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**OVERSTRAND MUNICIPALITY
BY-LAW ON PROBLEM BUILDINGS**

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CHAPTER 1

INTRODUCTORY PROVISIONS

To provide for the identification, control and management of dilapidated, abandoned and problem properties in the Overstrand Municipal Area, and to provide for matters incidental thereto.

1. PREAMBLE

Whereas section 156(2) and (5) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution) provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

And Whereas the Overstrand Municipality seeks to identify, control and manage dilapidated and problem properties within its area of jurisdiction to ensure that such properties comply with the relevant legislation by formulating a coordinated and integrated strategic plan, processes and procedures which address the current challenges faced within its jurisdiction;

And now therefore, be it enacted by the Overstrand Municipality, as follows:

2. DEFINITIONS

In this By-law, unless the context otherwise indicates, reference to:

"area of jurisdiction" means the area under the control of the Overstrand Municipality according to the legally determined and declared boundaries of the Overstrand Municipality.

"authorised official" means an employee of the Overstrand Municipality authorised by the Overstrand Municipality or authorised by any delegated official of the Overstrand Municipality, to implement and enforce the provisions of these By-laws.

"building" includes, but is not limited to:

- (a) any structure 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 building;
- (c) a unit or common property as defined in the Sectional Titles Act, 1986 (Act no. 95 of 1986); or
- (d) any vacant or unoccupied erf of whatever nature and size, with or without walls, with or without a roof and if there is a structure, whether or not building plans for such structure are approved by the relevant authority in terms of any legislation;
- (e) any advertising sign, advertising board or other structure as defined in the Overstrand Municipality By-law relating to Outdoor Advertising and Signage P.G. 6856 / March 2011;
- (f) all structures which fall within the definition of "building" in:
 - (i) the National Building Regulations and Building Standards Act, (Act 103 of 1977), any amendments thereto or substitutions thereof, as well as any Regulations promulgated thereunder or any deemed to satisfy or similar standards published by the Government Printers;
 - (ii) any 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.

"Court" means the Magistrates court or High Court or Additional Court for Municipal matters having jurisdiction over an area falling within the Overstrand Municipality;

"Municipality" means the Municipality of the Overstrand established by Establishment Notice No. P.N. 494/2000 of September 2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and any employee of the Municipality acting in terms of delegated or sub-delegated authority thereof:

"property" means any piece of land registered as a separate entity of land in a deeds registry as an erf, lot, plot, farm, stand or agricultural holding and includes any unit and land contemplated in the Sectional Title Act, 1986 (Act No. 95 of 1986) and any public place depicted on the general plan of a township or any piece of land used as if registered as a separate entity of land in a deeds registry as an erf, lot, plot, farm, stand or agricultural holding and includes any unit and land contemplated in the Sectional Title Act, 1986 (act No. 95 of 1986) or used for a similar purpose, and includes any public road, park, private road or any piece of land of whatever nature.

"Problem Property" means any property, building or portion of a property or building that has been declared a problem property in terms of section 7 of this By-law;

"Responsible Person" means:

- (a) 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
- (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, 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/her whereabouts are unknown to the Overstrand Municipality; 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 compensation in respect of the occupation of the building;
 - (v) 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;

- (c) a trustee in an insolvent estate which is the registered owner, registered holder or person in charge of property;
- (d) the liquidator of a company or a close corporation which is a registered owner, registered holder or person in charge of the property;
- (e) the executor of any registered owner, registered holder or person in charge of the property who has died;
- (f) or the representative recognized by law of any registered owner, registered holder or person in charge of the property who is a minor or of unsound mind or is otherwise under disability;

- (g) where the Overstrand Municipality is unable to determine the identity of such person as mentioned in sub sections (a) or (b) 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.

3. APPLICATION OF THIS BY-LAW

This By-law applies to all properties and buildings in the area and jurisdiction of the Overstrand Municipality.

CHAPTER 2

AUTHORISED OFFICIAL

4. APPOINTMENT OF AUTHORISED OFFICIAL

The Municipal Manager or any other person with the relevant authority delegated to him/her by the Overstrand Municipality, or its delegated official, shall appoint so many authorised officials he/she may deem necessary to implement and enforce the provisions of this By-law.

5. IDENTIFICATION OF AUTHORISED OFFICIAL

An authorised official shall at all times identify him/herself to the responsible person with an identification card as provided to him/her for this purpose by the Overstrand Municipality at the time of his/her appointment.

6. ENTRY AND INSPECTION BY AUTHORISED OFFICIAL

- (1) Any authorised official may enter any property or building at any reasonable time with a view to:
- (a) inspect and/or determine whether the property or building complies with this By-law and any other legislation;
 - (b) inspect and determine whether the property or building is, in his/her opinion, a problem property;
 - (c) serve the responsible person with a notice contemplated in this By-law or any other By-laws or legislation.
- (2) No persons shall hinder or obstruct the authorised official in the exercise of his/her powers in terms of this By-law.

7. POWERS OF AUTHORISED OFFICIAL

- (1) The authorised official may, subject to the provisions of this section, declare a property or a building or any part thereof a Problem Property, provided that one or more of the following circumstances exist at the property:
- (a) the building appears to have been abandoned by the registered owner or responsible person with or without the consequence that rates or other municipal services charges have not been paid for a period of more than eight (8) months during any period of twelve (12) months, and after the registered owner or responsible person have received a written notice to comply.

- (b) the building does not comply with existing legislation and/or is not maintained in accordance with the health, fire-safety and town- planning and building control By-laws and legislation;
 - (c) is overcrowded as envisaged in any law, By-law, town planning scheme in operation or any other relevant legislation;
 - (d) is unhealthy, unsanitary, unsightly or objectionable as determined by the personnel in the Building Services Department of the Overstrand Municipality. The Building Services Department of the Overstrand Municipality may seek professional advice from the Overstrand Heritage and Aesthetics Committee as regards aesthetics and advice from a registered engineer as regards stability of the building or structure or any other professional to ensure the objective as stated above.
 - (e) is subject to complaints of criminal activities, including but not limited to drug dealings, prostitution, money laundering;
 - (f) is occupied, but is nevertheless derelict as a result of neglect;
 - (g) 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 Overstrand Municipality;
 - (h) is partially completed and the responsible person has not complied with a notice issued in terms of Section 11 of the National Building Regulations and Building Standards Act, 1977;
 - (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.
- (2) The authorised official shall give notice in writing to the responsible person, before so declaring the building or property a Problem Property:
- (a) stating his/her intention to declare the building or property a Problem Property;
 - (b) providing brief reasons for such intention; and
 - (c) granting the responsible person a period of not less than 10 (ten) days, excluding Saturdays, Sundays and Public Holidays, to provide written representations as to why the building or property is not to be declared a Problem Property
- (3) The authorised official shall:
- (a) consider the written representations provided to him/her by the responsible person, and;
 - (b) declare the building as:
 - (i) a Problem Property; or
 - (ii) declare it as not being a Problem Property; and
 - (c) forthwith provide the responsible person with his/her written decision by way of service in terms of section 8 below.

CHAPTER 3

NOTICE TO COMPLY AND SERVICE OF NOTICE

8. NOTICE TO COMPLY

- (1) The authorised official shall serve a written notice on the responsible person that the property has been declared a Problem Property, requiring such responsible person within a specified period to comply with the provisions of this By-law and/or any other relevant legislation or By-laws and the responsible person shall forthwith comply with the notice.
- (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 responsible person and may recover the cost of such steps from the responsible person.
- (3) 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 responsible person of any Problem Property 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 Problem Property, and to take care that no person who is not authorised by the Overstrand Municipality enters the Problem Property;
 - (b) Order any person occupying, operating or working from, or who for any other purpose is in or on any Problem Property, to vacate the Problem Property.
- (4) No person shall occupy, use or permit the occupation or use of any Problem Property or continue to occupy, use or permit, the occupation or use of any Problem Property in respect of which a notice was given of sub section (3) or steps were taken by the Overstrand Municipality in terms of this section, unless he or she has been granted permission by the Overstrand Municipality in writing that the Problem Property may be occupied or used, as the case may be.

9. SERVICE OF NOTICES

- (1) All and any notices to be given in terms of this By-law shall be deemed to be duly given and effectively served on such person:
 - (a) when it has been delivered to him/her personally;
 - (b) when it has been delivered to a person, who accepts it on behalf of the responsible and who is apparently over the age of 16 years and found at the problem property or at the responsible person's place of residence or business in the Republic;
 - (c) when it has been posted by prepaid registered or certified mail to the responsible person's last known residential or postal address as in possession of the Overstrand Municipality, 7 (seven) days after such posting;
 - (d) if the responsible person's address in the Republic of South Africa is unknown, when it has been served on his/her representative in the manner set out in paragraph 9(1)(b) above;
 - (e) if the responsible person's address and/or agent in the Republic of South Africa is unknown, when it has been posted in a conspicuous place, including but not limited to, the front door or gate to the property, to which it relates.
- (2) Where such service has been effected in the manner prescribed by paragraphs 9(1)(b) and (d), the sheriff or peace officer shall indicate in the return of services of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation

to the person, corporation, company, body corporate or institution affected by the process. Where such service has been effected in the manner prescribed by paragraphs 9(1)(c) or (e), the court may, if there is reason to doubt whether the process served has come to the actual knowledge of the person to be served, and in the absence of satisfactory evidence, treat such service as invalid

CHAPTER 4

GENERAL PROVISIONS

10. OFFENCES AND PENALTIES

Any person who contravenes any provision or fails to comply with any notice issued in terms of this By-law, commits an offence and shall be liable for criminal prosecution and may, upon conviction, be liable for a fine of up to R300 000,00 (Three Hundred Thousand Rand) or imprisonment for a period not exceeding 3 (three) years or both such fine and imprisonment.

11. CIVIL ACTION

- (1) In addition to or instead of the action set out above, the Overstrand Municipality may, in its sole discretion, proceed with civil action against any responsible person or person who contravenes or permits a contravention of the provisions of these By-laws.
- (2) All costs of the civil action on an attorney and client scale shall be recoverable by the local authority from the responsible person or person who contravenes these By-laws in respect of all legal action taken against such responsible person or person by the Overstrand Municipality. Such costs shall be payable to the Overstrand Municipality upon demand.

12. INDEMNITY

The Overstrand Municipality or any authorised official shall not be liable to the responsible person or any person for any damages of whatever nature caused as a result of any lawful or authorised action of an authorised official or the Overstrand Municipality taken in terms of this By-law.

13. DAMAGES

Any responsible person or person contravening this By-law shall be held liable for all damages and actual costs and disbursements the Overstrand Municipality incurs to repair, renovate, alter, close, demolish, remove, secure, maintain, or enforce compliance or payable in terms of this By-law and such damages, actual costs and/or disbursements shall be paid by the responsible person or responsible persons jointly and severally to the Overstrand Municipality upon demand.

14. SHORT TITLE

This By-law is called the Overstrand Municipality By-law on Problem Properties, 2016 and will take effect on the date of publication hereof.