

UNLAWFUL LAND OCCUPATION BY-LAW, 2022



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PREAMBLE

WHEREAS section 156(2) of the Constitution of the Republic of South Africa, 1996 confers on municipalities the competence to make and administer by-laws in respect of local government matters set out in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution.

WHEREAS Part B of Schedule 4 of the Constitution confers on municipalities the competences in respect of building regulations, municipal planning and municipal health services.

WHEREAS the George Municipality seeks to prevent the unlawful occupation of land and buildings while being cognizant of the requirement in section 26(3) of the Constitution that no one may be evicted from their home or have their home demolished without an order of court;

THE COUNCIL OF GEORGE MUNICIPALITY hereby enacts the following by-law:

CHAPTER 1

INTERPRETATION, APPLICATION AND OBJECTS

1. Definitions

In this by-Law, unless the context indicates otherwise:

“Authorised official” means an employee of the George Municipality responsible for carrying out any duty or function or exercising any power in terms of this By-law and includes-

- (a) Member of the South African Police Services established in terms of section 65A of the South African Police Services Act, 1995 (Act No. 68 of 1995);
- (b) A traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996 (Act 93 of 1996);
- (c) A law enforcement officer declared to be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and
- (d) Any other employee delegated, or person authorised to carry out or exercise the duty, function or power;

“Boundary” in relation to land, means a line prescribed in any town planning scheme or any other law designating the boundaries of the particular piece of land, outside of which the erection of any building is prohibited;

“Consent” means the express or implied consent by the owner person in charge of occupied land by an occupant of a structure irrespective of whether such consent was given in writing or otherwise;

“Eviction” means the permanent removal and deprivation of a person in occupation of a building or structure, or the land on which such building or structure is erected, against his or her will, in accordance with the provision of a court order and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No 19 of 1998, hereinafter referred to as the PIE Act, and **“evict”** shall have a corresponding meaning;

“Land” means any and all land within the area of jurisdiction of the Municipality, irrespective of who owns, or is in charge of the land or building or any portion of land or building, and **“Premises”** shall have a corresponding meaning;

“Landowner” means the registered owner of land, including an organ of state and includes any person in charge of that land or building, and **“Owner of land”** will have a corresponding meaning;

“Municipality” means the George Municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) (Municipal Demarcation Code WC044) whose registered office is at 71 York Street, George, Western Cape, or any structure or employee of the Municipality acting in terms of delegated authority;

“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, as defined in section 1 of the PIE Act;

“recognized informal settlements” are informal settlements that are registered with the George Municipality;

“structure” includes any shelter, hut, tent, dwelling, and/or building intended to be occupied as a home.

“Unlawful occupation” means the illegal occupation or trespassing of the land or any settlement or occupation of land by people 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”** and **“informal settlements”** shall have a corresponding meaning

2. Application

This by-law applies to all land and buildings within the jurisdiction of the Municipality.

3. Identification of land for managed settlements

- (1) The Municipality must, within its available resources and in accordance with section 26(2) of the Constitution, its Human Settlements Strategy, its Unlawful Occupation of Land Framework, its Spatial Development Frameworks, and other policies, identify land for the purposes of establishing managed settlements with the purpose, amongst others, to settle those who have been prevented from, or evicted for unlawfully occupying, land in terms of this Bylaw.
- (2) In establishing a managed settlements contemplated in subsection (1) the Municipality must –
 - (a) Maintain a database of all recognized informal settlements;
 - (b) Provide basic service infrastructure in accordance with national norms and standards and as determined by financial means;
 - (c) Demarcate sites on the land in close proximity to that infrastructure;
 - (d) Allocate a unique address in respect of that site;
 - (e) Ensure that the site address is legibly painted or inscribed in a prominent place on the site; and
 - (f) Record the name, identity number and contact details of the head of the household and the number of persons residing in the structure.

4. Determination whether to provide interim or emergency basic services to unlawful occupants

- (1) When faced with the unlawful occupation of land, the Municipality may, within its available resources, determine whether unlawful occupants of land are to be provided with interim or emergency basic services on the land they have occupied.
- (2) If the Municipality makes a determination that an informal settlement created in terms of subsection (1) is –
 - (a) To be provided with interim or emergency basic services, section 5 applies;
 - (b) Not to be provided those services, section 6 applies
- (3) Nothing in this section affects those informal settlements that the Municipality has recognized as informal settlements, has provided basic services or has planned to do so.

5. Provision of interim or emergency services to unlawful occupants

- (1) If a determination is made in terms of section 4(1) that the unlawful occupants are to be provided with interim or emergency basic services, an authorised official must inform the occupants, in a language that they understand, that such services will be provided as and when available resources permit.
- (2) An authorised official must ensure that the names and other relevant details of the household heads of the occupants are registered on the Municipality’s Housing Needs Register;
- (3) Subject to the Municipality’s Credit Control and Debt Collection Policy, the Rates Policy, the Tariff Policy and the National Policies on Free Basic Services, and other related policies, the Municipality may institute, operate, and maintain an account for –
 - (a) The rent or levy charged for occupation of the site on which the structure is built to be delivered to the head of the household of the structure; and
 - (b) The services rendered to the structure.

6. Voluntary relocation of unlawful occupants

- (1) If the Municipality has determined in terms of section 4(2)(b) that an informal settlement is not to be provided with interim or emergency basic services, an authorised officer must inform the occupants, in writing, in a language that they understand, that such services will not be provided.
- (2) The written notice referred to in subsection (1) must contain the following:
 - (a) The reasons why the informal settlement is not to be provided with emergency relief services;
 - (b) Inform the occupants of the settlement, in writing, in a language that they understand, that their continued occupation is unlawful;
 - (c) Require the occupants to remove their structures within a stipulated period, which must be reasonable, and vacate the land on which the settlement has been established; and

- (d) Inform the occupants of the option of settlement in terms of the Municipality's managed settlement programme, if available, and any support that the Municipality may give in transporting their possessions including the materials used to build the structure.
- (3) If an occupant agrees to comply with the requirement in subsection (2)(c) and (d), an authorised official must ensure that –
 - (a) The occupant is provided with transport; and
 - (b) The occupant is placed on the Municipality's Needs Register
- (4) If an occupant refuses or fails to comply with the requirements in subsection (2) within the stipulated period, the Municipality shall initiate eviction proceedings in accordance with the PIE Act.

CHAPTER 3

UNLAWFUL OCCUPATION

7. Identifying and monitoring land prone to unlawful occupation

- (1) The Municipality must –
 - (a) Identify land in its jurisdiction that it reasonably considers may be prone to unlawful occupation taking into account its location, terrain, and previous attempts to occupy it;
 - (b) Continuously monitor land in its jurisdiction with a view to –
 - (i) Identify additional land that may be prone to unlawful occupation; and
 - (ii) Detect signs of a potential unlawful occupation; and
 - (c) Keep a register of the identified land and the details of its owners

8. Steps to prevent unlawful occupation on identified land

- (1) If the Municipality is not the owner of the identified land, an authorised official must –
 - (a) Notify the owner that the land has been identified as land prone to unlawful occupation in terms of section 7(a);
 - (b) Require the owner within a reasonable period stipulated in the notice to take appropriate measures to prevent the unlawful occupation of the land which may include –
 - (i) Fencing the land if it is not land to which the public do not have access and erecting signage prohibiting unauthorized entry and occupation; and
 - (ii) Placing appropriately placed signage prohibiting occupation on land to which the public have access.

- (2) Subject to available funds and the Municipality's Credit Control and Debt Collection Policy and the Credit Control and Debt Collection By-law, the Municipality may, at the owner's cost, fence the land and place the signage contemplated in the subsection, if an owner contemplated in subsection (2) fails or refuses to comply with a requirement contemplated in subsection (2)(b) within the stipulated period

9. Responding to unlawful occupation on land under the control of the Municipality

- (1) If the Municipality is informed of an ongoing imminent unlawful occupation on land under its control and jurisdiction, it must –
 - (a) Take the necessary steps to prevent persons' intent on occupying the land unlawfully from entering the land, which may include closing the roads surrounding the land to be, or being, unlawfully occupied in order to prevent vehicles transporting persons carrying their possessions or building materials for the construction of structures from entering the area;
 - (b) Immediately inform the intended occupiers that their intended occupation of the land is unlawful and serve them with a written instruction to –
 - (i) Not to enter the land; or
 - (ii) If they have entered the land, to dismantle any structure and to leave the land with their building materials and possessions.
- (2) If an intended occupier refuses or fails to comply with an instruction given under subsection (1)(b), the authorised official may –
 - (a) Arrest the occupier for committing an offense in terms of this By-law or other applicable legislation; and
 - (b) Dismantle the structure and impound the intended occupier's building materials and possessions, if the structure is –
 - (i) on land under the Municipality's control;
 - (ii) on a public thoroughfare or other public land.
- (3) If an unlawful occupier has established a structure is capable of constituting a home and fails or refuses to comply with an order given under subsection (1)(b), the Municipality must initiate eviction proceedings in accordance with the PIE Act.
- (4) If the intended occupier is not identifiable and, after taking all reasonable steps to identify who the intended occupier is or who the owner of the building materials and possessions is, the authorised official may impound such materials and place a notice in a prominent place at the entrance or boundary of the land indicating the place at which any owner of the materials and possessions impounded under this section may, upon proof of ownership and payment of any fee, recover the goods .
- (5) In taking any of these steps contemplated in this section –
 - (a) Every authorised official must-
 - (i) Exercise their powers reasonably with due regard to every person's fundamental rights under Chapter 2 of the Constitution;

- (6) The authorised official in charge must exercise their duty of care by intervening and taking the necessary steps to curtail and unreasonable exercise of powers or disproportionate use of force by any official under their command.
- (7) The Municipality must keep a record of unlawful occupants and include the details in a register including the names and details of the persons and possessions removed.

10. Obligations of owners other than the Municipality in responding to unlawful occupation

- (1) A Landowner has a duty to—
 - (a) Immediately inform the Municipality of any intended or executed unlawful occupation of their land and the measures taken to prevent the illegal and unauthorized occupation on the owner’s land, within 4 hours of becoming aware of the unlawful occupation and/or land invasion.
 - (b) Fence land which the municipality has identified as a hotspot for unlawful occupation and/or land invasion within 24 hours of being informed to do so by the municipality.
 - (c) Bring to the attention of the municipality of any eviction proceedings the owner intends to bring against an unlawful occupier of land.
- (2) A Landowner may not unreasonably withhold consent sought by the municipality to institute evicting proceedings against occupiers who have taken unlawful occupation of land and/or invaded same.
- (3) If the Municipality is informed of an intended or executed unlawful occupation, it must—
 - (a) Require the owner to take the necessary measures to prevent the occupation; or
 - (b) With the consent of the owner, take the necessary measures set out in section 9 on the owner’s behalf and at the owner’s expense.
- (4) Should private land have been invaded by illegal occupiers prior to the promulgation of this by-law, the owner must take steps to—
 - (a) Survey the total number of structures;
 - (b) Survey the total number of persons occupying the property;
 - (c) Indicate on a site plan the location of the structures;
 - (d) Indicate services available on the property;
 - (e) Take steps to provide basic services at the national norms and standards; and
 - (f) Take steps to prohibit any further occupation of the property, including—
 - i. Monthly surveys of the number of structures and persons occupying the property; and
 - ii. Photographic or videographic footage of the occupied area.
- (5) The Municipality may seek a court order permitting it to take the measures contemplated in subsections (2) and (3) if-

- (a) It is in the public interest; and
- (b) The owner fails or refuses to-
 - (i) Take the necessary measures contemplated in subsection (3)(a); or
 - (ii) Give the consent contemplated in subsection (3)(b).

CHAPTER 4

PROHIBITED CONDUCT

11. Prohibited conduct

- (1) No person may contravene or fail to comply with any provision of this By-law or disobey any instruction or compliance order by an authorised official enforcing this By-law.
- (2) No person may –
 - (a) Instigate or organize the unlawful occupation of land;
 - (b) Occupy land unlawfully;
 - (c) Assist, instigate and/or organise another, directly or indirectly another to occupy land unlawfully or invade it;
 - (d) Clear or prepare land, with the intention of occupying it, by removing vegetation or by any other means;
 - (e) Remove or damage a sign put up in managed settlement;
 - (f) Remove or damage a sign put up on land that is owned by the Municipality
 - (g) Remove or damage survey pegs installed by the Municipality
 - (h) Demarcate or mark any land with the purpose of allocating it to unlawful occupiers;
 - (i) Solicit payment for arranging or organizing a person to occupy land without the consent of the owner of the land;
 - (j) Sell or purport to sell land and or structures on land that is or is intended to be invaded;
 - (k) Lease or purport to lease land or structures on land that is or is intended to be invaded;
 - (l) Transport persons, building materials and personal possessions for the purpose of an unlawful occupation;
 - (m) Refuse to disclose his or her details when asked by an official of the municipality, if that person is occupying land unlawfully or has invaded it;
 - (n) Remove any fence, sign, marking placed by the municipality or owner (under the direction of the municipality), on land;
 - (o) Erect or occupy a structure on land without the consent of the owner; or
 - (p) Interfere or obstruct an authorised officials in preventing the erection or dismantling of a structure or the removal of the building materials and personal possessions of an unlawful occupier of land.

- (3) Any vehicle driven in contravention of this By-law-

- (a) Is deemed for the purpose of this By-law to have been driven, in the absence of evidence to the contrary-
 - (i) On the instruction or with the consent of the owner; or
 - (ii) By the owner, if a natural person; and
- (b) May be impounded in terms of Chapter 6 together with the building materials and possessions conveyed in the vehicle.

CHAPTER 6

GENERAL

11. Impoundment

- (1) Subject to the subsection (2), building materials and personal possessions impounded in terms of section 9(4) or vehicles impounded in terms of section 11(4)(b) must be stored, returned or disposed on in terms of the Municipality's Standard Operating Procedure on the Impoundment of Goods and Animals and the Municipality's impoundment policies.
- (2) Impounded building materials, possessions or vehicles must be released -
 - (a) If charges are not laid within 7 days of impoundment;
 - (b) If the charges are withdrawn;
 - (c) On payment of an admission of guilt fine;
 - (d) On payment of impoundment costs incurred by the Municipality; or
 - (e) By an order of court
- (3) Impounded building materials and possessions under the By-law are forfeited to the Municipality if-
 - (a) A court orders the forfeiture;
 - (b) The owner of the materials and possessions cannot be determined after-
 - (i) Posting a notice in a prominent place at the entrance or boundary of the land; or
 - (ii) Three months from the date of impoundment; or
 - (iii) Reasonable efforts have been taken to determine through publication and other means who the owner is.
 - (c) The owner of the materials and possessions has been convicted and not paid the fines imposed and the impoundment fees within 3 months of conviction
- (4) An impounded vehicle under this By-law is forfeited to the Municipality if a court orders the forfeiture.
- (5) If any impounded materials, possessions or vehicle are to be forfeited, the Municipality-
 - (a) May sell or destroy them; and
 - (b) If sold, must apply any net proceeds from the sale as follows and in this order:

- (i) The recovery of costs incurred by the Municipality as a result of the impoundment and forfeiture;
 - (ii) The payment of the impoundment fee and any fine imposed in terms of section 6(2); and thereafter;
 - (iii) The balance of the proceeds will be forfeited to the Municipality.
- (6) If the owner of the materials, possessions or vehicle fails to claim the proceeds derived from any sale contemplated in subsection (5) within one month from the date of the sale, the proceeds will be forfeited to the Municipality.

12. Power to search and seize

- (1) An authorised official may, without a search warrant, search any person, vehicle, or structure for the purpose of seizing any article which is, or is on reasonable grounds believed to be, concerned with the commission of an offence in terms of this By-law if –
- (a) The person consents to the search;
 - (b) The person does not consent, the official, on reasonable grounds believes-
 - (i) That a search warrant will be issued under paragraph (a) of section 21(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) if application is made for a warrant; and
 - (ii) That the delay in obtaining a warrant would defeat the object of the search; or
 - (c) In terms of Section 23 of the Criminal Procedure Act, 1977 (Act 51 of 1977)
- (2) A search of any person must be conducted with strict regard to decency and order provided that –
- (a) A woman may only be searched by a woman;
 - (b) If no female authorised official is available, the search may be made by any woman designated for that purpose by an authorised official
- (3) The authorised official may seize anything found as a result of the search referred to in subsection (1) which-
- (a) Is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence in terms of this By-law;
 - (b) May afford evidence of the commission or suspected commission of such an offence;
 - (c) Is intended to be used or is on reasonable grounds believed to be used in the commission of such an offence.

13. Indemnity

Neither the Municipality nor any authorised official is liable for any damages in respect of anything done, or omitted, in the reasonable exercising of any power or carrying out any function in terms of this By-law.

14. Offences and penalties

A person who contravenes a provision of this by-law, is guilty of an offence and on conviction liable to the payment of a fine or to imprisonment.

15. Short title

This By-law is called the George Municipality: Unlawful Land Occupation By-law, 2022, and shall come into operation on the date of publication in the Provincial Gazette.