

## LOCAL GOVERNMENT NOTICE

### MUNICIPALITY OF GREAT KEI

#### **BY- LAW RELATING TO NEGLETED BUILDINGS AND PREMISES**

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government: Municipal Systems Act, 2000 [Act No.32 of 2000], read with section 162 of the constitution of the Republic of South Africa Act, 1996 [Act No.108 of 1996], the By-Law Relating to Neglected Buildings and Premises.

#### **PURPOSE OF BY-LAW**

The purpose of this by-law is to promote the habitat and environment of the communities residing within the municipal boundaries of the municipality, by regulating the appearances and condition of buildings and premises.

1. **Definition** – In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa, and, unless the context otherwise indicates –

“absentee owner or occupier” means an owner or occupier who seldom or infrequently visits or makes use of a building or premises in respect of which he or she is the owner or has the right of occupation;

“Administrative action” means any action taken by the municipality in the exercise of a power or performance of a function;

“Building “includes –

- [a] any other 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 accommodation or convenience of human beings or animals;

The manufacturing, processing, storage, display or sale of any goods;

The rendering of any service;

The destruction or treatment of refuse or other waste materials;

The cultivation or growing of any plant or crop;

- [b] any wall, swimming bath, swimming pool, reservoir or bridge, or any other structure connected therewith;

- [c] any fuel pump or any tank used in connection therewith;

- [d] any part of a building, including a building as defined in subsection (a), (b) or (c),

[e] any facilities or system, or part or portion thereof, within, or outside, but incidental to, a building, for the provision of a water supply, drainage, sewerage, storm water disposal, electricity supply or other similar service in respect of the building;

“calendar day” means a 24 hour day period, reckoned from one midnight to the next, and

Includes a Saturday, Sunday and public holiday;

“Improvement” means any work carried out on a building or premises, so as to result in a Better appearance or condition;

“Municipality” means the Municipality of Great Kei, established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998], and includes any Political structure, political office bearer, councillor, duly authorised agent thereof or any Employee thereof acting in connection with this by-law by virtue of a power vested in the Municipality and delegated to such political structure, political office bearer, agent or Employee;

“municipal area” means the area under the jurisdiction and control of the municipality;

“occupier” means a person who resides in a building or on a premises, but who is not the Owner thereof;

“owner” means-

[a] the person in whom from time to time is vested the legal title to premises;

[b] in a case where the person in whom the legal title is vested is insolvent or dead or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator, or other legal representative;

[c] in a case where the municipality is unable to determine the identity of such person, a person who is entitled to the benefit of any building located on such premise;

[d] in the case of premises for which a lease of 10 years or more has been entered into, the lessee thereof;

[e] in relation to –

[i] a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act , 1986 [Act No. 95 of 1986], the developer or the body corporate in respect of the common property; or

[ii] a section as defined in such Act, the person whose name such a section is registered under sectional title deed, and includes the lawfully appointed agent of such a person; and

[f] any legal person, including but not limited to –

[i] a company registered in terms of the companies Act, 1973 [Act No. 61 of 1973], a trust, a closed corporation registered in terms of the closed corporation Act, 1984 [Act No. 69 of 1984], and a voluntary association;

[ii] any department of national, provincial or local government;

[iii] any council or board established in terms of any legislation applicable to the Republic of South Africa; and

[iv] any embassy or foreign entity; and

“premises” means any land, whether vacant, occupied, or with buildings thereon, situated within the municipal area.

## **2. Responsible ownership and occupation of building and premises**

An owner or occupier of a building or premises situated within the municipal area shall exercise responsible ownership and occupation, and maintain such building or premises in such a manner as to ensure that the building or premises will not be –

[a] a risk to the public health or hygiene;

[b] unsightly or objectionable;

[c] a probable or actual nuisance to the occupiers of adjoining or neighbouring properties; or

[d] the probable or actual cause of the derogation in value of adjoining or neighbouring properties.

## **3. Establishment, functions and powers of municipal aesthetics committee**

[1] the municipality may establish an aesthetics committee for the purposes of administering – law

[2] an aesthetics committee established in terms of subsection [1] shall investigate, report and make recommendations to the municipality in respect of any reasonable allegation of or complaint about a contravention of section 2.

[3] the municipality may delegate to the aesthetics committee such powers as it deems necessary for the purpose contemplated in terms of subsection [1].

## **4. Municipality may serve written notice**

[1] Where, in the reasonable opinion of the municipality, any building or premises is or is likely to be –

[a] a risk to public health or hygiene;

- [b] unsightly or objectionable;
- [c] a nuisance to the occupiers of adjoining or neighbouring properties;
- [d] the cause of the derogation in value of adjoining or neighbouring Properties,

The municipality may serve a notice in writing on the owner or occupier such building or premises, requiring the owner or occupier to improve such building or the condition of such premises to a standard reasonably acceptable to the municipality, which standard shall be stated in the notice, and attained by the owner or occupier, within a specified period, and by not later than 6 (six) months from the service of the notice.

[2] Service of the written notice in terms of subsection [1] may be affected –

- [a] by delivering a copy thereof –
  - (i) personal to the owner or occupier or a duly authorised agent;
  - (ii) to any person apparently not less than 16 years of age, and apparently residing or employed at the residence or place of business of the owner or occupier in question; or
  - (iii) at a domicile citadel , if the owner or occupier in question has chosen such domicile;
- [b] where the owner or occupier in question keeps his or her residence or place of business closed, and thus prevents delivery of the written notice, by –
  - (i) attaching a copy thereof to the outer or principal door or security gate of such residence or place of business; or
  - (ii) placing a copy thereof in the letter box of such residence or place of business.

[3] for the purposes of this section, the owner or occupier shall be presumed to have received a written notice served in terms of subsection [2] [b] within –

- [a] 1 (one) month of the date upon which service was effected, or
- [b] 6 (six) months of the date upon which service was effected, in the case of an absentee owner or occupier.

## **5. Lodging of objection to written notice**

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- [1] Upon the receipt of a written notice contemplated in terms of section 4 [1], the owner or occupier may lodge an objection with the municipality, out the reasons why the owner or occupier should not be required to comply with the written notice.
  - [2] The objection must be lodged with the municipality no later than 14 (fourteen) calendar days after service of the written notice, as contemplated in terms of section 4 [1] and [2]
  - [3] The municipality shall consider the objection, whereupon it shall, within 30 (thirty) calendar days of its receipt of the objection, either confirm or retract the written notice.
  - [4] In the event of –
    - [a] the municipality’s confirmation of the written notice, it may adjust the period within which the owner or occupier shall be required to effect the necessary improvement in accordance with the stated standard, or
    - [b] the municipality’s retraction of the written notice, it may issue a further written notice, stating such adjusted period or standard ; or both , as may be reasonable necessary to promote the purposes of this by-law
  - [5] The municipality shall inform the owner or occupier of its decision in writing and within the time limit prescribed by subsection [3]
  - [6] Where the owner or occupier has failed to lodge an objection in terms of the provisions of subsection [2], the municipality may refuse to consider the objection, provided such that refusal shall not amount to unjust administrative action.

## **6. Improvement may be effected by municipality**

- [1] The municipality may undertake the improvement of buildings or premises in accordance with the standard stated in the written notice contemplated in terms of section 4 [1], provided that –
  - [a] such undertaking by the municipality shall not absolve the owner or occupier from any criminal liability.
  - [b] the period specified in the written notice, contemplated in terms of section 4 [1], has lapsed, without the owner’s or occupier’s having complied with the requirement set out therein; and
  - [c] no objection has been lodged by the owner or occupier within the period specified in the written notice for the improvements to be effected.

- [2] Where an owner or occupier has lodged an objection in accordance with sections 5 [1] and [2], the municipality may not undertake the improvement of buildings or premises unless the municipality has –
- [a] complied with the provision of section 5[3] and [5]; and
  - [b] ensured that any adjusted period has lapsed, subsequent to the application of section 5[4]
- [3] In the event that an owner or occupier has failed to lodge an objection within the period specified in the written notice for the improvement to be effected, then the municipality may assume that the owner or occupier has no objection and agrees to permit the municipality to undertake the improvements.
- [4] The municipality may appoint a service provider to undertake improvements, in which event –
- [a] the municipality shall be responsible for the actions and conduct of the service provider and its employees on the premises of the owner or occupier in question,
  - [b] the service provider shall be responsible and accountable to the municipality for the work undertaken;
  - [c] neither the municipality nor the service provider shall permit a subcontractor to undertake any aspect of the work on the premises; and
  - [d] any improvements undertaken by a service provider shall be –
    - [i] in accordance with the standard stated in the written notice contemplated in terms of section 4[1]; and
    - [ii] of such a nature as not to detract from the appearance of surrounding buildings or premises
- [5] All reasonable costs incurred by the municipality in effecting improvements to the buildings or premises may be recovered from the owner or occupier in question provided that -
- [a] a certificate endorsed by the municipal manager and stating the total amount of reasonable costs incurred shall constitute prima facie proof thereof ; and
  - [b] the owner or occupier shall be entitled to set off against any amount claimed by the municipality or duly appointed service provider in undertaking any improvements.

## **7. Offences and penalties**

Any person who contravenes, or fails to comply with, any provision of this by-law shall be guilty of an offence, and liable, upon conviction, to -

- [a] a fine not exceeding R6 000, or imprisonment for a period not exceeding 12 (twelve) months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment; and
- [b] in the case of continuing offence, an additional fine not exceeding R6 000, or an additional period of imprisonment not exceeding 1 (one) day, or such additional imprisonment without the option of a fine, or to both such additional fine and imprisonment, for each calendar day on which such offence is continued.

## **8. Regulations**

- [1] The municipality may take regulation regarding –
  - [a] the establishment, function and powers of an aesthetics committee; contemplated in terms of section 3;
  - [b] the contents of a written notice, contemplated in terms of section 4 [1], including –
    - [i] the determination of standards with which a building or premises must comply, subject to the provisions of national legislation, and
    - [ii] the period within which improvements must be effected;
  - [c] the lodging of an objection to a written notice, including –
    - [i] the place at which such objection may be lodged and the municipal official authorised to deal with such objection; and
    - [ii] the prescription of time limits in terms of section 5 [2] and [3] and any amendments thereto;
  - [d] Improvements effected by the municipality, including –
    - [i] the fixing of a set fee or tariff for the determination of costs that may be recovered from the owner or occupier;
    - [ii] the contents and formats of a certificate, contemplated in terms of section 6 [5] [a]; and
    - [iii] the manner in which a setoff shall be determined and effected, in terms of section 6 [5] [b]
  - [e] [i] the prescription of penalties, in terms of section 7, for failure to comply with a written notice; and
    - [ii] the amendments of such penalties from time to time;
  - [f] any matter which may be prescribed in terms of this by-law, and any matter which may facilitate the application of this by-law.

- [2] [a] The municipality shall, not less than 1 (one) month before promulgating a regulation in terms of subsection [1] , cause a draft of the regulation to be communicated to the local community and to be made public in terms of section 21 and 21A of the local Government: Municipal Systems Act; 2000 [Act No. 32 o 2000], together with a notice declaring the intention of the municipality to issue such a regulation and inviting comments or representations.
- [b] If the municipality decides to alter the draft regulation as results of comments or representations received pursuant to such invitation, then it shall not be necessary to communicate and make the public alteration before the amended draft is promulgated as a regulation.

**9. Repeal of by- laws**

Any by –laws promulgated by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality, and pertaining to any matter regulated in this by – law, shall be repealed from the date of promulgation of this by-law.

**10. Short title**

This by-law is called the Relating to Neglected Buildings and Premises, 2004, and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.

