

ELIAS MOTSOLEDI LOCAL MUNICIPALITY



BY-LAWS RELATING TO THE MANAGEMENT AND CONTROL OF INFORMAL SETTLEMENTS

1. Application of by-laws

These by-laws apply to all informal settlements located on state & private land.

2. Definitions

In these by-laws, unless the context otherwise indicates –

“authorised informal settlement” means any informal settlement which is recognised by the Municipality as an authorised informal settlement and which will be legalised and upgraded as a formal township in terms of the municipality's existing housing policies;

“assigned municipal officials” means personnel assigned in accordance to Section (3);

“consent” means the express or implied consent of the owner or person in charge to the occupation of land by a resident of a shack, irrespective of whether such consent was given in writing or otherwise;

“contractual agreement” means the contractual agreement entered into between the head of a household and the municipality in terms of which the household is authorised to occupy a shack in an authorised informal settlement;

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

“eviction” means the permanent removal, in accordance with the provisions of a court order, of a person and his or her personal property from occupation of a shack or the land on which the shack is constructed, and includes the 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; and
- (c) any person in the household who has legal capacity to act and is recognised 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 owner of the land or the person in charge of the land;

“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, the municipality or a private individual, company or other legal entity;

“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 in law to settle on or occupy such land;

“municipality” means the Elias Motsoaledi Local Municipality in terms of the provisions of the Local Government: Municipal Structures Act (117 of 1998).

“owner” means the registered owner of land, irrespective of whether such owner is the National Government, the Provincial Government, the municipality or a 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, 1977 (Act 103 of 1977), the regulations promulgated under that Act and the municipality's Building Control By-laws and which is primarily used for residential purposes; and

“unauthorised informal settlement” means any informal settlement which is not recognised by the Municipality as an authorised informal settlement and which will not be legalised and upgraded as a formal township in terms of the Municipality's existing housing policies, but will be demolished and removed in terms of these by-laws.

3. Appointment of officials: Informal Settlements

The municipality must assign official/s for management & control of informal settlements in accordance with the provision of these by-laws.

4. Duties of officials in accordance to Section (3)

Assigned officials as per Section (3) must:

- a) Conduct regular surveys to determine the location, origin and extent of and the conditions prevailing in each informal settlement;
- b) Monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the municipality;
- c) 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;
- d) 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 shack in each authorised informal settlement:
 - i) The number allocated to the stand or site on which the shack is constructed;
 - ii) The name and identity number of the head of the household who is entitled to occupy the shack;
 - iii) 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;
 - iv) The reference number of the file of the assigned municipal officials as per Section (3) that contains a copy of the contractual agreement in respect of the shack;
 - v) The number of the shack's rental account;
 - vi) The number of the shack's municipal services account;
 - vii) The previous address of the household that is entitled to occupy the shack; and
 - viii) 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.

- e) Ensure that all the residents living in an authorised informal settlement are registered in the Municipality's Housing Waiting List;
- f) Submit written reports 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;
- g) For the purpose of informing residents of informal settlements and all other persons visiting informal settlements, ensure that –
 - i) The contents of these by-laws are communicated to all the residents of every informal settlement; and
 - ii) 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 7 usually holds its meetings;
- h) Allocate to each site or stand in an authorised informal settlement a unique 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;
- i) Ensure that no new unauthorised shacks are erected in any informal settlement and that no new unauthorised residents take up residence in such an informal settlement; and
- j) Perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.

5. Incidents of land invasion

- 5.1. Assigned municipal officials as per Section (3) 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 authorised or an unauthorised informal settlement in terms of the Municipality's existing housing policies; and
 - b) Inform the residents of the informal settlement of the status of the informal settlement in accordance with Section 6 or Section 7, whichever is applicable in the circumstances.

- 5.2. In the event of the status of an informal settlement contemplated in Subsection (1) being determined as an authorised informal settlement, the assigned municipal officials as per Section (3) must deal with the matter in accordance with the provisions of Section 6.
- 5.3. In the event of the status of an informal settlement contemplated in Subsection (1) being determined as an unauthorised informal settlement, the assigned municipal officials as per Section (3) must deal with the matter in accordance with the provisions of Section 8.

6. 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 and within the period contemplated in section 5(1), the assigned municipal officials as per Section (3) must personally or through a subordinate official designated by him or her for that purpose, visit the informal settlement and notify the residents of the status of the authorised informal settlement in the manner contemplated in section 7(2) or by means of a letter delivered to each shack in the informal settlement, whichever is appropriate in the circumstances.
- 6.2. Assigned municipal officials as per Section (3) must compile a comprehensive register of all the residents who are entitled to reside in the authorised informal settlement contemplated in Subsection (1), and the following details must be entered in respect of each shack in the authorised informal settlement:
 - a) The number allocated to the stand or site on which the shack is constructed;
 - b) The name 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 assigned municipal officials as per Section (3) must 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.
- 6.3. Assigned municipal officials as per Section (3) must ensure that the names, addresses and other relevant details of all the residents living in an authorised informal settlement contemplated in subsection (1) are registered in the Municipality's Housing Waiting List.
- 6.4. Assigned municipal officials as per Section (3) must allocate to each site or stand in an authorised 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.
- 6.5. Assigned municipal officials as per Section (3) must ensure that no new unauthorised shacks are constructed in the authorised informal settlement contemplated in subsection (1) and that no new unauthorised residents take up residence in the authorised informal settlement by implementing appropriate measures to manage, monitor and control the occupancy of residents in the authorised informal settlement in general.
- 6.6. Any unauthorised occupancy in an authorised informal settlement contemplated in subsection (1) must be dealt with in accordance with the provisions of section 8.
- 6.7. In respect of an authorised informal settlement contemplated in subsection (1), the assigned municipal officials as per Section (3) 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 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; and
 - b) Such an account is supplied to the head of the household of each registered shack in the authorised informal settlement.

7. Residents' Committees

- 7.1. A meeting of residents in each authorised informal settlement must be convened as and when it is deemed fit by the municipality on a date and at a venue

determined by the assigned municipal officials as per Section (3) 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.

- 7.2. A residents' committee contemplated in Subsection (1) and the assigned municipal officials as per Section (3), 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.
- 7.3. 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.
- 7.4. 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 notice-board at a venue whose location has been determined by the residents' committee and communicated to the residents at an official meeting of the residents.

8. 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 and within the period contemplated in section 5(1), the assigned municipal officials as per Section (3) must, personally or through a subordinate official designated by 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 or demarcated site in the informal settlement.
- 8.2. The written notice contemplated in Subsection (1) must –
 - a) Notify the residents of a shack in the unauthorised informal settlement 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.

- 8.3. 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 assigned municipal officials as per Section (3) 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.
- 8.4. 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 Assigned municipal officials as per Section (3) in conjunction with the Legal Advisor must immediately institute the necessary legal procedures to obtain an eviction order contemplated in Subsection (5).
- 8.5. Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (1), the assigned municipal officials as per Section (3) 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 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.
- 8.6. Assigned municipal officials as per Section (3) must, within a period of 24 hours after obtaining the eviction order referred to in Subsection (5), deploy the South African Police Service, EMLM Traffic Unit & relevant General Workers to execute the eviction order to terminate the unauthorised informal settlement by –
- 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; and
 - c) Disposing of the building materials and other personal property in accordance with the provisions of these by-laws.
- 8.7. Any costs incurred by the assigned municipal officials as per Section (3) for the purposes of executing the provisions of these by-laws must be borne by the Municipality in accordance with its approved budget.

9. Disposal of building materials and personal property

- 9.1. In the execution of the provisions of section 8(6), any building materials and other personal property belonging to a resident or occupier of a shack in an unauthorised informal settlement must be removed and stored in a safe place by the assigned municipal officials as per Section (3).
- 9.2. 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 assigned municipal officials as per Section (3), or a person designated by him or her, 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 that –
- a) Subject to the laws governing the administration and distribution of estates, 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
 - b) Any building materials or other personal property which is, in the opinion of the assigned municipal officials as per Section (3), valueless and unable to realise any meaningful amount may be destroyed, abandoned, dumped or otherwise disposed of by the assigned municipal officials as per Section (3).
- 9.3. Assigned municipal officials as per Section (3) 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 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) i) The signature or left 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 realised on the sale of 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 assigned municipal officials as per Section (3) to the effect that the building materials or personal property was valueless.

- 9.4. 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 unauthorised informal settlement or any other person for any reason whatsoever.

10. Prohibition of receipt or solicitation of consideration in respect of unlawful occupation of land

- 10.1. No person may directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of that land.
- 10.2. Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- 10.3. 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 person or 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.
- 10.4. 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.