



## **UNLAWFUL LAND OCCUPATION OF LAND BYLAW**

### **GEORGE MUNICIPALITY**

**BY-LAW: UNLAWFUL LAND OCCUPATION OF LAND**

To provide for the prevention of, and response to, unlawful land occupation; and to provide for matters connected therewith.

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## CHAPTER 1: INTERPRETATION, APPLICATION AND OBJECTS

### 1. Definitions

(1) In this By-law, unless the context indicates otherwise:

**“consent”** means the express or implied consent by, the owner or person in charge of the occupied land, 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, and “evict” shall have a corresponding meaning;

**“informal settlement”** means one or more structures 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 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;

**“law enforcement official”** means an employee of the Municipality responsible for carrying out any duty or function or exercising any power in terms of this By-law and declared to be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

**“Municipality”** means the George Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or any structure or employee of the Municipality acting in terms of delegated authority;

**“land owner”** means the registered owner of land, including an organ of state and includes any person in charge of that land or building;

**“official”** means any person who is employed or is contracted by the municipality.

**“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;

**“structure”** 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; includes any shelter, hut, tent, dwelling, structure intended to be occupied as a home; and

**“unlawful land occupation”** means the illegal occupation of land or any settlement or occupation of people on land without the express or tacit consent of the land owner or the person in charge of the land, or without any other right in law to settle on or occupy such land.

## **2. Application**

- (1) The provisions of this By-law apply to all properties within the jurisdictional geographical area of the Municipality, including properties owned by the State.
- (2) This By-law binds every owner, their successor-in-title and every occupier of a property(ies).

## **CHAPTER 2: UNLAWFUL LAND OCCUPATION**

### **3. Identifying and monitoring of land prone to unlawful occupation**

- (1) The Municipality must –
  - (a) identify land in its jurisdiction which, in its reasonable discretion, 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) identifying additional land that may be prone to unlawful occupation; and

- (ii) detecting signs of a potential unlawful occupation; and
  - (c) keep a register of the identified land and the details of the land owner(s).
- (2) The following criteria must be used to identify land prone to unlawful occupation, and includes:
  - (a) Areas that have recently been identified as a future development area;
  - (b) Land that has recently been obtained by the State or Municipality;
  - (c) Privately owned land, which has been vacant for a substantial amount of time.
  - (d) Land where people will be relocated to on a transitional basis in aid of the incremental land use management system;
  - (e) Strategically located land earmarked for significant future development; and
  - (f) Land that has been purchased by the Municipality, Housing Development Agency and or any other Government agency for the purpose of 'banking' it for future low income and/or integrated settlement development.

**4. 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) issue a notice in which the land owner is notified that such land has been identified as being prone to unlawful occupation in terms of section 7(a);
  - (b) require that the landowner, within a reasonable period stipulated in the notice, take appropriate measures to prevent the unlawful occupation of the land, which may include –

- (i) in relation to land where the public is not permitted, to fence the land and erecting signage prohibiting unauthorised entry and occupation;
  - (ii) in relation to land which the public has access to, by erecting appropriately placed signage prohibiting occupation ;
  - (iii) the arrangement for regular patrols to be undertaken;
  - (iv) recordal of informal settlers , on a regular basis, to be able to readily ascertain when new informal settlers have been established on the land., ;
- (2) Subject to the Municipality's Credit Control and Debt Collection Policy and the Credit Control and Debt Collection By-law 2006, if an owner contemplated in subsection (2) fails or refuses to comply with a requirement contemplated in subsection (2)(b) within the stipulated period, the Municipality may, at the owner's cost, fence the land and place the signage contemplated in the subsection (2).

### **CHAPTER 3: PRIVATE LAND OWNERS AND PROHIBITIONS**

#### **5. Obligations of private land owners in responding to unlawful land occupation**

- (1) A private land owner must immediately inform the Municipality of any intended or executed unauthorised occupation of their land and the measures taken to prevent such occupation.
- (2) If the Municipality is informed of an intended or executed unauthorised land occupation, it must-
  - (a) require the private land owner to take the necessary measures to prevent any further or subsequent unauthorised 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.

- (3) The Municipality may seek a court order permitting it to take the measures contemplated in subsection (2) if –
- (a) it is in the public interest; and
  - (b) the owner fails or refuses to take the necessary measures contemplated in subsection (2)(a);
- (4) A private land owner has a duty to–
- (a) take the necessary security measures on land which the Municipality has identified as a hotspot for unlawful occupation within 48 (forty eight) hours of being informed to do so by the Municipality.
  - (b) bring to the attention of the Municipality of any eviction proceedings they intend to bring against an unlawful occupier of land.
- (5) A landowner may not unreasonably withhold consent sought by the Municipality to institute evicting proceedings against unlawful occupiers who have taken unauthorised occupation of land.

## **6. Prohibited conduct**

- (1) No person may –
- (a) occupy land unlawfully;
  - (b) instigate or organise the unlawful occupation of land;
  - (c) permit another to occupy or trespass on land with the intention to reside thereon unlawfully;
  - (c) assist another, directly or indirectly to occupy land unlawfully;
  - (d) mark or demarcate with the intention to occupy the land unlawfully;
  - (d) clear land, with the intention of occupying it, by removing vegetation or by any other means;
  - (e) remove or damage a sign erected in a managed settlement;

- (f) remove or damage a sign erected on land that is not owned by the Municipality;
  - (g) remove or damage survey pegs installed by the Municipality;
  - (h) remove any fence, sign or marking placed by the Municipality or owner on such land
  - (i) demarcate any land with the purpose of allocating it to unlawful occupiers;
  - (j) solicit payment for arranging or organising for a person to occupy land without the consent of the owner of the land;
  - (k) sell or purport to sell land or structures on land that is or is intended to be occupied;
  - (l) lease or purport to lease land or structures on land that is or is intended to be occupied;
  - (m) transport persons, building materials and personal possessions for the purpose of an unlawful occupation;
  - (n) erect or occupy a structure on land without the consent of the owner;
  - (o) refuse to disclose his or her details when asked by an authorised official of the municipality, if that person is occupying land unlawfully; or
  - (p) interfere or obstruct an authorised official 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.
- (2) Any vehicle utilized for the transportation of building material or possessions for the purposes of contravening this By-law -
- (a) is deemed for the purpose of this By-law to have been utilized , in the absence of evidence to the contrary –
    - (i) on the instructions 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 4 together with the building materials and possessions conveyed in the vehicle.

#### **CHAPTER 4: GENERAL**

#### **7. Power to search and seize**

- (1) A law enforcement officer of the Municipality 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; or
  - (b) the person does not consent, the official, on reasonable grounds believes –
    - (ii) 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
    - (iii) that the delay in obtaining a warrant would defeat the object of the search; or
  - (c) the person is arrested, a search is conducted in terms of section 23 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

The search of any person must be conducted with strict regard to decency and order provided that –

- (b) a woman may only be searched by a woman,
  - (c) if no female authorised official is available, the search may be made by any woman designated for that purpose by an authorised official.
- (2) The law enforcement officer(s) of the Municipality 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; or
- (c) is intended to be used or is on reasonable grounds believed to be used in the commission of such an offence.

**8. Co-operation**

- (1) The Municipality may request another municipality for assistance or support in the event of an unlawful or illegal occupation of land.
- (2) If an assistance or support contemplated in subsection (1) is requested, the respective municipalities must agree with respect to the payment of any related incidental costs.

**9. Offences and penalties**

- (1) No person may contravene the stipulations of this By-law, or 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.
- (2) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine and/or to imprisonment or to both such fine and such imprisonment.
- (3) The court which 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.

- (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.

**10. Short title**

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