



Emakhazeni Local Municipality

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DRAFT EMAKHAZENI LAND INVASION AND ILLEGAL LAND USE BY LAW, 2021

Prepared for:

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1. PREAMBLE

The Emakhazeni Local Municipality recognizes the right of its residents to life and to be treated with dignity. The Municipality acknowledges its residents right to housing as contained in Clause 25 of the Bill of Rights of the Constitution of the Republic of South Africa, and further admit that such right may be limited as provided for in Clause 36 of the same Bill of Rights. The Municipality will in its efforts and endeavors (together with Department of Human Settlement) of housing and settling its residents in need of housing and accommodation take into cognizance the provision and the spirit of all legislations relevant to housing and land settlements control. The Municipality realizes that, there exists a great need for accommodation amongst its low income group or less fortunate residents, and that land for township development is scarce within its area of jurisdiction. The Municipality will do all in its power to ensure orderly development. This By-Law is underpinned and based on the provision of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act (Act 19 of 1998) and Extension of Tenure Security Act (Act 62 of 1997).

2. DEFINITIONS

In this By-Laws unless the context indicates otherwise;

"Authorised informal settlement" means any informal settlement which is recognized by the Municipality as an authorised informal settlement and which is regarded as a transit camp to house landless people who will be ultimately relocated to a formally established township;

"Building" without in any way limiting its ordinary meaning, includes—

- a) roofed structure;
- b) an external stair, step or landing of a building and a gallery, canopy, balcony, stoop, veranda, terrace, porch or similar feature of a building;
- c) a wall or railing enclosing any feature referred to in paragraph (b); and
- d) any other portion of a building; and a retaining wall or infilling higher than meters;

"Competent authority", in relation to land use, means the authority that is empowered to grant or approve a right to use of land for a specified purpose.

“Consent” means the express or tacit consent, whether in writing or otherwise, of the owner or person in charge to the occupier of the land in question;

“Court” means any division of the High Court or the magistrate's court in whose area of jurisdiction the land in question is situated;

“Eviction” means the permanent removal, in accordance with the provision of a court order, of a person and his or her property from the land on which the illegal structure is constructed, and includes a demolition and removal of any building materials used to construct the structure and “evict” has a corresponding meaning;

“Head of the household” means—

- a) Person in charge of the household;
- b) A single parent, where the household has only one parent with dependants permanently with him or her in the household; and any person in the household who has legal capacity to act and is recognized by the majority of the other persons in the household as the person responsible for the maintenance of the welfare and discipline within the household;

“Land” means any land within the area of Jurisdiction of the Municipality, irrespective of whether such land belongs to the National Government, the Provincial Government (including land under Traditional Authority), the Municipality or a private individual, company or other legal entity;

“Land invasion” means the illegal occupation of land or any settlement without the express or tacit consent of the owner of the land or the person in charge of the land, and without acquiring the necessary rights to settle on or occupy such land from the competent authority;

“Land Invasion Reaction Unit” means a group of officers or workers consisting of any combination of one or more of the following components—

- a) members of the South African Police Services;
- b) members of the staff of the bailiff, sheriff or messenger of the court with jurisdiction in the area;
- c) members of a private security company contractually engaged by the Municipality to perform certain duties on its behalf; and

d) any combination of employees of the Municipality, which group is designated by the Municipality to assist the Authorised Official in the execution of his/her duties and to execute any eviction order contemplated by section 10.3 to terminate an unauthorised informal settlement;

"Municipality" means Emakhazeni Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998;

"Municipal Council" means a municipal council referred to in section 157

"Municipal Manager" means a person appointed on terms of section 54 A (1) of the Constitution;

"Owner" means the registered owner of land, irrespective of whether such owner is the National Government} the Provincial Government, the Municipal or Private individual, company or other legal entity;

"Person in charge" in relation to land, means a person who has the legal authority to give permission to another person to enter or reside on that land;

"Shack" means any temporary shelter, building, hut, tent, dwelling or similar structure which does not comply with the provisions of the National Building Regulations and Building Standards Act, Act 103 of 1977

"Structure" without in any way limiting its ordinary meaning, includes any building, shelter, wall* fence, pillar, tower, pergola, steps, landing, terrace, sign, ornamental architectural feature, swimming pool, fuel pump or underground tank, any building ancillary to service infrastructure provision, and any portion of a structure;

"National Housing Needs Register (NHNR)" is a central database that offers households the opportunity to register their need for adequate shelter by providing information about their current living conditions, household composition & to indicate the type of housing assistance they require from government

"Unauthorised informal settlement" means any settlement which is not recognized by the Municipality as an authorised informal settlement which will be demolished and removed in terms of these

3. APPLICATION OF BY-LAW

This By-law shall apply to all land and informal settlements within the area of

jurisdiction of the Emakhazeni Local Municipality.

4. OBJECTIVES

- 1) To assist the Municipality to manage unlawful occupation and invasion of land and buildings in Emakhazeni Municipality
- 2) To assist municipality to control and manage open spaces, and
- 3) To prevent future unlawful occupation of land and formation of informal settlements

5. LEGAL PROVISIONS

- 1) Emakhazeni Local Municipality acknowledges that it must ensure that all areas under its jurisdiction to develop according to its Integrated Development Plan, Spatial Development Framework and Land Use Scheme.
- 2) The Municipality acknowledges that it has legal and moral obligation to provide alternative accommodation to residents of the informal settlements who have been so residing for more than six (6) months if so required to relocate as provided for by the Prevention of Illegal Eviction from and unlawful Occupation Act 19 of 1998.
- 3) No person has a right to allow, encourage, motivate, organize and/or instigate the occupation of land of whatever nature without an expressed and written consent of Council.
- 4) Where such is concurrent as mentioned above happen, the Municipality reserves the right to take any appropriate legal action to rectify the situation.

6. POWERS AND FUNCTIONS

6.1. Appointment of Authorised Official

The Municipality may appoint or assign one of its officials from the Human Settlements unit to manage and control all informal settlements in accordance with the provisions of this By-law. Where no official is appointed or assigned, the duties contained in this By-law are to be executed by the Office of the Municipal Manager or to whoever is delegated this function.

6.2. Duties of the Authorised Official

In respect to informal settlements, the Authorised Official must -

- 1) Conduct regular surveys to determine the location, origin and extent of and the conditions prevailing in each informal settlement;
- 2) Monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality;
- 3) Undertake and promote liaison and communication with local communities with a view to obtaining their understanding and cooperation regarding the prevention of land invasion in the area of jurisdiction of the municipality;
- 4) Keep a register of all the residents who are entitled to reside in each authorised informal settlement, and in such register the following details must be entered in respect of each structure in each authorised informal settlement—
 - a) the number allocated to the stand or site on which the structure is constructed;
 - b) the names, and identity number of the head of the household who is entitled to occupy the structure;
 - c) the names, identity numbers and relationships to the head of the household of each and every other person occupying the structure as a member of the household;
 - d) the reference number of the municipal file that contains a copy of the contractual agreement in respect of the structure;
 - e) the number of the structure's rental account;
 - f) the number of the structure's municipal services account;
 - g) the previous address of the household that is entitled to occupy the structure; and
 - h) the names, addresses and telephone numbers, if any, of at least two family members of the head of the household who do not live at the same address as the household that is entitled to occupy the structure;
- 5) Ensure that all residents living in an authorised informal settlement are registered in the Municipality's Housing Demand Data Base;
- 6) Submit written report on the control and management of any informal settlement, or the conditions prevailing in the informal settlement* if and when required to do so by the municipality;
- 7) For the purpose of informing residents of informal settlements and all other persons visiting informal settlements, ensure that—
 - a) The contents of these By-laws are communicated to all residents of every informal settlement; and

- b) A copy of these By-laws is posted and maintained in every informal settlement in a prominent place at the venue where the residents' committee contemplated in section 6 usually holds its meeting;
- 8) Allocate to each site or stand in an authorised informal settlement an individual number as the temporary address of the site or stand and must ensure that such number is legibly painted or inscribed in a prominent place on the site or stand;
- 9) Perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.
- 10) The Authorised Official must adopt the necessary preventative measures in order to curb informal settlement.

6.3. Duties of Ward Councillors and Ward Committee Members

- 1) Ward Councillors and Ward Committee Members together with the Authorised Official, must meet on a regular monthly basis, on all matters relating to the authorised informal settlement. After such meetings, it is the sole responsibility of the Ward Councillor and Ward Committee Member to inform the individual residents of matters discussed at the meetings.
- 2) Ward Councillors and ward committee members must report all cases of illegal occupation of land within their wards whether it is municipal property or not, to the authorised official.

6.4. Function of Residents' Committees

- 1) A meeting of residents in each authorised informal settlement must be convened annually on a date and at a venue determined by the Manager: Informal Settlements to elect a residents' committee comprising a chairperson, deputy chairperson, secretary and six ordinary members to represent the views and interests of the residents of the authorised informal settlement in all consultative processes between the Municipality and the residents of the authorised informal settlement.
- 2) A residents' committee contemplated in subsection (1) and the Manager: Informal Settlements, or his or her designated representative, must meet on a regular monthly basis, and at such meetings the Municipality must consult the

residents' committee on all matters relating to the authorised informal settlement and communicate matters of general concern to the residents on a collective basis. After such meetings, it is the sole responsibility of the residents' committee to inform the individual residents of matters discussed at the meetings.

- 3) Special meetings of residents may be convened from time to time by a residents' committee contemplated in subsection (1) to communicate with and inform the individual residents of matters relating to the authorised informal settlement.
- 4) A residents' committee contemplated in subsection (1) must give notice of a meeting of the residents of the authorised informal settlement by placing the notice prominently on the official noticeboard at a venue whose location has been determined by the residents' committee and communicated to the residents at an official meeting of the residents.

7. PROHIBITED CONDUCT

7.1. Prohibited Conduct

- 1) No person may; individually or as part of a group-
 - a) clear any land of any vegetation without prior written consent of the owner
 - b) invade or occupy any land to which he or she does not have lawful
 - c) erect a structure on any land to which he or she does not have lawful title
 - d) continue with the construction of an incomplete structure after a written warning to stop construction was issued by the municipality;
 - e) demarcate or continue to demarcate any piece of land with any form of material including, but not restricted to string, rope, pegs, stones, pebbles, wire, wood or any other material after a written warning to stop any form of demarcation was issued by the municipality;
 - f) move or remove any demarcation or surveying pegs affixed in terms of any law;
 - g) without the written consent of the municipality allow, encourage, motivate, organise or instigate the occupation of any land;
 - h) move furniture into an informal structure in order to defeat the provisions of any law; without the written consent of the municipality
 - i) allow a shack or structure to be unoccupied for more than 3 months;
 - j) erect any additional shack or structure on a site in any existing informal

- settlement or reception area;
- k) lease any additional shack or structure on a site in any existing informal settlement or reception area; access any land for the purposes of grazing and the keeping of farm animals;
 - l) access land in contravention of a sign prohibiting such access;
 - m) occupy a structure on any land to which he or she does not have lawful title;
 - n) sell any land or structure on any land to which he or she does not have lawful title;
or
 - o) Interfere with or obstruct an authorised officer in the execution of his or her duties in terms of this by-law.

7.2. Prohibition of Receipt or Solicitation of Consideration in Respect of Unlawful Occupation of Land

- 1) No person may directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organizing or permitting a person to occupy land without the consent of the owner or person in charge of that land and without the consent of the competent authority.
- 2) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine of not less than R20 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- 3) The court that convicts any person of a contravention of this section must order any money or other consideration which was received by that person and which has been seized to be forfeited and the money and the proceeds of the consideration may be paid to the persons from whom the money or consideration was received, and where such person or persons cannot be positively identified, such money or proceeds of the consideration must be paid into the Municipality's Revenue Account.
- 4) If any money or other consideration has been received in contravention of subsection (1), but has not been seized or made available for purposes of confiscation, the court that convicts a person of a contravention of this section may order the amount proved to the satisfaction of the court to have been received by such person to be paid to the person or persons from

whom the money or consideration was received, and where such person or persons cannot be positively identified, the money or proceeds of the consideration must be paid into the Municipality's Revenue Account. Such order has the effect of a civil judgment and may be executed against such person who received the money or consideration as if it were a civil judgment in favour of the person or persons from whom the money or other consideration was received or in favour of the Municipality.

8. ENFORCEMENT AND CONTROL MEASURES

8.1. Incidents of Land Invasion

- 1) The Authorised Official must, within a period of 24 hours after he or she becomes aware of an incident of land invasion or the existence of a newly established informal settlement, irrespective of whether such informal settlement was established as a consequence of an Incident of land invasion or not—
 - a) Make a determination of the status of the informal settlement as an authorized or an unauthorized informal settlement; and
 - b) Inform the residents of the informal settlement of the status of the informal settlement in accordance with section 5 or section 7, whichever is applicable in the circumstances.
- 2) In the event of the status of an informal settlement completed in subsection (1) being determined as an authorized informal settlement, the Authorised Official must deal with the matter in accordance with the provisions of section 10.4 of this By-law
- 3) In the event of the status of an unauthorized informal settlement, the Authorised Official must deal with the matter in accordance with the provisions of section 10.5 of this Bylaw.

8.2. Management and control of Authorised Informal Settlements

- 1) As soon as a determination of the status of an authorized informal settlement has been made and within the period contemplated in section 10.3 (1) the Authorised Official, personally or through any other Council official designated by the Municipal Manager to assist him or her for that purpose,

visit the informal settlement and notify the residents of the status of the authorized informal settlement in the manner contemplated in section 9 (1) or by means of a letter delivered in the circumstances,

- 2) The Authorised Official must compile a comprehensive register of all the residents who are entitled to reside in the authorized informal settlement contemplated in subsection (1), and the following details must be entered in respect of each structure in the authorized informal settlement—
 - a) the number allocated to the stand or site on which the structure is constructed;
 - b) the name and identity number of the head of the household who is entitled to occupy the structure;
 - c) the names, identity numbers and relationship to the head of the household of each and every other person occupying the structure as a member of the household;
 - d) the reference number of the file of the Authorised Official that contains a copy of the contractual agreement in respect of the structure;
 - e) the number of the structure's rental account;
 - f) the number of the structure 's municipal services account;
 - g) the previous address of the household that is entitled to occupy the structure; and
 - h) the names, address and telephone numbers, if any, of at least two family members of the head of the household that is entitled to occupy the structure
- 3) The Authorised Official must ensure that the names, addresses and other relevant details of all residents living in an authorized informal settlement contemplated in subsection (1) are registered in the Municipality's Housing Demand Data Base.
- 4) The Authorised Official must allocate to each site or stand in an authorized informal settlement contemplated in subsection (1) a unique number as the temporary address of the site or stand and must ensure that the number is legibly painted or inscribed in a prominent place on the site or stand.
- 5) The Authorised Official must ensure that no new unauthorized structures are constructed in the authorized informal settlement contemplated in subsection (1) and that no new unauthorized residents take up residence in the authorized informal settlement by implementing appropriate measure to manage, monitor and control the occupancy of residents in the authorized informal settlement in general.

- 6) Any unauthorized occupancy in an authorized informal settlement contemplated in subsection (1) must be dealt with in accordance with the provisions of section (9.5)
- 7) In respect of an authorized informal settlement contemplated in subsection (1), the Authorised Official must ensure that—
 - a) the Municipality's Finance Department institutes, operates and maintains an appropriate account for services rendered by the Municipality to each registered structure in the authorized informal settlement and for any charges levied for the right of occupation of a particular site or stand in the authorized informal settlement; and
 - b) Such an account is supplied to the head of the household of each registered structure in the authorized informal settlement.

8.3. Termination of Unauthorised Informal Settlements

- 1) As soon as a determination of the status of an unauthorized informal settlement has been made and within the period contemplated in section 9.3 (l), the Authorised Official must, personally or through any official designated—
 - a) Inform residents of a structure in the unauthorized informal settlement that their occupation of the structure and the site or stand on which it is situated is illegal; and
 - b) Visit the informal settlement and notify the residents of the status of the unauthorized settlement by means of a written notice hand-delivered to each structure in the informal settlement.
- 2) The written notice contemplated in subsection (1) must notify the residents of the structure to vacate the structure and remove any building materials and other personal property from the unauthorized informal settlement within a period of 24 hours after receipt of the written notice,
- 3) If the residents notified in terms of subsection (1) cooperate and vacate their structures and remove their building materials and other personal property from the site or stand in the unauthorized informal settlement* the Authorised Official or designated official must take such steps as he or she may deem appropriate to prevent a recurrence of any incident of land invasion or illegal land occupation on that site, stand or unauthorized informal settlement and

must regularly monitor the situation to ensure the non- recurrence of such land invasion or illegal land occupation.

- 4) If the residents notified in terms of subsection (1) fail to cooperate and vacate their structures and remove their building materials and other personal property from the site or stand in the unauthorized informal settlement, the Authorised Official must immediately institute the necessary legal procedures to obtain an eviction order contemplated in subsection (5),
- 5) Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (1), the Authorised Official or designated official must lodge an application in a competent court to obtain an Eviction Order contemplated in section 4, 5 or 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), against any person or persons jointly or severally, occupying or residing in a structure or on a site or stand in the unauthorized informal settlement.
- 6) The Authorised Official, 'within a period of 24 hours after obtaining the eviction order referred to in subsection (5), deploy the Land Invasion Reaction Unit to execute the eviction order and to terminate the unauthorized informal settlement.
 - a) Evicting the residents of the unauthorised informal settlement;
 - b) Demolishing and removing all shacks and removing all building materials and other personal property from the unauthorised informal settlement
 - c) Disposing of the building materials and other personal property in accordance with the provisions of this by-law,
- 7) Any costs incurred by the Authorised Official for the purposes of executing the provision of these By-laws must be borne by the Municipality in accordance with its approved budget.

8.4. Disposal of building materials and personal property

- 1) In the execution of the provisions of section 10.5(6), any building materials and other personal property belonging to a resident or occupier of a structure in an unauthorized informal settlement must be removed and stored in a safe place by the Authorised Official.
- 2) If the building materials and other personal property contemplated in

subsection (1) are not claimed by their owner within a period of three months after the date of the removal and storage, the building materials and personal property must be sold to the best advantage by the Authorized Official, or a person designated by the Municipal Manager who must after deducting the amount of any charges due or any expenses incurred, deposit the net proceeds into the Municipality's Revenue Account, provided subject to the laws governing the administration and distribution of estate, nothing in this subsection contained may deprive the heir of any deceased person of his or her right to the balance of the proceeds of the property; and

- 3) Any building materials or other personal property which is, in the opinion of the Authorized Official, valueless and unable to realize any meaningful amount may be destroyed, abandoned, dumped or otherwise disposed of by the Authorized Official.
- 4) The Authorized Official must compile and maintain a register which records—
 - a) Particulars of all buildings material or other personal property removed and stored in terms of these By-laws;
 - b) The date of the removal and storage of building materials or other personal property in terms of subsection (1) and the name and site or stand number of the owner of the building materials or personal property; and
 - c) the signature or right thumb print of the person who is claiming ownership and to whom delivery of building materials or other personal property has been made; or full details of the amount realized on the sale of the building materials or other personal property in terms of subsection (2) and the date of the sale; and
 - d) If building materials or other personal property has been destroyed, abandoned, dumped or otherwise disposed of in terms of subsection (2), a certificate by the Authorized Official to the effect that the building materials or personal property was valueless.
- 5) Neither the Municipality nor any of its officials acting within the reasonable scope of their authority are liable for any loss of or damage to property or injury to any resident or occupier of a structure in an unauthorized informal settlement or any other person for any reason whatsoever.

9. OFFENCES AND PENALTIES

9.1. Illegal Occupation of Private Land

- 1) Where a private land owner allows or permit the occupation of land for habitation purposes by a group of people who are in his/her employ or not, the Municipality shall insist that its Building Health and Security Regulations be adhered to by the land owner.
- 2) In an instance where a private landowner does not act against illegal occupier of his/her land, the Municipality may act in terms of Section 6 of Act 19 of 1998 to obtain an order for eviction at the cost of the said landowner.

9.2. Contravention and Non-Compliance

- 1) Contravention Notices have to be issued by the Municipal Manager or delegated official. Authority for prosecution or legal action rests with the administration arm of the Municipality, unless delegated authority is given.
- 2) Where Notice has been issued but not obeyed, this is non-compliance and is a contravention. Authority for prosecution or legal action rests with the administration arm of the Municipality, unless delegalized authority is given.
restriction of Liability
- 3) No authorized employee of the municipality shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

10. APPEAL

- 1) FA person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.
- 2) Any person making a decision or exercising a discretion in terms of this bylaw must inform any person affected by such decision or exercise of discretion that he or she has a right to appeal in terms of subsection (1).

11. REPEAL OF LAWS

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

12. SHORT TITLE

This by-law shall be known as the **EMAKHAZENI LAND INVASION AND ILLEGAL LAND USE BY LAW, 2021**

13. DATE OF COMMENCEMENT

This By-law will take effect on the day of publication.

DRAFT