



WINNIE MADIKIZELA MANDELA LAND INVASION POLICY

MAY 2022

Table of Contents	
1.1 Preamble	2
2.1 Definitions	3
3.1 Purpose of the policy	4
4.1 Legislative framework	6
1. The Constitution No 6 of 1996	5
2. Spatial Planning and Land Use Management Act 16 of 2013.....	6
3. National Building Regulations Act	6
4. Prevention of illegal Eviction and Unlawful Occupation of Land Act No 19 of 1998.....	6
5.1 Legal Provisions	6
6.1 Prohibited Conduct	7
7.1 Serving of Notices	7
8.1 Procedure to be followed	8
9.1 Calculation of Days	8

1.1 Preamble

The Winnie Madikizela-Mandela Local Municipality recognizes the right of its residents to life and to be treated with dignity.

Furthermore, the resident's right to housing as contained in Clause 25 of the Bill of Rights of the Constitution of the Republic of South Africa, and further admits that such right may be limited as provided for in Clause 36 of the same Bill of Rights.

Council will in its efforts and endeavours of housing and settling its residents in need of housing and accommodation take into cognisance the provision and the spirit of all legislations relevant to housing and land settlements control.

Council realizes that, there exist a great need for accommodation amongst its low income group or less fortunate residents, and that land for township development is scarce within its area of jurisdiction.

Council will do all in its power to ensure orderly development of places of residents for all its residents.

This policy underpinned and based on the provision of the Prevention of illegal Eviction form and Unlawful occupation of Land Act (Act 19 of 1998) and Extension of Tenure Security Act (Act 62 of 1997).

2.1 Definitions

In this Policy, unless the context indicates otherwise;

- (i) **"Authorised Official"** means an official who may consider and determine applications;
- (i) **"Building" or "Structure"** means any hut, shack, tent, or similar structure or any other form of temporary or permanent dwelling or shelter;
- (ii) **Consent means:**
 - (a) "the express or tacit consent, whether in writing or otherwise, of the owner or person in charge to the occupation by the occupier of the land in question";
 - (b) a land use right that may be obtained by way of consent from the municipality and is specified as such in the land use scheme;
- (i) **"Contravention"**
- (ii) **"Court"** means any division of the High Court or the magistrate's court in whose area of jurisdiction the land in question is situated;
- (iii) **"Days"** means days as calculated in terms of section 9.1;
- (iv) **"Development"** in relation to any land, means the erection of buildings and structures, the carrying out of construction, engineering, mining or other operations on, under or over land, and a material change to the existing use of any building or land for non-agricultural purposes;
- (v) **"Evict"** means to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his/ her will and eviction has a corresponding meaning
- (vi) **"Environment"** means the surrounding within which humans exist and that are made up of
 - (a) the land, water and atmosphere of the earth;
 - (b) micro-organisms, plant and animal life;
 - (c) any part or combination of (a) and (b) and the inter-relationships among and between them; and
 - (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;
- (vii) **"Erf"** means any piece of land registered in the deeds registry as an *ert*, lot, plot, stand or farm and includes a portion of an *ert*, lot, plot or stand;
- (viii) (iv) **"Invasion"** means the illegal movement of a person or persons into ones property, land etc;

- (ix) **"Inspector"** means a person authorised by a municipality to enter upon land for the purpose of inspecting it,
- (x) **"Land"** includes a portion of land;
- (xi) **"Municipality"** as defined in the Constitution of The Republic of South Africa;
- (xii) **"Municipal Council"** means a municipal council referred to in section 157 (1) of the Constitution;
- (xiii) **"Municipal Manager"** means a person appointed on terms of section 54A.
- (xiv) **"Notify"** has a corresponding meaning as "serve";
- (xv) **"Objector"** means a person who has lodged an objection with the Municipality to a draft municipal spatial development framework, draft land use scheme or a land development and land use application; a contravention notice served by the municipality
- (xvi) **"Owner"** means the registered owner of the land contemplated in section 102 of the Deeds Registries Act and also includes the holder of a leasehold, a deed of grant or any similar right registered in the deeds registry, but does not include
 - (a) a right or interest of a tenant, labour tenant, sharecropper or employee that is purely of a contractual nature; or
 - (b) a right or interest that is based purely on temporary permission by the owner or lawful occupier of land who may at any time withdraw that right or interest
- (xvii)
- (xviii) **"Public Place"** means any road and any square, park, recreation ground, garden, commonage or enclosed or open space
 - (a) registered in the deeds registry as land set apart for the use and benefit of the public;
 - (b) of which the ownership vests in the municipality, or under the control or management thereof by law for the use and benefit of the public, or which the public has the right to use; or
 - (c) to which the public or the inhabitants of a township have a common right in accordance with a record filed in the deeds registry;
- (xix) **"Serve"** in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 158;
- (xx) **"Urgent prevention order"** means an urgent order obtained under the circumstances
- (xxi) **unlawful occupier"** means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights (Act No. 31 of 1996)

3.1 Purpose of the Policy

The purpose of the policy is to regulate land use and to promote orderly development in accordance with the municipality's integrated development plan, Spatial Development Framework and other spatial plans in place that guides development.

4.1 Legal Framework

- (i) The Constitution No 6 of 1996
- (ii) Spatial Planning and Land Use Management Act 16 of 2013
- (iii) National Building Regulations Act 103 of 1977
- (iv) Prevention of illegal Eviction and Unlawful Occupation of Land Act No 19 of 1998

5.1 Legal Provisions

a) The Council acknowledges that in so far as Section 26 of the Constitution reads, (1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

b) Council acknowledge that it has legal and moral obligation to provide alternative accommodation to residents of the said areas who have been so residing for more than six (6) months if so required to relocate as provided for by Act 19 of 1998.

c) No person has a right to allow, encourage, motivate, organise and/or instigate the occupation of land of whatever nature without an expressed and written consent of Council or the rightful owner of the property.

d) Where such concurrent as mentioned above happen, Council reserve the right to take any appropriate legal action to rectify the situation.

(e) No person may 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.

(f) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment, or to both such fine and such imprisonment.

(g) Council encourages the involvement of community leaders such as Councillors, Ward Committees, and Community Based Organisation to act as whistle blowers on emerging land invasions.

6. 1 Prohibited Conduct

No person may – individually or as part of a group may

- a) (i) Clear any land of any vegetation without the prior written consent of the owner;
(ii) Invade or occupy any land to which he or she does not have lawful title;
- b) Erect a structure on any land to which he or she does not have lawful title;
- c) Continue with the construction of an incomplete structure after a written warning to stop construction was issued by the municipality;
- d) Demarcate or continue to demarcate any piece of land with any form of material, including, but not restricted to string, rope, pegs, stones, pebbles, wire, wood or any other material after a written warning to stop any form of demarcation was issued by the municipality;
- e) Move or remove any demarcation or surveying pegs affixed in terms of any law;
- f) Without the written consent of the municipality allow, encourage, motivate, organise or instigate the occupation of any land;
- g) Access land in contravention of a sign prohibiting such access;
- h) Occupy a structure on any land to which he or she does not have lawful title;
- i) Sell any land or structure on any land to which he or she does not have lawful title; or
- j) Interfere with or obstruct an authorised officer in the execution of his or her duties in terms of this by-law

7.1 Serving of Notice

- Eviction of unlawful occupiers
- Urgent proceedings for eviction
- Eviction at instance of organ of state

8.1 Procedure to be followed

The authorised Official

- Create a file
- Site to be inspected by authorised official within 3 days from receiving notification of land invasion.
- Photos to be taken and file note made.
- Details of the offenders should be obtained
- A notice from the municipality calling them to seize operation within a given period of time.
- Obtain owner/offenders details.
- Notice to be served in person or registered mail (in the case of registered mail, keep proof of postage on file and for handover).
- If served in person, obtain signature acknowledge receipt.
- If the offender has not seized with the operations within the stipulated time on the notice, the municipality should apply for a court order.
- If the offender has seized with the operations, and the municipality has reasonable grounds to believe so, it should decide whether:
 - (i) to proceed with high court application
 - (ii) Should the municipality choose not to proceed with a high court application then an inspection must be conducted to verify whether contravention still occurring.
- If contravention still persists then, a court order for eviction should be obtained.

- NB. Notice must be served on a person and not a Company or Trust, etc.(e.g. you may send a notice to trusty motors but you must include c/o Mr. . Mustard)

9.1 Calculation of number of days

- Where this policy prescribes a particular number of days for performing an action, the number of days must be calculated by excluding the first day as well as every public holiday, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the days must be calculated by including the first work day immediately following that Saturday or Sunday or public holiday.

Signed on the 20th day of June 2022


MUNICIPAL MANAGER