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LOCAL MUNICIPALITY

ENCROACHMENT ON MUNICIPAL PROPERTY BY-LAWS

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Notice is hereby given in terms of Section 13 of the Local Government: Municipal Systems Act, 32 of 2000, as amended, read with Sections 156 and 162 of the Constitution of the Republic of South Africa Act, 108 of 1996 as amended that the Local Municipal Council has resolved to adopt the following Encroachment on Municipal Property By-laws with effect from date of publication.

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1. Interpretation

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

“Council” means (a) the Local Municipality established by the Mpumalanga Provincial Notice 28 of 2004 in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, exercising its legislative and executive powers by way of its municipal Council or its successor in title.

(b) a structure or person delegated to carrying out an instruction, where any power or function in terms of these By-laws has been delegated or sub-delegated as contemplated in Section 59 of the Local Government: Municipal Systems Act, 32 of 2000.

“encroachment” means a physical object or structure which intrudes on municipal property.

“municipal property” means property which is registered in the Council’s name and which the Council has control over, or property in respect of which a servitude or other property right has been registered in favour of the Council;

“prescribed fee” means a fee determined by the Council by resolution in terms of section 6;

“public road” means a road, street or thoroughfare or place which is commonly used by the public or a section of the public or to which the public or a section of the public has a right of access, and includes –

- (a) the verge of such road, street or thoroughfare;
- (b) a bridge, ferry or drift traversed by such road, street or thoroughfare;

- (c) work or an object which forms part of or which is connected with or which belongs to such road, street or thoroughfare, and a road reserve and any

Word or expression that has been defined in the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), has that meaning.

2. Principles and objectives

The Council, aware of its duty to safeguard safety of all person within the area under jurisdiction or control of the Council, and being obliged, by the laws of the country, **to provide land for public use and for fulfillment of its mandate and** to create and maintain an aesthetically pleasing and safe environment, adopts this by-law with the aim of regulating and controlling encroachments on municipal property.

3. Application of by-law

This by-laws apply to a person who intrudes, or intends to intrude on municipal property by means of an encroachment in a manner specified in these By-laws.

4. Permit and application

- (1) Subject to subsections (4) and (5), no person may, without a permit issued by the Council –

- (a) construct, erect or allow a projection, structure or thing such as, but not limited to –
 - (i) a building;
 - (ii) a platform;
 - (iii) a step;
 - (iv) a ramp;
 - (v) a balcony;
 - (vi) a veranda;
 - (vii) a sign;
 - (viii) a colonnade;

- (ix) a bay window;
 - (x) a pavement light;
 - (xi) a showcase;
 - (xii) a cat-crane or lifting crane;
 - (xiii) a window on a ground storey level, if the window opens over a public place and the window is at any point lower than 2.3m measured vertically from the surface of the level of the public place;
 - (xiv) a gate or door which open outwards thus projecting over or across a portion of a public place;
- (b) alter an existing building or structure; or
- (c) allow a branch of a plant such as, but not limited to a tree or shrub, growing on his or her premises, so as to encroach, hang over, suspend or intrude in whatever manner, from his or her premises on, into, over, or under municipal property, such as, but not limited to encroachment beyond the street line into a public place or over a part of a public road or pavement opening in or under public road, and a permit issued by the Council includes approval by the Council of the design, arrangement and construction of an encroachment over a public road, as well as the paving, kerb and gutter thereof, and should a person fail to obtain permit, the Council may issue a demolition notice, as contemplated in section 8, on the person.
- (2) A person who wishes to obtain a permit must submit to the Council for consideration a completed form similar to the form contained in Schedule 1, which schedule refers, and the Council may require, for its consideration, drawings, plans or other information as it may deem fit.

- (3) The Council may refuse to grant permit, or may grant a permit, similar to the permit in Schedule 4, which schedule refers, and should the Council grant permit it may do so unconditionally, subject to the provisions of subsection (4), or upon such conditions as the Council may deem fit, and subject to the payment of the prescribed fee, as contemplated in section 6, for each encroachment.
- (4) In the instance where the Council grants a permit contemplated in subsection (3), a particular encroachment must comply with the requirements set out in Schedule 5, which schedule refers.
- (5) The Council may, instead of issuing a permit or demolition notice as contemplated in subsection (1), require the owner of the premises contemplated in subsection (1) to enter into a lease with the Council over the portion of the municipal property into which the encroachment encroaches.
- (6) A permit is not required in the instances where-
 - (a) an owner has alienated to the Council an area reserved for road purposes in terms of a scheme and has retained a right to project a portion of a building under or over such area; and
 - (b) a flagpole is erected and used for the sole display of the national flag of a country on a building that is wholly or partly occupied by the consulate or embassy of that country.

5. Tenant at will

- (1) The owner of and the person who has erected or constructed an encroachment on, into, under or over municipal property is a tenant at will in respect of the encroachment.

6. Prescribed fee

- (1) The prescribed fee contemplated in section 4(3), as determined by the Council, is payable in advance at the beginning of each year which is calculated from date of approval or the period determined by the Council, prescribed fee as specified in Schedule 3, which schedule refers.

7. Maintenance of encroachment

The owner of an encroachment must maintain the encroachment in proper repair and outward appearance, and where an encroachment is not being maintained in such state, the Council may act in terms of section 9.

8. Demolition notice

- (1) A person on whom a demolition notice has been served in terms of section 4(1) or 14, must demolish so much of the encroachment as is encroaching in, into, under, over or on municipal property, and remove the material and restore the surface of the municipal property to its former condition.
- (2) The Council may dispose of the whole or any part of the materials from any building, whether wholly or partly removed or demolished, by public auction or public tender.
- (3) The Municipality may deduct from the proceeds of any materials so disposed of the costs of any such pulling down, removal or demolition and the costs incurred in so disposing of the said materials and the surcharge thereon and shall thereafter pay any balance to the owner of the building removed or demolished.

- (4) The exercise of any powers set forth in subsection (2) and (3) shall not prejudice or diminish the rights of the Municipality to recover in terms of other provisions of these By-laws and other legislations.

9. Notice of compliance and representations

- (1) Where a person fails to comply with the provisions of section 7, the Council may serve a notice of compliance on the person, which notice must state –

- (a) the name and residential or postal address of the affected person;
- (b) the measures required to restore the encroachment to the state contemplated in section 7;
- (c) that the person must within a specified period take the measures to comply with the notice and to complete the measures before a specified date; and
- (d) that the person may within 14 days make written representations in the form of a sworn statement or affirmation to the Council at a specified place.

- (2) The Council, when considering any measure or period envisaged in subsection (1)(b) or (c), must have regard to the principles and objectives of these By-laws, the nature of the non-compliance, and other relevant factors.

- (3) Where a person does not make representations in terms of subsection (1)(d), and the person fails to take measure before the date contemplated in subsection (1)(c), he or she commits an offence, and the Council may, irrespective of any fines which may be imposed under section 13, act in terms of subsection(5).
- (4) (a) Representations not lodged within the time contemplated in subsection (1)(d) will not be considered, except where the person has shown good cause and the Council condones the late lodging of the representations.
- (b) The Council must consider the timely representations and any response thereto by an authorized official.
- (c) The Council may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the permit holder, who must be given an opportunity of making a further response if he or she so wishes, and the Council must also consider the further response.
- (d) The Council must, after consideration of the representations and any response and further response make an order in writing and serve a copy of it on the person, which order must confirm, in whole or in part, alter, or set aside the notice of compliance, and where the notice of compliance is confirmed, in whole or part, or altered, the Council must inform the person that he or she must, within the period specified in the order, discharge the obligations set out in the order and that failure to do so constitutes an offence.

(e) Where a person fails to discharge the obligations contemplated in subsection (4)(d), he or she commits an offence and the Council may, irrespective of any fines which may be imposed under section 13, act in terms of subsection (5).

(5) The Council may take such measures as it deems necessary to remedy the situation, including legal action and the cost thereof must be paid to the Council in accordance with section 10.

10. Costs

(1) Should a person fail to take the measures required of him or her by a notice of compliance contemplated in section 9, the Council may, subject to subsection (3) recover, as a debt, all costs incurred as a result of it acting in terms of section 9(5) from that person and any or all of the following persons:

(a) the owner of the land, building or premises; or

(b) the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.

(2) The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs as well as the legal costs incurred by the Council under section 9(5).

- (3) If more than one person is liable for costs incurred, the liability must be appointed as agreed among the person concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take the required measures.
- (4) The owner of the building in connection with which any encroachment exists must defray any cost incurred in connection with wires or property of the Council and costs for remedy to be recovered be regarded to be cost against the property of the owner.

11. Authentication and service of notices and other documents

- (1) A notice issued by the Council in terms of these By-laws is deemed to be duly issued if it is signed by an officer authorized by the Council.
- (2) Any notice or other document that is served on a person in terms of these By-laws is regarded as having been duly served –
 - (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic of South Africa with a person apparently over the age of 16 years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic of South Africa, and an acknowledgement of the posting thereof from the postal service is obtained;

- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or
 - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

12. Appeal

- (1) A person whose rights are affected by a decision of an official of the Council acting in terms of these By-laws may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

- (2) The appeal authority contemplated in subsection (3) must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) When the appeal is against a decision taken by –
- (a) a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;
 - (b) the Municipal Manager, the Executive Mayor is the appeal authority; or
 - (c) a political structure or political officer bearer, or a Councillor the Council is the appeal authority.
- (4) The appeal authority must commence with an appeal within six weeks or receipt of the notice of appeal and decide the appeal within a reasonable time.

13. Penalties

A person who has committed an offence in terms of these By-laws is, on conviction, and subject to penalties prescribed in any other law, liable to a fine or in default of payment, to imprisonment for a period not exceeding 3 months of a fine of R..... or to such imprisonment without the option or a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment for a period not exceeding ... months.

14. Saving and transitional provisions

The owner of an encroachment in existence at the date of commencement of these By-laws and for which the Council has not previously issued a permit must, within 12 (twelve) months after the date of commencement of these By-laws, notify the Council and for this purpose must complete and submit to the Council a form similar to the form in Schedule 2 which schedule refers, of the existence of the encroachment and must provide the particulars of the encroachment as specified in the form, and should the owner fail to comply with the provisions of this section, the Council may issue a demolition notice as contemplated in section 8.

15. Availability of By-laws

- (1) A copy of these By-laws shall be included in the Council's Municipal Code as required in terms of Section 15 of the Local Government: Municipal Systems Act, 32 of 2000.
- (2) A copy of these By-laws shall be made available for inspection at the municipal offices or at the offices of its authorized agent at all reasonable times.
- (3) A copy of these By-laws may be obtained in accordance with the provisions of the Council's Manual on the Promotion of Access to Information Act, 2 of 2002.

16. Short title and commencement

These By-laws are called Local Municipality: Encroachment on Municipal Property By-laws, and shall come into effect on the date of publication in the Mpumalanga Provincial Gazette.

SCHEDULE 1
(Section 4(2))

APPLICATION FOR PERMIT

A. PERSONAL PARTICULARS

Name: _____

Address: _____

Telephone number: _____

B. ENCROACHMENT PARTICULARS

Address of premises from which encroachment encroaches:

Municipal property on, into, over or under which encroachment encroaches:

Dimensions of encroachment (specify* size, height, width, length, etc.):

Reasons why encroachment is necessary:

- * The horizontal dimension of the encroachment must be measured parallel to the erf boundary on or over which the encroachment exists.

Signature applicant:

Date:

SCHEDULE 2
(Section 14)

NOTICE OF EXISTENCE OF ENCROACHMENT

A. PERSONAL PARTICULARS

Name: _____

Address: _____

Telephone number: _____

B. ENCROACHMENT PARTICULARS

Address of premises from which encroachment encroaches:

Municipal property on, into, over or under which encroachment encroaches:

Dimensions of encroachment (specify* size, height, width, length, etc.):

Reasons for existence of encroachment:

- The horizontal dimension of the encroachment must be measured parallel to the erf boundary on or over which the encroachment exists.

Signature applicant:

Date:

SCHEDULE 3

(Section 6 (1))

PRESCRIBED FEE

1.	Building	R ../m ² / month
2.	Platform	R ../m ² / month
3.	Step	R ../m ² / month
4.	Ramp	R ../m ² /month
5.	Balcony	R/m ² /month
6.	Veranda	R ../m ² /month
7.	Sign	R ../sign
8.	Colonnade	R ../colonnade/month
9.	Bay window	R ../m ² /month
10.	Pavement light	R ../m ² /month
11.	Showcase	R ../m ² /month
12.	Window	R ../month
13.	Gate or door	R ../month

Where a road reserve is encroached by a building or the boundary fence was moved into a road reserve, the annual fee should be based on the valuation of the erf from which the encroachment is taking place or for which an application is received.

SCHEDULE 4
(Section 4(3))

ENCROACHMENT PERMIT

This serves to confirm that _____ (Name of person) of

(Address of person) is permitted to encroach by means of _____

_____ within the _____

_____ Municipal Area at the following

address: _____

_____ (Address of premises).

The following conditions apply to the carrying on of the business:

Signed: _____

Date: _____

OFFICIAL CAPACITY

SCHEDULE 5
(Section 4 (4))

REQUIREMENTS

1. Specific requirements relating to columns

- (1) A person may not place a veranda column –
 - (a) over a pavement where the pavement is less than 2,6m wide;
 - (b) more than 3m from the building line measured to the outside of the column or at less than 3m centre to centre;
 - (c) over any pavement at the corner of a public street that is beyond the alignment of the building lines;

- (2) A person may not place a portion of veranda column at a distance lesser than 600mm back from the front edge of any kerb.

- (3) A person may not place a twin or double veranda column over a public street or pavement.

- (4) Where a veranda is supported on columns-
 - (a) the columns may not have a square arris;
 - (b) no base may project more than 50mm beyond the bottom diameter of the column; and
 - (c) the maximum horizontal axial dimensions of a base may not exceed 350mm.

- (5) Where the form of a column is classic in character, the shaft must have suitable entasis, and the cap and base must be in due proportions.

- (6) A column, including cap and base, may not be less than 3m or more than 3,6m in height and not more than 4,5m including plinth.
- (7) No person may place a column on a public street where the footway or sidewalk is, or is likely to be occupied by a cable, pipe or other municipal services.
- (8) The minimum height from the footway or sidewalk to the underside of each cantilever or fascia girder is 3m.
- (9) Plain piping or tubing may not be used for a column over or on a public street veranda and balcony unless architecturally treated for aesthetic purposes.
- (10) The coping, blocking course or balustrade, if any, may not extend less than 750mm or more than 1,05m above the floor or a balcony.
- (11) The consent of the Council is not required for the erection and use of a party column common to two adjoining verandas if the column stands partly on the extended boundary lines of two properties or adjoins the same.
- (12) If all the other provisions of these By-laws are observed, the consent of the Council is not required where, in the case of adjoining verandas, the placement of any column upon a plinth if this is necessary for alignment.

2. Specific requirements relating to balconies and bay windows

- (1) A balcony or bay window may not overhang a public street if it is at a height of less than 3m above the pavement, and must be constructed of fire-resisting material and supported by cantilevers of reinforced concrete or by masonry or steel.
- (2) A balcony may not encroach more than 1,35m over a public street.

- (3) A bay window may not encroach more than 900mm over a public street.
- (4) The aggregate horizontal length of a bay window at any level over a public street may not exceed one-third of length of the building frontage to that street.
- (5) No part of any window in any bay shall be less than 900mm from any part wall of the building to which it belongs nor from any boundary separating stands in separate ownership or any extension of the boundary.
- (6) A balcony superimposed upon a veranda must be set back at least 1,2m from the line of the veranda.
- (7) No part of a balcony that is attached to a veranda, may be carried up to a height greater than two storeys above the pavement level, however, where the top portion of the balcony is roofed with a concrete flat roof forming a floor, a balustrade not exceeding 1m in height is allowed above the level of the floor.
- (8) A dividing wall across a balcony over a public street may not exceed 1m in height or 225mm in thickness.
- (9) A balcony over a public street may not be the sole means of access to any room or apartment.
- (10) No erection of any kind is allowed on a balcony, except balustrades and light columns not exceeding 150mm in diameter, of good architectural design and supporting the roof and upper balcony sufficiently.

- (11) A person may not place or permit or cause to be placed an article upon a balcony over a public street, except an ornamental plant, table, chair, canvas blind or awning that is not used as a sign or advertisement.
- (12) Where a floor of a building is used solely for the parking of a motor vehicle, a bay window at the level of the floor may not project over a public street for more than 1,35m for the full length of the building frontage to that street.

3. Specific requirements relating to plinths, pilasters, corbels and cornices

- (1) No plinth or pilaster beyond building lines carried up from ground level are permitted to encroach on a public street.
- (2) A pilaster, cornice, corbel or similar architectural feature that is at least 3m above the ground may not exceed the following encroachment over a public street.
 - (a) A pilaster: 450mm: The total aggregate frontage length of the pilaster may not exceed one-fifth of the building frontage and bay windows in the same storey must be included in the calculation of the maximum aggregate length for bay windows;
 - (b) a fire-resisting ornamental hood or pediment over a door: 600mm and in any part not less than 2,75m in height above the footway or pavement; and

- (c) a cornice: 1,05m where not exceeding 10,5 m above the footway or pavement and one-tenth of the height from the footway or pavement if exceeding 10,5m with a maximum of 1,8m.

4. Specific requirements relating to verandas around corners

- (1) Where a veranda is built around the corner of a public street it must be properly splayed or rounded to follow the curves of the kerb.
- (2) If corrugated iron is used for covering a veranda, its exposed surfaces must be painted.
- (3) A veranda over a public street must correspond in line, height and detail with an existing adjoining veranda.

5. Specific requirements relating to pavement openings

- (1) A pavement opening, pavement light, wall and basement wall must be made and kept water-tight by the owner.
- (2) No pavement opening may be the sole means of access to any vault or cellar.
- (3) Every such opening must be formed of thick glass and set in iron or reinforced concrete frames flush with the sidewalk and no single piece of such glass may exceed 160cm² in area.
- (4) No pavement opening on any public street may extend more than 1,2m beyond the building line.
- (5) Where flaps are permitted in pavement openings each flap may not exceed 0,75 square metres in area and must open upwards and while open, must be provided with stout iron guard rails and stanchions.

- (6) Flap openings may be opened and used only for the purpose of lowering and raising goods and must be kept closed except when lowering and raising operations are in progress.
- (7) The front wall or wall parallel to the kerb in every opening must be built with a suitable batter to the satisfaction of the Council.
- (8) No pavement opening may be covered with metal bar gratings or with metal plates or with wood.

6. Cat-cranes, lifting cranes and platforms

- (1) A cat-head, lifting crane, platform and other such contrivance may not overhang a sidewalk or street.
- (2) In the instance where the Council granted a permit, the contrivance contemplated in subitem (1) may be situated under balcony and above first floor level, but the contrivance must be capable of being housed in the building to which it belongs, and may only lift goods from outside the line or kerb.