

7.4 PROBLEM BUILDINGS BY-LAW

<i>File number</i>	:	<i>1/3/1/21</i>
<i>Report by</i>	:	<i>Municipal Manager</i>
<i>Compiled by</i>	:	<i>Director: Strategic and Corporate Services</i>
<i>Delegated authority</i>	:	<i>Council</i>

1. PURPOSE OF REPORT

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

1. BACKGROUND

Several complaints was received regarding dilapidated buildings and or unsafe building premises within Stellenbosch Municipal area. Several investigations were done and a "best practise" from Drakenstein Municipality was investigated, as a means to address the lack of effective law enforcement measures, experienced at this stage. A copy of said By-law is attached hereto as **APPENDIX 1**. Said By-law was sent to the relevant officials within Council, who supports this initiative.

3. DISCUSSION

The Director: Planning and Economic Development supports this initiative, which may be enforced by all designated officials of the municipality, including the Law Enforcement Department.

The Manager: Building Management indicated that this By-law will be able to address some of the complaints received. Other means will also be investigated.

4. CONCLUSION

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

RECOMMENDED

- (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 whereafter same be resubmitted to Council for final approval.

**(DIRECTOR: STRATEGIC AND CORPORATE SERVICES
TO ACTION)**

MAYORAL COMMITTEE MEETING: 2013-08-21: ITEM 6.1.1

RECOMMENDED BY THE EXECUTIVE MAYOR

- (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 whereafter same be resubmitted to Council for final approval.

**(DIRECTOR: STRATEGIC AND CORPORATE SERVICES
TO ACTION)**

ITEM 7.4

APPENDIX 1

PROBLEM BUILDINGS BY-LAW

**15TH COUNCIL MEETING:
2013-08-29**

STELLENBOSCH MUNICIPALITY PROBLEM | 2013
BUILDINGS BY-LAW



PROBLEM BUILDING BY-LAW

PREAMBLE

Stellenbosch Municipality, by virtue of the powers vested in it by **section 156(2)** of the Constitution of the Republic of South Africa as amended, read with **section 13** of the **Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)**, has made the by-law set out below.

In this by-law, words used in the masculine gender include the feminine.

All singular meanings shall include the plural interpretation and vice versa.

The English text shall prevail in the event of an inconsistency between the different texts, unless the context otherwise indicates.

TABLE OF CONTENTS

1. Definitions
2. Principles and application
3. Appointment of authorized officials
4. Delegation
5. Entry by authorized 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. DEFINITIONS

STELLENBOSCH MUNICIPALITY PROBLEM | 2013

BUILDINGS BY-LAW

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:

“**authorized official**” means an employee of the Municipality authorized 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 service;
 - (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 Stellenbosch Municipality established in terms of **section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)**, published in **Provincial Notice 5642 dated 4 December 2000** and includes any political office-bearer, councillor, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office-bearer, councillor, or employees.

“**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 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

STELLENBOSCH MUNICIPALITY PROBLEM BUILDINGS BY-LAW 2013

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 therefor;
- (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 excavated 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 excavated land that is derelict in appearance, overcrowded or showing signs that it is unhealthy, unsanitary, unsightly or objectionable;
- (c) building or excavated land that is the subject of complaints from the public;
- (d) building or excavated land that is illegally occupied;
- (e) building partially completed or structurally unsound and that shows signs of any of the risks contemplated in paragraphs (a) to (d).

2. APPOINTMENT OF AUTHORIZED OFFICIALS

The Municipal Manager may appoint officials to implement and enforce the

STELLENBOSCH MUNICIPALITY PROBLEM BUILDINGS BY-LAW 2013

provisions of this by-law.

3. 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 authorized officials.

4. ENTRY BY AUTHORIZED OFFICIALS OF BUILDINGS AND LAND

- (1) Any authorized official may enter any building or excavated land at any reasonable time with a view to-
 - (a) Inspect or determine whether the building or excavated land complies with the provisions of this by-law; or
 - (b) Serve the owner of the building or excavated land with a compliance notice contemplated in **section 6**.
- (2) No person may hinder or obstruct the authorized official in the exercise of his or her powers in terms of the by-law.
- (3) An authorized official must, when entering the building or excavated land, produce a valid identification document issued to him or her by the municipality to the owner of such building or excavated land.
- (4) A person who contravenes **subsection (2)** commits an offence.

5. DECLARATION OF A BUILDING OR LAND, A PROBLEM BUILDING

- (1) An authorized official-
 - (a) may carry out an investigation of a building or excavated 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

STELLENBOSCH MUNICIPALITY PROBLEM BUILDINGS BY-LAW 2013

notice of intention issued in terms of **subsection (1) (c)** within the stipulated period, the authorized 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)**.

6. COMPLIANCE NOTICE

- (1) Subject to the provisions of **section 5(1) and (2)** of this by-law and section 12 of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), an authorized official may serve a written notice on the owner of any building or excavated land which has been declared a problem building, requiring such owner within a specified 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 registered competent person as contemplated in Part a 19 of the National Building Regulations, to investigate such building and to report to the authorized 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) 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 (e)**, 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 authorized 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.

STELLENBOSCH MUNICIPALITY PROBLEM | 2013
BUILDINGS BY-LAW

7. RECOVERY OF COST

The municipality may, if the owner fails to pay the cost contemplated in **section 6(2)**, or if costs have been incurred for any steps taken in terms of **subsection (3)**, recover the cost in terms of relevant legislation.

8. VACATION OF BUILDINGS

(1) If the authorized 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 authorized 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.

9. 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 been left at that 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 thereof from the postal service is obtained;

STELLENBOSCH MUNICIPALITY PROBLEM | 2013
BUILDINGS BY-LAW

- (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 subsections (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;
 - (e) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or
 - (f) 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 authorized 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 described as the owner or holder of such immovable property or other right, as the case may be.

10. RESTRICTION OF LIABILITY

No authorized 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.

11. EXEMPTION

- (1) Any person may by means of a written application, in which the reasons 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 writing 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 for 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 writing 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.

12. APPEAL

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

13. 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 an 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.

14. 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.

15. SHORT TITLE

STELLENBOSCH MUNICIPALITY PROBLEM BUILDINGS BY-LAW 2013

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