

CITY OF CAPE TOWN
PROBLEM BUILDING BY-LAW,
2010

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CONTENTS

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Proclamation

- 7 Overberg District Municipality: Closure of a portion of minor road 4423: Bredasdorp 1054

Provincial Notices

- 273 City of Cape Town: Amendment of scheme regulations 1055
 274 City of Cape Town: (Cape Town Administration): Rectification: Removal of restrictions 1055
 275 City of Cape Town: (Helderberg District): Removal of restrictions 1056
 276 Cape Metropolitan Area: Amendment of the urban structure plan for the Cape Metropolitan Area: Hottentots-Holland Basin 1057
 277 Western Cape Gambling and Racing Board: Amendments to the Racing and Betting rules 1056
 278 City of Cape Town: (Blaauwberg District): Removal of restrictions 1058
 279 City of Cape Town: (Cape Flats District): Removal of restrictions 1058
 280 Beaufort West Municipality: Notice for final capital and operating budget and fixing of property rates, tariffs and fees 1058

Removal of restrictions in towns

- Applications: 1060

Tenders:

- Notices 1059

Local Authorities

- Basic Assessment: Public participation process 1069
 Bitou Local Municipality: Proposed Rezoning and Tourist Facility 1135
 Berg River Municipality: Consolidation 1070
 Breede Valley Municipality: Subdivision and consolidation 1071
 Cape Agulhas Municipality: Closure 1071
 City of Cape Town: 1st Supplementary Valuation to the 2009 General Valuation Roll for the financial year 2010/2011 1072
 City of Cape Town: (Blaauwberg District): Rezoning, subdivision and conditional use 1075

INHOUD

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Proklamasie

- 7 Overberg Distriksmunisipaliteit: Sluiting van 'n gedeelte van ondergeskikte pad 4423: Bredasdorp 1054

Provinsiale Kennisgewings

- 273 Stad Kaapstad: Wysiging van skemaregulasies 1055
 274 Stad Kaapstad: (Kaapstad Administrasie): Opheffing van beperkings 1055
 275 Stad Kaapstad: (Helderberg Distrik): Wysiging van skemaregulasies 1056
 276 Kaapse Metropol: Wysiging van die Kaapse Metropol: Hottentots-Hollandkom stedelike struktuurplan 1057
 277 Wes-Kaapse Raad op Dobbelay en Wedrenne: **English** only 1056
 278 Stad Kaapstad: (Blaauwberg Distrik): Opheffing van beperkings 1058
 279 Stad Kaapstad: (Kaapse Vlakte Distrik): Opheffing van beperkings 1058
 280 Beaufort-Wes Munisipaliteit: Kennisgewing van die finale kapitaal en bedryfsbegroting en die vasstelling van eiendomsbelasting, tariewe en foie 1058

Opheffing van beperkings in dorpe

- Aansoek: 1060

Tenders:

- Kennisgewings: 1059

Plaaslike Owerhede

- Openbare Deelnameproses: Basiese beoordeling 1070
 Bitou Plaaslike Munisipaliteit: Voorgestelde Hersonerings en Toeriste Fasiliteit 1135
 Bergrivier Munisipaliteit: Konsolidasie 1070
 Breedevallei Munisipaliteit: Onderverdeling en konsolidasie 1071
 Kaap Agulhas Munisipaliteit: Sluiting 1071
 Stad Kaapstad: Eerste Aanvullende Waardasielys tot die 2009-Algemene Waardasielys (SV01), vir die 2010/2011-boekjaar 1073
 Stad Kaapstad: (Blaauwberg Streek): Hersonerings, onderverdeling en voorwaardelike gebruik 1075

CITY OF CAPE TOWN
PROBLEM BUILDING BY-LAW, 2010

To provide for the identification, control and management of dilapidated and problem buildings in the City of Cape Town; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 156(2) and (5) of 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 Part B of Schedule 4 to the Constitution lists building regulations as a local government matter to the extent set out in section 155(6) (a) and (7);

AND WHEREAS the City of Cape Town 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 Council of the City of Cape Town, as follows:

Definitions

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

“authorised official” means an employee of the City authorised by the City Manager 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;
 - (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 or common property as defined in the Sectional Titles Act, 1986 (Act No. 95 of 1986); or
- (d) any vacant or unoccupied erf;

“City” means the City of Cape Town established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), by Provincial Notice No. 479 dated 22 December 2000;

“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;

“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 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;
- (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, 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 City 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;

“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;
- (c) that is the subject of written complaints in respect of criminal activities, including drug dealings and prostitution;

- (d) that is illegally occupied;
- (e) where refuse or waste material is accumulated, dumped, stored or deposited with the exception of licensed waste disposal facilities; or
- (f) that is partially completed or structurally unsound and is a threat or danger to the safety of the general public.

Application of this By-law

2. This By-law applies to all problem buildings situated within the area of jurisdiction of the City, except those situated in areas exempted from the application of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

Appointment of Authorised Officials

3. The City Manager may appoint authorised officials to implement and enforce the provisions of this By-law.

Delegation

4. The City Manager may exercise all powers, duties and functions conferred upon the City in terms of this By-law and to delegate such powers, duties and functions to authorised officials.

Entry by authorised officials of buildings and land

5. (1) Any authorised official may enter any building at any reasonable time with a view to—

- (a) inspect or determine whether the building complies with any provision of this By-law subject to 7 days notice of such intended inspection having been given to the owner; or
- (b) serve the owner of the building with the compliance notice as referred to in section 7.

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

(3) An authorised official shall, when entering the building, produce a valid identification document issued to him or her by the City to the owner of such building.

Declaration of a building, a problem building

6. (1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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).

Compliance notice

7. (1) 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—

- (a) repair, renovate, repaint, alter, close, demolish, secure, or remove all refuse from, such problem building;
- (b) complete the construction of a problem building or any structure of such building;
- (c) enclose, fence or barricade such problem building to the satisfaction of the City;
- (d) 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;
- (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 showing signs of becoming unsightly, insanitary, unhealthy or objectionable or is likely to constitute an obstruction; or
- (f) comply with any provision of this By-law.

(2) The City 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.

(3) The City may, if the owner fails to pay such cost, recover the cost in terms of the Credit Control and Debt Collection By-law, 2006.

(4) 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 owner.

(5) If the authorised official deems it necessary for the safety of any person, he or she may by notice in writing—

- (a) 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 the City enters such problem building;
- (b) order any person occupying or working, or who for any other purpose is in any problem building, to vacate such building.

(6) 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 City in terms of subsection (2), unless he or she has been granted permission by City in writing that such building may be occupied or used or continue to be occupied or used, as the case may be.

Service of a notice

8. (1) 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—

- (a) when it has been delivered to him or her personally;
- (b) when it has been left at his or her 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 his or her last known residential or business address in the Republic and an acknowledgment of the posting thereof is produced;
- (d) 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
- (e) 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.

(2) 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.

Indemnity

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

Offences and penalties

10. (1) Any person who contravenes any provision, or fails to comply with any notice issued in terms, of this By-law commits an offence.

(2) A person who is guilty of an offence in terms of this By-law is upon conviction liable to a fine not exceeding R300 000.00 or imprisonment for a period not exceeding three years or to both such fine and imprisonment.

(3) In the case of a continuing offence an additional fine or imprisonment for a period not exceeding ten days for each day on which such offence continued may be imposed.

(4) In addition to any penalty imposed in terms of subsections (2) and (3), 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.

Short title

11. This By law is called the City of Cape Town: Problem Building By-law, 2010.

STAD KAAPSTAD

VERORDENING OP PROBLEEMGEBOUE, 2010

Om vir die identifikasie, beheer en bestuur van probleem- en vervalte geboue in die Stad Kaapstad voorsiening te maak; en om vir aangeleenthede wat daarmee gepaard gaan, voorsiening te maak.

AANHEF

NADEMAAL artikels 156(2) en (5) van die Grondwet bepaal dat 'n munisipaliteit verordeninge kan uitvaardig en toepas vir die doeltreffende administrasie van die aangeleenthede ten opsigte waarvan hy die reg het om dit te administreer, en om enige bevoegdheid uit te oefen rakende 'n aangeleentheid wat redelikerwys vir die doeltreffende uitvoering van sy funksies nodig is of daarmee gepaard gaan;

EN NADEMAAL Deel B van Bylae 4 van die Grondwet boueregulasies as 'n plaaslike regeringsaangeleentheid lys in die mate in artikels 155(6) (a) en (7) uiteengesit;

EN NADEMAAL die Stad Kaapstad probleem- en vervalte geboue binne sy regsgebied wil identifiseer, beheer en bestuur om te verseker dat sodanige geboue aan dié Verordening voldoen deur—

- 'n gekoördineerde geïntegreerde strategieplan, prosesse en prosedures te formuleer;
- probleemgeboue te rehabiliteer deur die geboue op te knap en te vernuwe in plaas van om hulle te sloop;
- die eiendom na oorlegpleging met die eienaars te herontwikkel in gevalle waar probleemgeboue nie opgeknap en vernuwe kan word nie;
- die wegdoening met probleemgeboue te fasiliteer met die oog daarop om die doelwitte van dié Verordening te bereik;

WORD DAAR DUS NOU soos volg deur die Raad van die Stad Kaapstad **VERORDEN**:

Definisies

1. In dié Verordening, tensy dit uit die samehang anders blyk, beteken—

“eienaar” ten opsigte van 'n gebou of grond die persoon op wie se naam die grond waarop sodanige gebou opgerig is of word, na gelang van die geval, by die betrokke Aktekantoor geregistreer is, met inbegrip van 'n persoon wat in beheer van sodanige gebou is: Met dien verstande dat -

- (a) as sodanige persoon, in die geval van 'n natuurlike persoon, oorlede is of deur enige hof as deurbringer of onbevoeg verklaar is om sy of haar eie sake te bestuur of 'n pasiënt is soos omskryf in artikel 1 van die Wet op Geestesgesondheid, 1973 (Wet 18 van 1973), of as sy of haar boedel gesekwestreer is, die betrokke eksekuteurs of kurator, na gelang van die geval;
- (b) as sodanige persoon, in die geval van 'n regspersoon, gelikwedeer of onder geregtelike bestuur geplaas is, die betrokke likwidateur of geregtelike bestuurder, na gelang van die geval;
- (c) as sodanige persoon nie in die Republiek is nie of sy of haar verblyfplek onbekend is, enige persoon wat as agent of andersins die bestuur, instandhouding en invordering van huurgeld of ander gelde ten opsigte van sodanige gebou onderneem of wat daarvoor verantwoordelik is;
- (d) as, in die geval van 'n deeltitelskema, 'n deeltiteleenheid in die naam van 'n persoon geregistreer is, die betrokke persoon;
- (e) in die geval van 'n trust, die trustees van sodanige trust;
- (f) in die geval van 'n deeltitelskema, 'n regspersoon wat vir die beheer, administrasie en bestuur van die gemeenskaplike eiendom verantwoordelik is; of
- (g) as die Stad nie die identiteit van die betrokke persoon kan bepaal nie, enige persoon wat op die voordeel van die gebruik van sodanige gebou geregtig is en wat sodanige voordeel benut;

“gebou” ook—

- (a) enige struktuur, hetsy van 'n tydelike of permanente aard, en ongeag die materiaal wat by die oprigting daarvan gebruik is, wat opgerig is of gebruik word vir, of verband hou met—
 - (i) die akkommodasie of gerief van mense of diere;
 - (ii) die vervaardiging, verwerking, berging, vertoon of verkoop van enige goedere;
 - (iii) die lewering van enige diens;
 - (iv) die vernietiging of behandeling van vullis of ander afvalstowwe;
 - (v) die verbouing of kweek van enige plant of gewas;
- (b) enige muur of deel van 'n gebou;
- (c) 'n eenheid of gemeenskaplike eiendom soos omskryf in die Wet op Deeltitels, 1986 (Wet 95 van 1986); of
- (d) enige onbeboude, onbewoonde erf;

“gelisensieerde afvalwegdoeningsfasiliteit” 'n terrein of perseel wat ingevolge die Nasionale Wet op Omgewingsbestuur: Afval (“National Environmental Management Waste Act”), 2008 (Wet 59 van 2008), gelisensieer is en vir die ophoping of wegdoening van afval gebruik word;

“gemagtigde amptenaar” enige werknemer van die Stadsbestuurder wat deur die Stad gemagtig is om die bepalings van dié Verordening te implementeer en toe te pas;

“probleemgebou” ook enige gebou of gedeelte van 'n gebou—

- (a) wat blyk deur die eienaar agtergelaat te wees met of sonder die gevolg dat belasting of ander diensteheffings nie betaal word nie;
- (b) wat verlate voorkom, oorbewoon is of tekens toon dat dit ongesond, onhigiënies, onooglik of aanstootlik word;

- (c) die onderwerp is van skriftelike klagtes oor kriminele aktiwiteit, insluitende dwelmshandel en prostitusie;
- (d) onwettig bewoon word;
- (e) waar vullis of afvalstowwe by sodanige gebou opgehoop, gestort, geberg of agtergelaat word, met die uitsondering van gelisensieerde afvalwegdoeningsfasiliteite; of
- (f) wat deels voltooï of struktureel swak is, en wat 'n bedreiging of gevaar vir die veiligheid van die algemene publiek inhou;

“**Stad**” die Stad Kaapstad wat ingestel is ingevolge artikel 12 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet 117 van 1998), by Provinsiale Kennisgewing no. 479 van 22 Desember 2000.

Toepassing van dié Verordening

2. Dié Verordening is van toepassing op alle probleemgeboue wat binne die Stad se regsgebied geleë is, met die uitsondering van dié wat geleë is in gebiede wat van die toepassing van die Wet op Nasionale Bouregulasies en Boustandaarde, 1977 (Wet 103 van 1977), vrygestel is.

Aanstelling van gemagtigde amptenare

3. Die Stadsbestuurder kan gemagtigde amptenare aanstel om die bepalings van dié Verordening te implementeer en toe te pas.

Delegasie

4. Die Stadsbestuurder kan alle bevoegdhede, pligte en funksies wat ingevolge dié Verordening aan die Stad verleen word, uitoefen en sodanige bevoegdhede, pligte en funksies aan gemagtigde amptenare deleger.

Betreding van geboue en grond deur gemagtigde amptenare

5. (1) Enige gemagtigde amptenaar mag enige gebou of grond op enige redelike tyd betree met die doel —

- (a) om die gebou te inspekteer of om te bepaal of dit aan enige bepaling van dié Verordening voldoen, onderworpe daaraan dat daar 7 dae kennis van sodanige voorgenome inspeksie aan die eienaar gegee is, of
- (b) om die voldoeningkennisgewing waarna daar in artikel 7 verwys word, aan die eienaar van die gebou te beteken.

(2) Geen persoon mag die gemagtigde amptenaar by die uitoefening van sy of haar bevoegdhede ingevolge die Verordening hinder of dwarsboom nie.

(3) 'n Gemagtigde amptenaar moet by betreding van die gebou 'n geldige identiteitsdokument wat die Stad aan hom of haar uitgereik het, aan die eienaar van sodanige gebou of grond toon.

Verklaring van 'n gebou tot probleemgebou

6. (1) Die gemagtigde amptenaar mag, onderworpe aan subartikels (2) tot (5), as 'n gebou binne die definisie van probleemgebou val soos omskryf in artikel 1, sodanige gebou tot probleemgebou verklaar.

(2) Die gemagtigde amptenaar moet, voordat sodanige gebou tot probleemgebou verklaar word, die eienaar skriftelik in kennis stel van sy of haar voorneme om sodanige gebou tot probleemgebou te verklaar.

(3) Die gemagtigde amptenaar kan 'n ondersoek uitvoer ten opsigte van 'n gebou wat hy of sy voornemens is om as 'n probleemgebou te verklaar, soos voorsien in subartikel (2), met dien verstande dat hy of sy 'n kennisgewing van sodanige ondersoek van die betrokke gebou moet toon.

(4) Die gemagtigde amptenaar moet die eienaar 'n tydperk van sewe dae bied om verhoë te rig oor waarom die gebou nie tot probleemgebou verklaar kan word nie.

(5) Die gemagtigde amptenaar moet, na oorweging van die verhoë waarna daar in subartikel (4) verwys word, 'n besluit neem of 'n gebou tot 'n probleemgebou verklaar moet word of nie.

(6) Die eienaar het, ten opsigte van 'n verklaring wat ingevolge subartikel (1) gedoen is, 'n reg van appèl ingevolge artikel 62 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000).

Voldoeningskennisgewing

7. (1) Die gemagtigde amptenaar mag 'n skriftelike kennisgewing beteken aan die eienaar van enige gebou wat tot probleemgebou verklaar is, soos daarna in artikel 6 verwys word, welke kennisgewing van sodanige eienaar vereis om binne 'n voorgeskrewe tydperk—

- (a) sodanige probleemgebou te herstel, op te knap, te verf, te verander, te sluit, te sloop of te beveilig;
- (b) die konstruksie van 'n probleemgebou of enige struktuur van sodanige gebou te voltooi;
- (c) sodanige probleemgebou tot voltoening van die Stad af te kamp, te omhein of af te sper;
- (d) 'n goedgekeurde bevoegde persoon waarna in Deel A 19 van die Nasionale Bouregulasies verwys word, op koste van sodanige eienaar aan te stel en opdrag te gee om 'n toestand wat daartoe aanleiding gegee het dat 'n gebou tot 'n probleemgebou verklaar is, te ondersoek en om aan die gemagtigde amptenaar verslag te doen oor die aard en omvang van die stappe wat gedoen moet word wat na die mening van sodanige goedgekeurde bevoegde persoon gedoen moet word om sodanige probleemgebou te beveilig;
- (e) met enige materiaal of artikels wat by enige gebou opgehoop, gestort, geberg of agtergelaat is, wat vullis of afval is en wat tekens toon dat dit onooglik, onhigiënies of ongesond of aanstootlik word of waarskynlik 'n hindernis sal uitmaak, weg te doen of dit te vernietig of te verwyder; of
- (f) aan enige bepaling van dié Verordening te voldoen.

- (2) Die Stad mag, ingeval sodanige eienaar versuim om te voldoen aan 'n kennisgewing wat ingevolge subartikel (1) aan hom of haar beteken is, enige probleemgebou op koste van die eienaar herstel, opknop, verf, verander, sluit, sloop, alle afval verwyder of die probleemgebou beveilig.
- (3) Die Stad mag, as die eienaar versuim om sodanige koste te betaal, die koste ingevolge die Verordening op Kredietbeheer en Skuldinvordering, 2006, verhaal.
- (4) As die gemagtigde amptenaar ondanks subartikel (1), artikel 6 en onderworpe aan enige toepaslike wetgewing, rede het om te glo dat die toestand van enige gebou sodanig is dat stappe onverwyld gedoen moet word om lewe of eiendom te beskerm, mag hy of sy sodanige stappe doen wat in die omstandighede nodig geag word sonder om sodanige kennisgewing aan die eienaar van sodanige gebou te beteken of af te lewer, en die koste van sodanige stappe van sodanige eienaar verhaal.
- (5) As die gemagtigde amptenaar dit vir die veiligheid van enige persoon nodig ag, mag hy of sy deur middel van skriftelike kennisgewing—
- die eienaar van enige probleemgebou gelas om binne die tydperk wat in sodanige kennisgewing gespesifiseer word, enige persoon wat sodanige probleemgebou okkupeer of daarin werk of wat om enige ander rede daarin is, te verwyder en om te sorg dat geen persoon wat nie deur die Stad gemagtig is nie, sodanige probleemgebou betree;
 - enige persoon wat enige probleemgebou okkupeer of daarin werk of om enige ander rede daarin is, gelas om sodanige gebou te ontruim.
- (6) Geen persoon mag enige probleemgebou okkupeer, gebruik of dit laat okkupeer of gebruik of voortgaan om enige probleemgebou te okkupeer, te gebruik of laat okkupeer of gebruik ten opsigte waarvan 'n kennisgewing ingevolge dié artikel beteken of afgelewer is of stappe ingevolge subartikel (2) deur die Stad gedoen is nie, tensy die Stad skriftelike toestemming aan hom of haar verleen het dat sodanige gebou geokkupeer of gebruik mag word of steeds geokkupeer of gebruik mag word, na gelang van die geval.

Betekening van 'n kennisgewing

8. (1) Wanneer ook al 'n voldoeningskennisgewing ingevolge dié Verordening gemagtig is of vereis word om aan 'n persoon beteken te word, sal dit doeltreffend en voldoende aan sodanige persoon beteken geag te wees—

- as dit persoonlik aan hom of haar beteken is;
- as dit by sy of haar verblyfplek in die Republiek by 'n persoon gelaat is wat oënskynlik ouer as 16 jaar is;
- as dit per geregistreerde of aangetekende pos na sy of haar laaste bekende woon- of sakeadres in die Republiek gepos is en bewys van die pos daarvan gelewer kan word;
- as dit, ingeval sy of haar adres in die Republiek onbekend is, aan sy of haar agent of verteenwoordiger in die Republiek beteken is op die wyse bedoel in paragraaf (a), (b) of (c); of
- as dit, ingeval sy of haar adres in die Republiek onbekend is, op 'n opsigtelike plek aangebring is op die vaste eiendom, as daar is, waarop dit betrekking het.

(2) Wanneer bogenoemde voldoeningskennisgewing gemagtig is of vereis word om aan 'n persoon beteken te word uit hoofde daarvan dat hy of sy die eienaar van vaste eiendom is of was of enige ander reg ten opsigte daarvan het, is dit nie nodig om hom of haar te noem nie, maar is dit voldoende as hy of sy daarin as die eienaar of houer van sodanige eiendom of ander reg beskryf word, na gelang van die geval.

Vrywaring

9. Die Stad of enige gemagtigde amptenaar van die Stad is nie teenoor 'n derde party aanspreeklik vir enige skade wat veroorsaak word deur enigiets wat die Stad of enige gemagtigde amptenaar doen of nalaat om te doen by die uitvoering van enige funksie of plig ingevolge dié Verordening nie.

Misdrywe en boetes

10. (1) Enige persoon wat 'n bepaling van dié Verordening oortree of versuim om aan 'n kennisgewing wat daarkragtens uitgereik is, te voldoen, begaan 'n misdryf.

(2) Enige persoon wat ingevolge dié Verordening aan 'n misdryf skuldig is, is by skuldigbevinding strafbaar met 'n boete van R300 000,00 of gevangenisstraf van hoogstens drie jaar, of aan beide sodanige boete en gevangenisstraf.

(3) In die geval van 'n voortgesette misdryf kan 'n bykomende boete of gevangenisstraf vir 'n tydperk van hoogstens tien dae opgelê vir elke dag waarop sodanige misdryf voortgesit is.

(4) Benewens enige boete wat ingevolge subartikels (2) en (3) opgelê is, is die persoon wat skuldig bevind is, aanspreeklik daarvoor om die koste van herstelwerk van enige skade wat aangerig is of koste wat aangegaan is om enige skade as gevolg van sodanige misdryf te herstel, te betaal.

Kort titel

11. Dié Verordening word die Stad Kaapstad: Verordening op Probleemgeboue, 2010, genoem.

ISIXEKO SASEKAPA**UMTHETHO KAMASIPALA ONGEZAKHIWO EZIYINGXAKI/EZINENGXAKI-ka-2010**

Ukubonelela ngomsebenzi wokuchonga, ukujonga nokulawula izakhiwo ezidilikayo neziyingxaki kummandla wesiXeko saseKapa; kunye nemibandela enxulumene noku.

INTSHAYELELO

NJENGOKO icandelo le-156(2) kunye nele-(5) loMgaqo-siseko libonelela ngento yokuba umasipala unakho ukwenza yaye asebenzise imithetho kamasipala ukulungiselela ulawulo olusebenzayo lwemicimbi anelungelo lokuyisebenzisa, yaye asebenzise naliphi na igunya elibhekiselele kumba oyimfuneko kuye, okanye kumcimbi ongalindelekanga, ekusebenzeni ngokufanelekileyo imisebenzi yakhe;

YAYE NJENGOKO iSahlulo B seShedyuli yesi-4 kuMgaqo-nkqubo sidwelisa imimiselo yesakhiwo njengomcimbi kamasipala ngokobume obuthiwe thaca kwicandelo lama-155(6) (a) kunye nelesi-(7);

YAYE NJENGOKO isiXeko saseKapa sifuna ukuchonga, ukulawula nokuphatha izakhiwo ezidilikileyo neziyingxaki kwingingqi yaso yolawulo ukuqinisekisa ngento yokuba izakhiwo ezinjalo ziyahambelana nalo Mthetho kaMasipala ngoku-

- Qulunqa isicwangciso esilungelelanisiweyo esihlanganisiweyo seqhinga lokusebenza, kunye neenkqubo;
- Guqula izakhiwo eziyingxaki ngokuzivuselela ngokutsha nokuzihlaziya ngokutsha ngaphezu kokuba zidilizwe;
- Phuhlisa ngokutsha isiza apho izakhiwo eziyingxaki zingabi nakho ukuvuselelwa ngokutsha okanye ukuhlaziywa ngokutsha emva kothethwano kunye nabanini bazo;

YAYE NGOKO KE, UMISELWE liBhunga lesiXeko saseKapa, ngale ndlela ilandelayo:—

IiNkcazelo

1. Kulo Mthetho kaMasipala, ngaphandle kokuba ubume buchaza enye into—

“igosa eligunyazisiweyo” lithetha umqeshwa kaManejala wesiXeko eligunyaziswe sisiXeko ukuba limilisele yaye linyanzelise izibonelelo zalo Mthetho kaMasipala;

“isakhiwo” sibandakanya—

- (a) nasiphi na, nokokuba sesethutyana okanye sisigxina kungakhathalelwe izixhobo ezisetyenzisiweyo ekwakheni apho, esakhelwe okanye esisetyenziselwa okanye esibhekiselele—
 - (i) nendawo yokuhlala okanye efanele abantu okanye izilwanyana;
 - (ii) nokwenza, ukuqhuba, ukugcina, ukubonisa okanye ukuthengisa naziphi na impahla;
 - (iii) nokunikezelwa kwayo nayiphi na inkonzo;
 - (iv) nokuchitha okanye ukunyangwa kwenkunkuma okanye nayiphi na impahla ezinkunkuma;
 - (v) nokulima okanye ukukhulisa nasiphi na isityalo okanye isivuno;
- (b) naluphi na udonga okanye inxalenye yesakhiwo;
- (c) iyunithi okanye ipropati njengoko ichazwe kuMthetho weCandelo leTayitile (uMthetho onguNombolo 95 we-1986);
- (d) nasiphi na isiza esingenanto;

“IsiXeko” sithetha isiXeko saseKapa esisekwe ngokwemiqathango yecandelo le-12 likaMasipala: uMthetho weZakhiwo zikaMasipala, we-1998 (uMthetho onguNombolo 117 ka-1988), ongeSaziso sePhondo esinguNombolo 479 somhla wama-22 kuDisemba wama-2000;

“isibonelelo sokulahla inkunkuma esinelayisenisi” sithetha isiza, okanye isakhiwo esinelayisenisi ngokwemiqathango yomthetho oyi-National Environmental Management: Waste Act, 2008 (Umthetho Nomb. 59 ka-2008) nesisetyenziselwa ukufaka okanye ukulahla inkunkuma;

“umnini” ngokuhambelana nesakhiwo okanye umhlaba uthetha umntu othi umhlaba ube segameni lakhe apho bewakhiwe kuwo okanye kusakhiwe kuwo, njengoko ubume bunokuba njalo, sibhaliswe kwi-ofisi yeziqibo ekuthethwa ngayo yaye kubandakanywa umntu ophetheyo weso sakhwiwo: Ngaphandle kokuba—

- (a) umntu lowo, kwimeko yomntu, uswelekile okanye ubhengezwe nayiphi na inkundla njengongakwaziyo ukulawula imicimbi yakhe okanye unenkitho okanye usisigulane njengoko kuchaziwe kwicandelo 1 loMthetho weMpilo yeNgqondo, wangowe-1973 (uMthetho onguNombolo 18 ka-1973), okanye ilifa lakhe lithinjwe, umabi welifa okanye umgcini ekubhekiselelwe kuye, njengoko ubume bunokuba njalo;
- (b) umntu lowo, kwimeko yomntu osemthethweni, uthe wathinjwa okanye ishishini labekwa phantsi kolawulo olusemthethweni, umthimbi okanye umlawuli osemthethweni lowo, njengoko imeko inokuba njalo;
- (c) umntu lowo ungaphandle kweRiphabliki okanye akaziwa apho akhoyo, nawuphi na umntu, njenge-arhente okanye nayiphi na enye indlela, uqalisa ulawulo, ukulolonga okanye ukuqokelela imali ye-arhente okanye nayiphi na enye imali ebhekiselele kwisakhiwo esinjalo okanye lowo unoxanduva apho ngoko;
- (d) kwimeko yoyilo lwecandelo letayitile, iyunithi yecandelo letayitile ibhaliswe egameni lomntu;
- (e) kumcimbi wetrasti (trust), ibhaliswa ngegama labanini-trasti baloo trasti;
- (f) kwimeko yoyilo lwecandelo letayitile, iqumru elimanyeneyo linoxanduva lokulawula, nokuphatha izakhiwo ezo zonke; okanye;
- (g) isiXeko asikwazi ukuqinisekisa ngeenkukacha zomntu lowo, nawuphi na umntu onelungelo kwisibonelelo sokusebenzisa eso sakhiwo othi axhamle kweso sibonelelo sinjalo;

“isakhiwo esiyingxaki” sibandakanya nasiphi na isakhiwo okanye inxalenye yesakhiwo:

- (a) esibonakala ngathi silahliwe ngumnini waso esijongile okanye engasijonganga isiphumo sokokuba iirhafu okanye eminye imirhumo yenkonzo ayihlawulwanga;
- (b) esikhangeleka silahliwe, sinabantu abaninzi kakhulu abahlala kuso okanye sibonisa iimpawu zokungabikho kwempilo, asicocekanga, asibukeki okanye sibi;
- (c) esingunobangela wezikhazazo ezibhaliweyo ezibhekiselele kwimisebenzi yolwaphulo-mthetho ezibandakanya ukuthengisa iziyobisi nokuthengisa ngemizimba;

- (d) sihlalwa ngokungekho mthethweni;
- (e) inkunkuma nezinto ezilahliweyo zikhule kakhulu, kuyalaha, kugcinwe okanye kujulwe nje kweso sakhiwo ngaphandle kwezibonelelo ezisemthethweni zokulaha inkunkuma; okanye
- (f) nasiphi na isakhiwo esishiywe singagqitywanga, okanye esingakhiwanga ngokufanelekileyo esinobungozi kukhuseleko loluntu.

Ukusetyenziswa kwalo Mthetho kaMasipala

2. Lo Mthetho kaMasipala usebenza kuzo zonke izakhiwo eziyingxaki ezakhiwe kwingingqi yolawulo lwesiXeko, ngaphandle kwezo zikwimandla enikwe imvume yokuba ingachatshazelwa yimiqathango yomthetho oyi-National Building Regulations and Building Standards Act, 1977 (uMthetho Nomb. 103 ka-1977).

Ukutyunjwa kwaMagosa okanye abasebenzi abaGunyazisiweyo

3. UManejala wesiXeko angatyumba abasebenzi ze abanike igunya lokumisela nokunyanzelisa izibonelelo zalo Mthetho kaMasipala.

Ukunikezela ngegunya

4. UManejala wesiXeko angasebenzisa onke amagunya nemisebenzi yakhe ayinikwe sisiXeko ngokwalo Mthetho kaMasipala ze awanikezele onke loo magunya naloo misebenzi kubasebenzi abagunyazisiweyo.

Ilungelo lokungena legosa eligunyazisiweyo lezakhiwo nomhlaba

5. (1) Naliphi na igosa eligunyazisiweyo linalo ilungelo lokungena nakusiphi na isakhiwo okanye umhlaba nangaliphi na ixesha elifanelekileyo ngenjongo—

- (a) yokuhlola okanye yokuqinisekisa ngento yokuba ingaba isakhiwo siyahambelana naso nasiphi na isibonelelo salo Mthetho kaMasipala kodwa oko kuyaxhomekeka ekubeni kukhutshwe isaziso seentsuku ezisi-7 esichaza ngoloo hlolo esiya kuthi sinikwe umnini-sakhiwo; okanye
- (b) zokunika umnini wesakhiwo isaziso sokuhambelana njengoko kubhekiselelwe kuso kwicandelo lesi-7.

(2) Akukho mntu oya kuphazamisa okanye athintele igosa eligunyazisiweyo ekusebenziseni amagunya alo ngokwemiqathango yalo Mthetho kaMasipala.

(3) Igosa eligunyazisiweyo, xa lingena kwisakhiwo, liya kuvelisa uxwebhu lokuzazisa olukhutshelwe umnini wesakhiwo eso okanye umhlaba wesiXeko.

Ukubhengezwa kwesakhiwo, isakhiwo esiyinxaki

6. (1) Igosa eligunyazisiweyo linakho, kuxhonyekeke kumacandelwana (2) ukuya (5), ukuba ngaba isakhiwo sikuluhlu lwenkcazelo yesakhiwo esiyinxaki njengoko kuchaziwe kwicandelo loku-1, ukusibhengeza isakhiwo eso njengesakhiwo esiyinxaki.

(2) Igosa eligunyazisiweyo, phambi kokuba libhengeze isakhiwo eso njengesakhiwo esiyinxaki, liya kwazisa umnini ngesaziso esibhaliweyo ngenjongo yalo yokusibhengeza isakhiwo eso njengesakhiwo esiyinxaki.

(3) Igosa eligunyazisiweyo livumelekile ukuba liqhube uphando oluphathelele kwisakhiwo azimisele ukusibhengeza njengesakhiwo esiyinxaki njengoko kubonisiwe kwicandelwana (2), ngokuxhomekeke ekubeni igosa elo lixhome isaziso esibhengeza uphando ngesakhiwo eso kuthethwa ngaso.

(4) Igosa eligunyazisiweyo liya kunika umnini wesakhiwo isithuba seentsuku ezisixhenxe ukuba anike ubungqina bokokuba ingaba kutheni esi sakhiwo singenakho ukubhengezwa njengesakhiwo esiyinxaki.

(5) Igosa eligunyazisiweyo, emva kokuba lithathele ingqalelo ubungqina ekubhekiswe kubo kwicandelwana (4), liya kuthatha isigqibo malunga nokuba eso sakhiwo lisibhengeze okanye lingasibhengezi njengesakhiwo esiyinxaki

(6) Umnini, ngokubhekiselele kubhengezo olwenziweyo ngokwemiqathango yecandelwana loku-(1), uya kuba nelungelo lokubhena ngokwemiqathango yecandelo lama-62 loMthetho weeNkqubo zikaMasipala, wama-2000 (uMthetho onguNombolo wama-32 wama-2000).

Isaziso sokuhambelana

7. (1) Igosa eligunyazisiweyo linakho ukunikezela ngesaziso esibhaliweyo kumnini waso nasiphi na isakhiwo esithe sabhengezwa njengesakhiwo esiyinxaki njengoko kubhekiselelwe kuso kwicandelo lesi-6, sidinga umnini lowo kwisithuba esichaziweyo kufuneka—

- (a) alungise, ahlaziye ngokutsha, apeyinte ngokutsha, aguqule, avale, adilize okanye aqinise isakhiwo eso siyingxaki;
- (b) agqibezele ulwakhiwo lwesakhiwo esiyinxaki okanye naluphi na udonga olukweso sakhiwo;
- (c) asivalele, asibiyele okanye asenzele uqilima eso sakhiwo ngohlobo oluya kwanelisa isiXeko;
- (d) atyumbe ze ayalele, ngeendleko zomnini lowo, umntu okwaziyo ukwenza loo msebenzi ekubhekiswe kuye kwiNxalenye A 19 yeMimiselo yoKwakha yeSizwe (National Building Regulations), ukuba aphande ngemeko ekhokelele ekubeni eso sakhiwo sibhengezwe njengesiyinxaki ze anike ingxelo kwigosa eligunyazisiweyo ngobume nobungakanani bamanyathelo ekufuneka ethatyathwe, anokuthi ngembono yomntu okwaziyo ukwenza loo msebenzi, awathabathe ukusenza eso sakhiwo siyingxaki sibe sesikhuselekileyo;
- (e) alahle, atshabalalise okanye asuse nayiphi na impahla okanye izinto ezifunjiweyo, ezilahliweyo, ezigciniweyo okanye ezibekiweyo nakusiphi na isakhiwo, eyinkunkuma ebonisa iimpawu zokungajongeki nenokuchaphazela ucoceko lwendawo okanye enokuchaphazela impilo nekungafanelekanga ukuba ibe lapho okanye enokuba ngumqobo othile; okanye
- (f) kuthotyelwe naso nasiphi na isibonelelo salo Mthetho kaMasipala

(2) IsiXeko sinakho, ukuba ngaba umnini lowo uyasilela ukuhambelana nesaziso asikhutshelweyo ngokwemiqathango yecandelwana (1), ukulungisa, ukuhlaziya ngokutsha, ukupeyinta ngokutsha, ukuguqula, ukuvala, ukudiliza, ukususa yonke inkunkuma okanye asivalele nasiphi na isakhiwo esiyinxaki ngeendleko zomnini.

(3) IsiXeko sinakho, ukuba ngaba umnini uyasilela ukuhlawula iindleko ezinjalo, ukubuyisa ezo ndleko ngokwemiqathango yoMthetho kaMasipala woLawulo lweMali-mboleko kunye noQokelelo lweMali-mboleko, wama-2006.

(4) Ngaphandle kwecandelwana (1), icandelo 6, yaye kuxhonyekeke kuwo nawuphi na umthetho osebenzayo, ukuba ngaba igosa eligunyazisiweyo linesizathu lokukholelwa kwinto yokuba ubume baso nasiphi na isakhiwo bobokuba kufuneka kuthatyathwe amanyathelo ngoko nangoko ukukhusela ubomi okanye isakhiwo, unakho ukuthabatha amanyathelo anjalo njengoko kuya kube kuyimfuneko kwiimeko ezo engakhange abe

ukhuphe okanye uhambise isaziso esinjalo kumnini wesakhiwo eso yaye unakho ukuzifumana kwakhona iindleko zokuthabatha loo manyathelo kumnini lowo.

- (5) Ukuba ngaba igosa eligunyazisiweyo libona kuyimfuneko ukulungiselela ukhuseleko lawo nawuphi na umntu, linakho ngesaziso esibhaliweyo—
- ukuyalela umnini ngayo nayiphi na ingxaki ekwisakhiwo ukuba asuse, kwisithuba esichazwe kweso saziso, nawuphi na umntu ohlalayo okanye osebenzayo, okanye nawuphi na omnye othi ngenye injongo abe kweso sakhiwo siyingxaki, nokunika ingqwalasela kwinto yokokuba makungabikho mntu ongagunyaziswanga sisiXeko omakangene kweso sakhiwo siyingxaki;
 - ukuyalela nawuphi na umntu ohlalayo okanye osebenzayo, okanye nawuphina na umntu ongena nangayiphi na injongo kwisakhiwo esiyingxaki, ukuba aphume aphele kweso sakhiwo.
- (6) Akukho mntu uya kuhlala, uya kusebenzisa okanye uya kunika imvume yokuhlala okanye yokusebenzisa nasiphi na isakhiwo esiyingxaki okanye aqhubeke ehlala, esebenzisa okanye evumela, ukuhlalwa okanye ukusetyenziswa kwaso nasiphi na isakhiwo esiyingxaki ngokubhekiselele apho bekukhutshwe okanye kuhanjiswa khona isaziso ngokwemiqathango yeli candelo okanye amanyathelo athatyathwe sisiXeko ngokwemiqathango yecandelwana (2), ngaphandle kokuba ubani lowo unikwe imvume sisiXeko ngembalelwano yokokuba isakhiwo eso sinakho ukuhlalwa okanye ukusetyenziswa, njengoko imeko isitsho.

Ukunikezelwa kwesaziso

8. (1) Nangalo naliphi na ithuba isaziso sokuhambelana sithe sagunyaziswa okanye kwafuneka sinikezelwe kumntu lowo ngokwemiqathango yalo Mthetho kaMasipala, siya kuthatyathwa njengesinikezelwe njengesisebenzayo nesanelisayo kumntu lowo—

- xa sithe sanikezelwa kuye ubuqu;
 - xa sithe sashiywa kwindawo yakhe ahlala kuyo okanye ashishina kuyo kwiRiphabliki kumntu mhlawumbi obudala bungaphezulu kweminyaka eli-16;
 - xa sithe saposwa ngeposi eqinisekisiweyo okanye engqinelweyo kwidelesi yakhe yokugqibela eyaziwayo yendawo yakhe yokuhlala okanye yoshishino kwiRiphabliki kunye nesaziso sokuba iposiwe emva koko sikhutshwe;
 - ukuba ngaba idilesi yakhe kwiRiphabliki ayaziwa, xa ithe yathunyelwa kwi-arhente yakhe okanye ummeli kwiRiphabliki ngendlela apha equlunqwe kumhlathi (a), (b) okanye (c); okanye;
 - ukuba ngaba idilesi yakhe kuye ne-arhente azaziwa kwiRiphabliki, xa sithe saposelwa kwindawo esekuhleni kwisakhiwo, ukuba ngaba ikho, ehambelana naso.
- (2) Xa isaziso sokuhambelana njengoko sichazwe apha ngasentla sigunyazisiwe okanye kufuneka sinikezelwe kumntu ngesizathu sokuba inguye okanye engumnini kanye enelungelo elithile ngokubhekiselele kwisakhiwo okanye umhlaba, akusayi kuba yimfuneko ukumchaza, kodwa kuya kwanela ukuba yena apho uchazwa njengomnini okanye ungumphathi weso sakhiwo okanye elinye ilungelo, njengoko kunokuba njalo.

Ukhuselo

9. IsiXeko okanye naliphi na igosa eligunyazisiweyo lesiXeko alisayi kuba nabutyala kumntu wesithathu ngawo nawuphi na umonakalo obangelwe ngokwenziweyo okanye okungenziwanga sisiXeko okanye naliphi na igosa eligunyazisiweyo ekuqhubeni nawuphi na umsebenzi okanye uxanduva ngokwemiqathango yalo Mthetho kaMasipala.

Amatyala nezohlwayo

10. (1) Nawuphi na umntu othe waphula izibonelelo okanye othe akathobela nasiphi na isaziso esikhutshwe kulandelwa lo Mthetho kaMasipala, waphule umthetho.

(2) Umntu onobutyala bolwaphulo mthetho ngokwemiqathango yalo Mthetho kaMasipala uya kugwetywa aze abe noxanduva lokuhlalwa isohlwayo esingama-R 300 000.00 okanye avalelwe entolongweni kangangesithuba esingadlulanga kwiminyaka emithathu okanye zozibini izohlwayo ezinjehohlwayo kunye nokuvalwa entolongweni.

(3) Kwimeko apho ulwaphulo mthetho luqhubekayo isohlwayo esangezelelweyo okanye ukuvalwa entolongweni kwisithuba esingadlulanga kwiintsuku ezilishumi ngosuku ngalunye oluthe ulwaphulo mthetho lwaqhubeka ngalo kunakho ukunyanzeliswa.

(4) Ngaphezulu kwaso nasiphi na isohlwayo esinyanzeliswa ngokwemiqathango yecandelwana lesi-(2) kunye nelesi-(3), umntu ofunyaniswe enetyala uya kuba noxanduva lokuhlalwa iindleko zokulungisa nawuphi na umonakalo owenzekileyo okanye iindleko ezenziweyo ekulungiseni nawuphi na umonakalo ovele ngenxa yolo lwaphulo mthetho.

Isihloko esifutshane

11. Lo Mthetho kaMasipala ubizwa sisiXeko saseKapa ngokuba: UMthetho kaMasipala ongezakhiwo eziyiNgxaki, wama-2010.

9 July 2010

22043

CONTENTS—(Continued)

Page

City of Cape Town: (Helderberg District): Special consent and departure.....	1076
City of Cape Town: (Helderberg District): Rezoning, subdivision, departure and approval of site development plan.....	1077
City of Cape Town: (Northern District): Rezoning and closure..	1078
City of Cape Town: (Southern District): Rezoning and subdivision.....	1079
City of Cape Town: (Southern District): Rezoning.....	1078
City of Cape Town: Graffiti By-Law, 2010.....	1093
City of Cape Town: Problem Building By-Law, 2010.....	1084
Drakenstein Municipality: Subdivision, Consolidation, Rezoning and Departures.....	1136
Drakenstein Municipality: Subdivision, Rezoning and Amendment of Urban Structure Plan.....	1138
Drakenstein Municipality: Application for Consent Use.....	1137
Drakenstein Municipality: Application for Rezoning and Departure.....	1139
Drakenstein Municipality: Application for Rezoning.....	1140
Hessequa Municipality: Closure.....	1076
Hessequa Municipality: Closure and alienation.....	1079
Mossel Bay Municipality: Customer Care, Indigent, Credit Control and Debt Collection.....	1123
Mossel Bay Municipality: Rates Policy.....	1014
Mossel Bay Municipality: Tariff Policy.....	1109
Mossel Bay Municipality: Rezoning, departure and consolidation.....	1080
Mossel Bay Municipality: Closure.....	1080
Mossel Bay Municipality: Public notice calling for inspection of Supplementary Valuation Rolls and lodging of objections..	1081
Swartland Municipality: Rezoning.....	1081
Swellendam Municipality: Subdivision.....	1082
Swellendam Municipality: Consent use.....	1082
Swellendam Municipality: Departure.....	1082
Swellendam Municipality: Rezoning and Consent use.....	1083
Swellendam Municipality: Consent use and departure.....	1083
Swellendam Municipality: Consent use and departure.....	1083

INHOUD—(Vervolg)

Bladsy

Stad Kaapstad: (Helderberg Distrik): Spesiale toestemming en afwyking.....	1076
Stad Kaapstad: (Helderberg Distrik): Hersonerings, onderverdeling, afwyking en goedkeuring van die terreinontwikkelingsplan.....	1077
Stad Kaapstad: (Noordelike Distrik): Hersonerings en sluiting....	1078
Stad Kaapstad: (Suidelike Distrik): Hersonerings en onderverdeling.....	1079
Stad Kaapstad: (Suidelike Distrik): Hersonerings.....	1078
Stad Kaapstad: Verordening op Graffiti, 2010.....	1096
Stad Kaapstad: Verordening op Probleemgeboue, 2010.....	1087
Drakenstein Munisipaliteit: Onderverdeling, Konsolidasie, Hersonerings en Afwyking.....	1136
Drakenstein Munisipaliteit: Onderverdeling, Hersonerings en Wysiging van Stedelike Struktuurplan.....	1138
Drakenstein Munisipaliteit: Aansoek om Vergunningsgebruik....	1137
Drakenstein Munisipaliteit: Aansoek om Hersonerings en Afwyking.....	1139
Drakenstein Munisipaliteit: Aansoek om Hersonerings.....	1140
Hessequa Munisipaliteit: Sluiting.....	1076
Hessequa Munisipaliteit: Sluiting en vervreemding.....	1079
Mosselbaai Munisipaliteit: Customer Care, Indigent, Credit Control and Debt Collection (English only).....	1123
Mosselbaai Munisipaliteit: Rates Policy (English only).....	1014
Mosselbaai Munisipaliteit: Tariff Policy (English only).....	1109
Mosselbaai Munisipaliteit: Hersonerings, afwyking en konsolidasie.....	1080
Mosselbaai Munisipaliteit: Sluiting.....	1080
Mosselbaai Munisipaliteit: Publieke kennisgewing vir inspeksie van die Aanvullende Waardasielys en indien van besware.....	1081
Swartland Munisipaliteit: Hersonerings.....	1081
Swellendam Munisipaliteit: Onderverdeling.....	1082
Swellendam Munisipaliteit: Vergunningsgebruik.....	1082
Swellendam Munisipaliteit: Afwyking.....	1082
Swellendam Munisipaliteit: Hersonerings en Vergunningsgebruik.....	1083
Swellendam Munisipaliteit: Vergunningsgebruik en afwyking....	1083
Swellendam Munisipaliteit: Vergunningsgebruik en afwyking....	1083