

PROCEDURE FOR THE REMOVAL OF UNLAWFUL OCCUPIERS OF LAND

Item B-CL (80-2004)
MC 20/01/2005

PROCEDURE FOR THE REMOVAL OF UNLAWFUL OCCUPIERS
OF LAND IN THE EKURHULENI METROPOLITAN MUNICIPALITY

(Refer to the Supplementary Agenda dated 20 January 2005)

RESOLVED:

1. **That** the report by the Executive Director: Corporate and Legal Services regarding the Procedure for the Removal of Unlawful Occupiers of Land in Ekurhuleni Metropolitan Municipality, as well as the legal opinion of Advocate Wim Trengove, **BE NOTED**.
2. **That** the Procedure for the Removal of Unlawful Occupiers of Land in Ekurhuleni Metropolitan Municipality attached as **Annexure A** to the report **BE ADOPTED**.
3. **That** all officials **BE INSTRUCTED** to immediately report incidences of land invasion when noticed, to the Metro Police.
4. **That** the Communications and Marketing Directorate **INFORM** the public in an effective manner to report incidences of land invasion to the Metro Police.

ANNEXURE “A”**PROCEDURE FOR THE REMOVAL OF UNLAWFUL OCCUPIERS OF LAND IN EKURHULENI METROPOLITAN MUNICIPALITY****IMPORTANT NOTE:**

It is imperative that all removals done by official of Ekurhuleni Metropolitan Municipality comply with the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998.

The policy deals with two scenarios, i.e. where the Council is not the owner of the property which was occupied unlawfully and where the Council is the owner of such land.

1. PROCEDURE TO BE FOLLOWED WHERE THE COUNCIL ACTS AGAINST UNLAWFUL OCCUPIERS OF LAND WHERE THE COUNCIL IS NOT THE OWNER OF THE LAND.

1. As soon as any official of the Council notice any unlawful occupation of land anywhere in the Ekurhuleni area, or as soon as any complaint regarding unlawful occupation is received, such unlawful occupation is reported to the Metro Police, in particular the operational center at.....
.....,
telephone number
and e-mail address.....
2. The Metro Police task team will investigate and confirm in writing within 24 hours that the said occupation is in fact unlawful.
3. NO department other than Housing will address any correspondence to the owner of the land, or any other party with rights in such land.
4. Metro Police will confirm with the Housing Department’s relevant Regional Executive Manager (REM), in particular:

REM: North: Mr John Mkwanzazi
E-mail: johnm@ekurhuleni.com
Mobile: 0825765450
Tel: (011) 926 1120 ext 211
Fax: (011) 926 2869

REM: South: Mr Fanie Mare
E-mail: faniem@ekurhuleni.com
Mobile: 0829214487
Tel: (011) 861 8828
Fax: (011) 861 8827

REM: East: Mr Eddie Nkomotse
e-mail: nkomotse@ekurhuleni.com
Mobile: 0824546759
Tel: (011) 741 6514
Fax: (011) 421 1619

5. Housing's Regional Executive managers will determine who the registered owner of the property is, as well as whether there are any servitudes, surface right permits, mining rights, leaseholds, or leases over the property which is affected by the unlawful occupation.
6. The Housing Department will issue the required 14 day notice in terms of The provisions of section 6 (4) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, to the owner of the property as well as any of the affected parties referred to in 5 above. The said notice must be sent by registered mail or served personally against signature of the recipient.
NB: STANDARD NOTICE NEEDS TO BE APPROVED BY CORPORATE AND LEGAL SERVICES FOR INCLUSION IN THE STANDARD PROCEDURE!
7. A copy of the notice referred to in 6 above, must simultaneously be forwarded to the Ward Councilor for the area.
8. A copy of the notice will also be forwarded to the following Departments for their information: Development Planning, Health, Municipal Infrastructure and Roads, Transport & Civil Works. No services may be provided to the area once such notice have been received.
9. During the said 14 day period, the Metro Police will prevent further invasions and the expansion of the occupied area and the Housing Department will obtain the land owner's permission to enter the property.
10. During the 14 day period, the Housing Department, assisted by the Metro Police and Development Planning, will obtain an aerial photograph (where possible) as well as prepare a diagram of the area unlawfully occupied.
11. The Housing Department will monitor the response to the letter, and if no action is taken by any party referred to in 5 above, the matter will proceed.
12. Housing Department refer the matter to Corporate and Legal, in particular, the Executive Manager: Legal Advice and Administration, Corporate Office, 2nd floor, EGSC Building, and such referral must include the following :

The deeds office property description, a physical address if possible, a copy of the notice forwarded to the relevant parties referred to in 5 above, plus proof of registration of the letter or proof of personal service. The referral must also contain a memorandum addressing the aspect of the availability of alternative land, full particulars of the structures erected, eg. corrugated iron, single room etc., health and safety factors, both for the unlawful occupiers as well as the public in general, the approximated period of occupation and an aerial photograph, where possible.
13. The Manager: Legal Advice and Administration, Corporate Office will forward the necessary instructions to the relevant region, who will instruct an attorney to bring the necessary application for removal.

14. The Regional Office: Legal, will liaise with the Metro Police and Housing Department to arrange for consultations and to obtain further information, where required.
 15. The attorney will then prepare and issue the court documents, where after the application for an order as to manner of service will be attended to. The papers should request an order that the sheriff, assisted by the Metro Police and a contractor appointed and nominated by the Applicant (Council) will assist the sheriff, be authorized to serve. The attorney, in consultation with the Legal Section should liaise with the sheriff and Metro Police to make the necessary arrangements for service, including copying and, where necessary, translation of the documents.
 16. The documents are served in accordance with the court order and Metro Police will provide proof thereof e.g. photographs.
 17. The Court process then follows, and are monitored by the Legal Section of the relevant region.
 18. Once to order is obtained, the attorney in consultation with the Legal Section liaise with the sheriff and Metro Police to orchestrate the service of the order and/or the execution thereof, i.e. the eviction itself. Where there is a suspicion of illegal immigrants, Metro Police will contact Home Affairs.
 19. Corporate and Legal will settle the legal costs from the legal costs Vote and Public Safety will settle all accounts of the eviction process and thereafter provide full particulars of all costs to the Legal Section, who will recover such costs from the parties referred to in 4 above, jointly and severally, (if possible) and once the costs are recovered, reimburse Public Safety.
2. **PROCEDURE TO BE FOLLOWED WHERE THE COUNCIL ACTS AGAINST UNLAWFUL OCCUPIERS OF LAND WHERE THE COUNCIL IS THE OWNER OF THE LAND.**
1. As soon as any official of the Council notice any unlawful occupation of land anywhere in the Ekurhuleni area, or as soon as any complaint regarding unlawful occupation is received, such unlawful occupation is reported to the Metro Police, in particular the operational center at
..... ,
telephone number
and e-mail address
 2. The Metro Police task team will investigate and confirm in writing within 24 hours that the said occupation is in fact unlawful.
 3. NO department other than Housing will address any correspondence to the occupier of the land.

4. Metro Police will confirm with the Housing Department's relevant Regional executive Manager (REM), in particular:

REM: North: Mr John Mkwazi

E-mail: johnm@ekurhuleni.com

Mobile: 0825765450

Tel: (011) 926 1120 ext 211

Fax: (011) 926 2869

REM: South: Mr Fanie Mare

E-mail: faniem@ekurhuleni.com

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Fax: (011) 861 8827

REM: East: Mr Eddie Nkomotse

e-mail: nkomotse@ekurhuleni.com

Mobile: 0824546759

Tel: (011) 741 6514

Fax: (011) 421 1619

5. Housing's Regional Executive Managers will prepare a notice to the unlawful occupiers, instructing them to vacate the property of the Council within 14 days, failing which legal action for their eviction will be instituted.

NB: STANDARD NOTICE NEEDS TO BE APPROVED BY CORPORATE AND LEGAL SERVICES FOR INCLUSION IN THE STANDARD PROCEDURE!

6. Housing will arrange with Metro Police for the service of the notice. Metro Police will provide proof of service, e.g. photographs and video footage.
7. A copy of the notice referred to in 5 above, must simultaneously be forwarded to the Ward Councilor for the area.
8. A copy of the notice will also be forwarded to the following Departments for their information: Development Planning, Health, Municipal Infrastructure and Roads, Transport & Civil Works. No services may be provided to the area once such notice have been received.
9. During the said 14 day period, the Metro Police will prevent further invasions and the expansion of the occupied area and the Housing Department will obtain the land owner's permission to enter the property.
10. During the 14 day period, the Housing Department, assisted by the Metro Police and Development planning, will obtain an aerial photograph (where possible) as well as prepare a diagram of the area unlawfully occupied.
11. The Housing Department will monitor the response to the letter, and if the unlawful occupiers do not vacate the property, the matter will proceed.
12. Housing Department refer the matter to Corporate and Legal, in

particular, the Manager: Legal Advice and Administration, Corporate Office, 2nd floor, EGSC Building, and such referral must include the following :

The deeds office property description ; a physical address if possible, a copy of the notice forwarded to the unlawful occupiers and the proof of service of the said notices. (See 6 above.) The referral must also contain a memorandum addressing the aspect of the availability of alternative land, full particulars of the structures erected, eg. corrugated iron, single room etc., health and safety factors and the approximated period of occupation and an aerial photograph, where possible.

13. The Manager: Legal Advice and Administration, Corporate Office will forward the necessary instructions to the relevant region, who will instruct an attorney to bring the necessary application for removal.
14. The Regional Office: Legal, will liaise with the Metro Police and Housing Department to arrange for consultations and to obtain further information, where required.
15. The attorney will then prepare and issue the court documents, where after the application for an order as to manner of service will be attended to. The papers should request an order that the sheriff, assisted by the Metro Police and a contractor appointed and nominated by the Applicant (Council) will assist the sheriff, be authorized to serve. The attorney, in consultation with the Legal Section should liaise with the sheriff and Metro Police to make the necessary arrangements for service, including copying and, where necessary, translation of the documents.
16. The documents are served in accordance with the court order and Metro Police will provide proof thereof e.g. photographs.
17. The Court process then follows, and are monitored by the Legal Section of the relevant region.
18. Once the order is obtained, the attorney in consultation with the Legal Section will liaise with the sheriff and Metro Police to orchestrate the service of the order and/or the execution thereof, i.e. the eviction itself. Where there is a suspicion of illegal immigrants, Metro Police will contact Home Affairs.
19. Corporate and Legal will settle the legal costs from the legal costs vote and Public Safety will settle all accounts of the eviction