

PROVINCIAL NOTICE

[NO. 194 OF 2011]

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:
PUBLICATION: STANDARD INFORMAL SETTLEMENTS BY-LAW**

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State Province, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), make standard by-laws as set out in the Schedule

SCHEDULE

INFORMAL SETTLEMENTS BY-LAW

DEFINITIONS

1. In this By-law, unless the context otherwise indicates-
 - "authorized informal settlement"** means any informal settlement which is recognized by the Municipality as an authorized informal settlement and which is regarded as a transit camp to house landless people who will be ultimately relocated to a formally established township;
 - "consent"** means the express or implied consent of the owner or person in charge of the occupation of land by a resident of a shack irrespective of whether such consent was given in writing or otherwise;
 - "eviction"** means the permanent removal, in accordance with the provision of a court order, of a person and his or her property from occupation of a shack or the land on which the shack is constructed, and includes a demolition and removal from the land of any building materials used to construct the shack, and "evict" has a corresponding meaning;
 - "head of the household"** means -
 - (a) the father in a household, where the father and mother of the household are legally married;
 - (b) the single parent, where the household has only one parent with dependants living permanently with him or her in the household; or
 - (c) 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;
 - "informal settlement"** means one shack or more constructed on land with or without the consent of the land owner or the person in charge of the land;
 - "land"** means any land within the area of jurisdiction of the Municipality;
 - "land invasion"** means the illegal occupation of land or any settlement or occupation of people on land without the express or tacit consent of the owner of the land or the person in charge of the land, or without any other right to settle on or occupy such land;
 - "Land Invasion Reaction Unit"** means a group of officers or workers which may consist of any combination of one or more of the following components -
 - (a) Members of the South African Police;
 - (b) members of the staff of the 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) employees of the Municipality designated by the Municipal Manager;
 - "Manager: Informal Settlements"** means the official referred to in section 2;
 - "Municipality"** means the Local Municipality established in terms of Section 12 of the 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 or sub-delegated to such political structure, political office bearer, councillor, agent or employee;
 - "owner"** means the registered owner of land;
 - "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, 1977 (Act No. 103 of 1977) and the regulations promulgated under that Act and which is primarily used for residential purposes; and

"unauthorized informal settlement" means any settlement which is not recognized by the Municipality as an authorized informal settlement.

APPOINTMENT OF MANAGER: INFORMAL SETTLEMENTS

2. (1) The Municipality may assign one of its officials as its Manager: Informal Settlements to manage and control all the informal settlements in accordance with the provisions of this By-law.
- (2) In the absence of a Manager: Informal Settlements, the powers and duties of the Manager: Informal Settlements in this By-law must be executed by the Municipal Manager or a delegatee.

DUTIES OF THE MANAGER: INFORMAL SETTLEMENTS

3. The Manager: Informal Settlements must ensure that all development is in accordance with the spatial development framework and integrated development plan, that the process of township establishment is followed in all cases and must and has the power to-
 - (1) determine whether an informal settlement is an authorised or unauthorised informal settlement;
 - (2) conduct regular surveys to determine the location, origin and extent of and the conditions prevailing in each informal settlement;
 - (3) monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality;
 - (4) 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;
 - (5) keep a register of all the residents who are entitled to reside in each authorized informal settlement, and in such register the following details must be entered in respect of each shack in each authorized informal settlement -
 - (a) a unique number allocated to the stand or site on which the shack is constructed;
 - (b) the names, and identity number of the head of the household who is entitled to occupy the shack;
 - (c) the names, identity numbers and relationships to the head of the household of each and every other person occupying the shack as a member of the household;
 - (d) the reference number of the file of the Manager: Informal Settlements that contains a copy of the contractual agreement in respect of the shack;
 - (e) the number of the shack's rental account;
 - (f) the number of the shack's municipal services account;
 - (g) the previous address of the household that is entitled to occupy the shack; 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 shack;
 - (6) ensure that all the residents living in an authorised informal settlement are registered in the Municipality's Housing Waiting List;
 - (7) 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;
 - (8) for the purpose of informing residents of informal settlements and all other persons visiting informal settlements, ensure that-
 - (a) the contents of this By-law is communicated to all the residents of every informal settlement; and
 - (b) a copy of this By-law 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 meetings;
 - (9) 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;
 - (10) perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.

CONSIDERATIONS REGARDING DETERMINATION OF STATUS OF INFORMAL SETTLEMENTS

4. The Manager: Informal Settlements must take into account the following before making any determination on whether an informal settlement is authorised or not:
 - (a) consider applicable legislation;
 - (b) obtain and consider representations of the owner of the relevant land; and
 - (c) obtain and consider representations of residents of the informal settlements.

INCIDENTS OF LAND INVASION

5.
 - (1) The Manager: Informal Settlements 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) commence with the process regarding the 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 6 or section 8, whichever is applicable in the circumstances.
 - (2) In the event of the status of an informal settlement contemplated in subsection (1) being determined as an authorised informal settlement, the Manager: Informal Settlements must deal with the matter in accordance with the provisions of section 6.
 - (3) In the event of the status of an unauthorised informal settlement being determined, the Manager: Informal Settlements must deal with the matter in accordance with the provisions of section 8.

PROCEDURES RELATING TO THE MANAGEMENT AND CONTROL OF AUTHORISED INFORMAL SETTLEMENTS

6.
 - (1) As soon as a determination of the status of an authorised informal settlement has been made, the Manager: Informal Settlements must, personally or through any other 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 7(2) or by means of a letter delivered in the circumstances, whichever way would be more effective in the relevant circumstances.
 - (2) The Manager: Informal Settlements must implement measures to manage, monitor and control the occupancy of residents in the authorized informal settlement in order to prevent the construction of unauthorised shacks in the authorised informal settlement and the taking up of residence by unauthorised residents in the informal settlement.
 - (3) Any unauthorised occupancy in an authorised informal settlement contemplated in subsection (2) must be dealt with in accordance with the provisions of section 7.
 - (4) In respect of an authorised informal settlement contemplated in subsection (1), the Manager: Informal Settlements must inform the Manager: Finance of the Municipality of such settlement and make information contemplated in section 3(5) available to that Manager.
 - (5) The Manager: Finance of the Municipality must –
 - (a) institute, operate and maintain an appropriate account for services rendered by the Municipality to each registered shack in the authorised informal settlement and for any charges levied for the right of occupation of a particular site or stand in the authorised informal settlement, subject to relevant legislation; and
 - (b) ensure that such an account is supplied to the head of the household of each registered shack in the authorised informal settlement, subject to relevant legislation.

RESIDENTS' COMMITTEES

7.
 - (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 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 of a collective basis.
- (3) After meetings contemplated in subsection (2), it is the responsibility of the residents' committee to inform the individual residents of matters discussed at the meetings.
- (4) 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.
- (5) A resident's committee contemplated in subsection (1) must give notice of a meeting of the residents of the authorised informal settlement by placing the notice prominently at a venue whose location has been determined by the residents' committee and communicated to the residents at an official meeting of the residents.
- (6) Notwithstanding the provisions of this section, the Manager: Informal Settlements may call a meeting of residents or attend a meeting called by the residents committee in terms of subsection (4).

PROCEDURES RELATING TO THE TERMINATION OF UNAUTHORISED INFORMAL SETTLEMENTS

8. (1) As soon as a determination of the status of an unauthorised informal settlement has been made, the Manager: Informal Settlements must, personally or through any 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 unauthorised informal settlement by means of a written notice hand-delivered to each shack in the informal settlement.
- (2) The written notice contemplated in subsection (1) must -
 - (a) notify the residents of a shack in the unauthorised informal settlements that their occupation of the shack and the site or stand on which it is situated is illegal; and
 - (b) request the residents of the shack to vacate the shack and remove any building materials and other personal property from the unauthorised informal settlement within a period of 24 hours after receipt of the written notice.
- (3) If the informal settlement is on land that does not belong to the Municipality, a copy of the notice contemplated in subsection (1) must also be delivered to such owner.
- (4) If the residents notified in terms of subsection (1) cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the Manager: Informal Settlements 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 unauthorised informal settlement and must regularly monitor the situation to ensure the non-recurrence of such land invasion or illegal land occupation.
- (5) If the residents notified in terms of subsection (1) fail to cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the Manager: Informal Settlements must immediately institute the necessary legal procedures to obtain an eviction order contemplated in subsection (6).
- (6) Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (1), the Manager: Informal Settlements must commence the process to obtain an eviction order contemplated in 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 shack or on a site or stand in the unauthorised informal settlement.
- (7) The Manager, Informal Settlements must, within a period of 24 hours after obtaining the eviction order referred to in subsection (6), deploy the Land Invasion Reaction Unit to execute the eviction order and to terminate the unauthorised informal settlement.
- (8) Any costs incurred by the Manager: Informal Settlements for the purposes of executing the provision of this By-law must be borne by the Municipality in accordance with its approved budget.

DISPOSAL OF BUILDING MATERIALS AND PERSONAL PROPERTY

9. (1) In the execution of the provisions of section 8(7), any building materials and other personal property belonging to a resident or occupier of a shack in an unauthorized informal settlement must be removed and stored in a safe place by the Manager: Informal Settlements.
- (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, arrangements must be made to sell the building materials and personal property to the best advantage of the Municipality, subject to the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003): Provided that, 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;
- (3) The Manager: Informal Settlement must compile and maintain a register in which is recorded and appears -
- (a) particulars of all building materials or other personal property removed and stored in terms of this By-law;
 - (b) the date of the removal and storage of building materials or 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)
 - (i) 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
 - (ii) 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
 - (iii) 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 Manager: Informal Settlements to the effect that the building materials or personal property was valueless.
- (4) 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 shack in an unauthorized informal settlement or any other person for any reason whatsoever.

APPLICATION OF BY-LAWS

10. These by-laws apply to all informal settlements within the area of the Municipality.

SHORT TITLE

11. These by-laws shall be called the Municipal Informal Settlements By-law, 2011.