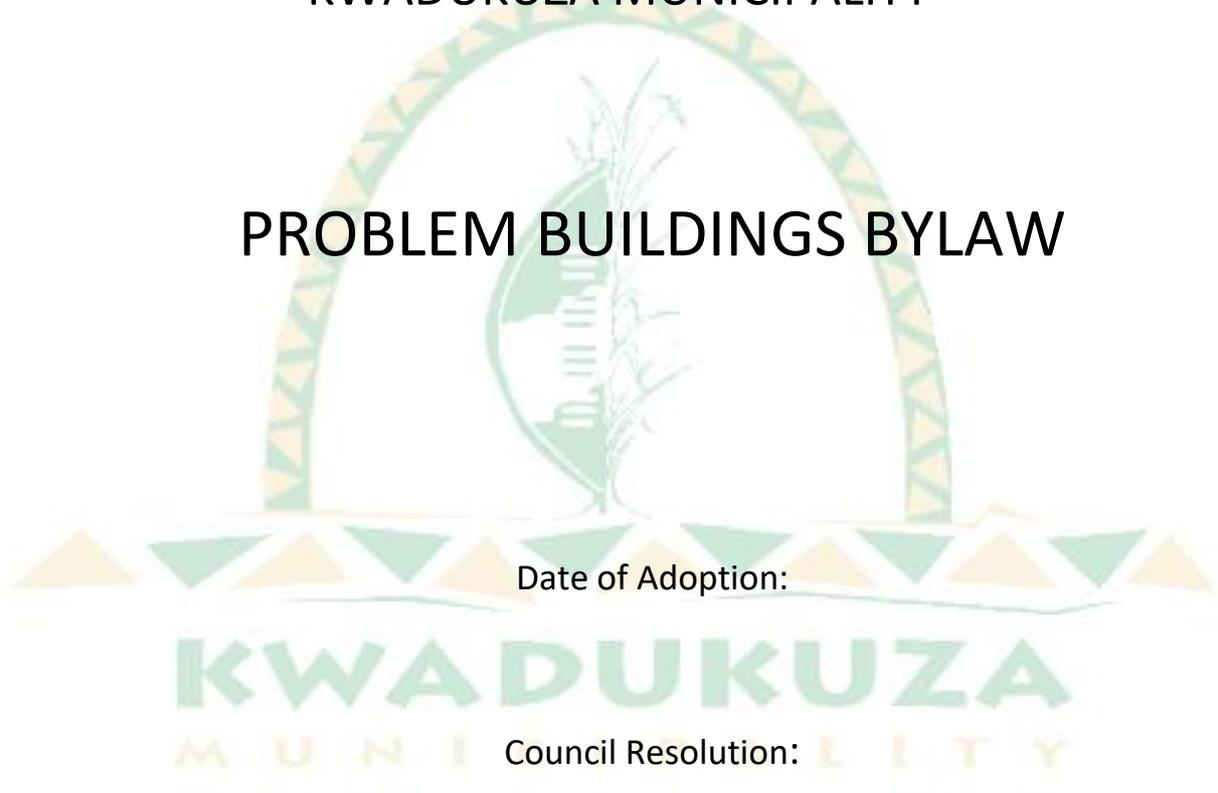


KWADUKUZA MUNICIPALITY

PROBLEM BUILDINGS BYLAW



Date of Adoption:

Council Resolution:

Table of Contents

1. PREAMBLE	3
2. Definitions.....	4
3. Application of this by-law.....	9
4. Appointment of Authorised Officials	10
5. Delegation	10
6. Entry by Authorised Officials of buildings and land.....	10
7. Declaration of a building, a problem building.....	10
8. Compliance notice	11
9. Service of a notice	13
10. Combined Notices	13
11. Vicarious liability.....	14
12. Indemnity.....	15
13. Offences	15
14. Penalties	15
15. Short title	16
16. Repeal of By-Laws	16



1. PREAMBLE

KwaDukuza Municipality: Problem Buildings By-law, 2018

To provide for the identification, control and rehabilitation of problem buildings; to create offences and penalties; and to provide for matters incidental thereto.

WHEREAS the KwaDukuza Municipality recognises the need to identify, control and rehabilitate problem buildings;

WHEREAS the KwaDukuza Municipality recognises the right to housing, as well as the need to address the infrastructural, social and economic disparities of the past;

WHEREAS the KwaDukuza Municipality has competence in terms of Part B of Schedule 4 of the Constitution of the Republic of South Africa, relating to such matters as building regulations, municipal planning and municipal health, and competence in terms of Part B of Schedule 5 of the Constitution of the Republic of South Africa, relating to such matters as the control of public nuisances;

AND WHEREAS the KwaDukuza Municipality has competence, in terms of section 156(2) and (5) of the Constitution of the Republic of South Africa, to 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;

NOW THEREFORE the KwaDukuza Municipality, acting in terms of section 156 read with Parts B of Schedules 4 and 5 of the Constitution of the Republic of South Africa, 1996 and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby seeks to identify, control and manage dilapidated and problem buildings within its area of jurisdiction to ensure that such buildings comply with this By-law by—

- Formulating a coordinated integrated strategy plan, processes and procedures;
- Turning problem buildings around by rejuvenating and regenerating the buildings rather than demolishing them;
- Redeveloping the property where problem buildings can't be rejuvenated or regenerated after consultation with the owners;

— Facilitating the disposal of problem buildings for the purpose of achieving the objectives of this By-law.

AND NOW THEREFORE, BE IT ENACTED by the KwaDukuza Municipality, as follows:

2. Definitions

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

"Enforcement Officer" means an employee of this Municipality, authorised by the Municipal Manager to implement and enforce the provisions of this By-law; including but not limited to—

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) municipal traffic officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and
- (c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"Authorized Official" means an employee of the Municipality authorized by the Municipality to implement and enforce the provisions of this By-law;

"Building" includes—

- (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;
 - (iii) destruction or treatment of refuse or other waste materials;
 - (iv) cultivation or growing of any plant or crop;

- (b) any wall or part of a 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;
- (e) any advertising sign, advertising board or other structure as defined in the KwaDukuza Outdoor Advertising Bylaw, as promulgated from time to time,
- (f) all structures which fall within the definition of “building” in
 - (1) the National Building Regulations and Building Standards Act (Act 103 of 1977), and any other amendments thereto or substitutions thereof, as well as any regulations promulgated thereunder,
 - (2) any town planning scheme in operation in respect of the property,
 - (3) all regulations and standard issued by South African Bureau of Standards or related entity,

"compliance notice" means a notice issued to the owner of a problem building in terms of section 10 of this By-law;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"hijack" in relation to a building means to unlawfully take over the management and control of a building, including but not limited to the collection of rentals from the owner, occupier or managing agent,

"licensed waste disposal facility" means a site, or premises which is licensed in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) and used for the accumulation or disposal of waste;

"managing agent" means a person who is appointed by –

- (a) an owner of a building to maintain and manage a building on the owner’s behalf;
or
- (b) a tenant of the owner who has the power or obligation to sub-let, maintain and manage the building;

“Municipality” means the KwaDukuza Municipal Council and includes the Mayor, Political Office Bearers, Political Structures, Municipal Manager and any Official who has delegated powers in terms of Section 59 of the Local Government Municipal Systems Act (Act 32 of 2000);

“municipal area” means the area under the jurisdiction and control of the KwaDukuza Municipality;

“premises” means any land whatsoever, whether vacant, occupied or with buildings thereon, situated within the municipal area.

"problem building" includes any building or portion of a building—

- (a) that appears to have been abandoned by the owner with or without the consequence that rates or other service charges are not being paid;
- (b) that is derelict in appearance, overcrowded or is showing signs of becoming unhealthy, unsanitary, unsightly or objectionable and offensive and which causes the value of surrounding properties to be detrimentally affected;
- (c) that is neglected and overgrown;
- (d) have an unsightly accumulation of papers, cartons, garden refuse, rubble and/or other waste material thereon;
- (e) that is the subject of written complaints in respect of criminal activities, including drug dealings and prostitution;
- (f) that is illegally occupied;
- (g) where refuse or waste material is accumulated, dumped, stored or deposited with the exception of license waste disposal facilities; or
- (h) that is partially completed or structurally unsound and is a threat or danger to the safety of the general public.
- (i) Have an accumulation of motor wrecks or used motor parts thereon which:
 - (1) detracts from the amenity or appearance of surrounding properties, or
 - (2) is offensive to the owners or occupiers of adjacent premises

"occupier" includes any person in actual occupation of a building or part of a building regardless of the title under which he or she occupies such building;

"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 convenience) utilised for sleeping purposes where such occupation exceeds adult per 4 square metres and 1 child under 10 years of age per 2 square metre or in situations where double bunks are used for sleeping purposes, occupation exceeds 3 square metres per adult person (occupying a double bunk bed) or 2 square metres per child under 10 years occupying a double bunk, provided that children under the age of one year are excluded for the calculations;

"owner" in relation to a building means 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—

- (a) such person, in the case of a natural person, is deceased or was declared by any court to be incapable 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;
- (b) such person, in the case of a juristic person or trust, has been liquidated or placed under judicial management, the liquidator or judicial manager concerned, as the case may be;
- (c) 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 there for;
- (d) in the case of a sectional title scheme, a sectional title unit is registered in the name of a person or that person;
- (e) in the case of a trust, the trustees of such trust;
- (f) in the case of a sectional title scheme, a body corporate responsible for the control, administration and management of the common property; or

- (g) where the Municipality is unable to determine the identity of such person, any person who is entitled to the benefit of the use of such building or who enjoys such benefit;
- (h) the business rescue practitioner where the owner of the building has been placed under business rescue,
- (i) the former members of a close corporation which has been deregistered and in respect of which they have a continuing liability as contemplated in section 26 of the Close Corporations Act, 1984 (Act No. 69 of 1984), read with sections 83(2) and (3) of the Companies Act 2008 (Act No.71 of 2008)
- (j) the executor, where the
 - (1) owner of the building is deceased and the building has not yet been transferred out of the deceased estate; or
 - (2) estate of the owner has been sequestrated,

"problem building" includes any building or portion of a building—

- (a) that appears to have been abandoned by the owner with or without the consequence that rates or other service charges are not being paid;
- (b) that is derelict in appearance, overcrowded or is showing signs of becoming unhealthy, unsanitary, unsightly or objectionable and offensive and which causes the value of surrounding properties to be detrimentally affected;
- (c) that is neglected and overgrown;
- (d) have an unsightly accumulation of papers, cartons, garden refuse, rubble and/or other waste material thereon;
- (e) that has been subject of one or more written complaints, charges or convictions in respect of criminal activities being conducted in the building, as confirmed in writing by a member of KwaDukuza Community Safety or the South African Police Services,
- (f) has been hijacked,

- (g) has been changed and its subsequently usage is unauthorised,
- (h) has been unlawfully erected or has a part which has been unlawfully erected,
- (i) is in contravention of one or more of the Municipality By-laws,
- (j) has overloaded or illegally connected electricity supply,
- (k) has illegally connected water supply,
- (l) has no electricity supply,
- (m) has no water supply,
- (n) has illegal connection to sewer mains,
- (o) has outflow or blocked sewer mains
- (p) that is illegally occupied;
- (q) where refuse or waste material is accumulated, dumped, stored or deposited with the exception of license waste disposal facilities; or
- (r) that is partially completed or structurally unsound and is a threat or danger to the safety of the general public.
- (s) Have an accumulation of motor wrecks or used motor parts thereon which:
 - (1) detracts from the amenity or appearance of surrounding properties, or
 - (2) is offensive to the owners or occupiers of adjacent premises

3. Application of this by-law

This By-law applies to all problem buildings situated within the area of jurisdiction of the KwaDukuza Municipality, and is binding to all persons to the extent applicable.

4. Appointment of Authorised Officials

The Municipal Manager may appoint Authorised Officials to implement and enforce the provisions of this By-law.

5. Delegation

The Municipal Manager may exercise all powers, duties and functions conferred upon the Municipality and its area of jurisdiction in terms of this Bylaw and to delegate such powers, duties and functions to Authorised Officials.

6. Entry by Authorised Officials of buildings and land

- a) Any Authorised Official may enter any building at any reasonable time with a view to —
 - (1) inspect or determine whether the building complies with any provision of this By-law subject to 2 days notice of such intended inspection having been given to the owner; or
 - (2) serve the owner of the building with the compliance notice as referred to in Section 7 of the National Building Regulations and Building Standards Act 103 of 1977.
- b) No person shall hinder or obstruct the Authorised Official in the exercise of his/her powers in terms of the Bylaw.
- c) An Authorised Official shall, when entering the building/premises, produce a valid identification document/card issued to him or her by the Municipality to the owner of such building.

7. Declaration of a building, a problem building

- a) The Authorised Official may, subject to subsections (2) to (5), if a building falls within the definition of "problem building" as defined in Section 1, declare such building a problem building.
- b) The Authorised Official shall, by notice in writing, before declaring such building a problem building, inform the owner of his or her intention to declare such building a problem building, giving the reasons for such declaration.

- c) The Authorised Official may carry out an investigation in respect of a building which he or she intends to declare a problem building as contemplated in subsection (2), provided that he or she must display a notice of such investigation on the building concerned.
- d) The Authorised Official shall give the owner a period of seven days to make representations on why the building should not be declared a problem building.
- e) The Authorised Official shall, after considering the representations referred to in subsection (4), take a decision either to declare or not to declare a building a problem building.
- f) The owner shall, in respect of a declaration 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).

8. Compliance notice

- a) The Authorised Official shall serve a written notice on the owner of any building which has been declared a problem building as referred to in section 6, requiring such owner within a specified period to—
 - (1) repair, renovate, repaint, alter, close, demolish, secure, or remove all refuse from, such problem building
 - (2) complete the construction of a problem building or any structure of such building;
 - (3) enclose, fence or barricade such problem building to the satisfaction of this Municipality;
 - (4) appoint and instruct, at the cost of such owner, an approved competent person referred to in Part A 19 of the National Building Regulations, to examine a condition that gave rise to the declaration of a building a problem building and to report to the Authorised Official on the nature and extent of the steps to be taken, which in the opinion of such approved competent person needs to be taken in order to render such problem building safe;

- (5) dispose of, destroy or remove any material or article accumulated, dumped, stored or deposited in any building/premises, which is refuse or waste and which is showing signs of becoming unsightly, insanitary, unhealthy or objectionable or is likely to constitute an obstruction; or
 - (6) comply with any provision of this By-law.
- b) The Municipality may, if such owner fails to comply with a notice served on him or her in terms of subsection (1), repair, renovate, repaint, alter, close, demolish, remove all refuse or secure any problem building at the cost of the owner.
 - c) The Municipality may, if the owner fails to pay such cost, recover the cost in terms of the prevailing Credit Control and Debt Collection By-law of the Municipality as adopted Council.
 - d) Despite subsection (1), section 6 and subject to any applicable legislation, if the Authorised Official has reason to believe that the condition of any building is such that steps should forthwith be taken to protect life or property, he or she may take such steps as may be necessary in the circumstances without serving or delivering such notice on or to the owner of such building and may recover the cost of such steps from such property owner.
 - e) If the Authorised Official deems it necessary for the safety of any person, he or she may by notice in writing—
 - (1) order the owner of any problem building to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in such problem building, and to take care that no person who is not authorised by this Municipality enters such problem building;
 - (2) order any person occupying or working, or who for any other purpose is in any problem building, to vacate such building.
 - f) No person shall occupy, use or permit the occupation or use of any problem building or continue to occupy, use or permit, the occupation or use of any problem building in respect of which a notice was served or delivered in terms of this section or steps were taken by the Municipality in terms of subsection (2), unless he or she has been granted permission by the Municipality in writing that

such building may be occupied or used or continue to be occupied or used, as the case may be.

.

9. Service of a notice

- (a) Whenever a compliance notice is authorised or required to be served on a person in terms of this By-law, it shall be deemed to have been effectively and sufficiently served on such person—
- (1) when it has been delivered to him or her personally;
 - (2) when it has been left at his or her place of residence or business in the Republic with a person over the age of 16 years;
 - (3) when it has been posted by registered or certified mail to his or her last known residential or business address in the Republic and an acknowledgment of the posting thereof is produced;
 - (4) if his or her address in the Republic is unknown, when it has been served on his or her agent or representative in the Republic in the manner contemplated in paragraph (a), (b) or (c); or
 - (5) if his or her address and agent in the Republic are unknown, when it has been posted in a conspicuous place on the immovable property, if any, to which it relates.
- (b) When a compliance notice as aforesaid 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.

10. Combined Notices

- (a) The Municipality is not restricted, when issuing a notice in terms of this By-law for —
- (1) multiple contraventions of the provisions of this By-law or of any other By-law in respect of a problem building,

- (2) multiple failures or refusals to comply with a compliance notice in terms of this By-law,
- (b) To serve a combined notice dealing with all of those contraventions, failures or refusals, as the case may be.

11. Vicarious liability

- (a) The owner of a problem building whose managing agent or tenant, in the case of a tenant who has the power or obligation to sub-let, maintain and manage building or portion of the building –
 - (1) Contravenes the provisions of this By-law or of any other By-law in respect of a problem building, or ,
 - (2) Fails or refuses to comply with a compliance notice issued in terms of this bylaw,

Is deemed to have committed such contravention himself or herself, unless the owner can show that he or she took a reasonable steps to prevent such contravention: Provided that –

- i. The owner issued instructions to the managing agent or tenant, prohibiting such contraventions, or
- ii. A written agreement making the managing agent, tenant or another third party responsible for compliance,

does not in itself constitute sufficient proof of such reasonable steps.

- (b) The managing agent of a problem building or a tenant in a problem building, in the case of a tenant who has the power or obligation to sub-let, maintain and manage the building, is jointly and severally liable with the owner of such building if the owner –
 - (1) contravenes the provisions of this By-law or of any other applicable law in respect of a problem building, or
 - (2) fails or refuses to comply with a compliance notice issued in terms of this By-law,

Unless the agent or tenant can show the he or she took reasonable steps to prevent such contraventions.

12. Indemnity

The Municipality or any Authorised Official of this Municipality shall not be liable to a third party for any damage caused by anything lawfully done or omitted by the Municipality or any Authorised Official in carrying out any function or duty in terms of this By-law.

13. Offences

Any person who:

- (a) contravenes any provision of this By-law,
- (b) fails or refuses to comply with the compliance notice,
- (c) fails to comply with any lawful instruction given in terms of this by-law
- (d) threatens, resists, interferes with or obstructs any Authorised Official in the performance of his or her duties or functions in terms of or under this by-law; or
- (e) deliberately furnishes false or misleading information to an Authorised Official,
- (f) is guilty of an offence.

14. Penalties

- (a) Any person who is convicted of an offence under this By-law is liable to–
 - (1) a fine of an amount not exceeding R300 000;
 - (2) imprisonment for a period not exceeding three years;
 - (3) In addition to any penalty imposed in terms of subsections a) and b), the person so convicted shall be liable to pay the cost of repair of any damage caused or costs incurred in remedying any damage resulting from such an offence.
- (b) In the case of a continuing offence–

(1) an additional fine of an amount not exceeding R5 000; or

(2) imprisonment for a period not exceeding 10 days,

for each day on which such offence continues, or both such fine and imprisonment, will be imposed.

15. Short title

This By law is called the KwaDukuza Municipality: Problem Building By-law, 2018.

16. Repeal of By-Laws

All Municipal Bylaws, and amendments thereto, relating to Unsightly and Neglected Buildings and Premises made by the local authorities of Nkwazi/Zinkwazi Beach Transitional Local Council, KwaDukuza/ Stanger Transitional Local Council and Dolphin Coast Transitional Local Council, disestablished in terms of Provincial Notice No. 345 of 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998: Establishment of Municipalities 9DC 29, KZ 291, KZ 292, KZ 293, KZ 294) as published on 19 September 2000, are hereby repealed.

