

# Mafube Local Municipality Draft Informal Settlement By-Laws 2021/22



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## 1. OBJECTIVE

To guide the process followed when Managing, Controlling, Preventing and Regulating authorized and unauthorized Informal Settlements as well as responding to all queries related to informal settlements within area of jurisdiction of Mafube Local Municipality. In addition, the processes followed will be in accordance with the Human Rights Commission guidelines.

## 2. DEFINITIONS

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



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**"Authorized Informal Settlement"** means any informal settlement which is recognized by the Municipality as an authorized informal settlement and which will be legalized and upgraded as a formal township in terms of the Municipality's existing housing policies;

**"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 authorized to occupy a shack in an authorized 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 dependents living permanently with him or her in the household; and (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 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;

**"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 Service; (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 Manager/Officer: Informal Settlements in the execution of his or her duties and to execute any eviction order contemplated by section 5 to terminate an unauthorized informal settlement;

**"Manager/Officer: Informal Settlements"** means the Manager/Officer: Informal Settlements appointed or assigned in terms of section 3 Section 2? It doesn't;



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**"Municipality"** means the Municipality established in terms of the provisions of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes the Council of the Municipality, the Executive Mayor and/or the Mayoral Committee or any other committee established by the Council and any employee or official of the Municipality duly authorized to perform any duty, power or function in terms of this by-law;

**"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-law and which is primarily used for residential purposes;

**"Unlawful Occupier"** a person that occupies the land without the express or tacit consent of the owner in charge or without any other legal right to occupy such piece of land; and

**"Unauthorized Informal Settlement"** means any informal settlement which is not recognized by the Municipality as an authorized informal settlement and which will not be legalized and upgraded as a formal township in terms of the Municipality's existing housing policies, but will be demolished and removed in terms of this by-law.

### 3. LEGISLATIONS

Key legislations guiding the development of this by- law include but not limited to:

- The Constitution of the Republic of South Africa, Act 108 /1998
- National Building Regulations and Building Standard Act 103/ 1977
- Health Act 63/1977
- National Environmental Management Act 107/1998
- Prevention of Illegal Eviction from and Unlawful Occupation of Land (PIE) Act 19/1998
- Restitution of Land Rights Act 22 of 1994
- Housing Act 107/1997 plus Housing Amendment Act 4/2001
- National Housing Code, 2009
- Land Tittles Adjustment 111/1993
- Distribution and Transfer of Certain Land Act 119/1993
- Upgrading of Tenure Rights 112/1991
- Interim Protection of informal Land Rights 31/1966
- Extension of Security of Tenure Act 62/1997
- National Housing Consumer Prevention Measures Act 95/1998
- Spatial Planning and Land Use Management Act 16/2013
- Disaster Management Act 57/2002



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Key Policies and Programmes guiding the development of this by-law include but not limited to:

- Emergency Housing
- Upgrading of Informal Settlement Programme
- Relocation and Resettlement Plan
- Bucket Eradication Programme
- Rental housing for the poor
- Comprehensive Housing Plan
- Integrated Residential Development Programme

#### 4. APPOINTMENT OF HOUSING / HUMAN SETTLEMENT MANAGER

(1) The Municipality must appoint a Human Settlement Manager/Officer or assign one of its officials in line with the municipality's organizational structure to manage and control all the informal settlements in accordance with the provisions of this by-law.

(2) In the absence of a Manager: Community Development, the powers and duties of the Manager: Community Development in this By-law must be executed by the Housing / Human Settlement Official or a delegate.

#### 5. DUTIES WITHIN INFORMAL SETTLEMENTS SUB-DIRECTORATE

(1) The Informal Settlements Sub-directorate must ensure that all developments are 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:

- i) determine, in consultation with his/her superiors, whether an informal settlement is a recognized or unrecognized informal settlement;
- ii) conduct regular surveys to determine the location, origin and extent of and the conditions prevailing in each informal settlement
- iii) determine primary reasons for the settlement of residents in informal settlements through qualitative research method
- iv) monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality;
- v) 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;
- vi) 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 structure is constructed;



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- (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 file of the Informal Settlements Sub-directorate 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;
- vii) ensure that all the residents living in a recognized informal settlement are registered in the Municipality's Housing Waiting List;
- viii) 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;
- ix) 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 Ward Committee usually holds its meetings;
- x) allocate to each site or stand in an recognized 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;
- xi) perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.
- xii) Collaboration with Home Affairs and SAPS for the verification of citizens

## 6. CONSIDERATIONS REGARDING DETERMINATION OF STATUS OF INFORMAL SETTLEMENTS

(1) The Informal Settlements Sub-directorate must take into account the following before making any determination whether an informal settlement is authorized or not:

- (i) existing and applicable municipality's policies;



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- (ii) applicable relevant pieces of legislation;
- (iii) municipality's land audit on informal settlements;
- (iv) representations of the owner of the relevant land; and
- (v) representations of residents of the informal settlements.
- (vi) establishment of a task team

## 7. INCIDENTS OF LAND INVASION

(1) The Informal Settlements Sub-directorate must, within a period of 24 hours after becoming 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-

- (i) commence with the process regarding the determination of the status of the informal settlement as an authorized or an unauthorized informal settlement; and
- (ii) inform the residents of the informal settlement of the status of the informal settlement in accordance with section 8 or section 10, whichever is applicable in the circumstances.

(2) In the event of the status of an informal settlement contemplated in subsection (4) being determined as an authorized informal settlement, the Informal Settlements Sub-directorate must deal with the matter in accordance with the provisions of section (8). In the event of the status of an unauthorized informal settlement being determined, the Informal Settlements Sub-directorate must deal with the matter in accordance with the provisions of section (10).

## 8. PROCEDURES RELATING TO THE MANAGEMENT AND MONITORING OF RECOGNISED INFORMAL SETTLEMENTS

(1) As soon as a determination of the status of an Authorized informal settlement has been made, the Informal Settlements Sub-directorate must, together with the Ward Committee or the Ward Councilor, visit the informal settlement and notify the residents of the status of the authorized informal settlement by means of holding community meetings in the area.

(2) The Informal Settlements Sub-directorate must implement measures to manage and monitor the occupancy of residents in the settlement area in order to prevent the construction of unauthorized structures in the authorized informal settlement and the taking up of residence by unrecognized residents in the informal settlement.

(3) Any unlawful occupancy in the authorized informal settlement contemplated in subsection (8.2) must be dealt with in accordance with the provisions of section 10.

(4) In respect of a recognized informal settlement contemplated in subsection (8.2), the Informal Settlements Sub-directorate must, as and when required, inform the Finance Department of the Municipality of such settlement and make information contemplated in section (8.5) available to that Department.



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(5) The Finance Department of the Municipality must –

(i) institute, operate and maintain an appropriate account for services rendered by the Municipality to each registered shack 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, subject to relevant legislation; and

(ii) ensure that such an account is supplied to the head of the household of each registered shack in the authorized informal settlement, subject to relevant legislation.

## 9. WARD COMMITTEE'S ROLE

(1) A Ward Committee, of which a Ward Councillor is a chairperson, and the Informal Settlements Sub-directorate, should meet on a quarterly basis, and at such meetings the Informal Settlements Sub-directorate should provide progress reports on all matters relating to the recognized informal settlement and communicate matters of general concern to the Ward Committee.

(2) Special public meetings of residents may be convened from time to time by the Ward Committee to communicate with and inform the residents of matters relating to the informal settlement

(3) Notwithstanding the provisions of sub-sections (1) & (2) above, the Ward Councilor may, in terms of this sub-section, call a community meeting of residents to inform them of matters concerning the informal settlement

## 9. PROCEDURES RELATING TO THE TERMINATION OF UNAUTHORIZED INFORMAL SETTLEMENTS

(1) As soon as a determination of the status of an informal settlement has been made, the Informal Settlements Sub-directorate must together with the Ward Committee or the Ward Councillor visit the informal settlement and notify the residents of the status of the informal settlement by means of holding community meetings in the area.

(2) If the informal settlement is on land that does not belong to the Municipality, a copy of the notice contemplated in subsection (8.1) must also be delivered to such owner.

(3) If the residents notified in terms of subsection (8.1) cooperate and vacate their structure and remove their structural materials and other personal property from the site or stand in the unrecognized informal settlement, the Informal Settlements Sub-directorate 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 (8.1) fail to cooperate and vacate their structures and remove their structural materials and other personal property from the site or stand in the informal settlement, the Informal Settlements Sub-directorate must immediately institute the necessary legal procedures to obtain an eviction order contemplated in subsection (8.5).



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(5) Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (8.1), the Informal Settlements Sub-directorate 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 structure or on a site or stand in the informal settlement.

(6) The Informal Settlements Sub-directorate must, within a period of 24 hours after obtaining the eviction order referred to in subsection (8.5), deploy the Land Invasion Reaction Unit to execute the eviction order and to terminate the unrecognized informal settlement.

## 10. LIABILITY

(1) 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 unrecognized informal settlement or any other person for any reason whatsoever.

## 11. LITIGATION

The Municipality will attach a court interdict to the adopted Spatial Development Framework to prevent land invasions and litigation processes.

## 12. OFFENCES

(1) Any person who incites, assists and/or abets persons to occupy land unlawfully shall be guilty of an offence.

(2) Any person who directly or indirectly receives or solicits 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 shall be guilty of an offence.

(3) Any person who wilfully or in a grossly negligent manner hinders or obstructs Informal Settlements Sub-directorate Officials, Ward Councilor, Ward Committee, Land Invasion Reaction Unit or any other official of the Municipality in the execution of their duties in terms of this by-law shall be guilty of an offence.

## 13. PENALTIES

(1) Any person found guilty of an offence in terms of the provisions of section 10(1) and (2) shall be liable to a fine, not exceeding R1 500, 00 or three (3) months imprisonment or both such fine and imprisonment.

(2) Any person found guilty of an offence in terms of the provisions of section (10.2) shall be liable to:

(i) Refund 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.



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(ii) If any money or other consideration has been received in contravention of subsection (10.2), 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.

(iii) 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 favor of the person or persons from whom the money or other consideration was received or in favor of the Municipality

#### 14. APPLICATION OF BY-LAW

(1) This by-law applies to all informal settlements within the area of jurisdiction of Mafube Local Municipality.

#### 15. SHORT TITLE

(1) This by-law shall be called Mafube Municipal Informal Settlement By-Law,2020 and shall come into effect from \_\_\_\_\_



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