

Winnie Madikizela-Mandela, South Africa

Encroachment of Municipal Property By-law, 2009

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Winnie Madikizela-Mandela South Africa

Encroachment of Municipal Property By-law, 2009

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The Municipal Manager of Mbizana local municipality hereby, in terms of section 13(a) of the local government: municipal systems act, 2000 (act no 32 of 2000), publishes the encroachment of property By-laws for the Mbizana Local Municipality, as approved by its council as set out below

1. Definitions

- (1) in these By-laws, any word or expression which has been defined in the national building regulations and building standards act, 1977 ([Act No 103 of 1977](#)), has that meaning and, unless context states otherwise-
 - (a) "**Council**" means Mbizana municipal council established in terms of section 12 of the Local Government: Municipal Structures Act, 1999. (act no 1 17 of 1998);
 - (b) "**encroachment** " means any physical object which intrudes on or over municipal property, or property which the council has control over or other property in respect of which a servitude or other property right has been registered in favour of the council;
 - (c) "**m**" means meter;
 - (d) "**mm**" means millimeter;
 - (e) "**prescribed**" means determined by the resolution of the council made from time to time;
 - (f) "**prescribed fee**" means a fee determined by a council resolution in terms of the Local Government Transition Act, 1993 (Act No. 209. of 1993), or any other applicable legislation;
 - (g) "**public road**" means any road, street or thoroughfare or any other place which is commonly used by the public or any section thereof or to which the public has a right of access, and includes -
 - (a) the verge of any such road, street or thoroughfare;
 - (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
 - (c) any other work or object forming part or connected or belonging to such road, street or thoroughfare.
- (2) If any provision in these By-laws vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality and such power, function or duty has in terms of section 81(2) of the Local Government: of the Municipal Systems Act, 2000 ([Act No 32 of 2000](#)), or any other law assigned to a service provider, the reference to such employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorized by it.

2. Council permission required

- (1) No person may, without prior written permission of the Municipality, make or construct any colonnade, veranda, balcony, bay window, pavement light, showcase or other encroachment on or over any part of a public road, and pavement opening in or under any public road.

- (2) The Municipality may refuse permission required in terms of section (1) or may grant such permission either unconditionally or with conditions and subject to the payment of the prescribed fee annually or the performance of work or service determined by the council in each in each case.
- (3) The prescribed fee mentioned in subsection (2) is payable in advance at the beginning of each year which is calculate from the date of the written permission or the date determined by the council, and the owner off the encroachment is liable for the payment of the prescribed fee for each encroachment.
- (4) The owner of an encroachment must within 90 days after the date of commencement of these By-laws notify the council in writing of-
 - (a) the existence of an encroachment; and
 - (b) the horizontal dimensions of every encroachment measured-parallel to the road boundary on or over which the encroachment exists.
- (5) Until the council is notified of the horizontal dimensions of the encroachment in terms of subsection (4)(b), every encroachment relating to a building is deemed to have an aggregate horizontal dimension equal to the total road frontage on or over which the encroachment exists, of the property on which the building concerned is situated.

3. Rules for the construction of encroachments

- (1) The design, arrangement and construction of a veranda, balcony, bay window, or other encroachment on or over a public road, as well as the paving, kerb and gutter thereof must be to the satisfaction of and to the levels approved by the council.
- (2) If corrugated iron is used for covering a veranda, its exposed surface must be painted.
- (3) A veranda over a public road must correspond in line, height and detail with existing adjoining verandas.

4. Columns

- (1) The Municipality may determine areas within the Municipal area where no person may place veranda columns over any public road or pavements.
- (2) No person is permitted to place any veranda column over any pavement where such pavement is less than 2.6 m wide.
- (3) No person may place any veranda column more than 3m from the building line measured to the outside of the column or at less than 3m centre to centre.
- (4) No person may place any veranda column over any pavement at the corner of a public road that is beyond the alignment of the building lines.
- (5) No person may place a portion of any veranda column at a distance less than 600mm back from the front edge of the kerb.
- (6) No person may place a twin or double veranda column over any public road or pavement.
- (7) If a veranda is supported on columns, the columns may not have square arris, no base may project more than 50mm beyond the bottom diameter of the column and the maximum horizontal axial dimensions of such base ma not exceed 350mm.
- (8) If the form o f a colum n is classic in character, the shaft must have suitable entasis and cap with the base in due proportions.
- (9) No column including the cap and base, may be less than 3m or more than 3.6m in height and more than 4.5m including plinth.

- (10) No person may, without prior written permission from the council, place a column on a public road where the footway or sidewalk is, or is likely to be occupied by any cable, pipe or other municipal service.
- (11) The minimum height from the footway or sidewalk to the underside of each cantilever or fascia girder is 3m.
- (12) Plain piping or tubing may not be used for any column for a veranda and balcony over or on a public road unless architecturally treated for aesthetic purposes.
- (13) The coping, blocking course or balustrade, if any, may not extend less than 750mm or more than 1.05 m above the floor of a balcony.
- (14) Nothing in these By-laws prohibits-
 - (a) the erection and use of a party column common to two adjoining verandas if the column stands partly on the extended boundary lines of two properties or adjoins the same; or
 - (b) in the case of adjoining verandas, the placement of any column upon a plinth if this is necessary for alignment and all the other provisions of these By-laws are complied with.

5. Balconies and bay window

- (1) No balcony, bay window or encroachment may overhang a public road if it is at a height of less than 3m above the pavement.
- (2) No balcony may encroach more than 1.35 m over any public road.
- (3) No bay window may encroach more than 900mm over any public road.
- (4) The aggregate horizontal length of a bay window at any level over a public road may not exceed one-third of the length of the building frontage on that road.
- (5) Any balcony superimposed upon a veranda must be set back at least 1,2m from the line of such veranda.
- (6) No part of a balcony which is attached to any veranda may be carried up to a height greater than two storeys above the pavement level except that, if the top portion of the balcony is roofed with a concrete flat roof forming a floor, a balustrade not exceeding 1m in height is allowed above the level of the floor.
- (7) No dividing wall across a balcony over a public road may exceed 1m in height or 225mm in thickness
- (8) A balcony over any public road may not be the sole means of access to any room or apartment.
- (9) No person may place or permit or cause to be placed any articles upon any balcony over a public road, except ornamental plants, tables, chairs, canvas blinds and awnings not used for signs or advertisements.
- (10) If any floor of a building is used solely for the parking of a motor vehicle, no bay window at the level of the floor may project over any public road for more than 1.35 m of the full length of the building frontage on to that road.

6. Plinths, pilasters, corbels and cornices

- (1) No plinth, pilaster or other encroachment beyond a building line carried up from ground level is permitted to encroach on a public road.

- (2) Any pilaster, cornice, corbel, or similar architectural feature which is at least 3m above the ground may not exceed the following encroachment of a public road:
 - (a) A pilaster: 450mm the total aggregate frontage length and any bay window' in the same storey must be included in the calculation of the maximum aggregate length for bay window
 - (b) A fire-resisting ornamental hood or pediment over a door: 600mm. and in any part not less than 2.75m in height above the footway or pavement;
 - (c) A cornice: 1.05m if not exceeding 10.5m above the footway or pavement and one-tenth of the height from the footway or pavement if exceeding 10.5m with a maximum of 1,8m.

7. Verandas around corners

If a veranda is built around a corner of a public road it must be properly displayed rounded to follow the curve or kerb.

8. Pavement openings

- (1) No pavement opening may be the sole means of access to any vault or cellar.
- (2) No pavement opening on any public road may extend more than 1,2 m beyond the building line.
- (3) If flaps are permitted in a pavement opening, no flap may exceed 0,75 square meters in area and must open upwards and while open, must be provided with stout iron guardrails and stanchions.
- (4) A 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
- (5) The wall in front or parallel to the kerb in every pavement opening must be built with a suitable batter to the satisfaction of the council.
- (6) No pavement opening may be covered with a material bar grating or with a metal plate or with wood.

9. Maintenance, removal and tenancy of projections

- (1) The owner of any encroachment must maintain the encroachment in good order and state of repair
- (2) Any pavement opening, pavement light, wall thereof and basement wall must be made and kept water-tight by the owner.

10. Encroachments erected in front of buildings

If any encroachment has been erected or constructed in front of any building, the owner must at his, her or its expense-

- (a) pave the whole footway or pavement under the encroachment or in front of the building in which the pavement opening is fixed; and
- (b) lay the road kerbing and guttering and paving in front of the building for the full width of the footway or pavement

11. Encroachments

- (1) (a) Any person wishing to erect or construct on, under or over any public, or any immovable property owned by or vested in the Municipality, must apply to the Building Control Officer on a form prescribed by the Municipality for that purpose.

- (b) If, in the opinion of the Building control Officer, drawings are required for the conclusion of an encroachment agreement, the prescribed charge in addition to any other charge is payable to the Municipality.
- (2) The owner of any encroachment or fixture, whether in the course of construction or erection or completed, on, under or over any public road, is regarded as a tenant in respect of the encroachment and, if notified in writing by the council under the hand of the Building Control officer to remove any such encroachment or fixture, must do so within a reasonable period stated in the notice.
- (3) The owner of the building in connection with which any encroachment exists, or is proposed-
 - (a) must defray any cost incurred in connection with which any encroachment exists, or is proposed; and
 - (b) must allow the Municipality to erect on, or attach to the encroachment or fixture or anything required in connection with electrical or other activities of the Municipality.

12. Offences and penalties

Any person who-

- (a) contravenes or fails to comply with any provisions of these By-laws ;
- (b) fails to comply with any notice issued in terms of these By-laws;
- (c) fails to comply with any lawful instruction given in terms of these By-laws; or
- (d) obstructs or hinders any authorized representative or employee of the Municipality in the execution of his or her duties under these By-laws, is guilty of an offence and is liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine no exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Municipality and served on the person concerned requiring the discontinuance of such offence.

13. Repeal of by-laws

The provisions of any By-law relating to encroachment of Municipal Property are repealed insofar as they relate to matters provided for in these By-laws.

14. Short title

This By-law is called Encroachment of Municipal Property By-laws.