



**POLOKWANE MANUAL  
FOR  
HANDLING ILLEGAL LAND USES**

**POLOKWANE MUNICIPALITY MANUAL FOR HANDLING ILLEGAL LAND USES**

<b>POLOKWANE MUNICIPALITY STUDENT ACCOMMODATION BY-LAW</b>		
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# **OPERATIONAL MANUAL FOR HANDLING OF ILLEGAL LAND USES**

## **1. INTRODUCTIONS AND PURPOSE**

In conjunction with the 2012 Strategy for handling of illegal land uses in the areas under control of a Land use (Town Planning) Scheme in Polokwane as approved, the purpose of this operational manual is to highlight the operational strategies to deal with unauthorized use of land (illegal land uses) within the municipality.

## **2. LEGISLATIVE FRAMEWORK FOR OPERATIONAL MANUAL**

### **2.1 Polokwane Municipal Planning Bylaw 2017**

Section 176 of the Polokwane Municipal Planning Bylaw 2017 deals with Offences and penalties, it is stipulated in (1)(a) of the above section—“ that any owner and/or other persons are guilty of an offence if such owner or person contravenes or fails to comply with a:

(iii) uses land or permits land to be used in a manner other than permitted by the Land Use Scheme or amendment scheme

(2) An owner who permits land to be used in a manner contemplated in section(1) and who does not cease such or who permits a person to breach the provision of subsection (1) is guilty of an offence and upon conviction is liable to the penalties contemplated in subsections(3) and (4)

(3) Any person convicted of an offence in terms of this By-law, shall be liable to a fine not exceeding Ten Thousand Rand(R10 000,00) or as may be determined by a Court of Law or to imprisonment for a period more or less than 12 months or both such fine and such imprisonment

(4) Any person convicted of an offence in terms of this By-law who, after conviction, continues with the Action in respect of which he/she was convicted, is guilty of a continuing offence and liable to a fine not exceeding Five Thousand Rand(R5 000,00) or as may be determined by a Court of Law or upon conviction, to imprisonment for a period more or less than three months or to both such fine and imprisonment, in respect of each day which he/she has so continued or continues with such Act or omission

(5) The Municipality may issue a compliance notice to a person contemplated in subsections (1) to (4) who uses any land or building or causes it to be used in a manner as contemplated in subsections (1) to (4), in writing requiring that person:

(a) discontinue such erection, alteration, addition or other work or such use or cause it to be discontinued; and

(b) at his/her expense- to remove such building or other work or cause it to be removed; or to cause such building or other work or such use to comply with the provisions of the scheme; and the directive shall state the period within which it shall be carried out.

**(8) Where any person fails to comply with a compliance notice issued in terms of subsection (5), the Municipality may, whether or not a prosecution has been or will be instituted, remove the building or other works or cause the building or other works executed to comply with provisions of its Land Use Scheme and recover all expenses incurred in connection therewith from such persons.**

## **2.2 Polokwane/Perskebult Town Planning Scheme 2016**

Section 41 of the scheme makes provision that—“any person who commits or knowingly permits a contravention of any of the provisions of this Scheme or of the requirements of any order or notice issued or conditions imposed in terms of this Scheme, shall be deemed to be guilty of an offence” And that the municipality - “may on its own accord; or (b) must on request of any person of the public, investigate any alleged contravention of the scheme, land use on land and/or an erf and/or within a building and for this purpose may inspect the land, erf and/or building implicated in the matter as set out in Clause 40 herein”

Section 42 further stipulates that—“any order, notice or other document to be served by the Municipality on any owner or occupier of a building or land situated within the area of the Scheme, shall be signed by the authorised official of the Municipality and shall be served in one of the following ways”:

(a) to the owner or occupier personally or to his/her authorized agent;

(b) by registered post to the owner or occupier or his/her duly authorized agent at his/her last known address of abode, place of business or employment, or post office box number;

(c) at the domicilium citandi of the person to be served; or (d) by fixing such order, notice or other document on a conspicuous part of the property if there is no such person on the premises at which service is to be effected.

Section 43 of the scheme relates to powers of the municipality in case of contravention of scheme which is stated in subsection (2) that—

‘If a person fails to comply with a directive issued in terms of the aforesaid subclauses, the Municipality may, irrespective of the fact that such a person has been criminally charged or prosecuted, remove the building or other works at the expense of such a person, obtain a court order to remove the building or other works or cause the building or other works to comply with the provisions of this Scheme and to recover all expenditure incurred in connection therewith, from such person’.

### **3. PROCEDURE AND PROCESS OF DEALING WITH ILLEGAL LAND USE**

**3.1 Municipal Official** duly authorised by council to deal with day to day compliance and enforcement of the scheme shall:

- perform routine inspections to identify Scheme contraventions
- Investigate complaints received from public (*Illegal land use reports*)
- Issue contravention notices

#### **3.2 Illegal Land Use Reporting**

Any member of the public may lodge a complaint about an illegal land use:

- A complaint must be lodged by contacting or completing the complaint form and sending it by post or by sending e-mail to the municipality.
- A complaint can also be lodged in person either by phoning, sending an e-mail, or posting a letter.

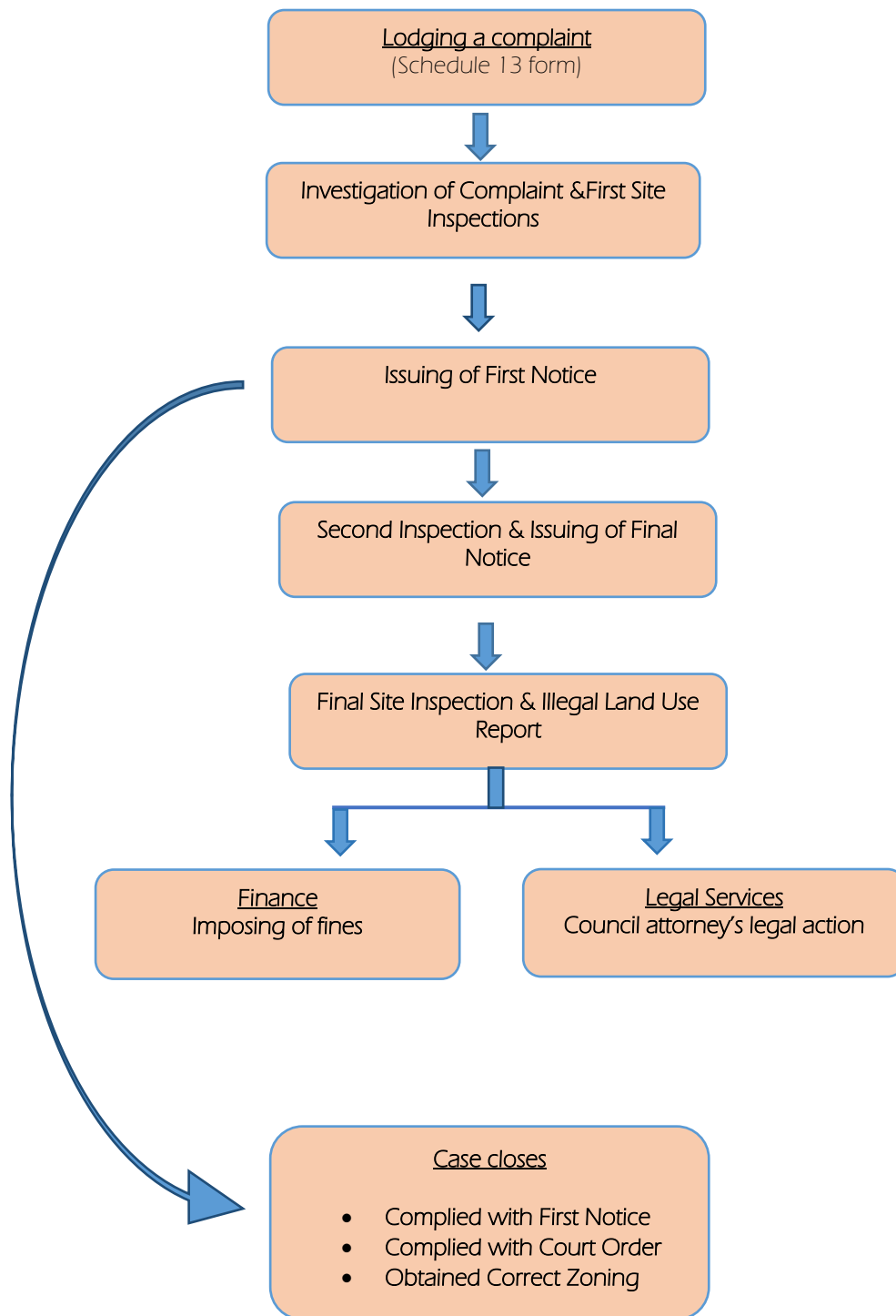
**3.3 All Contravention** noted through routine inspections/contravention findings after preliminary investigation following an illegal land use complaint.

The following steps will then have to be followed:

MUNICIPAL OFFICIAL		ACTIVITY
	<b>Steps to be followed</b>	
3.3.1.	<b>Lodging of complaint</b>	A complaint must be lodged by contacting or completing the complaint form (Schedule 13 of the Scheme) and sending it by post or sending e-mail to the municipality, a complaint can also be lodge in person either by phoning, sending an e-mail, or posting a letter.
3.3.2.	<b>Investigation of Complaint</b>	GIS, zoning rights of the property Identification of correct Erf number
3.3.3.	<b>First Site Inspections</b>	<ul style="list-style-type: none"> <li>▪ An official will conduct an inspection to establish whether the unauthorized use exists.</li> <li>▪ An official will write a report detailing the observations, take photos, and gather other evidence that supports the un authorized use</li> </ul>
3.3.4.	<b>Issue First Notice</b>	<ul style="list-style-type: none"> <li>▪ A notice is an official warning, calling upon the offender to stop the unauthorized use. The usual time given for complying is 7(seven) days.</li> <li>▪ The official will then acknowledge received a complaint and advise the complainant of the action taken.</li> </ul>
3.3.5.	<b>Second Site Inspection</b>	<ul style="list-style-type: none"> <li>▪ After the notice period expires, the official will re-inspect the site. If the unauthorized use has been terminated, the file will be closed.</li> </ul>
3.3.7.	<b>Final Site Inspection &amp; Illegal Land Use Report</b>	<ul style="list-style-type: none"> <li>▪ If the use continues, an assessment will be undertaken to determine whether there is a prima facie case</li> </ul>

		and, if so the file will be referred to the council's attorneys for further action.
3.3.8.	<b>Imposing of fines</b>	<ul style="list-style-type: none"> <li>▪ The Illegal land use file will be referred simultaneously to legal services to appoint council attorneys and to finance department to start billing an illegal land use levy/fine on the property</li> </ul>
3.3.9.	<b>Legal Action</b>	<ul style="list-style-type: none"> <li>▪ The council's attorneys will launch civil proceedings against the offender to interdict him from continuing with the unauthorized use, if this action is successful in court, the attorneys will obtain a court order.</li> <li>▪ The sheriff of the court is usually authorized by the court to execute the court order if the respondent does not comply with it</li> </ul>
3.3.10.	<b>Finance</b>	<ul style="list-style-type: none"> <li>▪ Finance starts billing the illegal land use levy on the property based on the illegal land use report</li> </ul>
3.3.11.	<b>File Closes</b>	<ul style="list-style-type: none"> <li>▪ Once court order has been complied with and illegal land use has ceased or correct zoning applied for</li> <li>▪ Illegal land use fine will be lifted and correct zoning will be levied</li> </ul>
3.3.12.	<b>Inspection after Court Order/Zoning rights</b>	<ul style="list-style-type: none"> <li>▪ A final inspection will be conducted to verify if the court order is complied with/ or the zoning rights are in place</li> </ul>

Schematic Diagram of process flow.





#### 4. DATA BASE

A proper data base is designed so that all illegal land uses are recorded. The database is updated on a regular basis and provides up to date information regarding each case

The database contains the following information regarding each case:

▪ <b>Case Reference Number</b>	▪ <b>Address of Illegal Land Use</b>
▪ <b>Property Description</b>	▪ <b>Type of Illegal Land use</b>
▪ <b>Councils' official file Report</b>	▪ <b>Date of First notice</b>
▪ <b>Date of second notice</b>	▪ <b>Date of when file Report handed to Legal and Finance</b>

#### 5. LAND USE APPLICATION AND EXTENSION OF TIME

All land owners who are operating illegal land uses and have submitted an application to legalize the use of land, will not be exempted from legal action and levying of illegal land use fee only after council is satisfied that the illegal land use has ceased pending the approval of the application, However there are those illegal land uses which even on receipt of an application may not be approved because they are not in line with council policies. **Legal action and penalty fees will be instituted until such time the illegal land use has ceased.**

Illegal land uses, which are operated within areas, which demarcated for the type of unauthorized use, will be given a maximum of 30(thirty days) to submit an application to legalize an unauthorized use. Failing to submit an application further action will be taken without any further notice.

#### 6. TRANSITIONAL ARRANGEMENTS

- The Municipality should consult and encourage all the existing, unapproved illegal land uses within its jurisdiction
- All unapproved land uses must be given 12 months from the date of adoption of the manual to register with the Polokwane municipality failure to which section 5 of the manual will be applicable

- Application for existing establishment must be in compliance to the evaluation procedure of the by-law

## **7. CONCLUSION**

- The Illegal land fine is proposed observing that the current practice wherein illegal land use files are taken to legal and court orders are granted and obtained but the illegal land uses continue.
- The hefty cost that council incurs when dealing with illegal land uses and In addition no proper cost orders are being obtained against the offending landowner causing the municipality to mostly foot the legal bills whilst the illegal land use continues.
- Either the illegality ceases momentarily after the court order has been enforced but months or years later the illegal use of land continues without an owner submitting the necessary application