



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

DRAFT

PROBLEM BUILDING BY-LAW

Version 9

DRAFT PROBLEM BUILDING BY-LAW

VERSION 9

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 buildings and to take the necessary measures to ensure compliance with the City'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 therefor enacted by the Council of the City of Cape Town as follows:

Draft

CONTENTS

PART 1: DEFINITIONS AND APPLICATION	5
1 Definitions	5
2 Application of this By-law	7
PART 2: DUTY AND LIABILITY OF OWNERS	7
3 Duty of owners.....	7
4 Duty to take measures	8
5 Liability of owners for damages and costs.....	8
PART 3: INVESTIGATION AND COMPLIANCE ORDERS	8
6 Investigation.....	8
7 Compliance notice.....	9
8 Failure to comply with compliance order	10
PART 4: DECLARATION OF A PROBLEM PROPERTY	10
9 Notice of intention to declare a problem property.....	10
10 Declaration of a problem building.....	11
11 Owner's failure to comply with the declaration.....	12
PART 5: APPOINTMENT OF ADMINISTRATOR.....	13
12 Appointment of administrator.....	13
PART 6: EVACUATION, EVICTION AND DEMOLITION	14
13 Evacuation.....	14
14 Eviction	Error! Bookmark not defined.
15 Demolition.....	Error! Bookmark not defined.
16 Expropriation.....	Error! Bookmark not defined.
PART 7: ENFORCEMENT	15
17 Civil proceedings.....	15
18 Administrative fines	15
19 Offences and penalties	15
PART 8: GENERAL.....	16

20 Appeals	16
21 Appointment of authorised officials	17
22 Delegation.....	17
23 Powers of authorised officials	17
24 Form of notices, declarations and sign boards	17
25 Service of notices	18
26 Indemnity	18

Draft

PART 1: DEFINITIONS AND APPLICATION

1 Definitions

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

“authorised official” means an employee of the City 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;

“City” means the City of Cape Town, a municipality established by City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structure Act, 1998 (Act No. 117 of 1998) or any structure or employee of the City acting in terms of delegated authority;

“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;

“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: Provided that if—

(a) such person, in the case of a natural person, is deceased or was declared by any court to be incapable of managing his or her own affairs or a prodigal or is a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), or if his or her estate has been sequestrated, 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 there for;

(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 City 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

This By-law applies to all properties within the area of jurisdiction of the City including properties owned by the State.

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 repair¹ and in a safe condition;

(b) notify the City 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 six months.

¹ The By-law will be supplemented by administrative guidelines to guide authorised officials in exercising their discretion. The guidelines will flesh out what is generally meant by ‘a good state of repair’.

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 City 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 City in terms of its 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 issued by a magistrate.

- (3) A magistrate may only issue a search warrant if it appears on information provided on oath that there are reasonable grounds for believing that the property is unlawfully occupied or used for criminal activities.
- (4) 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.
- (5) 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 provided that a subsequent visit is on written notice that may be less than 7 days.

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; 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 with the owner's duties under Part 2;
 - (ii) a reasonable period within which the measures must be taken;
the amount of the administrative fine imposed, if the owner fails to comply with subparagraphs (i) and (ii); and
 - (iii) the date by which the owner may make representations to amend or withdraw the notice.
 - (b) be in the form determined by the City Manager in terms of section 24.
- (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;
 - (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)(iv).

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.
 - (c) must impose the administrative fine referred to in section 7(2)(a)(iii).
- (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(4).

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, supplies or sewers;
 - (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 City 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 has not been proceeded with for more than three months.
- (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 building

- (1) An authorised official may declare a building a problem building if-
- (a) the owner fails to comply with a compliance notice issued in terms of section 8(1)(a);
 - (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 City Manager in terms of section 24, 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 City 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.

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 City may

impose an administrative fine in terms of section 18; and

carry out the measure, including approaching a court for orders contemplated in Part 6.

- (2) If the City gives effect to the measure under subsection (1)(b), the owner is liable for the costs and expenses of effecting the measure.

PART 5: APPOINTMENT OF ADMINISTRATOR

Appointment of administrator

- (1) The City may apply to the Court for the appointment of an administrator if the property or building has been declared a problem property in terms of section 10
- (2) and the Court may, in its discretion, appoint the administrator on such terms as it deems fit in the circumstances to give effect to the measures contained in the declaration.
- (3) 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.
- (4) The administrator must submit the following documents to the owner, the City and the Court-
 - (a) A monthly report in the form determined by the City Manager in terms of section 24;
 - (b) A final report and account in the form determined by the City Manager in terms of section 24 on the completion of the administrator's mandate.
- (5) The Court may, at its discretion or on the application of the owner or the City -,
 - (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

12 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 a building is dangerous to life and property and that the immediate evacuation of the property is necessary-

- (a) the official may make an order requiring the evacuation of the property as contemplated in section 10(3)(b); and
 - (b) if the order is not obeyed, the City 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.
- (2) 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

13 Civil proceedings

- (a) The City or administrator may, by way of civil proceedings and in accordance with the City of Cape Town: Credit Control and Debt Collection By-law, 2006, recover any costs incurred in effecting any measure or performing any function in terms of this By-law. any unpaid administrative fine imposed in terms of this By-law.

14 Administrative fines

- (1) An authorised official may impose an administrative fine for a failure to comply with this By-law or any notice or declaration made in terms of it.
- (2) The amounts of the administrative fines are set out in Schedule A.

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;
 - (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 City 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 City Manager in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

17 Appointment of authorised officials

The City Manager 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 City Manager is authorised to exercise all the powers and perform all the duties and functions conferred on the City 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 15, 16, and 19.

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

23 Repeal

The City of Cape Town: Problem Building By-law, 2010 as published in the Provincial Gazette 6767 of 31 March 2010 is hereby repealed.

28 Short title

This By-law is called the City of Cape Town: Problem Building By-law, 2017.

SCHEDULE A: FINES

The City may impose the following administrative fines in respect of contraventions of the relevant applicable sections of this By-law.

- (1) In respect of section 7(2)(iii) read with section 8(1)(c), if the owner fails to comply with a compliance order, the City may impose an initial fine of between R20 000 and R50 000 and subject to item (2) an additional fine of R10 000 for each day thereafter until the measures as contemplated in the compliance notice are met.
- (2) The fines will continue to accumulate until the date that the property is declared a problem property for purposes of section 10.
- (3) Once the declaration under section 10 has occurred and the owner continues to fail to take the measures contemplated in subsection 10(2) and (3) a further fine may be imposed, the amount of which is calculated at 10% of the municipal valuation of the property as provided in the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).