10.8.1	PUBLIC PARTICIPATION PROCESS FOR STELLENBOSCH MUNICIPALITY: PROPOSED DRAFT PROBLEM PROPERTY BY-LAW 2025

Collaborator No: 780663
IDP KPA Ref No: Good Governance and Compliance
Meeting Date: 19 February 2025 & 31 March 2025

1. SUBJECT: PUBLIC PARTICIPATION PROCESS FOR STELLENBOSCH MUNICIPALITY: PROPOSED DRAFT PROBLEM PROPERTY BY-LAW 2025

2. PURPOSE

Is to present to Council the Stellenbosch Municipality: Proposed Draft Problem Property By-law (2025) for consideration to adopt the same for the purpose of a public participation process.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

Following the internal review of the Stellenbosch Municipality: Problem Property By-law (2020), the Department of Development Management proceeded to update the current problem property by-law to address difficulties that are currently being experienced in the implementation of said By-law, as well as to enhance the By-law with relevant additions.

The proposed draft Stellenbosch Municipality Problem Property By-law (2025) is now being presented to Council for consideration to be adopted for the purpose of a public participation process.

Following such public participation process and any required amendments that may result from such process, the final draft problem property by-law will be submitted to Council for consideration of approval and subsequent promulgation.

5. RECOMMENDATIONS

(a) that the proposed draft Stellenbosch Municipality Problem Property By-law 2025 **BE NOTED**; and

(b) that the proposed draft Stellenbosch Municipality Problem Property By-law 2025 **BE ADOPTED** for the purpose of a public participation process.

6. DISCUSSION / CONTENTS

6.1 Background

A crucial need was identified for the review of the current Stellenbosch Municipality Problem Property By-Law (2020), to allow for the effective implementation thereof.

The review process of the current Stellenbosch Municipality Problem Property By-law (2020) included the rationale for the inclusion of all problem properties.

The current Stellenbosch Municipality Problem Property By-law (2020) refers specifically to ‘’Problem Buildings’’, which may be interpreted to exclude properties on which no building structures are present and consequently hampers the implementation of the By-law on properties where no buildings exist.

It was further identified that the current Stellenbosch Municipality Problem Property By-law (2020), does not make provision for the effective recourse should an owner not adhere to the compliance notices.

In accordance with these identified difficulties to implement the associated processes of the subject By-law, the current Problem Property By-Law (2020) was updated with suitable measures to address these matters.

During the updating process of the subject By-law all relevant internal departments was consulted, which included the Directorate: Corporate Services, Legal Services, and the Municipal Court. Valuable inputs were received from the Senior Magistrate to ensure the effective referral of cases to the court, when required.

The Draft By-law retains the objective for Council to assist property owners in rectifying the problem properties, and additional provisions were added in accordance with the current reality of matters that is pertinent in the context of the Stellenbosch Municipality.

All inputs will be considered for required amendments, and the final draft by-law will then be submitted to Council for adoption pursuant to any comments received after the public participation process and promulgated.

In consideration of the proposed updates to the current By-law, the most viable avenue for adopting the new subject by-law must be determined.

In practice there are essentially two ways to update and amendment a By-law, -

a) The first is the “Brackets and Underline” method in which every individual amendment is shown in the subject by-law by way of words in [ ] to indicate omissions from the by-law and words underlined to indicate insertions in the by-laws. With any changes to a By-law, this approach makes for difficult reading and complicated interpretation.

b) The second is the “Publish and Repeal” method whereby a new version of the subject by-law, with all amendments, are adopted and published and with it, also repeal the previous or existing version. This is the Directorate’s preferred method as such version will be clean and easy to read and use. It is thus also proposed to undertake the amendment of the subject By-law in accordance with this method.

6.2 Financial Implications

The development of the subject by-law was undertaken in-house with no cost to Council. The public participation process will result in the cost associated with required publishing of the Draft By-law.

6.3 Legal Implications

The amendment of By-law is governed in terms of the provisions of Section 12 of the Municipal Systems Act, 2000 (Act 32 of 2000) which needs to be satisfied. The proposed public participation process is an inherent requirement for adopting a new by-law.

6.4 Staff Implications

The public participation process will be conducted in-house by the available professional building development management staff.

6.5 Previous / Relevant Council Resolutions

Council resolved (nem con) **Item 13.2 on 29 July 2020**

(a) that the revised draft By-law on Problem Properties for Stellenbosch Municipality (WC024) be recommended for approval in terms of Sections 11(3)(m) of the Local Government Municipal Systems Amendment Act 32 of 2000 and;

(b) the administration proceeds with the publication of the by-law.

6.6 Risk Implications

There are no risks associated with the envisaged public participation process in finalising the development of the proposed draft Stellenbosch Municipality Problem Property By-law (2025).

6.7 Comments from Senior Management

6.7.1 Director: Infrastructure Services

Inputs not solicited.

6.7.2 Director: Planning and Economic Development

Item supported.

6.7.3 Director: Community and Protection Services

Inputs not solicited.

6.7.4 Director: Corporate Services

Inputs as reflected in the subject updated By-law. Supports the recommendations.

6.7.5 Chief Financial Officer

Inputs not solicited.

6.7.6 Municipal Manager

Item supported.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2025-02-19: ITEM 7.8.1

(a) that the proposed draft Stellenbosch Municipality Problem Property By-law 2025 **BE NOTED**; and

(b) that the proposed draft Stellenbosch Municipality Problem Property By-law 2025 **BE ADOPTED** for the purpose of a public participation process.

ANNEXURES

ANNEXURE “A”: Proposed Draft Stellenbosch Municipality: Problem Property By-law 2025

FOR FURTHER DETAILS CONTACT:

NAME	*Liezel Poulton*
POSITION	*Manager: Building Development Management*
DIRECTORATE	*Planning and Economic Development*
CONTACT NUMBERS	*021 808 8664*
E-MAIL ADDRESS	*Liezel.Poulton@stellenbosch.gov.za*
REPORT DATE	*5 February 2025*

ANNEXURE A

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PROBLEM PROPERTY

BY-LAW

APPROVED BY COUNCIL: _____ 2025

DRAFT AMENDMENTS

February 2025

PROBLEM PROPERTY BY-LAW

PREAMBLE

Noting the constitutional mandate of municipalities to administer the regulation of buildings and properties 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 including entrance gates/facilities;

1. **"Municipality"** means Stellenbosch Municipality, a local authority established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998 by Provincial Notice 489/2000 (Establishment of the Stellenbosch Municipal (WC024)) promulgated in the Government Gazette dated 22 September 2000, as amended by Provisional Notice PN675/2000 (Stellenbosch Municipality (WC024) Established Amendment Notice)

promulgated in the Provincial Gazette of 4 December 2000 as amended by the 9th Amendment notice dated 15 October 2021.

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

''owner'' in relation to a property 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;

"occupier" means a person in charge of a property or the person who occupy the property or who erected the structure under investigation or authorised the erection of the structure on the property with or without the consent of the owner.

(a) If 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, placed under administration or debt review the executor or curator, administrator or debt councillor 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 or business rescue, the liquidator, judicial manager or business rescue practitioner 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 an Owners Association, the members of the owners association

(g) in the case of a sectional title scheme, a body corporate responsible for the control, administration, and management of the common property; and/or

(h) 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 property" means any property that has been declared under section 10 to be a problem property;

"property"-

(a) means any piece of land registered as a separate entity of land in the 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) including any piece of land not so registered in the deeds registry;

(b) includes any building or structure on that piece of land, any active or abandoned development and building activities, inclusive of earthworks, on the property in pursuance of development of the subject property; and

(c) includes any earthworks done 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 property, or who enjoys such benefit shall be deemed to be the owner of such property or the person in charge of that property or who occupy the property.

PART 2: DUTY AND LIABILITY OF OWNERS

3 Duty of owners

(1) Every owner of a property must-

(a) not permit that the property becomes abandoned and/ or it to be unlawfully occupied, overcrowded or used for criminal activities; or activities that contravenes any Municipal Bylaws or National Laws

(b) not permit the dumping of waste on the property or allow that waste accumulate on the property; and

(c) not permit that the property be used for any purpose not authorised in terms of the prevailing land use rights and /or cause that the property is illegally connected to electricity and the water supply system,

(d) ensure that the property, which includes any structures, buildings and infrastructure located thereon, is maintained in a good state of upkeep, repair and in a safe and functional condition that prevents hazards to health, safety or the environment, and which includes, but is not limited to, ensuring:

(i) that the condition and appearance of the property is not in a state of being derelict, unhealthy, unsanitary, unsightly, dilapidated, overgrown and consequently justifiable objectionable, and

(ii) that the condition and appearance of the property does not impact negatively on the aesthetic appeal of the living environment, and which means that the condition and appearance of the property is not distractively less than, and not befitting, the equivalent state of the prevailing conditions of other properties in the same street and/ or precinct.

(e) ensure that the property, including any structures, buildings and infrastructure located thereon, is maintained in compliance with the applicable **National Building Regulations** and other relevant safety regulations so that the property does not present any risks to the health,

safety, or well-being of the occupants or the public, and which includes, but is not limited to, ensuring that:

(i) the structural integrity of the building, structures, and infrastructure is preserved and not causing that any building, structure or infrastructure on the property becomes structurally unsound or becomes dangerous to life or property, and if so, to 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 and Building Standards Act;

(ii) electrical, plumbing, and mechanical systems are safe and properly functioning

(iii) access to the property, including walkways and stairways, is safe and free from hazards.

(iv) fire safety measures are in place and maintained in good working order.

(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 at own cost without delay.

(2) Where the owner of such property fails/refuses to take appropriate legal action and/or eviction proceedings against the illegal occupiers, out of own initiative or when instructed to do so, the Municipality can institute appropriate legal action against the owner and occupiers which proceeding will be instituted by the Municipality, but for the cost of the owner. Where the owner cannot be found after a diligent search, legal action can be instituted by the Municipality against the illegal occupants, and owner which will be for the owner’s cost.

(3) The Municipality will take appropriate legal action against the occupiers of the property, where the Municipal Council is the owner of a property so occupied.

(4) Where the State is the owner of a property, the Municipality will act against a State after a process of intergovernmental relations is instituted and finalised.

(5) If waste has been dumped or accumulated on the property, the owner must remove the waste and transport it to a designated licensed disposal facility at the owner's cost.

(6) Should the owner fail/refuse to remove the waste the Municipality can institute legal action against the owner/occupier of the property.

(7) Overgrown vegetation shall be removed by the owner at the owner's cost when so instructed by the Municipality in writing, and within 14 working days from receipt of such instruction. Should the owner fail to adhere to the instruction from the Municipality, the Municipality shall appoint a contractor to execute the function, and the cost shall be for the owner's account and shall be placed on the owner's Municipal account.

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 or contractor appointed by the Municipality, to-

(a) maintain, repair, renovate, rehabilitate, or alter the property;

(b) secure, close or barricade the property;

(c) demolish a building or structure on the property;

(d) to clean-up and remove waste, vegetation, clear and remove plant overgrowth, remove rubble and rehabilitate the property; or

(e) otherwise enforce compliance with this By-law

(2) Any damages and actual 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, 2011 and these cost may be added to the owner's Municipal account..

(3) Where the Municipality commenced with any of the processes alluded to in section 5(1)(a) to (e), the Municipality will finalize the process commenced with and the owner cannot appoint its own contractors after the Municipality commenced with such processes.

(4) The owner/occupier will be liable for the payment of the costs incurred by the Municipality regardless of the owner/occupier appointing its own contractor after the Municipality appointed a contractor to attend to the processes alluded to in section 5(1)(a) to (e).

PART 3: INVESTIGATION AND COMPLIANCE NOTICE

6 Investigation

(1) Subject to subsection (7), an authorised official may enter any property unrestricted at a reasonable time to inspect and determine whether the owner of the property complies with this by-law. A reasonable time in terms of this section will be any time between 07h00am and 20h00pm on weekdays.

(2) An authorised official may only enter a property in terms of subsection (1)-

(a) with the consent of the owner or occupant; OR

(b) on 7 days after the date upon which a written notice was sent to the owner or occupant of an intention to inspect the property; or

(c) with a warrant to enter and search the property issued by a Judge of the High Court or a Magistrate for the district in which the land or property or premises or building or structure is situated, at the request of the Municipality if –

(i) the prior permission of the occupier or owner cannot be obtained after reasonable attempts; or

(ii) the purpose of the inspection would be frustrated by the occupier or owner's prior knowledge thereof;

(d) A warrant may be issued only if it appears to the Judge or Magistrate from information that there are reasonable grounds for believing that –

(i) An authorised employee has been refused entry to land or property or a building that he or she is entitled to inspect;

(ii) An authorised employee will be refused entry to land or property or a building that he or she is entitled to inspect;

(iii) An offence contemplated in section 16 of this By-law is occurring or has occurred and an inspection of the premises is likely to yield information pertaining to that offence; or

(iv) The inspection is in the opinion of the Municipality reasonably necessary for the purpose of this By-law.

(3) A warrant must authorise the Municipality and all officials deemed necessary by the Municipality, including any law enforcement agents or government officials, to enter upon the land or property or premises or to enter the building to inspect and determine whether the owner of the property complies with this By-law as specified in the warrant, on one occasion only, and that entry must occur –

(i) Within one month of the date on which the warrant was issued; and

(ii) At a reasonable time between 07h00am and 20h00pm, except where the warrant was issued on grounds of urgency.

(4) A search warrant may only be issued if it appears on information provided under 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.

(5) An authorised official or officials may enter the premises without a warrant if he/she reasonably believes that a warrant will be issued in the circumstances contemplated in subsection (7) but that the delay in obtaining such warrant will negate the purpose of such entry.

(6) An authorised official may be accompanied by any approved competent person, as contemplated in Part A 19 of the National Building Regulations and an armed

law enforcement official may accompany the official due to safety concerns, or any other person who's technical or professional advice would be required to make a determination on any prevailing condition at the property, who is instructed to examine the building and report on the state of the building and any measures to be taken,

(7) 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 in terms of Part 2;

(ii) a reasonable period within which the measures must be taken; and completed in full

(iii) 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) may 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;

(e) disposing of, or removing, any waste accumulated, dumped or stored on a property;

(f) clear and remove plant overgrowth, remove rubble and rehabilitate the property; or

(g) causing any unauthorised land uses and/ or occupation or criminal activities associated with the property to cease.

(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;

(b) may declare the property to be a problem property in terms of section 10;

(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(6).

PART 4: DECLARATION OF A PROBLEM PROPERTY

9 Notice of intention to declare a problem property

(1) An authorised official may issue a notice of intention to declare a property to be a problem property if the official is satisfied that there are good grounds for believing that the property -

(a) is abandoned or derelict;

(b) is unlawfully occupied or overcrowded;

(c) is overgrown, not maintained properly and as a result is or is becoming unhealthy, unsanitary, unsightly, dilapidated, overgrown or objectionable;

(d) is illegally connected to either the electricity and/or water supply system;

(e) is being used for criminal activities or as a throughfare for criminals;

(f) has without planning permission, been altered so as to have the effect of preventing the South African Police Service and/or law enforcement of the Municipality, 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 vegetation;

(i) has people occupying the property without access to clean water supply and ablution facilities; or

(j) has buildings or structures that was erected without approved building plans that is used by people contrary to the consent use issued by the Municipality;

(k) the construction of which is incomplete and

(i) has not been proceeded with for more than three months, and

(ii) the owner has not taken reasonable measures during its erection to prevent unauthorised access to the property.

(l) failure to comply with any duty of owners as listed in section 3

(2) The notice in subsection (1) must-

(a) give the owner 7 days within which to make representations as to why the property should not be declared a problem property 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 property being declared a problem property.

(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 in his or her discretion 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 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 property a problem property;

(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) Where the owner of the property after a diligent search cannot be found, the Municipality can institute legal action against the occupiers of the property.

(6) The Stellenbosch Municipality must-

(a) serve the declaration on the owner and/or occupier of the property;

(b) at the owner's/occupier's cost, erect sign boards and publish advertisements in community newspapers notifying the public that the property has been declared a problem property setting out the measures to be taken and any orders or requirements as to access or occupation in the declaration.

(7) No unauthorised person may enter a property which has been declared a problem property.

(8) The Stellenbosch Municipality may, on its own accord, or upon written representation authorise any person to enter a property which has been declared a problem property for purposes of renovating, repairing, or securing the property as per the written instructions issued by the Municipality, which cost shall be for the owner of the property and which cost may also be added to the owner's Municipal account..

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) approach a court for relief contemplated in Part 6.

(b) carry out the measure; or

(c) appoint a contractor to carry out the measure; and

(2) If the Stellenbosch Municipality gives effect to the measure under subsection (1)(b) and (c), the owner/occupier is liable for the costs and expenses of effecting the measures.

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) Full compliance with the stipulations of this By-Law

(b) The collection of rental and other charges from the occupiers;

(c) The maintenance, repair or renovation of the problem property utilizing the rental so collected or from other funding as obtained from whatever source;

(d) 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;

(e) The appointment of a committee to assist in the management of the problem property;

(f) The opening and operating of an account with a bank;

(g) Any other action-

(i) required to give effect to measures contemplated in this By-Law

(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 and the Court-

(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 to -

(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.

(e) Hold the administrator liable for adherence to the stipulations of this By-Law and any order of Court;

PART 6: EVACUATION

13 Evacuation

(1) If a property has been declared to be a problem property in terms of this By-Law and an authorised official has reasonable grounds for believing that a property is dangerous to life and other property and that the immediate evacuation of the property is necessary-

(a) the authorised official may make an order requiring the evacuation of the property as contemplated in section 10(3)(b).

(b) 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.

(iii) Which cost shall be for the owner of the property or the administrator thereof in terms of Part 5;

(2) A court may-

(a) grant an order contemplated in subsection (1)(b) if it is satisfied that the property 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.

14 Demolition

(1) If an authorised official has reasonable grounds to believe that the demolition of a building is a necessary measure in terms of section 10(3)(a) read with section 7(3)(d), the Stellenbosch Municipality may-

(a) require the owner to demolish any structure, building or part of a building; or

(b) institute proceedings in a court to order directing the owner or authorising the Stellenbosch Municipality to demolish the building on one or more of the following grounds-

(i) the building or structure or its alteration is without planning permission or building plan approval;

(ii) the building or structure is structurally unsafe and not capable of being made safe;

(iii) the building or structure is or becoming dangerous to life and property;

(iv) the building or structure is used by members of the public for purposes contrary to the land use right applicable to the property;

(v) the building or structure is used to continuously violate the Events Bylaws of Stellenbosch Municipality

(vi) the owner has failed to comply with the measures issued in terms of section 10(3)(a) and the costs of complying with those measures exceed the costs of demolition.

(2) A court may- Also, and in addition

(a) grant an order for the demolition of a building or structure if it is satisfied that the demolition is a necessary measure in terms of this By-Law read with section 7(3)(d); and

(b) make an order of costs against the owner including the costs of the demolition, and returning or rehabilitating the property to a state which will no longer put it in contravention of the stipulations of the By-Law

PART 7: ENFORCEMENT

15 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 and Credit Control and Debt Collection By-law recover-

(a) any costs incurred in effecting any measure or performing any function in terms of this By-law from the owner or beneficial owner of the affected property;

16 Offences and penalties

(1) A person is guilty of an offence and is 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/her 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 not exceeding an amount of R120 000

(b) imprisonment for a period not exceeding 3 years; or

(c) both such fine and imprisonment in (a) and (b) above.

(d) All costs incurred by the Municipality to ensure compliance to the stipulations of this By-Law;

(3) In the case of a continuing offence, the Court may impose in respect of suitable proof that the offence continues-

(a) an additional fine calculated at 25% of the municipal valuation of the property.

(b) imprisonment for a period not exceeding 10 days; or

(c) both such fine and imprisonment, will be imposed.

(4) If civil proceedings have been instituted for the collection of a fine in terms of section 16(1) against any person in respect of a contravention contemplated in subsection (1), no criminal proceedings may be instituted against that person in respect of that contravention.

(5) Municipality may put the property on auction to recover any unpaid fees owed in terms of sections 16.

PART 8: GENERAL

17 Appeals

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

18 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 and Building Standards Act.

19 Delegation

The Stellenbosch Municipality's 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 18.

20 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, notes 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 and Building Standards Act.

21 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.

22 Serving of a notice

(1) Whenever a compliance notice, or any 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 acknowledgment 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 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;

(f) by email a copy of the notice to the person, if the person has an email address. If service was effected by email, by an affidavit of the person who effected service, which must provide proof of the correct email address and confirmation that the whole sending of the email was completed;

(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.

(3) 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.

(4) When a compliance notice as aforesaid is required to be served on a person after-hours; or in cases where officials are threatened, Stellenbosch Municipality Law Enforcement or South African Police Services (SAPS) can be requested to assist in delivering the notice. It shall be deemed to have been effectively and sufficiently served on such person.

23 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.

24 Repeal

Stellenbosch Municipality: Problem Property Bylaw, 2020 as published in the Provincial Gazette of July 2022 is hereby repealed.

25 Short title

This By-law is called the Stellenbosch Municipality: Problem Property By-law, 2025 as amended.

SCHEDULE A: FINES

Stellenbosch Municipality may impose the following fines in respect of contraventions of the relevant applicable sections of the By-Law.

(1) In respect of Section 16(2)(a), any person who is convicted of an offence under this By-Law is liable to a fine not exceeding an amount of R120 000.00

(2) In respect of section 16(3)(a), in the case of continuing offence, the Court may impose an additional fine; calculated at 25% of the municipal valuation of the property.

(3) In respect of section 16(5), the Municipality may put the property on auction to recover any unpaid fees owed

ANNEXURE A: NOTICES

Stellenbosch Municipality may apply Notices in respect of contraventions of the relevant applicable sections to ensure compliance of this By-law, as follows –

a) Notice of Intended Inspection

b) Compliance Notice

c) Notice of Contravention

d) Notice of Intention to Declare a Problem Property

e) Notice of Declaration of a Problem Property