



STELLENBOSCH

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**Stellenbosch Municipality:
Problem Properties By-Law, 2017**

DRAFT (August 2017)

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Problem Properties By-Law, 2017

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1. Preamble

Stellenbosch Municipality, by virtue of the powers vested in it by the Constitution, read with the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), has made the Stellenbosch Municipality: Problem Properties By-Law (2017) as set out in this document.

WHEREAS section 152 (1) of the Constitution stipulates that two objectives of local government include the promotion of social and economic development, as well as safe and healthy environments;

WHEREAS section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

AND WHEREAS Part B of Schedule 4 to the Constitution lists building regulations and local tourism, as local government matters to the extent set out in section 155(6) (a) and (7);

AND WHEREAS Stellenbosch Municipality seeks to identify, assess and manage dilapidated and problem properties within its area of jurisdiction to ensure that such properties comply with this By-law and any other relevant legislation.

2. Definitions

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:

“area of jurisdiction” means the geographical area under the control of the local authority according to legally determined and declared boundaries of the local authority.

“authorised employee” means a municipal employee who is authorised in terms of delegated or sub-delegated authority by the Municipality to exercise a power or perform a duty in terms of this By-law or to inspect land and buildings in order to enforce compliance with this By-law or the zoning scheme;

“building” without in any way limiting its ordinary meaning, 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 roofed structure;
- c) any external stairs, steps or landings of a building and any gallery, canopy, balcony, stoep, veranda, porch or similar feature of a building;
- d) any walls or railings enclosing any feature referred to in (c);
- e) any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith;
- f) any fuel pump or any tank used in connection therewith;
- g) a unit as defined in the Sectional Title Act, 1986 (Act No. 95 of 1986).
any vacant or unoccupied erf of whatever nature and size, with or without walls, with or without a roof and if there is a structure, whether or not building plans for such structures are approved by the relevant authority in terms of any legislation;

"erf" means a distinct portion of land identified by a unique number in the Surveyor-General's office, the title of which is capable of being registered separately in the Deeds Office, or a servitude area or lease area, capable of being registered in the Deeds Office and includes land units which are referred to as erven as well as farms;

"erf boundary" in relation to a land unit, means a cadastral line separating one land unit from another land unit or the street, and 'boundary' has a corresponding meaning;

"excavated land" refers to any land within the boundaries of a given property that has been subject to unnatural manipulation, including but not limited to: the digging of holes for buildings or other structures; drainage; and/or the installation of subterranean infrastructure, and where the land has not been built to its intended state nor returned to its natural state.

"licensed waste disposal facility" means a site, or premises which is licensed in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and used for the accumulation or disposal of waste;

"Municipality" means the Municipality of Stellenbosch established in terms of section 12 of the Local Government Municipal Structures Act 1998 (no 117 of 1998) and includes, where the context so determines, the Council, another authorised political structure or office bearer, the Tribunal, the Municipal manager, or an authorised 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 land, means the person, any or all of the trustees of a trust or body corporate, any or all of the members of an association, any or all members of a partnership, any or all of the directors of a company, any or all of the members of a close corporation, or entity in whose name a land unit is registered in a deeds registry, and may include the holder of a registered servitude right or registered long-term lease, executor of an estate, or any successor in title; provided that if:

- a) such person(s), 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 therefor;
- a) the mortgage bond is registered in favour of a financial institution, that financial institution;
- 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 sectional title scheme, a body corporate responsible for the control, administration and management of the common property; or
- f) 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 property” includes any:

- b) building or excavated land that has 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;
- c) building or excavated land that is derelict in appearance, overcrowded or showing signs that it is unhealthy, unsanitary, unsightly or objectionable;
- d) building that does not comply with existing legislation and/or not maintained in accordance with health, fire-safety, town planning or building control by-laws;
- e) building or excavated land that is the subject of complaints from the public, particularly in relation to criminal activities not limited to drug dealings, prostitution or human trafficking;

- f) where refuse or waste material is accumulated, dumped, stored or deposited with the exception of licensed waste disposal facilities;
- g) building(s) or excavated land that is/are illegally occupied;
- h) building(s) partially completed or structurally unsound and that shows signs of any of the risks contemplated in paragraphs (a) to (e).
- i) any property with illegally connected or over-loaded water or electricity supply;
- j) any property with illegal connections to sewer mains;
- k) any property with overflown or blocked sewer drains;
- l) any property that is a threat or danger to the safety of occupiers, registered owners, or the general public.

“**property**” means any registered erf, lot, plot, farm or land unit together with all buildings and structures on the land.

3. Application of this By-law

This By-law applies to all problem properties situated within the area of jurisdiction of Stellenbosch Municipality, except in any areas that have been exempted in terms of section 2, sub-section 2 (a) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

4. Appointment of Authorised Officials

The Municipal Manager may appoint authorised officials to implement and enforce the provisions of this By-law.

5. Delegation

The Municipal Manager may exercise all powers, duties and functions conferred upon the Municipality in terms of this By-law and to delegate such powers, duties and functions to authorised officials.

6. Entry and Inspection by an Authorised Official

- 1) Any authorised official may enter any property or building at any reasonable time with a view to:
 - a) inspect and/or determine whether the property or building complies with these Bylaws and any other legislation;
 - b) inspect and determine whether the property or building is, in his/her opinion, a problem property;

- c) serve the responsible person with a notice contemplated in these or any other By-laws or legislation.
- 2) No persons shall hinder or obstruct the authorised official in the exercise of his/her powers in terms of these By-laws.

7. Declaration of a “Problem Property”

- 1) The authorised official may, subject to subsections (2) to (5) and if a property falls within the definition of "problem property" as defined in section 1, declare such a property as a problem property.
- 2) In terms of section 6, an authorised official may carry out an investigation in respect to any property that he or she intends to declare a problem property, provided that he or she must display a notice of such investigation upon the property concerned.
- 3) Upon investigation, the authorised official shall, by notice in writing, before declaring such property a problem property, inform the owner of his or her intention and provide reasons for the declaration.
- 4) The authorised official shall give the owner a period of seven days to make representations on why the building should not be declared a problem property.
- 5) The authorised official shall, after considering the representations referred to in subsection (4), take a decision either to declare or not to declare a property a problem property.
- 6) The owner shall, in respect of a declaration 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).

8. Service of a notice

- a) 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 a person—
 - i) when it has been delivered to him or her personally;
 - ii) 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;
 - iii) 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 acknowledgment of the posting thereof is produced;
- b) If his or her address in the Republic is unknown:
 - i) when it has been served on his or her agent or representative in the Republic in the manner contemplated in paragraph (a), (b) or (c); or

- j) when it has been posted in a conspicuous place on the immovable property, if any, to which it relates.
- c) 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 described as the owner or holder of such immovable property or other right, as the case may be.

9. Contents of a Compliance Notice

The authorised official shall serve a written notice on the owner of any property which has been declared a problem property as referred to in section 7 requiring such owner within a specified period to—

- a) repair, renovate, repaint, alter, close, demolish, secure, or remove all refuse from the property;
- b) complete any incomplete building work or intended land excavation within the problem property;
- c) enclose, fence or barricade such problem property to the satisfaction of the municipality;
- d) appoint and instruct, at the cost of such owner, an approved competent person referred to in Part A 19 of the National Building Regulations, to examine a condition that gave rise to the declaration of a property as a problem property and to report to the authorised official on the nature and extent of the steps to be taken, which in the opinion of such approved competent person needs to be taken in order to render such problem property as safe;
- e) dispose of, destroy or remove any waste material or articles accumulated, dumped, stored or deposited in any building, which is showing signs of becoming unsightly, unsanitary, unhealthy or objectionable or is likely to constitute an obstruction;
- f) If such owner fails to comply with a notice served on him or her in terms of subsection (1), the Municipality may take the responsibility to repair, renovate, repaint, alter, close, demolish, remove all refuse, or secure any problem building at the cost of the owner.
- g) The Municipality may, if the owner fails to pay such cost, recover the cost in terms of the Credit Control and Debt Collection By-law, 2013.

10. Problem Properties that pose immediate threats to health or safety

- a) Despite Sections 8 and 9, if the authorised official has reason to believe that the condition of any building is such that immediate steps should forthwith be taken to protect life or property, he or she may take such 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, in terms of section 13 of this by-law.

- b) 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 property to remove, within the period specified by such notice, any person occupying or working, or who for any other purpose is located in or on such property, and to take care that no person who is not authorised by the Municipality enters the property.
 - b) order any person occupying or working, or who for any other purpose is in or on the problem property, to vacate the premises.
 - c) No person shall occupy, use or permit the occupation or use of any problem property in respect of which a notice was served or delivered in terms of this section and/or additional steps were taken by the authorised official or municipal manager in terms of subsection (2), unless he or she has been granted permission by the Municipality, in writing, that such building may be occupied, used or continue to be occupied or used, as the case may be.

11. Indemnity

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

12. Offences and penalties

- a) Any person who contravenes any provision, or fails to comply with any notice issued in terms of this By-law commits an offence, and may, in the sole discretion of the municipal manager or authorised official, be fined on the spot to the extent as stipulated by the local authority from time to time.
- b) A person who is found guilty of an offence in terms of this By-law is, upon conviction, and in addition to any spot fines, liable to a fine with a value determined by the contravention penalty formula as stipulated in Council's annual tariffs or imprisonment for a period not exceeding three years or to both such fine and imprisonment.
- c) In the case of a continuing offence, an additional fine or imprisonment for a period not exceeding ten days for each day on which such offence continued, may be imposed.

13. Damages

Any responsible person or person contravening these By-laws shall be held liable for all damages and actual costs and disbursements the local authority incurs to repair, renovate, alter, close, demolish, remove, secure, maintain, or enforce compliance or payable in terms of these By-laws and such damages, actual costs and/or disbursements shall be paid by the responsible person or responsible persons jointly and severally to the local authority upon

demand.

14. Short title

This By-law is called the Stellenbosch Municipality: Problem Properties By-Law, August 2017.