

# LAND USE MANAGEMENT BY-LAW FOR DAWID KRUIPER MUNICIPALITY

VERSION 1.1 - MARCH 2018  
(as approved by Council on 27 February 2018)

## Preamble

WHEREAS the Constitution established local government as a distinctive sphere of government, interdependent, and interrelated with the national and provincial spheres of government; and

AND WHEREAS a Municipality has distinctive responsibilities in terms of the Constitution and other legislation regarding Spatial Planning and Land Use Management within its area of jurisdiction; and

AND WHEREAS the commencement of the Spatial Planning and Land Use Management Act, 16 of 2013 on 1 July 2015 has necessitated the promulgation of a By-Law to ensure that the Municipality can give effect to its obligations

BE IT THEREFORE ENACTED by the Municipal Council of Dawid Kruiper Municipality as follows:-

## 1. DEFINITIONS AND INTERPRETATIONS

- 1) In this By-law, unless the context indicates otherwise, any word or term to which a meaning has been assigned in the Spatial Planning and Land Use Management Act 16 of 2013 and has the meaning assigned to it in that Act.

All references to sections in this By-law refers to the By-law unless clearly indicated otherwise.

Apart from the words and terms defined in the Act, the following words or terms shall have the following meaning in this By-law -

“Act” or “the Act” means the Spatial Planning and Land Use Management Act 16 of 2013 and any Regulations published in terms of section 54 of the Act;

“application” means an application to submitted to the Municipality in terms of which a development right is sought;

“authorised employee” means a municipal employee who is authorised by the Municipal Council of the Municipality to exercise a power or perform a duty in terms of this By-law as read with the provisions of the Act;

“Council” means the Municipal Council of the Municipality;

“Municipality” means the Municipality established by Establishment Notice [insert number] of [insert date] issued in terms of the Local Government: Municipal Structures Act 117 of 1998 or the delegated employee of the Municipality or the Municipal Planning Tribunal of the Municipality if the context so require;

“Municipal Planning Tribunal” means the Municipal Planning Tribunal appointed and by the Council and established by the Municipality in terms of the Act;

“Regulations” means any Regulations published in terms of the Act.

## 2. APPLICATION OF BY-LAW

- 1) This By-law applies to the area of jurisdiction of Dawid Kruiper Municipality and should be read together with the Land Use Management Scheme for Dawid Kruiper Municipality.

## 3. LAND DEVELOPMENT REQUIRING APPROVAL

- 1) No person may commence, continue, or cause the commencement or continuation of land development without the approval of the Municipality in terms of subsection (2).
- 2) The owner of land (including all organs of state) or a person listed in section 45(1) of the Act must apply to the Municipality in terms of this By-law, and in accordance with the approved Land Use Management Scheme for Dawid Kruiper Municipality, for any changes- or additional land use/development rights.

- 3) If any development right is granted subject to any conditions as may be imposed in respect thereof, the applicant and owner must comply with such conditions imposed, as well as any conditions contained in any applicable land use management scheme and the Spatial Development Framework of the Municipality.
- 4) If a Municipality wishes to apply for any development rights made provision for in this By-law, it must submit its application in the manner prescribed which will be dealt with in the manner prescribed.

#### **4 REZONING OF LAND**

- 1) The rezoning of land may be made applicable to a land unit or part thereof, and zoning of land need not follow the boundaries of land as registered in terms of the Deeds Registries Act.

#### **5. SUBDIVISION**

- 1) No person may subdivide land without the approval of the Municipality, unless the subdivision is exempted in terms of the Land Use Management Scheme of Dawid Kruiper Municipality.
- 2) An applicant may submit a subdivision application simultaneously with an application for rezoning.

#### **6. AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE CONDITIONS**

- 1) The Municipal Planning Tribunal may upon application amend or remove a restrictive condition contained in the conditions of establishment of a township, in a title deed relating to land or those conditions contained in a land use management scheme administered by it.

#### **7. OWNERSHIP OF PUBLIC PLACES AND LAND REQUIRED FOR MUNICIPAL ENGINEERING SERVICES AND SOCIAL FACILITIES**

- 1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan shall vest in the Municipality upon registration of the public open space in terms of the Deed Registries Act, unless a provision to the contrary is contained in the development right granted to an applicant, in which event the condition contained in such a development right shall prevail.
- 2) The Municipality may in terms of conditions imposed in terms of any development right granted determine or designate land that must be used for the provision of engineering service which must be transferred to the Municipality at the cost of the owner upon the owner complying with the development right thus granted.

#### **8. CLOSURE OF PUBLIC PLACES**

- 1) The Municipality may upon application, permanently close a public place or any portion thereof in accordance with provisions of this By-Law and the Land Use Management Scheme.
- 2) An applicant who requires the closure of a public place, including the Municipality, whether permanently or temporarily, must apply to the Municipality, in terms of section 3 of this By-Law as well as the approved Land Use Management Scheme for Dawid Kruiper Municipality, in the manner prescribed.
- 3) The ownership of the land comprised in any public place or portion thereof that is permanently closed in terms of this section continues to vest in the Municipality, unless the Municipality determines otherwise.

#### **9. SERVICES ARISING FROM SUBDIVISION OR THE GRANTING OF ANY OTHER DEVELOPMENT RIGHTS**

- 1) Subsequent to the approval of an application for subdivision or any other development right in terms of this By-law, the owner of any land unit originating from the subdivision must:
  - a) allow without compensation that the following be conveyed across its land in respect of other land units originating from the subdivision:
    - i. electricity cables;
    - ii. telephone cables;
    - iii. other electronic infrastructure;
    - iv. main and other water pipes;
    - v. sewer lines;
    - vi. storm water pipes;
    - vii. ditches and channels; and
    - viii. any cable conveying data in any format whatsoever.
  - b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:

- i. surface installations such as mini-substations;
  - ii. (meter kiosks; and
  - iii. service pillars;
- c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs (a) or (b); and
- d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and to provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of, and within a period to be determined by, the Municipality.

## **10. APPLICATION PROCEDURES**

- 1) All development applications for rezoning, subdivision, secondary and or consent use or any other relevant application in terms of the Act and/or these regulations will be executed strictly according to the procedures for the handling of applications as set out in the LUMS.

## **11. WRITTEN ASSESSMENT OF APPLICATION**

- 1) The Municipal Planning Tribunal or the Designated Official may request the Municipality to provide it with a written assessment of any application within a reasonable period of time.
- 2) A written assessment contemplated in subsection (1) may include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

## **12. DEVELOPMENT CHARGES**

- 1) The following components are applicable regarding development charges relating to developments within the borders of the Municipality as imposed by Council in accordance with sections 40(7)(b) of the Act, namely:
  - a) The applicant must pay development charges to the Municipality in respect of the provision of an external engineering service by the municipality.
  - b) The external engineering service, for which development charges are payable, must be set out in a policy adopted by the Municipality and/or annual fixed tariff list and included in the approval letter.
  - c) The amount of the development charges payable by an applicant must be calculated in accordance with the policy and/or annual fixed tariff list adopted by the Municipality.
  - d) The date by which development charges must be paid and the means of payment must be specified in the conditions of approval.
  - e) The development charges imposed are subject to escalation at the rate calculated in accordance with the policy and/or annual fixed tariff list on development charges and will be recalculated if these rates have changed before the payment is made.

## **13. ERRORS AND OMISSIONS**

- 1) The Municipal Planning Tribunal or the designated employee may at any time correct an error in the wording of its decision if the correction does not change its decision or result in an alteration, suspension or deletion of a condition of approval.
- 2) The Municipal Planning Tribunal or the designated employee may on its own initiative or on application by the applicant or interested party, and upon good cause shown, condone an error in a procedure, provided that such condonation does not have a material adverse effect on, or unreasonably prejudices, any party.

## **14. ENFORCEMENT, OFFENCES AND PENALTIES**

- 1) Any person who—
  - a) contravenes or fails to comply with this By-Law; or
  - b) utilises land in a manner other than prescribed by a zoning scheme without the approval of the municipality and who does not cease that use or take reasonable steps to ensure that the use ceases; or
  - c) supplies particulars, information or answers in an application knowing it to be false, incorrect or misleading or not believing them to be correct,
 is guilty of an offence and is liable upon conviction to a fine and/or imprisonment, as stated in the Act.
- 2) An owner who permits his or her land to be used in a manner set out in subsections(1)(a) and (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of a zoning scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment, as stated in the Act.

- 3) Any person who refuse an authorised employee of the Municipality access to land in terms of sections 32 and/or 48 of the Act or hinders the authorised employee, is guilty of an offence and liable upon conviction to a fine and/or imprisonment as stated in the Act.

## **15. COMPLAINT**

- 1) A person, who is affected by an alleged contravention of this By-Law or the LUMS of the Municipality, may in writing, request the Municipality to investigate the alleged contravention and to act in terms of this By-Law.
- 2) A person who submits a complaint, objection, comment or representation must provide –
  - a) sufficient details of the contravention;
  - b) their full name;
  - c) their address and other contact details and the method by which they may be notified;
  - d) the reason for the complaint or how they are affected by the contravention, including at least –
    - i. the effect the contravention has on them or the area;
    - ii. any aspect of the contravention that is considered to be inconsistent with policy, and how.
- 3) An objection, comment or representation which does not meet the requirements of subsection (2) may be disregarded.
- 4) The Municipality must then investigate the complaint within the time and in accordance with the procedure set out in the LUMS and take steps to rectify the matter.

## **16. RECTIFICATION OF CONTRAVENTIONS**

- 1) It is the responsibility of Dawid Kruijer Municipality to ensure that land is utilized in accordance with the Land Use Management Scheme and that contraventions are rectified in accordance with this By-Law. Failure to rectify an unauthorised land use will be dealt with as stipulated hereunder and will also be subjected to the Municipality imposing a monthly or occasional levy as per annual approved tariff structure of Council for such unauthorised land uses, as part of the Municipal account until such time as the owner / occupier of the said property provides written proof that the contravention has been rectified.
- 2) If land, a land unit or land area or a building situated thereon or any part thereof is developed or utilised or any other action is taken in contravention of any provisions of this By-law and/or the Land Use Management Scheme of the Municipality, the Municipality shall serve a notice to comply (hereinafter referred to a "notice to comply " or "contravention notice") on the owner / occupier of the land in the manner prescribed, to rectify the contravention before a date specified in the notice to comply, being not less than 7 days (norm for any non-residential contravention) and not more than 30 days (where contravention is of a residential nature) after the date on which the notice to comply was served.
- 3) The Municipality may on written application or of its own accord agree to the extension of the period within which the contravention is to be rectified, provided that an extension shall only be granted if a building has to be demolished to rectify the contravention.
- 4) If the owner / occupier fails to comply with the notice to comply, the Municipality shall take all further steps required to rectify the contravention, which may include the imposing of a contravention levy and/or legal proceedings instituted against the land owner and/or occupant.
- 5) The Municipality will, according to the annual approved tariff structure of Council, impose a contravention levy for unauthorised land uses as part of the municipal account, until such time as the owner / occupier of the said property provides written proof that the contravention has been rectified.
- 6) The owner of the land and/or occupier, in the case of municipal or state owned land, concerned on the date on which the notices to comply was issued and who fails to comply with the notice, shall be liable for the payment of the contravention levy which may be
  - a) an once off amount applicable per event or occurrence of the said contravention, or
  - b) a monthly levy applicable as long as the contravention continues and both such levies may be calculated retrospectively from the date on which the contravention first occurred.
- 7) If the owner or occupier disputes the existence or the nature of the contravention to which the notice to comply relates, he or she shall on or before the date referred to in subsection (2) submit a written statement to the Municipal Planning Tribunal of the Municipality.
- 8) If the owner or occupier disputes the existence or the nature of the contravention to which the notice to comply relates to, the Municipal Planning Tribunal of the Municipality may obtain the written comments from any

interested party or person who has an interest in the matter.

- 9) Upon receipt of the written comments from any interested party / person as referred to in subsection (8), the owner or occupier shall within 10 (ten) days after receipt of copies of the written comments referred to in subsection (8), provide his or her written response thereto to the Municipal Planning Tribunal of the Municipality. If the owner or occupier who disputes existence or the nature of the contravention to which the notice to comply relates fails to provide his or her written response thereto within the prescribed period, such an owner or occupier shall be deemed to not have responded to the written comments referred to in subsection (8).
- 10) Upon receipt of the written response referred to in subsection (9) or upon expiry of the period contemplated in subsections (9) the Municipal Planning Tribunal or designated official shall, with due regards to all facts and public interest –
  - a) make a decision with regard to the existence or the nature and extent of the contravention;
  - b) impose a contravention levy if deemed appropriate and determine the date on which it is payable; and
  - c) if a contravention is to be rectified, determine the period within which it shall be done and the conditions imposed in respect thereof.
- 11) Any decision in terms of subsection (10) shall be served on the owner or occupier in the manner prescribed.
- 12) The person who is the owner or occupier of the land concerned on the date on which a decision was made in terms of subsection (10), shall be liable for the payment of the contravention levy which may be
  - a) an once off amount applicable per event or occurrence of the said contravention, or
  - b) a monthly levy applicable as long as the contravention continues and both such levies may be calculated retrospectively from the date on which the contravention first occurred.
- 13) Ownership of land, land unit or land area in terms of which a notice to comply in terms of subsection (1) has been served, shall only be transferred after a decision was made in terms of subsection (10).
- 14) Any application in terms of SPLUMA and/or the Land Use Management Scheme may only take effect after the payment of any contravention levy imposed on the land, has been paid.

## **17. ENFORCEMENT LITIGATION**

- 1) The Municipality may apply to the Magistrate Court in whose jurisdiction the land is situated to obtain and order to compel the owner and/or the occupiers of land in question to—
  - a) cease with the unlawful utilisation of land, and/or
  - b) demolish, remove or alter any building, structure or work illegally erected or constructed and/or
  - c) rehabilitate the land concerned.

## **18. TRANSFER CLEARANCE**

- 1) A transferor intending to effect the first registration of transfer of a land unit which arises out of an approved subdivision within the area of the municipality, may be required by the municipality to provide the municipality with proof to the satisfaction of the municipality that all the requirements of the original approval have been met.
- 2) A transferor intending to effect the registration of transfer of any land unit within the area of the municipality that is indicated on the system as being subject to the action referred to in section 16 above, must provide proof to the satisfaction of the municipality, that –
  - a) in cases where a contravention levy was imposed in terms of this By-law – that the levy or penalty has been paid;
  - b) in cases where a compliance notice has been issued in terms of section 16 – that the directive has been complied with.
- 3) If the Municipality is satisfied that the requirements of subsection (1) and (2) have been met, the Municipality may issue a certificate authorising the transfer.

## **19. SHORT TITLE AND COMMENCEMENT**

- 1) This By-law is called the Dawid Kruiper Municipality By-Law on Land Use Management.
- 2) This By-law comes into operation on the date on which it is published in the Provincial Gazette.