



KING SABATA DALINDYEBO MUNICIPALITY:

ABANDONED, DILAPIDATED AND UNSIGHTLY BUILDING BY-LAW

This by-law is developed under Section 41 of the Municipal Systems Act no 32 of 2000 and Section 156 of the Constitution of the Republic of South Africa, 1996 the King Sabata Dalindyebo Local Municipality, developed the Abandoned, Dilapidated And Unsightly Building by-law for regulation of abandoned, dilapidated and unsightly Buildings which may cause danger to neighbouring environment, that may be used as potential crime spots and that may cause nuisance to the area of jurisdiction of the King Sabata Dalindyebo Local Municipality: –

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1. DEFINITIONS

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

“Authorised official” means an employee of the local authority authorised by the local authority or authorised by any delegated official of the local authority, to implement and enforce the provisions of this By-law.

“Court” means the Magistrates Court or High Court or Municipal court having jurisdiction over an area falling within the jurisdiction of the local authority.

“Building” includes –

(a) any structure, including but not restricted to containers, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with the –

(i) Accommodation or convenience of human beings or animals.

(ii) Manufacture, processing, storage, display or sale of any goods.

(iii) Rendering of any service.

(iv) Destruction or treatment of refuse or other waste materials.

(v) Cultivation or growing of any plant or crop.

(b) Any wall or part of a building.

(c) A unit as defined in the Sectional Title Act, 1986 (Act No. 95 of 1986) or any amendments thereto or substitutions thereto;

(d) Any vacant or unoccupied erf;

(e) any advertising sign, advertising board or other structure as defined in the local authority's Advertising and Signage By-laws, as promulgated from time to time; and

(f) All structures which fall within the definition of "building" in:

(i) The Spatial Planning and Land Use Management Act and SPLUMA by-law.

(ii) The Mthatha town planning scheme in operation in respect of the property.

(iii) All regulations and standards issued by the South African Bureau of Standards or related authority.

“**Disability**” refers to persons who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

“**Local authority**” means:

(a) the King Sabata Dalindyebo Municipality established before the local government elections in the year 2000 and any amendments thereto or substitutions thereof, and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the local authority and delegated or sub-delegated to such political structure, political office bearer, councillor, agent, or employee.

(b) any structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has been delegated or sub-delegated, or an instruction given, as contemplated in Section 59 of the Municipal Systems Act, 2000 (Act no. 32 of 2000) and any amendments thereto or substitutions thereof.

“**Spatial Planning and Land Use Management Act no**” means the National framework relating to establishment of policies and systems relating to planning and Land Use Management.

“**National Heritage Resource Act**” means provinces to establish heritage Authorities which must adopt powers to protect and manage certain categories of Heritage resources, to provide protection and management of conservation where the place is and areas by local Authorities.

“**Abandoned building**” means building/s that are either vacant or occupied and where the owner or majority of the co-owners cannot be found or traced by the local authority and there is no proper management or maintenance of the building to the extent that the condition of the building poses a health and safety risk to the occupants of the building or occupants of neighbouring buildings or any other member of the general public.

Dilapidated building” means a structure which through neglect or injury lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that the structure is a hazard to the health, safety, or welfare of the general public.

Unightly building” means any building, structure or mobile home with missing shingles or peeling paint; or with broken or unsafe stairway, porches, fences or retaining walls.

“nuisance” means any act or omission or condition on any premises or place, including any building or structure, or any growth on such premises place which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people or which adversely effects the safety of people.

“overcrowding” means (a) a residential occupancy in excess of 12 occupants per sanitary convenience; or (b) occupancy of habitable rooms (being all rooms in a dwelling excluding kitchens, bathrooms and sanitary conveniences) utilised for sleeping purposes where such occupation exceeds 1 adult person per 4 m² and 1 child under 10 years of age per 2 m², or in situations where double bunks are used for sleeping purposes, occupation exceeds 3m² per adult person (occupying a double bunk bed) or 2m² per child under 10 years occupying a double bunk, provided that children under the age of one year are excluded from this calculation; and

“Owner” in relation to a building or land means:

(a) the person in whose name the land on which such building was or is erected, as the case may be, is registered in the deeds office in question and includes a person in charge of such building, provided that if –

(i) such person, in the case of a natural person, is deceased or was declared by any court to be incapable of managing his or her own affairs or a prodigal or is a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), or if his or her estate has been sequestrated, the executor or curator concerned, as the case may be, further provided that where an executor or curator has not been appointed for a deceased estate, a court appointed administrator;

(ii) Such person, in the case of a juristic person, has been liquidated or placed under judicial management, the liquidator or judicial manager concerned, as the case may be.

(iii) Such person is absent from the Republic or if his or her whereabouts are unknown, any person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other moneys in respect of such building or who is responsible, therefore.

(iv) a mortgage bond is registered in favour of a financial institution, that financial institution; (v) in the case of a sectional title scheme, a sectional title unit is registered in the name of a person, that person.

(vi) in the case of a sectional title scheme, a body corporate responsible for the control, administration and management of the common property; or

(b) the person, any or all of the trustees of a trust or body corporate, any or all of the members of an association, any and all members of a partnership, any or all of the directors of a company, any or all of the members of a close corporation, registered as the owner or holder of any property in the relevant deeds registry office; or

(c) the person, any or all of the trustees of a trust or body corporate, any or all of the members of an association, any and all members of a partnership, any or all of the directors of a company, any or all of the members of a close corporation, seemingly in charge of the property, whether due to any reason, including but not limited to:

(i) The property being abandoned by the registered owner or holder thereof; or

(ii) The registered owner or holder thereof being absent from the Republic of South Africa or his or her whereabouts are unknown to the local authority; or

(iii) The property having been taken over by such person with or without consent of the registered owner or holder thereof; or

(iv) Such person collecting or accepting any monetary

(vi) such persons as being appointed by the registered owner or holder thereof to be in charge of the property; and whether or not such person undertakes or at any time undertook the management, maintenance or collection of rentals or other moneys in respect of such property or who is or was responsible thereof;

(d) A trustee in an insolvent estate which is the registered owner, registered holder or person in charge of property;

(e) the representative appointed by a court of law of any registered owner or of a person in charge of the property who is a minor or of unsound mind or is otherwise under disability; and

(f) Where the local authority is unable to determine the identity of such person as mentioned in sub sections (a) to (e) above, any person who accepts or is entitled to or who have accepted or were entitled to the benefit of the use of such property or who enjoys or enjoyed such benefit.

2. PRINCIPLES, OBJECTIVES AND APPLICATION

(2.1) The King Sabata Dalindyebo Local Municipality adopts the abandoned, dilapidated and Unsightly Buildings by-law to provide for the identification, control and management of abandoned, dilapidated and Unsightly buildings and land in its area of jurisdiction with the aim of protecting and promoting the interests of all people in the King Sabata Dalindyebo Local Municipality by providing, in conjunction with applicable laws, a legal and administrative framework within which the local authority can develop and manage its constitutional and other legislative obligations, including but not limited to its obligations to promote a safe and healthy environment.

(2.2) In the development and management of its obligations and the implementation of this by-law, the local authority also recognises the infrastructural, social and economical disparities and inequalities resulting from previous local government dispensations and shall strive to overcome such disparities and inequalities by supporting the goals for local government as laid down in section 152 of the Constitution.

(2.3) In the implementation and enforcement of this by-law, the local authority may take into consideration the realities of the King Sabata Dalindyebo Local Municipality area, the different customs, cultures, circumstances, geographical areas, kinds of premises, levels of development and conventions and the local authority may from time to time determine the areas in which the by-law will be applicable.

(2.4) This By-law applies to all abandoned, dilapidated, and unsightly buildings situated within the area of jurisdiction of the local authority.

3. APPOINTMENT, IDENTIFICATION AND ENTRY BY AUTHORISED OFFICIALS OF BUILDING MANAGEMENT AND SPATIAL PLANNING.

(3.1) The Municipal Manager or any other person with the relevant authority delegated to him or her by the local authority, may appoint authorised officials to implement and enforce the provisions of this By-law.

(3.2) Any authorised official may enter any building or land at any reasonable time with a view to –

(a) inspect or determine whether the building or land complies with any provision of this By-law or any other legislation, subject to **5 working days'** notice of such intended inspection having been given to the owner;

(b) inspect and determine whether the property or building is abandoned, Dilapidated and Unsightly ; or

(c) serve the owner of the building or land with a compliance notice as contemplated in section 5.

(3.3) No person may hinder or obstruct the authorised official in the exercise of his or her powers in terms of the By-law.

(3.4) An authorised official must, when entering the building or land, produce a valid identification document or appointment certificate issued to him or her by the local authority to the owner of such building or land.

(3.5) A person who contravenes the provisions of subsection (3) commits an offence.

4. PROHIBITED CONDUCT

(4.1) No person may –

(a) Abandon a building;

(b) Fail to comply with or maintain a building in accordance with the health, fire-safety and town planning scheme or by-laws;

(c) Fail to maintain lifts that were installed in a building;

(d) Allow any of the conditions listed in section 5(e) to develop or exist;

(e) Conduct or permit the conduct of any criminal activities contemplated in section 5(f);

(f) Occupy a building illegally;

(g) Fail to comply with a Notice issued in terms of the Spatial Planning and Land Use Management Act no 16 of 2013.

(h) Allow a building to be a threat or danger to the safety of the occupiers, registered owners, responsible person or the public in general; and

(i) allow a building to be in a state of partial completed completion, to become abandoned or structurally unsound and to show the signs of any of the risks contemplated in section 5(1)(a) to (j).

(2) A person who fails to comply with the provisions of subsection (1) commits an offence.

5. DECLARATION OF A BUILDING AS ABANDONED, DILAPIDATED AND UNSIGHTLY, AND THE RIGHT TO APPEAL

(5.1) An authorised official may, subject to the provisions of this section, declare a property or a building or any part thereof Abandoned, Dilapidated and Unsightly, provided that one or more of the following circumstances exist at the property: The building -

(a) Appears to have been abandoned by the owner, irrespective of whether the municipal rates or other municipal service charges have been paid or not;

(b) Does not comply with existing legislation or is not maintained in accordance with the health, fire-safety, Building Management By-laws and town planning scheme or by-laws;

(c) Has no or limited use of lifts that were installed in the building;

(d) Is overcrowded;

(e) is unhealthy, unsanitary, unsightly or objectionable in terms of any applicable legislation or, as determined by the local authority –

(i) Has overloaded or illegally connected electricity supply;

(ii) Has illegally connected water supply;

(iii) Has no electricity supply;

(iv) Has no water supply;

(v) Has illegal connections to sewer mains;

(vi) Has overflown or blocked sewer drains;

(vii) Constitutes a nuisance; or

(viii) is a place where refuse, waste material, rubble, scrap or any similar material is accumulated, dumped, stored or deposited, unless so stored in terms of a valid approval by the local authority;

(f) is the subject of complaints of criminal activities, including but not limited to drug dealings, prostitution and money laundering as is evidenced by complaints lodged at the South African Police Services or the local authority;

(g) is occupied illegally;

(h) is partially completed and the responsible person has not complied with a Notice issued in terms of Section 33 (1) of the Spatial Planning and Land Use Management Act.

(i) is structurally unsound;

(j) is a threat or danger to the safety of the occupiers, registered owners, responsible person, or the public in general; and

(k) is partially completed, abandoned or structurally unsound and shows signs of any of the risks contemplated in paragraphs (a) to (j).

(5.2) Before declaring a building abandoned, dilapidated and Unsightly, the authorised official must give notice in writing to the owner and occupiers and such notice must:

(a) state the fact that the authorised officer is considering declaring the building or property as an abandoned, dilapidated and Unsightly Building;

(b) provide reasons for such intention;

(c) establish a platform to engage meaningfully with the owner and occupiers; and

(d) if the engagement in terms of subsection (2)(c) fails to resolve the matter, grant the owner and occupiers a period of not less than 10 (ten) working days, excluding Saturdays, Sundays and Public Holidays, within which to submit written presentations as to why the building or property should not to be declared as an abandoned, dilapidated and Unsightly Building.

(5.3) A building committee established by the municipality, consisting of at least two officials, provided that the authorised officer who made the declaration in terms of subsection (1) or who served the notice in terms of subsection (2) may not be a member of such committee, must:

(a) Consider the written presentations submitted by the owner; and

(b) Declare that the building is an abandoned, dilapidated and Unsightly Building or that it is not abandoned, dilapidated and Unsightly Building; and

(c) Provide the responsible person with a written decision by way of service in terms of section 6 below.

(5.4) The declaration of a building as an abandoned, Dilapidated and Unsightly Building in terms of this section and the procedures prescribed by this will not preclude the authorised official from having the authority to issue spot fines in terms of this by-laws or any other relevant legislation or by-laws or to take any further action as provided for in this by-laws or any other relevant legislation or by-laws.

(5) The owner shall, in respect of a declaration made in terms of subsection (1), have a right of appeal in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and any amendments thereto or substitutions thereof.

6. COMPLIANCE NOTICE

(6.1) When a building is declared as an Abandoned, Dilapidated and Unsightly Building, the authorised official must serve a written notice on the owner and take all reasonable steps to explain the impact of the fact that the property has been declared as such and the notice must require the owner to comply with the provisions of this by-law and any other relevant legislation or by-laws within a specified period.

(6.2) Despite the provisions of sub section (1), and subject to any applicable legislation, if the authorised official has reason to believe that the condition of any building or property is such that steps should immediately be taken to protect the safety and health of persons or property, he or she may take such steps as may be necessary in the circumstances to alleviate that condition, without serving or delivering such notice on or to the owner and the local authority may recover the cost of taking such steps from the owner.

(6.3) The authorised official may serve a written notice on the owner of any building or land which has been declared as an Abandoned, Dilapidated and Unsightly Building as referred to in section 4, requiring such owner within a specified period to

(a) Clean, repair, renovate, repaint, alter, close, demolish or secure such abandoned, Dilapidated and Unsightly Building; (b) complete the abandoned, Dilapidated and Unsightly Building or any structure of such building;

(c) Enclose, fence or barricade such as an Abandoned, Dilapidated and Unsightly Building or land;

(d) instruct, at the cost of such owner, an architect or other registered person, to investigate such as and to report to the authorised official on the nature and extent of the steps to be taken to render such abandoned, Dilapidated and Unsightly Building safe or to rectify the deficiency which caused the building to be declared as an abandoned, Dilapidated and Unsightly Buildings;

(e) dispose of, destroy or remove any material or article accumulated, dumped, stored or deposited in any building, which is refuse or waste and which is unsightly or is likely to constitute an obstruction; or

(f) Comply with any provision of this By-law.

(6.4) Failure by an owner to comply with a notice served on him or her in terms of subsection (1), (3) and (4) constitutes an offence and the local authority may, if an owner fails to comply with such a notice, clean, repair, renovate, repaint, alter, close demolish or secure any abandoned, Dilapidated and Unsightly Building at the cost of the owner.

(6.5) The local authority may, if the owner fails to pay the cost contemplated in subsection (2) or (4), recover the cost in terms of the Customer Care and Revenue Management By-law.

(6.6) If the authorised official deems it necessary for the safety of any person, he or she may, by notice in writing, and subject to any applicable legislation:

(a) Order the owner of any abandoned, Dilapidated and Unsightly Building to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in or on the abandoned, Dilapidated and Unsightly Building, and to take care that no person who is not authorised by the local authority enters the abandoned, Dilapidated and Unsightly Building; and

(b) Order any person occupying, operating or working from, or who for any other purpose is in or on any abandoned, Dilapidated and Unsightly Building, to vacate such building: Provided that such notice will only be served after the municipality and the owner or occupiers engaged with each other meaningfully.

(6.7) The municipality must keep a complete and accurate account of the process of engagement

(6.8) Failure to comply with a notice served in terms of subsection (6) constitutes an offence. (9) No person shall occupy, use or permit the occupation or use of any abandoned, Dilapidated and Unsightly Building or continue to occupy, use or permit the occupation or use of any abandoned, Dilapidated and Unsightly Building in respect of which a notice was issued in terms of sub section (3) or where steps were taken by the local authority in terms of this section, unless he or she has been granted permission by the local authority in writing that the abandoned, Dilapidated and Unsightly Building may be occupied or used, as the case may be and failure to comply with this subsection constitutes an offence.

7. SERVICE OF A NOTICE

(7.1) Any notice or other document that is served on a person in terms of this bylaw 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 with a person apparently over the age of 18 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, and an acknowledgment 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 the body corporate; or

(g) When it has been delivered, at the request of that person, to his or her e-mail address. (2) When a compliance notice is authorised or required to be served on a person by reason of his or her being or having been the owner or holding some other right in respect of immovable property, it shall not be necessary to name him or her, but it shall be sufficient if he or she is therein described as the owner or holder of such immovable property or other right, as the case may be. 8. Restriction of Liability The local authority or any authorized employee of the local authority shall not be liable for any damage caused by anything done or omitted in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

9. CIVIL ACTION

(9.1) In addition to or instead of the action contemplated in section 5, the local authority may proceed with civil action against any owner or person who contravenes or permits a contravention of the provisions of this by-law.

(9.2) All costs of the civil action on an attorney and client scale will be recoverable by the local authority from the owner or person who contravenes this by-law in respect of all legal action taken against such owner or person by the local authority and such costs shall be payable upon demand by the local authority.

10. EXEMPTIONS

(10.1) Any person may by means of a written application, in which the reasons are given in full, apply to the local authority for exemption from any provision of this bylaw.

(10.2) The local authority may:

(a) Grant an exemption in writing and impose conditions and the period for which such exemption is granted;

(b) alter or cancel any condition in an exemption; provided that the local authority must give reasonable notice of such intention and give the applicant reasonable time to make representations; or

(c) refuse to grant an exemption in which case the applicant must be informed of the reasons for such refusal.

(10.3) In order to consider an application submitted in terms of sub-section (1), the local authority may obtain the input or comments of the owners or occupants of surrounding premises.

(10.4) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the local authority in terms of subsection (2) and if any activity is commenced with before such undertaking has been submitted to the local authority, the exemption lapses.

(10.5) If any condition of an exemption is not complied with, the local authority may withdraw or cancel such exemption: Provided that the local authority must give reasonable notice of such intention and give the applicant reasonable time to make representations.

11. Offences and penalties

Any person in contravention of this by-law shall; -

1. Be served with contravention notice to improve his/her property within 90 Days or apply for demolition of the structure.

2. In failure to comply with contravention notice for improvement or demolish of the identified Abandoned, Dilapidated And Unsightly shall be liable to a fine as below categories:

- a) Building used for residential purpose an amount of **R10 000.00** shall imposed to the property owner, trust etc.
- b) Building used for commercial, place of worship, entertainment, purpose etc. an amount of **R30 000.00** shall imposed to the property owner, trust etc.
- c) Building used for government, agricultural, Industrial purpose etc. an amount of **R50 000.00** shall imposed to the property owner, trust etc.

3. Further legal proceeding be imposed against property owner failing to comply with requirement of this by-law.

12. Short title and commencement

This By-law may be cited as the King Sabata Dalindyebo Local Municipality: Abandoned, Dilapidated and Unsightly Building By-law and will commence upon publication in the Provincial Gazette.

ANNEXURE: A**DRAFT ABANDONED, DILAPIDATED, UNSIGHTLY BUILDING BY-LAW
STANDARD OPERATION:****STAGE NO: 01: NON-COMPLIANCE MONITORING REQUIREMENT:**

- The King Sabata Dalindyebo Local Municipality where the municipality is obligated to monitor and control all Abandoned, Dilapidated, Unsightly Buildings as prohibited with area of jurisdiction.
- The Municipality shall consult all property, Trusts etc relating Abandoned, Dilapidated, Unsightly Buildings appear to cause nuisance with Municipal jurisdiction.
- No building shall be left Abandoned, Dilapidated, Unsightly and overcrowded that may pose as crime spot within Municipality jurisdiction.

**STAGE NO 02: IDENTIFICATION OF ABANDONED, DILAPIDATED,
UNSIGHTLY BUILDINGS.**

- The Sabata Dalindyebo Local Municipality Authorised officials (Building Inspectors etc.) shall inspect condition of the structure/property.
- Once inspection had been carried out and the property declared as Abandoned, Dilapidated, Unsightly Buildings. Authorized official shall serve compliance notice for the property to be improved or demolished within building management requirements.
- The property information shall be captured on the unsightly buildings register.

- The property owner shall be granted 7 x working days to respond and commit on prompts of the compliance notice.
- The municipality shall grant 90 days to the property owner to improve condition of the property.

STAGE NO 03: APPLICATION OF FINES AND LEGAL PROCEEDINGS.

- Any property owner served with non-compliance notice and failed to comply with the objective of the notice shall be fined to pay R 10 000.00 non-compliance.
- The municipality shall further institute legal proceeding seeking court order for improvement or demolition of the property with legal cost being carried out by the transgressor.

ANNEXURE A: FINE SCHEDULE:

**OFFENCES OR PENALTIES FOR CONTRAVENTION OF THE KING SABATA
DALINDYEBO MUNICIPALITY DRAFT ABANDONED, DILAPIDATED AND
UNSIGHTLY BUILDING BY-LAW.**

NO	OFFENCE/PENALTIES	FINES
1.	Failure to comply with contravention notice for improvement or demolish of the identified Abandoned, Dilapidated And Unsightly Building for Residential Properties.	R10 000
2.	Failure to comply with contravention notice for improvement or demolish of the identified Abandoned, Dilapidated And Unsightly Building for Commercial Properties, Hotel, Place of Worship etc.	R30 000
3.	Failure to comply with contravention notice for improvement or demolish of the identified Abandoned, Dilapidated and Unsightly Building for Government, University Properties etc.	R50 000