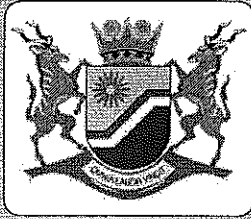


THEMBISILE HANI LOCAL MUNICIPALITY



ENCROACHMENT OF MUNICIPAL PROPERTY BY-LAW



THE PROVINCE OF MPUMALANGA
DIE PROVINSIE MPUMALANGA

Provincial Gazette Extraordinary
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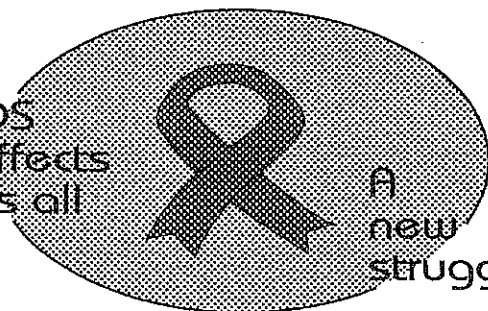
Vol. 20

NELSPRUIT, 15 FEBRUARY
FEBRUARIE 2013

No. 2138

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AIDS
affects
us all



A
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struggle

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Prevention is the cure

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**THEMBISILE HANI LOCAL MUNICIPALITY
ENCROACHMENT ON MUNICIPAL PROPERTY BY-LAWS**

Under the provisions of section 156 of the Constitutional of the Republic of South Africa, 1996 (Act 108 of 1996), the Thembisile Hani Local Municipality, enacts as follows:-

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1. Interpretation

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

- “Council”** means the Thembisile Hani Local Municipality Council, or an official of the Council to whom an instruction has been given or a power, function or duty has been delegated or sub-delegated, or a service provider to whom a power, function or duty of the Council has been assigned;
- “Encroachment”** means a physical object which intrudes on municipal property;
- “Municipal property”** means property which the Council has control over, or property in respect of which servitude of 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 section of the public or to which the public or 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; and
 - c) work or an object which forms part of or which is connected with or which belongs to such road, street or thoroughfare, and any word or expression that has been defined in the National Building Regulation 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 create and maintain an aesthetically pleasing and safe environment, adopts these by-laws with the aim of regulating a controlling encroachments on municipal property.

3. Application of by-laws

These 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 subsection (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;

a window on a ground storey level, if the window opens over a public place and the window is at any point lower than 2,3 m measured vertically from the surface of the level of the public place; 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 a 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 a permit, the Council may issued a demolition order, 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 complete form similar to the form contained in Schedule 1 refers, 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 a permit, or may grant a permit, similar to the permit in schedule 4, which schedule refers, and should the Council grant a 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 requirement set out in schedule 5, which schedule refers.

(5) The Council may, instead of issuing a permit or demolition order 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 reserve 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 land 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.
- 2) The owner of the building in connection with which any encroachment exists must allow the Council to erect on, or attach to the encroachment anything required in connection with electrical or other services.
- 3) Where an encroachment has been erected or constructed in front of a building which adjoins a footway or building, the owner must at his or her expense, and in accordance with the provisions set out in Schedule 6, which schedule refers-
 - a) pave the footway or pavement under the encroachment or in front of the building for the full width of the footway or pavement; and
 - b) lay the street kerbing and guttering in front of the building for the full width of the footway or pavement.

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, and the owner of the encroachment is liable for the payment of the prescribed fee as specified in schedule 3, which schedule refers.
- 2) Where a person-
 - a) requires a special service from the Council;
 - b) requests the Council to attend at a building to give advice as to the effect of these by-laws on proposals put forward by architects, builders or owners; or
 - c) has been ordered by the Council have the Council attend at a building to give advice as to the effect of these By-laws on proposals put forward by architects, builders or owners, he or she must pay the prescribed fee before such special service is rendered or before the Council attends at a building
- 3) The Council, in determining the fee to be prescribed, may distinguish and differentiate between type and dimensions of encroachment and the nature of the municipal property.

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 order

- 1) A person on whom a demolition order as 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 materials and restore the surface of 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 exercise of any powers set forth in subsection (2) and (3) shall not prejudice or diminish the rights of the Municipal to recover in terms of other provisions of this code.

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 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 the measures 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 may 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, and where the notice of compliance is confirmed, in whole or in part, or altered, the Council must inform the person that he or she must, within the period specified 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, 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 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 incurred by the Council under section 9(5).
- 3) If more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the emergency resulting in 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.

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 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, 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 term of these By-laws may appeal against that decision by giving written notice of the appeal and reason 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 Councilor the Council is the appeal authority.
- 4) The appeal authority must commence with an appeal within six weeks of 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, or a fine of R1000.00 or to such imprisonment without the option of a fine, or to both such fine and 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, imprisonment for a period not exceeding 3 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 similar 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 order a contemplated in section 8.

15. Short title and commencement

These By-laws are called the Thembisile Hani Local Municipality Encroachment on Municipal Property By-laws, and commence on a date determined by the Council.

**SCHEDULE 1
(Section 4(2))**

PERMIT APPLICATION

A. PERSONAL PARTICULARS

Name: _____

Address: _____

Telephone number: _____

B. ENCROACHMENT PARTICULARS

Address of premises from which encroaches encroaches:

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

Dimension 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 Road 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 numbers:

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 of existence of encroachment:
.....

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

Signature applicant:

Date:

**SCHEDULE 3
(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 theMunicipal Area at the following addresses:

..... (Address of premises).

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

.....
.....
.....

Signed:
OFFICIAL CAPACITY

Date:

SCHEDULE 4 (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 2,6 m wide;
 - b) More than 3 m from the building line measured to the outside of the column or less than 3 m center to center;
 - 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 a veranda column at a distance lesser than 600 mm 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 supposed on columns-
 - a) the column may not have a square arris;
 - b) no base may project more than 50 mm beyond the bottom diameter of the column; and
 - c) the maximum horizontal axial dimensions of a base may not exceed 350 mm.
- 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 3 m or more than 3,6 m in height and not more than 4,5 m 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 3 m.
- 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 750 mm nor more than 1,05 m above the floor of a balcony.

- 11) The corner 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 line 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 less than 3 m 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 1,35 m over a public street.
- 3) A bay window may not encroach more than 900 mm 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 the length of the building frontage to that street.
- 5) No part of any window in any bay shall be less than 900 mm from any party wall of the building to which it belong 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 1,2 m 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 1 m in height is allowed above the level of the floor.
- 8) A dividing wall across a balcony over a public street may not exceed 1 m in height or 225 mm 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 150 mm in diameter, of good architectural design and supporting the roof and the upper balcony sufficiently.

- 11) A person may not place or permit or cause to be placed an article upon a balcony or 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 1,35 m for the full 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 3 m above the ground may not exceed the following encroachment over a public street:
 - a) A pilaster: 450 mm: 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 ornament hood or pediment over a door 600 mm and in any part not less than 2,75 m in height above the footway or pavement; and
 - c) a cornice: 1,05 m where not exceeding 10,5 m above the footway or pavement and one-tenth of the height from the footway or pavement if exceeding 10,5 m with a maximum of 1,8 m.

4. Specific requirements relating to verandas around corners

- 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 front of reinforced concrete frames flush with the sidewalk and no single piece of such glass may exceed 160 cm² in area.
- 4) No pavement opening on any public street may extend more than 1,2 m beyond the building line.
- 5) Where flaps are permitted in pavement opening each flap may not exceed 0,75 square meters in area and must open upwards and while open, must be provided with stout iron guard rails and stanchions.

- 6) Flap opening 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 grating or with metal plates or with wood.

5. Cat-cranes, lifting cranes and platforms

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

SCHEDULE 5
(Section 5(3))

SLAB FOOTWAYS OR PAVEMENTS

- 1) Paving must be of pre-cast slabs, 450 mm by 450 mm in size with a minimum thickness of 50 mm.
- 2) The shape of all slabs must be rectangular, and the slabs must be laid with joints parallel and at right angle to kerbing.
- 3) The backing of the slabs must be 40 mm thick and composed of concrete, of which three volumes must be 6 mm stone, one volume 3 mm stone, free from dust, two volumes drift sand and one volume Portland cement, The topping must be 12 mm thick composed of one and a half volumes of granite chipping which pass through a 6 mm screen but are retained by a 3 mm screen, and one volume Portland cement, The proportion of any coloring matter introduced into slabs must be such as not to impair the strength of the mixture.
- 4) Slabs must be laid to the grade, line and cross-fall pointed out by the Council and must conform to the following further requirements:
 - a) For ordinary slabs the minimum cross-fall must be 1:100 and the maximum cross-fall 1:25.
 - b) Non-skid slabs of a type to be approved by the Council must be used for cross-falls between 1:25 and 1:15, provided that the maximum cross-fall may not exceed 1:15.
 - c) Longitudinal grades may not be steeper than 1:20 ordinary slabs and Non-skid slabs must be used for longitudinal grades between 1:15 and 1:20, provided that when the longitudinal grade is steeper than 1:15, asphaltic concrete must be used.
 - d) Prior notice of at least three working days must be given to the Council of the intention to lay slabs or asphaltic concrete on any footway or Pavement.
- 5) When carriage opening are formed in kerbs and across footways or pavement, such opening must be paved with similar slabs to those hereinbefore described, but such slabs must be of sizes 300 mm by 150 mm in thickness. All such slabs must be solidly bedded in suitable material and joints between the slabs must be formed in lime mortar consisting of at least one volume lime to three volumes sand, provided that such joints may not exceed 20 mm nor be less than 6 mm in width.
- 6) Should any person desire to lay slabs, he or she must submit a sample to the council for testing and approval in writing before any such materials are deposited upon a public footway or pavement. Should the materials be approved, all the provision of this schedule in regard to shape, size and laying must be observed as far as applicable.

- 7) No person may lay or fix any cement concrete bedding under such paving slabs nor cause any joint thereof to be of cement mortar.
- 8) No person shall lay asphalt, tar macadam, concrete or granolithic in situ in any pavement or any street or sidewalk or footway unless especially permitted in writing by the council to do so.
- 9) No person may lay slabs of any other kind, colour, size or shape, or in any manner other than as specified in this schedule, unless duly authorized thereto by the Council.