

LOCAL AUTHORITY NOTICE 714 OF 2025

MORETELE LOCAL MUNICIPALITY UNLAWFUL LAND OCCUPATION BYLAW 2024



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**MORETELE LOCAL MUNICIPALITY UNLAWFUL LAND OCCUPATION BYLAW,
2024**

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1. DEFINITIONS

“Authorised land occupation” means any informal settlement which is recognised by the Municipality as an authorised informal settlement, and which will be legalised and upgraded as a formal settlement in terms of the Municipality's existing policies;

“Authorised Official” means the authorised official appointed or assigned in terms of section 6 of this Bylaw;

“Building or Structure” means any temporary shelter, building, hut, tent, dwelling or similar structure which does not comply with the provisions of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), the regulations promulgated under that Act and the Municipality's by-law.

“By-law” refers to the Moretele Local Municipality Unlawful Land Occupation By-law

“Consent” means the express or implied permission by the owner or person in charge of the occupied land by an occupant of a structure irrespective of whether such consent was given in writing or otherwise;

“Contractual Agreement” means the agreement entered into between the occupant and the Municipality in terms of which the household is authorised to occupy a structure in an authorised informal settlement;

“Council” refers to the municipal council of the Moretele Local Municipality.

“Court” means any division of the High Court or the magistrate's court in whose area of jurisdiction the land is situated;

“Evict” means the permanent removal, in accordance with the provision of a court order, of a person and his or her property from occupation of a structure or the land on which the structure is constructed, and includes a demolition and removal from the land of any structural materials used to construct the structure, and "eviction" has a corresponding meaning;

“Informal settlement” means an area that is not formally planned but nevertheless is occupied with or without the consent of the owner of the land or the person in charge of the land;

"Head of the household" means any person in the household who has capacity to act and is recognized by the majority of the other persons in the household as the person responsible for the maintenance of the welfare and discipline within the household;

"Land" means any any erf, agricultural holding or farm portion within the area of jurisdiction of the Municipality, irrespective of whether such land belongs to the National Government, the Provincial Government, the Municipality or a private individual, company or other legal entity;

"land use" refers to the lawful purpose for which land may be used in terms of the municipality's land use scheme.

"land use scheme" refers to Moretele Local Municipality land Use Scheme

"Land owner" means the registered owner of land, irrespective of whether such owner is the National Government, the Provincial Government, the Municipality or a private individual, company or other legal entity;

"legal department" refers to the Moretele Local Municipality's in-house legal services department.

"Municipality" means the Moretele Local Municipality, a Municipality established in terms of Section 12 of the Municipal Structures Act, 1998 (Act No. 117 of 1998);

"Person in charge", in relation to land, means a person who has the legal authority to give permission to another person to enter or reside on that land;

"Settlement" mean an area that is occupied by dwellers

"sustainable human settlement" refers to a place designed for a wide variety of developmental needs and activities of humans, which utilises local resources efficiently, creates opportunities for people to achieve their full potential and which is convenient, offers choice and quality and promotes equality of access.

"Unauthorised Land Occupation" means the illegal occupation of land or any settlement or occupation of land by people without the express or tacit consent of the owner of the land or the person in charge of the land, or without any other right to settle on or occupy such land;

"unlawful occupant" refers to a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land.

2. BACKGROUND AND CONTEXT

The Municipality recognises that as local government, land owner(s) and the authoritative institution regulating the manner in which all areas under its jurisdiction have to develop according to the Objectives of its Integrated Development Plan, Spatial Development Framework, and any legislation or policies that regulates Land Development.

The municipality is faced with the continuous proliferation of unlawful land occupation and most of these have developed through the occupation of privately or state-owned land

which makes service delivery implementation by the municipality difficult. Council does not have a specific policy that is aimed at dealing effectively with the proliferation of settlements. It is believed that illegal land occupation and, thus, the proliferation of unlawful land occupation.

The process of transferring such occupied land to the municipality is cumbersome and restricts the municipality from exercising its mandate in rendering basic services to the affected communities and illegal letting or the 'selling' of sites by individuals who plan and lead unlawful land occupation are prevalent.

The provision of such services and the numbering of existing shacks and buildings built in bricks and mortar does not in itself mean that the residents thereof reside there permanently. Such numbering does not itself in any manner whatsoever mean that the yard fenced in or not which a structure or building has been erected and so numbered is a stand. The occupant of a structure or building in these areas has no right to the land and cannot claim ownership of the land on whatever basis including the period of occupation of such land.

3. OBJECTIVES OF BY-LAW

The municipality acknowledges that some of its citizenry reside in unlawfully occupied land. It recognises that many of these unlawfully occupied land offer shelter to the poor and destitute, but that it creates undesirable environments due to the lack of services and security of tenure. Furthermore, some of the land parcels in the municipality are unlawfully occupied for the purposes of commercial trading and other activities. Land parcels within the municipality's area of jurisdiction are, therefore, invaded for residential and commercial reasons, amongst others.

It is for these reasons that this by-law is directed at addressing the following:

- To contain, monitor and prevent unlawful land occupation
- To plan for sustainable human settlements

4. POLICY AND LEGISLATIVE FRAMEWORK

This section highlights various policies and legislation that have a bearing on unlawful land occupation.

Constitution of the Republic of South Africa 108 of 1996

"No one may be evicted from their home, or have their home demolished, without an order of Court made after considering all the relevant circumstances. No legislation may permit Arbitrary evictions"

In order to ensure the realisation of this right, Parliament enacted two statutes - the Extension of Security of Tenure Act (ESTA), in 1997, and the Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act (PIE) in 1998.

Disaster Management Act ,2002: Regulations (Eviction and demolition of places of residence)

"A person may not be evicted from his or her land or home or have his or her place of residence demolished for the duration of the national state of disaster unless a competent court has granted an order authorising the eviction or demolition".

Practically the tenant will remain in occupation of the rental property until termination of the National State of Disaster or an amendment to the Regulations, pertaining to evictions, provides otherwise. There is thus no legal remedy available for property owners to physically evict the tenants until such time, unless the Court hearing the matter orders immediate eviction. Although the tenant or occupier will remain liable for the rental amount and monthly expenses such as water and electricity consumption for the duration of their occupation, property owners will have to proceed with legal action against them to obtain judgment for the arrears. Execution steps will have to be taken to attempt recovery of the arrears and there are no guarantees of success.

Extension of Security of Tenure Act 62 of 1997

The Extension of Security of Tenure Act, 62 of 1997 (commonly known as ESTA) gives people who lived on someone else's land, with permission from the owner, on or after 4 February 1997, a protected legal right to continue living on that land. ESTA covers people who live in rural areas, on farms and on undeveloped land. It also protects people living on land that is encircled by a township or land within a township that is marked for agricultural purposes.

Housing Act 107 of 1997

The Housing Act of 1997 specifically authorizes Local Government to expropriate land for the purpose of housing of its residents and requires that the process as set out in the Expropriation Act be followed.

Interim Protection of Land Rights Act 31 of 1996

Parliament passed the Interim Protection of Informal Land Rights Act (IPILRA) to give effect to section 25(6) and (9) of the Constitution. IPILRA was intended to be a temporary law that would work like a safety net by protecting people against the deprivation of their land rights until a more detailed permanent law could be passed to strengthen people's rights.

Municipal Systems Act 32 of 2000

The Act places a statutory duty upon municipalities to provide services to the whole of the community within their respective jurisdictions and to progressively realise the rights of access to housing, water and sanitation as enshrined in the Constitution.

National Environmental Management Act 107 of 1998

The Act is closely linked to land use planning and listed land use activities have to be approved in terms of planning and environmental law. The NEMA process generally affects the establishment of new townships or settlements in all types of application process (egR293 [1962], Less Formal Township Establishment, SPLUMA, 2015, but can also affect land use applications in established areas. It is largely ineffectual where land invasion or informal settlement has occurred.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

"No person may evict an unlawful occupier except on the authority of a competent court".

The purpose of the PIE Act is on the one hand to provide for the prohibition of illegal eviction and on the other to provide procedures for the eviction of unlawful occupiers. Therefore, the purpose of the PIE Act is therefore to protect both the occupier and the landowner and applies to all land within the Republic of South Africa.

Rental Housing Act 50 of 1999

It is the government's responsibility to (i) 'promote a stable and growing market that progressively meets the latent demand for affordable rental housing among persons historically disadvantaged by unfair discrimination and poor persons, by the introduction of incentives, mechanisms and other measures that improve conditions in the rental housing market' and (ii) 'facilitate the provision of rental housing in partnership with the private sector'.

The Act regulates the relationship between landlord and tenant and outlines obligations for government.

Spatial Planning and Land Use Management Act 16 of 2013

SPLUMA states that Municipalities, in their Spatial Development Framework plans should "identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable" (in section 21 (k))

The SPLUMA further highlights that the land use scheme of the municipality should "include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme."

In SPLUMA, incremental upgrading of informal areas means the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation, and may include any settlement or area under traditional tenure.

5. LEGAL PROVISIONS

The Municipality acknowledge that it has legal and moral obligation to provide alternative accommodation to residents of the said areas who have been so residing for more than six (6) months if so required to relocate as provided for by Prevention of Illegal Eviction from and Unlawful Occupation of Land Act Act 19 of 1998.

No person has a right to allow, encourage, motivate, organise and/or instigate the occupation of land of whatever nature without an expressed and written consent of the Municipality.

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

6. APPOINTMENT OF AUTHORISED OFFICIAL (AO)

The Municipality must appoint an official or assign one of its officials as its authorised official to manage and control all unlawful occupation of land in accordance with the provisions of this by-law.

7. DUTIES OF THE AUTHORISED OFFICIAL

The Authorised Official must:

- a) conduct regular surveys to determine the location, origin, extent of and the conditions prevailing in each of the unlawfully occupied land;
- b) monitor and control all unlawfully occupied land and take the necessary steps to prevent unlawful land occupation within the area of jurisdiction of the Municipality;
- c) undertake, promote, liaison and communicate with land owners and relevant stakeholders with a view to obtaining their understanding and cooperation regarding the prevention of unlawful land occupation in the area of jurisdiction of the Municipality;
- d) keep a register of all the residents who are entitled to reside in each authorised settlement, and in such register the following details must be entered in respect of each shack in each authorised settlement:
 - (i) the number allocated to the stand or site on which the structure is constructed.
 - (ii) the name and identity number of the head of the household who is entitled to occupy the structure;
 - (iii) the names, identity numbers and relationships to the head of the household of each and every other person occupying the structure as a member of the household;
 - (iv) the reference number of the file of the Authorised Official that contains a copy of the contractual agreement in respect of the structure;
 - (v) the number of the shack's rental account;
 - (vi) the number of the structures municipal services account;
 - (vii) the previous address of the household that is entitled to occupy the structure; and
 - (viii) the names, addresses and telephone numbers, if any, of at least two family members of the head of the household who do not live at the same address as the household that is entitled to occupy the structure;
- e) ensure that all the residents living in lawfully occupied land are registered in the Municipality's National Housing Needs Register in consultation with the relevant Ward Councillor, headman, tribal or community leader;
- f) submit quarterly written reports on the control and management of any unlawful occupied land, or the conditions prevailing in the unlawful occupation of land to the Municipality;
- g) for the purpose of informing residents of informal settlements, ensure that a copy of this by-law is posted on the municipal website, is available at the venue where the residents' committee usually holds its meetings and at municipal libraries and the office of the relevant ward councillor;
- h) allocate to each site or stand in an authorised settlement a unique number as the temporary address of the site or stand and must ensure that such number is legibly painted or inscribed in a prominent place on the site or stand; (Check with finance and housing)
- i) ensure that no new unauthorized shacks are erected in any informal settlement and that no new unauthorised residents take up residence in such an informal settlement; and
- j) perform any other duty or function which may be necessary to ensure the proper management and control of an unlawful occupied land.

8. INCIDENTS OF UNLAWFUL OCCUPATION OF LAND

- a) The Authorised Official must, within a period of 24 hours after he or she becomes aware of an incident of unlawful land occupation do the following:
 - (i) commence with the process prescribed by the Municipality regarding the determination of the status of the informal settlement as an authorised or an unauthorised settlement.
 - (ii) complete the process contemplated in subsection (a)(i) within 48 hours after commencement; and
 - (iii) inform the residents regarding the commencement of the process to determine the status of the settlement and that, depending upon the outcome of the determination, the informal settlement will be dealt with in accordance with section 8 or section 9, whichever is applicable in the circumstances.
- b) In the event of the status of an settlement contemplated in subsection (a) being determined as an authorised settlement, the authorised official must deal with the matter in accordance with the provisions of Section 8.
- c) In the event of the status of an settlement contemplated in subsection (a) being determined as an unauthorised settlement, the authorised official must deal with the matter in accordance with the provisions of section 9.

9. PROCEDURES RELATING TO THE MANAGEMENT AND MONITORING OF AUTHORISED INFORMAL SETTLEMENTS

- a) As soon as a determination of the status of an authorised settlement has been made, the Authorised Official must, together with the Ward Committee or the Ward Councillor, representative from Traditional/Community Authority visit the settlement and notify the residents of the status of the recognized settlement by means of holding community meetings in the area;
- b) The Authorised Official must implement measures to manage and monitor the occupancy of residents in the settlement area in order to prevent the construction of unauthorised structures in the authorised settlement and the taking up of residence by unauthorised residents in the settlement;
- c) Any unauthorised occupancy in the authorised settlement contemplated in subsection (b) must be dealt with in accordance with the provisions of section 9.
- d) In respect of a authorised settlement contemplated in subsection (a), the authorised official must, as and when required, inform the Finance Department of the Municipality of such settlement and make information contemplated in section 6(d) available to that Department.
- e) The Finance Department of the Municipality must –
 - (i) institute, operate and maintain an appropriate account for services rendered by the Municipality to each registered shack in the authorised settlement and for any charges levied for the right of occupation of a particular site or stand in the authorised settlement, subject to relevant legislation;
 - (ii) and ensure that such an account is supplied to the head of the household of each registered

10. PROCEDURES RELATING TO THE TERMINATION OF UNAUTHORISED SETTLEMENTS

- a) As soon as a determination of the status of a settlement has been made, the authorised official must together with the Ward Committee or the Ward Councillor,

- a representative from Traditional/Community Authority and Law Enforcement Officers visit the settlement and issue a written notice as well as notifying the residents of the status of the settlement by means of holding community meetings in the area;
- b) If the settlement is on land that does not belong to the Municipality, the Municipality must inform the owner of the property and present them with a copy of the written notice;
 - c) If the residents notified in terms of subsection (a) cooperate and vacate their structure and remove their structural materials and other personal property from the site or stand in the unauthorised settlement, the property owner must take such steps as he or she may deem appropriate to prevent a recurrence of any incident of unlawful land occupation on that site, stand or unauthorised settlement and must regularly monitor the situation to ensure the non-recurrence of such unlawful land occupation;
 - d) If the residents notified in terms of subsection (a) fail to cooperate and vacate their structures and remove their structural materials and other personal property from the site or stand in the settlement, the Authorised Official and/or Property Owner must immediately institute the necessary legal procedures to obtain an eviction order;
 - e) Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (a), the Authorised Official and/or Property Owner must commence the process to obtain an eviction order contemplated in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), against any person or persons jointly or severally, occupying or residing in a structure or on a site or stand in the settlement;
 - f) The Authorised Official and/or Property Owner must, within a period of 24 hours after obtaining the eviction order referred to in subsection (e), execute the eviction order and to terminate the unauthorised settlement.

11. ADMINISTRATIVE CONTROL MEASURES

- a) Authorised Official must ensure that the number and personal details of residents of existing authorised and authorised settlements are captured into its administrative systems.
- b) Municipality and/or Property Owner henceforth will endeavour to demolish and impound any structures that is being erected within area of jurisdiction without its consent;
- c) Municipality and/or Property Owner must inform the offender in writing of the offence committed, giving the offender forty-eight (48 hrs) hours to remove or demolish the illegal structure. Failure to comply with the above, section 9 of this by-law will be put into effect;
- d) Where a structure has been put up for more than three (3) days and the action of immediate eviction was not taken, a notice of unlawful occupation of land shall be issued, advising the occupant to remove the structure immediately. The Legal Department and/or Property Owner should be notified and same must prepare and urgent application to the Court for and eviction order. This action must be accomplished within three (3) months he residents of the reception area will have to sign the standard service agreement and to pay for services rendered;

12. OFFENCES AND PENALTIES

- a) Any person who incites, assists and/or abets persons to occupy land unlawfully shall be guilty of an offence;
- b) Any person who is directly or indirectly receives or solicits payment of any money or other consideration as a fee or charge for arranging or organizing or permitting a person to occupy land without the consent of the owner or person in charge of that land shall be guilty of an offence;
- c) Any person who wilfully or in a grossly negligent manner hinders or obstructs Authorised Official, Ward Councillor, Ward Committee, a representative from Traditional/Community Authority or any other official of the Municipality in the execution of their duties in terms of this By-law shall be guilty of an offence;
- d) Any person found guilty of an offence in terms of the provisions of this section this section shall be liable to a fine or imprisonment.
- e) Any person found guilty of an offence in terms of the provisions, shall be liable to:-
 - (i) Refund any money or other consideration which was received by that person and which has been seized to be forfeited, and the money and the proceeds of the consideration may be paid to the person or persons from whom the money or consideration was received, and where such person or persons cannot be positively identified, such money or proceeds of the consideration must be paid into the Municipality's Revenue Account.
 - (ii) If any money or other consideration has been received in contravention of subsection 11(b) but has not been seized or made available for the purposes of confiscation, the court that convicts a person of a contravention of this section may order the amount provided to the satisfaction of the court to have been received by such person to be paid to the person or persons from whom the money or consideration was received, and where such person or persons cannot be positively identified, the money or proceeds of the consideration must be paid into the Municipality's Revenue Account.
 - (iii) Such order has the effect of a civil judgment and may be executed against such person who received the money or consideration as if it were a civil judgment in favour of the person or persons from whom the money or other consideration was received or in favour of the Municipality.

13.APPLICATION OF BY-LAWS

This by-law applies to matters of unlawful land occupation within the area of jurisdiction of the Moretele Local Municipality.

14.SHORT TITLE

This by-law shall be called the Moretele Local Municipality Unlawful Land Occupation By-law 2024 and comes into operation on the date of promulgation.