

# **MSUNDUZI MUNICIPALITY**



<b>Policy Name:</b>	<b>Municipal Anti-Land Invasion Policy</b>
<b>Policy Number:</b>	
<b>Status:</b>	<b>Draft</b>
<b>Date:</b>	
<b>Approved By:</b>	
<b>Date Approved:</b>	
<b>Date Last Amended:</b>	
<b>Date for Next Review:</b>	
<b>Date Published on Intranet:</b>	

## **TABLE OF CONTENTS**

1. LEGISLATION AND POLICY FRAMEWORK
2. DEFINITIONS
3. PREAMBLE
4. STATUS QUO
5. POLICY OBJECTIVES
6. ADDRESSING LAND INVASIONS
7. ADDRESSING EXISTING INFORMAL SETTLEMENTS
8. PROHIBITION OF RECEIPT OR SOLICITATION OF CONSIDERATION
9. IN RESPECT OF UNLAWFUL OCCUPATION OF LAND
10. LEASING AND OCCUPATION

## **1. LEGISLATION AND POLICY FRAMEWORK**

1.1 Although not exhaustive, the following legislation and policies provide the appropriate legislative framework within which the Msunduzi Land Invasion Policy is drafted:

1.1.1 Constitution of the Republic of South Africa 108 of 1996

1.1.2 Interim Protection of Land Rights Act 31 of 1996

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

1.1.4 Extension of Security of Tenure Act 62 of 1997

1.1.5 Development Facilitation Act 67 of 1995

1.1.6 Less Formal Township Establishment Act 113 of 1991

1.1.7 Municipal Systems Act Act 32 of 2000)

1.1.8 Local Government Municipal Finance Management Framework Act 56 of 2003

1.1.9 Housing Act 107 of 1997

1.1.10 Rental Housing Act 50 of 1999)

1.1.11 Housing Code, 2000

1.1.12 National Environmental Management Act 107 of 1998

1.1.13 White Paper on Local Government

1.1.14 Spatial Planning and Land Use Management Act 16 of 2013

- 1.1.15 The KwaZulu-Natal Provincial Land Monitoring and Anti-Land Invasion Strategy

## 2. DEFINITIONS

- 2.1 The following terms will have the meanings assigned to them hereunder:

- 2.1.1 **“building control”** refers to the municipality’s in-house building control team responsible for the circulation and approval of building plans for all building work to be executed, namely, the construction of new buildings and structures, extensions and alternations to new buildings and structures, the erection of boundary walls and signage and all other activities that fall within the ambit of the activities undertaken by the building control team from time to time.
- 2.1.2 **“building or structure”** refers to any hut, shack, tent or other informal dwelling or similar structure, whether temporary or permanent, and regardless of whether or not such building or structure is still in the process of being erected.
- 2.1.3 **“council”** refers to the municipal council of the Msunduzi Local Municipality.
- 2.1.4 **“existing Informal settlement”** refers to an unplanned settlement or settlements occupied in an informal manner with or without the permission of the landowner on a date before the adoption of this policy, or where the court did not grant a court interdict for the eviction of illegal occupants from the land in question and to which basic services have or have not been rendered.
- 2.1.5 **“in-situ upgrading”** refers to progressive upgrading of settlements on informally occupied land by the authorities through a range of interventions to create habitable environments.

- 2.1.6                      **“infill”** refers to the upgrading or development of open spaces within built-up areas to improve or to better utilize existing services and infrastructure.
- 2.1.7                      **“infrastructure services”** refers to the municipality’s in-house unit responsible for provision and maintenance of the capital works necessary to provide municipal services.
- 2.1.7                      **“land”** refers to immovable property and includes a portion of land.
- 2.1.8                      **“land management unit”** refers to the municipality’s in-house land management team responsible for managing municipal land within the jurisdictional boundaries of the municipality.
- 2.1.9                      **“land use”** refers to the lawful purpose for which land may be used in terms of the municipality’s land use scheme.
- 2.1.10                     **“land use scheme”** refers to the land use scheme contemplated in in the Spatial Planning and Land Use Management Act 16 of 2013.
- 2.1.11                     **“legal services”** refers to the municipality’s in-house legal services department.
- 2.1.12                     **“municipality”** refers to the Msunduzi Local Municipality.
- 2.1.13                     **“municipal manager”** refers to the municipal manager or acting municipal manager of the municipality, from time to time.
- 2.1.14                     **“open space(s)”** refers to land set aside for use by a community for recreational purposes.
- 2.1.15                     **“owner”** refers to a person who is the registered owner of land in the deeds registry or who is the beneficial owner of land.
- 2.1.16                     **“person”** refers to a natural or juristic person.

- 2.1.17                      **“person in charge”** refers to a person who has, or at the relevant time had, legal authority to give permission for land to be accessed, utilized or settled.
- 2.1.18                      **“policy”** refers to this municipal land invasion policy.
- 2.1.19                      **“rapid response unit”** refers to the municipality’s in-house unit responsible for enforcing and implementing the municipality’s by laws and policies.
- 2.1.20                      **“rural development”** refers to those areas that fall outside the urban fringe(s) as defined in the Spatial Development Framework of the municipality.
- 2.1.21                      **“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.
- 2.1.22                      **“town planning and environmental management”** refers to the municipality’s in-house unit responsible for creating an economically viable, attractive and friendly city, promoting spatial efficiencies, advancing the principles of sustainable development, promoting the spatial development of the city, promoting spatial transformation, proper land use management, encouraging spatial planning, development management and facilitation and built environment and enforcement.
- 2.1.23                      **“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.

- 2.1.24                      **“unlawful occupation”** refers to the situation where an unlawful occupier has invaded land with the intention of occupying it in the absence of permission from the owner or person in charge and/or in the absence of any other right in law to occupy the land.
- 2.1.25                      **“urban areas”** refers to areas in and around the city of Pietermaritzburg that are characterized by high population density and an infrastructure of built environment.
- 2.1.26                      **“urban development”** refers to those areas falling inside the urban fringe(s) as defined in the Spatial Development Framework of the municipality.
- 2.1.27                      **“urban renewal”** refers to the improvement of depressed urban environments to boost investor confidence by channeling social, economic and infrastructure investment in these areas.

### **3.        PREAMBLE**

- 3.1                      The municipality is faced with a proliferation of informal settlements and land invasions, particularly on the periphery of the urban areas. Most of these informal settlements have developed through the invasion of privately owned or state owned land, which makes service delivery by the municipality difficult. The process of transferring some of this land to the municipality is cumbersome, thus restricting the municipality from exercising its mandate in providing basic services to affected communities.
- 3.2                      Council does not have a specific policy that is aimed at dealing effectively with the proliferation of informal settlements. It is believed that land invasion and, thus, the proliferation of informal settlements, is driven by the following issues:
- 3.2.1                      A perception by rural migrants and people from poor small towns that settling in informal settlements in urban areas will usher them to a better life.

- 3.2.2 Initial occupants of informal settlements often rally the support of other potential occupants to strengthen their negotiating or bargaining power, for example, with the owner.
- 3.2.3 There is a perception that people in informal settlements are helped first before those on a housing waiting list and this perception appears to fuel the spread of informal settlements.
- 3.2.4 The lack of timeous planning to accommodate population growth.
- 3.2.5 Community ignorance concerning the intended use of land, vacant land, open areas earmarked for development within existing settlements, the land uses applicable to such land, the land use scheme or any combination of these.
- 3.2.6 The lack of a coordinated approach among spheres of government to release land and/or funding for the planning and servicing of priority areas.
- 3.2.7 The lack of policy and enforcement by authorities.

#### **4. STATE OF AFFAIRS**

- 4.1 Council accepts that there are various informal settlements within its area of jurisdiction, which have been established prior to the adoption of this policy and that efforts have been made to provide rudimentary services to their respective residents.
- 4.2 The provision of such services and the numbering of existing buildings or structures built in bricks and mortar does not, in itself, mean that the residents thereof reside there permanently.
- 4.3 Such numbering also does not, itself, in any manner whatsoever, mean that the yard fenced in or not, and on which a building or structure has been erected and so numbered is a stand.



- 4.4                      The occupant of a building or structure in these areas has no right to the land and cannot claim ownership of the land on any basis, including the period of occupation of such land. These include cases where money has been exchanged under the pretext that land and ownership is being acquired through such a transaction.

## **5.        POLICY OBJECTIVES**

- 5.1                      The municipality acknowledges that some of its citizenry reside in informal settlements. It recognises that many of these informal settlements offer shelter to the poor and destitute, but that it creates undesirable urban environments due to the lack of services and security of tenure. Furthermore some of the land parcels in the municipality are illegally 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.
- 5.2                      It is for these reasons that this policy is directed at addressing the following:
- 5.2.1                      To contain and prevent land invasion and the spread of informal settlements; and
- 5.2.2                      To plan for sustainable human settlements through the rapid release of land for development.

## **6.        ADDRESSING LAND INVASIONS**

### **6.1                      The Policy: Land Invasion**

- 6.1.1                      Council shall not tolerate the illegal occupation of land within its area of jurisdiction.
- 6.1.2                      All measures available to Council shall be exhausted to prohibit the illegal occupation of land.

- 6.1.3 Council shall apply to court for the eviction of illegal occupants and commence criminal proceedings of those responsible for initiating and/or facilitating the unlawful occupation or invasion of land.
- 6.1.4 Ward councillors, in collaboration with ward committee members shall, as a matter of urgency, report all cases of unlawful occupation of land within their wards, whether it involves land owned by the municipality or not.
- 6.1.5 Once a ward councillor has reported a case of unlawful occupation of land, the administrative procedures outlined in the policy shall be adhered to.
- 6.1.6 The Municipality shall only recognise unlawfully occupied land as an existing informal settlement if:
- 6.1.6.1 The land has been unlawfully occupied before the adoption date of this policy and an eviction order was not granted by the court.
  - 6.1.6.2 It is a priority identified in the Integrated Development Plan (IDP) of the Municipality.
  - 6.1.6.3 It conforms to the Housing Sector Plan (HSP) and the Spatial Development Framework (SDF) of the Municipality.
  - 6.1.6.4 It conforms to the land use scheme of the municipality.
  - 6.1.6.5 It will create a habitable sustainable human settlement.
  - 6.1.6.6 It is in the interest of those staying in the area, as well as the rest of the community to be upgraded.

6.1.6.7 It conforms to the general principles outlined in the policy.

## 6.2 **Administrative Procedures: Land Invasion**

### 6.2.1 **Pro-Active measures: Land Invasion**

6.2.1.1 The Municipality shall take all possible measures to prohibit the unlawful occupation of land. The following pro-active measures shall, therefore, be put in place:

6.2.1.1.1 The land management unit, in conjunction with building control, to erect signboards on all open and undeveloped pieces of land stating the purpose of the land and that land invasion or dumping on the site are unlawful uses and not permitted by the land use scheme.

6.2.1.1.2 The rapid response unit to regularly patrol municipal property and report invasions immediately to the municipality's land management unit and building control.

6.2.1.1.3 Town planning and environmental management shall, together with human settlements budget for the planning, pegging and servicing of new residential areas.

6.2.1.1.4 The land management unit, in conjunction with building control, town planning and environmental management and human settlements shall timeously identify land needed for future development and budget to acquire the land.

6.2.1.2 Where the above pro-active measures have failed to prohibit the illegal occupation of land, a distinction shall be made between land that has been illegally occupied for less than 6 months and those occupied for a period longer than 6 months, as required by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998).

6.2.1.3 Furthermore there shall be a distinction between administrative procedures applicable to land owned by the municipality and those applicable to any other property.

### **6.3 Administrative procedures: Illegal occupation for less than 6 months**

#### **6.3.1 Land Invasion on Council properties**

6.3.1.1 Ward committee members shall report any land invasion within their wards to the ward councillor.

6.3.1.2 The ward councillor and, if in a tribal area, the Chief of that area shall report the case in writing to the land management unit of the municipality.

6.3.1.3 Once a case has been reported, the land management unit shall immediately inform the municipal manager of the situation.

6.3.1.4 The municipal manager shall inform the municipality's executive committee (EXCO).

6.3.1.5 EXCO shall, in turn, inform building control, town planning and environmental management, and human settlements and Legal Services of the situation.

6.3.1.6 The land management unit shall, in conjunction with the rapid response unit, investigate and verify land ownership.

- 6.3.1.7 The land management unit, in conjunction with the rapid response unit, will number and capture the personal details of residents of existing informal settlements and capture such information in the municipality's information technology systems.
- 6.3.1.8 The municipality's council, henceforth, will endeavour to demolish and impound any shack or structure that is being erected within area of jurisdiction without its consent.
- 6.3.1.9 Where a shack or structure has been put up for more than three (3) days immediate demolition is impossible, a notice of illegal occupation of land shall be issued, advising the occupant to remove the structure or shack immediately. Legal services is to be notified and they shall take such steps as may be necessary to secure an urgent order for eviction. This action must be accomplished within three (3) months insofar as this may be possible.
- 6.3.1.10 The municipality's council is to identify a particular area in an existing informal settlement that may be used as a reception area for all new residents and when such an area has been established, no new residents will be allowed into the existing informal settlement without the express written permission of the Municipality.
- 6.3.1.11 The residents of the reception area will have to sign a standard service agreement and pay for services rendered. The size of each "site" allocated to a person will be limited to 200 square metres.
- 6.3.1.12 For housing opportunities Council will endeavour to prioritise the needs of residents of existing informal settlements.

### **6.3.2 Land invasion of property other than that of Council**

- 6.3.2.1 Ward committee members shall report any land invasion within their wards to the ward councillor.
- 6.3.2.2 The ward councillor and, if in a tribal area, the Chief, shall report the case in writing to the land management unit.
- 6.3.2.3 Once a case has been reported, the land management unit shall immediately inform the municipal manager of the situation.
- 6.3.2.4 The municipal manager shall inform EXCO.
- 6.3.2.5 EXCO shall, in turn, inform building control, town planning and environmental management, human settlements and legal services of the situation.
- 6.3.2.6 The land management unit shall, in conjunction with the rapid response unit, investigate and verify land ownership.
- 6.3.2.7 If it is not land owned by the municipality, legal services shall give notice to the owner of the land that he/she/it is required to apply to court for an eviction order, as well as to report the fact of the land invasion to the relevant, as well as the identities of the persons responsible for initiating and facilitating the invasion. The notice may also state that if the owner fails to take any steps to evict such persons and/or prevent the invasion, the municipality may take such steps and that it reserves the right to recover the cost, or part thereof, from the owner.
- 6.3.2.8 The process shall then unfold in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of and Act, Act No 19 of 1998.

## **6.4 Administrative procedures: Illegal occupation for more than 6 months**

### **6.4.1 Land invasion on Council properties**

6.4.1.1 The same process shall unfold as with land occupied for less than 6 months as described in clauses 6.3.1.1 to 6.3.1.12.

6.4.1.2 If it the municipality's property, the land management unit shall identify alternative suitable land, in conjunction with human settlements, to which the affected community could be relocated before legal services initiates any legal proceedings.

6.4.1.3 Sustainable development and city enterprises shall table a report to EXCO in which the various strategies for relocation or *in-situ* upgrading are explained.

6.4.1.4 EXCO shall recommend to council a process of relocation or if it is viable to develop the land, which has been illegally occupied, and council may consider a process of *in-situ* upgrading.

6.4.1.5 If council decides to relocate residents, the Mayor of the council shall be involved in negotiations with those affected by relocation.

6.4.1.6 If council opts for an *in-situ* upgrading process, the same process will be followed as in relation to the upgrading of existing informal settlements.

### **6.4.2 Land invasion of property other than that of Council**

6.4.2.1 The same process shall be followed as with land occupied for less than 6 months 6.3.1.1 to 6.3.1.12.





7.1.3 Council will give priority for relocation of residents from an informal settlement if:

7.1.3.1 The settlement does not comply with any of the conditions set out in 7.1.2 above.

7.1.3.2 The health and well-being of people staying in and around the area is adversely affected.

7.1.3.3 The area proves to be too small to accommodate all residents in a sustainable manner.

7.1.3.4 The area proves to be uninhabitable.

7.1.3.5 Basic services cannot be rendered in an affordable and efficient manner.

## **7.2 Administrative procedures: Existing Informal Settlements**

### **7.2.1 Pro-active measures: Existing Informal Settlements**

7.2.1.1 The implementation of this policy shall act as a pro-active measure to curb the proliferation of informal settlements.

7.2.1.2 Where this policy has failed to pro-actively address the proliferation of informal settlements, a distinction shall be made between areas that are suitable for human occupation and those that might adversely affect the health and well-being of the community or adjacent communities.

7.2.1.3 Those areas suitable for human occupation shall be treated as *in-situ* upgrading projects while those not suitable shall be treated as relocation projects.

7.2.1.4 A further distinction shall be made between the availability of municipal property for relocation and cases where suitable land will have to be acquired by council for the purpose of relocation.

## **7.2.2 Administrative Procedures: *In-situ* upgrading project**

- 7.2.2.1 If an eviction order fails in terms of this policy or if council decides to upgrade an existing informal settlement, human settlements, in collaboration with the ward councillor and ward committee members, shall compile a site register of all occupants of the informal settlement.
- 7.2.2.2 A cut-off date must be determined by the municipality to include those residing in the informal settlement in the site register.
- 7.2.2.3 The site register shall make a distinction between occupants who qualify for housing subsidies and those who do not qualify, South African citizens and those who are illegal immigrants, including those who desire to be relocated elsewhere, etc.
- 7.2.2.4 Human settlement shall capture this information into the housing database.
- 7.2.2.5 Human settlements shall report all illegal immigrants to the Department of Home Affairs.
- 7.2.2.6 Human Settlements shall consult with town planning and environmental management with a view to investigating the suitability of the land.
- 7.2.2.6 The land management unit shall verify land ownership and identify alternative land for relocation, if necessary.
- 7.2.2.7 Infrastructure services shall assess the possibility of servicing the land.
- 7.2.2.8 Town planning and environmental management shall assess the potential impact of the proposed development.

- 7.2.2.9 Human settlement shall table a combined report to council outlining the feasibility of upgrading the informal settlement versus the relocation of the affected community and shall incorporate the various recommendations made from the various directorates involved.
- 7.2.2.10 Council shall approve a budget and instruct town planning and environmental management and infrastructure services to begin a process of tendering to plan, survey and service the land.
- 7.2.2.11 Once the process of formalization has been completed, human settlements shall allocate sites to potential beneficiaries in terms of the housing allocation policy outlined in this document.
- 7.2.2.12 The construction of houses shall then begin.

### **7.2.3 Administrative Procedures: Relocation to Council Property**

- 7.2.3.1 The same process will be followed as with the *in-situ* upgrading project as described in clauses 7.2.2.1 to 7.2.2.12. However, if human settlements has identified that the area occupied by an existing informal settlement is not suitable for human settlement and land is available for relocation, town planning and environmental management shall submit a report to council recommending relocation.
- 7.2.3.2 The council shall take a decision on the process of relocation and the way sites will be allocated in terms of the housing allocation policy.
- 7.2.3.3 The Mayor of the council shall be involved in negotiating with the affected community around the modalities of relocation.
- 7.2.3.4 Before a community can be relocated, town planning and environmental management shall prepare a preliminary layout plan for adoption by the council.

- 7.2.3.5 Once the preliminary layout plan has been adopted, the town planning and environmental management shall ensure that the sites are pegged and clearly identified for occupation.
- 7.2.3.6 The affected community shall be relocated onto the identified sites per guidelines set by the council.
- 7.2.3.7 Once the community has been relocated according to the guidelines given by council, infrastructure services shall supply basic infrastructure to this community.
- 7.2.3.8 Town planning and environmental management shall lodge an application for township establishment with the relevant authorities to formalise the area.
- 7.2.3.9 Human settlements shall lodge a housing subsidy application for those beneficiaries who qualify.

#### **7.2.4 Administrative Procedures: Relocation to Other Property**

- 7.2.4.1 The same process will be followed as with relocation to council owned properties. However, if town planning and environmental management has identified that the area occupied by an existing informal settlement is not suitable for human settlement and municipal land is not available for relocation, the land management unit, in consultation with infrastructure services, shall identify suitable land that could be acquired by council.
- 7.2.4.1 Town planning and environmental management shall submit a report to council outlining the process of relocation to be adopted as well as the process of acquiring land for relocation purposes.
- 7.2.4.2 Council shall take a decision on the acquisition of the land and the process of relocation. Council shall also outline the steps to be followed in the relocation process.

- 7.2.4.3 The Mayor of council shall be involved in negotiating with the affected community around the modalities of land acquisition and relocation.
- 7.2.4.4 If council agrees to the acquisition of other land, the the land management unit shall make an offer to the prospective seller. If the seller accepts the offer, the necessary administrative procedures to transfer the land shall be taken.
- 7.2.4.5 Once the land has been transferred, the land management unit shall inform council so that the negotiated relocation process could begin.
- 7.2.4.6 Before a community could be relocated, town planning and environmental managemen shall prepare a preliminary layout plan for adoption by council.
- 7.2.4.7 Once the preliminary layout plan has been adopted, town planning and environmental management shall ensure that the sites are pegged and clearly identified for occupation.
- 7.2.4.8 The affected community shall be relocated onto the identified sites in accordance with the guidelines set out by council.
- 7.2.4.9 Once the community has been relocated according to the guidelines given by council, the infrastructure services shall supply basic infrastructure to this community.
- 7.2.4.10 Town planning an environmental management shall lodge an application for township establishment with the relevant authorities to formalise the area.
- 7.2.4.11 Human settlements shall lodge a housing subsidy application for those beneficiaries who qualify.

**8. PROHIBITION OF RECEIPT OR SOLICITATION OF CONSIDERATION IN RESPECT OF UNLAWFUL OCCUPATION OF LAND**

- 8.1 No person may directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of that land.