



RUSTENBURG LOCAL MUNICIPALITY

DRAFT BY-LAW: PROBLEM BUILDINGS AND VACANT STANDS

To provide for the identification, control and management of dilapidated and problem buildings problematic vacant stands in the Rustenburg Local Municipality and to provide for matters incidental thereto.

PREAMBLE

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 as a local government matter to the extent set out in section 155(6) (a) and (7);

AND WHEREAS the Rustenburg Local Municipality seeks to identify, control and manage dilapidated and problem buildings and vacant stands within its area of jurisdiction to ensure that such buildings comply with this By-law by—

- Formulating a coordinated integrated strategy plan, processes and procedures;
- Turning problem buildings around by rejuvenating and regenerating the buildings rather than demolishing them;
- Redeveloping the property where problem buildings or vacant stands can't be rejuvenated or regenerated after consultation with the owners;
- Facilitating the disposal of problem buildings and vacant stands for the purpose of achieving the objectives of this By-law.

AND NOW THEREFORE, BE IT ENACTED by the Council of the Rustenburg Local Municipality, as follows:

1. Definitions

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

“**authorised official**” means an employee of the Rustenburg Local Municipality authorised by the Municipal Manager to implement and enforce the provisions of this By-law;

“**building**” includes—

- (a) any structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with the—
 - (i) Accommodation or convenience of human beings or animals;
 - (ii) Manufacture, processing, storage, display or sale of any goods;

- (iii) Rendering of any service;
- (iv) Destruction or treatment of refuse or other waste materials;
- (v) Cultivation or growing of any plant or crop;
- (b) Any wall or part of a building;
- (c) A unit or common property as defined in the Sectional Titles Act, 1986 (Act No. 95 of 1986); or
- (d) Any vacant or unoccupied erf;

“**Municipality**” means the Rustenburg Local Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) through the relevant Provincial Notice;

“**owner**” means the person in whose name the land on which such building is registered in the deeds office:

- a) In the case of a trust, the trustee of that trust;
- b) The registered owner of a sectional title unit, where the interior of the sectional title is issued
- c) The trustees of a body corporate, where the common property of a sectional title scheme is at issue;
- d) The administrator of the body corporate of the sectional title scheme where the common property of a sectional title scheme is at issue and there are no elected trustees of the body corporate;
- e) The executor, where the-
 - i. Owner of the building or vacant stand is the deceased and the building has not yet been transferred out of the deceased ‘s estate; or
 - ii. Estate of the owner has been sequestrated;
- f) the curator, where the owner of the building or vacant stand has been declared by any court to be incapable of managing his or her own affairs or prodigal;
- g) the administrator, where the owner of the building or vacant stand is a mental health care user as defined in section 1 of the Mental Health Act 2002 (Act No.17 of 2002)
- h) the liquidator, where the owner of the building or vacant stand is judicial person or trust and has been liquidated;
- i) the former members of a close corporation which has been deregistered and in respect of which they have continuing liability as contemplated in section 26 of the Close Corporation Act,1984 (Act No.69 of 1984), read with sections 83(2) and (3) of the Companies Act,2008 (Act No.71 of 2008)
- j) the business rescue practitioner, where the owner of the building has been placed under business rescue;
- k) the managing agent, where the owner of the building is absent from the Republic of South Africa of where the Municipality has, after reasonable attempts, not been able to determine his or her whereabouts; or
- l) every person who is entitled to occupy or use a building or vacant stand where-
 - i. the owner of the building or vacant stand is absent from the Republic of South Africa
 - ii. the Municipality has, after reasonable attempts, not been able to determine the whereabouts of the owner of the building; and
 - iii. there is no managing agent;

“**problem building**” means a building or portion of a building which-

- a) is derelict in a appearance or is showing signs of becoming unhealthy, unsanitary, unsightly, or objectionable
- b) has been abandoned by the owner, or appears to have been abandoned by the owner, regardless of whether rates or services charges are being paid;
- c) is overcrowded
- d) has been Hijacked;
- e) has been the subject of one or more written complaints, charges or convictions regarding criminal activities being conducted in the building, as confirmed in writing by a member of the South African Police Services or Officials of the Municipal Public Safety
- f) Illegally Occupied;
- g) Has refused or waste material unlawfully accumulated, dumped, stored or deposited;
- h) Has been unlawfully erected or has a part which has been unlawfully erected;
- i) Has been changed and its subsequent usage is unauthorized;
- j) Is partially completed, or structurally unsound or showing sign thereof, and is or may be a threat or danger to life and property; or
- k) Is in contravention of one or more of the Municipal by-laws.

“vacant stands” shall mean any open stand Check other by-laws from DCD

2. APPLICATION OF THIS BY-LAW

This By-law applies to all problem buildings and vacant stands situated within the area of jurisdiction of Rustenburg Local Municipality, except those situated in areas exempted from the application of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

3. OBJECTS OF BY-LAW

The objects of this by-law are to-

- a) Provide a mechanism for the co-ordination identification and control of problem building including vacant stands
- b) Set minimum standards for consultations with owners and people who occupy or reside in the problem building; and
- c) Ensure the health and safety of the people occupying problem building and vacant stands.

4. APPOINTMENT OF AUTHORISED OFFICIALS

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

1. An authorized Official may enter any building or vacant stand at any reasonable time with a view to-
 - a) Determine whether the building should be declared a problem building in terms of this By-law in the exercise of his or her power or duties in terms of this by-law
 - b) Serve any notice required in terms of terms by-law
 - c) Determined whether the owner has complied with any compliance notice issued in terms of this by-law;
 - d) Enforce any provide of this by-law

2. A person may not hinder or obstruct an authorized official in the exercise of his or her powers or duties in terms of this by-law.
3. An authorized official must, when entering the building or vacant stand contemplated in subsection (1), produce a valid identification document issued to him or her by the municipality, to the owner and, if applicable, the agent, as well as to any occupier who ask to see the identification document.

5. POWERS OF AUTHORISED OFFICIALS

An authorized official may, when entering a building or vacant stand

1. Inspect, monitor and investigate the building or vacant stand
2. Question the owner, the agent or any occupier of the building or vacant stand
3. Take photos of the building or vacant stand whether of the outside of the building or any internal aspect of the building any residence or vacant stand.
4. Do anything to implement to implement the provisions of this by-law.

6. ENTRY BY AUTHORISED OFFICIALS OF BUILDINGS OR VACANT STAND

1. Any authorised official may enter any building or vacant stand at any reasonable time with a view to—

(a) inspect or determine whether the building complies with any provision of this By-law subject to 7 days' notice of such intended inspection having been given to the owner; or

(b) Serve the owner of the building or vacant stand with the compliance notice as referred to in section 7.

(2) No person shall hinder or obstruct the authorised official in the exercise of his or her powers in terms of the By-law.

(3) An authorised official shall, when entering the building or vacant stand, produce a valid identification document issued to him or her by the City to the owner of such building or vacant stand.

7. IDENTIFICATION OF A PROBLEM BUILDING AND VACANT STANDS

7.1 DECLARATION OF A BUILDING OR VACANT STAND AS PROBLEM BUILDING OR VACANT STAND

In the event that the municipality is of the opinion that a building or vacant stand should be declared as problematic, it must serve a written notice to the owner or must display a notice on the building or on a vacant stand.

(1) The authorised official may, subject to subsections (2) to (5), if a building or stand falls within the definition of “problem building” as defined in section 1, declare such building or vacant stand a problem building or problematic vacant stand.

(2) The authorised official shall, by notice in writing, before declaring such building or vacant stand, inform the owner of his or her intention to declare such building or vacant stand a problem building or problematic vacant stand, giving the reasons for such declaration.

(3) The authorised official may carry out an investigation in respect of a building or vacant stand which he or she intends to declare a problem building or problematic vacant stand as contemplated in subsection (2), provided that he or she must display a notice of such investigation on the building or on the vacant stand concerned.

(4) The authorised official shall give the owner a period of seven (7) days to make representations on why the building or vacant stand should not be declared a problem building or problematic vacant stand.

(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 building or vacant stand a problem building or a problematic stand.

(6) in the event the municipality decided to declare a building or a vacant stand to be a problematic building or vacant stand, the municipality must give a written notice to the owner together with reasons.

(7) The owner shall, in respect of a declaration in terms of subsection (6), have a right of appeal in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

8. COMPLIANCE NOTICE

(1) The authorised official shall serve a written notice on the owner of any building or vacant stand which has been declared a problem building as referred to in section 6, requiring such owner within a **specified period of thirty (30) days** to—

(a) Repair, renovate, repaint, alter, close, demolish, secure, or remove all refuse from, such problem building or vacant stand;

(b) Complete the construction of a problem building or any structure of such building;

(c) Enclose, fence or barricade such problem building or vacant stand to the satisfaction of the City;

(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 building a problem building 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 building safe;

(e) dispose of, destroy or remove any material or article accumulated, dumped, stored or deposited in any building or vacant stand, which is refuse or waste and which is showing signs of becoming unsightly, insanitary, unhealthy or objectionable or is likely to constitute an obstruction; or

(f) comply with any provision of this By-law.

(2) The municipality may, if such owner fails to comply with a notice served on him or her in terms of subsection (1), repair, renovate, repaint, alter, close, demolish, remove all refuse or secure any problem building or vacant stand at the cost of the owner.

(3) 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,

(4) Despite subsection (1), section 6 and subject to any applicable legislation, if the authorised official has reason to believe that the condition of any building is such that 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 or vacant stand and may recover the cost of such steps from such owner.

(5) 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 building or vacant stand to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in such problem building, and to take care that no person who is not authorised by the municipality enters such problem building or vacant stand;

(b) Order any person occupying or working, or who for any other purpose is in any problem building or vacant stand, to vacate such building or stand.

(6) No person shall occupy, use or permit the occupation or use of any problem building or vacant stand or continue to occupy, use or permit, the occupation or use of any problem building or vacant stand in respect of which a notice was served or delivered in terms of this section or steps were taken by the municipality in terms of subsection (2), unless he or she has been granted permission by municipality in writing that such building may be occupied or used or continue to be occupied or used, as the case may be.

9. SERVICE OF A COMPLIANCE NOTICE

(1) 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 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.

(2) 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.

10.COMBINED NOTICES

The municipality is not restricted, when issuing a notice in terms of this by-law-

1. Multiple contraventions of the provisions of this By-law or of any other By-law in respect of a problem building or vacant stand;
2. Multiple failure or refusal to comply with a compliance notice in terms of this by-law, to serve a combined notice dealing with all of those contraventions, failure or refusals, as the case may be.

11.BAN ON NEW OCCUPANTS

The municipality may, once a problem building has been declared, apply to court for an interdict restraining the owner and any agent from

1. Allowing any other people, in addition to those identified in the profile of occupants, from occupying or residing at the building and
2. Filing any vacancy which arise as a result of any person identified in the profile of occupants vacating the building.

12. ENGAGEMENT WITH OCCUPIERS

1. if a problem building or vacant stand is occupied, the Municipality must serve a compliance notice on the occupiers and affix a copy of the compliance notice at the main entrance of the building or on the vacant stand

- a). the building or vacant stand has been declared a problem building or problematic vacant stand
- b). the owner has been instructed to take specified steps within a period of 30 working days.
- c). continued occupation of the problem building is unsafe and;
- d). the municipality will seek the eviction of the occupiers if the owner fails to comply with the compliance notice.

2. in the event that the owner of a problem building or vacant land which is occupied by resident fails to comply with the compliance notice, the municipality must serve a further notice on the occupiers and affix a copy of the notice at the main entrance to the building or vacant stand.

- a). advising that the owner of the problem building or vacant stand failed to comply with the alternative accommodation
- b). warning that continued occupation of the problem building is not safe
- c). advising that the municipality intends seeking the eviction of the occupiers;
- d). if possible listing the details of alternative accommodation and
- e). providing the contact details of the Directorate to assist the occupiers in finding possible alternative accommodation.

13. EVICTION

where the owner of the problem building or vacant stand failed to comply with a compliance notice, the Municipality may, after having complied with the engagement process contemplated in terms of section 8, apply to court for the eviction of the occupants.

14. UNSAFE USE OF THE PROBLEM BUILDING

1. In the event that the authorized official has a reason to believe that the condition of the building is such that steps should be immediately taken to protect life or property, he or she may take such steps as may be necessary in the circumstances without having to comply with any other provision of this By-law and may recover the costs incurred from the owner.
2. In the event that the authorized official deems it necessary to act in terms of subsection 1 he or she may for the purposes of ensuring the safety, of any person, by notice in writing order-
 - a. The owner of a problem building or vacant stand to-
 - i) Remove, within a period specified in the notice, any person residing in or otherwise occupying such problem building or vacant stand
 - ii) Take reasonable steps to ensure that no person who is not authorized by municipality enters such problem building or vacant stands and
 - b) any person residing in or otherwise occupying a problem building or vacant stand to vacate such problem building or stand.

3. Any person may not enter or continue to occupy, use permit the occupants or use of any problem building in respect of which a notice was served in accordance with subsection 2 unless he or she has been given written permission to do so by the municipality

15. INDEMNITY

The municipality and any authorised official is not 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.

16. LAWFUL INSTRUCTIONS

Failure to comply with a lawful instruction of an authorized official constituted a contravention of this By-law.

17. VACARIOUS LIABILITY

1. The owner of a problem building or vacant stand whose managing agent or tenant, in the case of a tenant who has then power or obligation to sub-let, maintain and manage the building or portion of the building
 - a. Contravenes the provisions of this by-law or of any other by-law in respect of a problem building or vacant stand
 - b. Fails or refuses to comply with a compliance notice issued in terms of this by-law, deemed to have committed such contravention himself or herself, unless the owner can show that he or she took reasonable steps to prevent such contravention: Provided that the fact that:
 - (i) the owner issued instruction to the agent or tenant, prohibiting such contravention or
 - (ii) a written agreement making the agent, tenant, or another third party responsible for compliance, does not in itself constitute sufficient proof of such reasonable steps.
2. The agent of a problem building or vacant stand or tenant in a problem building or vacant stand, in the case of a tenant who has the power of obligation to sub-let, in the case of a tenant who has the power or obligation to sub-let, maintain and manage the building or vacant stand or a portion of the building or vacant stand, is jointly and severally liable with the owner of such building or vacant if the owner-
 - a. Contravenes the provisions of this By-law or of any other applicable law in respect of a problem building or vacant stand
 - b. Fails or refuses to comply with a compliance notice issued in terms of this by-law, unless the agent or tenant can show that he or she took reasonable steps to prevent such contravention.

18. PPESUMPTIONS

A person charged with an offence in terms of this By-law who is-

1. letting a problem building; or
2. acting as a agent in respect of a problem building, is deemed, until the contrary, to have knowingly let or managed a problem building

19. DELEGATIONS

Subject to the Constitution and applicable national and provincial laws any-

1. power, excluding a power referred to in section 160(2) of the Constitution;
2. function; or
3. duty, conferred in this By-law, upon the Council, or on any the Municipality's other political structures, political office bearers, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor, or staff member, to an entity within, or a staff member employed by the Municipality.

A delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of Local Government: Municipality System Act, 2000(Act No.32 of 2000) subject to the criteria set in section 59 (2) of the said Act.

20. RECOVERY OF COSTS

In the event that a person-

- a. Contravenes the provisions of this by-law or of any other applicable law in respect of a problem building or vacant stand
- b. Fails or refuses to comply with a compliance notice issued in terms of this By-law, such person is guilty of an offence and the municipality may take any steps required to remedy the contraventions and recover the costs from such person.

21. OFFENCES AND PENALTIES

- (1) Any person who contravenes any provision, or fails to comply with any notice issued in terms, of this By-law commits an offence.
- (2) Fails or refuses to comply with a compliance notice
- (3) Fails to comply with any lawful instructions given in terms of this by-law;
- (4) Threatens, resists, interferes with or obstructs any authorized officials in the performance of his or her duties or functions in terms of or under this by-law; or
- (5) Deliberately furnishes false or misleading information to an authorized official, is guilty of an offence.

22. PENALTIES

Any person who is convicted of an offence under this by-law is liable to-

1. A fine of an amount not exceeding R100 000
 2. Imprisonment for a period not exceeding three years;
 3. Both such fine and imprisonment contemplated in paragraphs (1) and (2)
- (2) In the case of a continuing offence:
- a) .an additional fine of an amount of R 50 000.00 or
 - b). imprisonment for a period not exceeding ten days for each day on which such offence continued may be imposed.
- (3) In addition to any penalty imposed in terms of subsections (2) and (3), the person so convicted shall be liable to pay the cost of repair of any damage caused or costs incurred in remedying any damage resulting from such an offence.

25. SHORT TITLE

This By-Law shall be called: Rustenburg Local Municipality Problem Building and Vacant Stands By-law 2017 and takes effect from the date of publication thereof in the Provincial Gazette.

APROVED COUNCIL	DATE	BY	
PROMULGATED DATE			