOR**

### **12 Appointment of administrator**

(1) The Stellenbosch Municipality may, where the owner of a property is deceased and complaints regarding the property have been received, apply to the Court for the appointment of an administrator.

(2) 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 6;
  - (iii) reasonably required to be taken in terms of managing the problem property;
  - (iv) any action which the owner would, in normal course of business and management of the problem property, have been able to take.

- (3) The administrator must submit the following documents to the Stellenbosch Municipality—
  - (a) a monthly report in the form determined by the delegated authority in terms of section 20;
  - (b) a final report and account in the form determined by the delegated authority in terms of section 20 on the completion of the administrator's mandate.
- (4) The Stellenbosch Municipality may, where necessary apply to the Court—
  - (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 6: EVACUATION**

### **13 Evacuation**

- (1) If a building has been declared to be a problem building in terms of section 10(1) and an authorised official is of the opinion that the building is dangerous to life and property and that the immediate evacuation of the property is necessary, the authorised official may make an order requiring the evacuation of the property as contemplated in section 10(3)(b).
- (2) If the order is not obeyed, the Stellenbosch Municipality 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.



- (3) 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.

## **PART 7: ENFORCEMENT**

### **14 Civil proceedings**

The Stellenbosch Municipality or administrator may, by way of civil proceedings and in accordance with the Stellenbosch Municipality: Credit Control and Debt Collection Policy recover any costs incurred in effecting any measure or performing any function in terms of this By-law.

### **15 Offences and penalties**

- (1) 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; or
  - (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, determine any costs incurred by the Stellenbosch Municipality 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.

## **PART 8: GENERAL**

### **16 Appeals**

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

### **17 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.

### **18 Delegation**

The Stellenbosch Municipal Manager is authorised to exercise all the powers and perform all the duties and functions conferred on the Stellenbosch Municipality 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 16.

## **19 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 or audio-visual recordings 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.

## **20 Form of notices, declarations and sign boards**

The delegated authority 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.

## **21 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.

## **22 Indemnity**

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

## **23 Short title**

This By-law is called the Stellenbosch Municipality: Problem Property By-law, 2020.