

**LAND USE ENFORCEMENT POLICY FOR THE
PLANNING AND BUILDING DEVELOPMENT MANAGEMENT DEPARTMENT
CITY OF CAPE TOWN**



CITY OF CAPE TOWN | ISIXEKO SASEKAPA | STAD KAAPSTAD

THIS CITY WORKS FOR YOU

1. POLICY ISSUES

This policy is called the Land Use Enforcement Policy for the Planning and Building Development Management Department of the City of Cape Town (the City).

There are different approaches to land use enforcement in the City. A uniform approach must be adopted. In many areas, the approach to land use enforcement has meant that people are permitted to continue with the unlawful land use until such time as the land use application has been finalised. Thus people are often able to utilise land for a purpose not contemplated by the zoning scheme for an unacceptable period of time.

There has been an increase in unlawful land use activities. This, in turn, has led to a flood of complaints from surrounding land owners, as well as from the Councillors who represent the ratepayers. The approach adopted must discourage the commencement of an activity prior to the land use rights being in place.

The approach must also give guidelines to officials on how to exercise discretion when carrying out land use enforcement.

A working group of officials and Councillors was set up to examine the different methods of enforcing the legislation and this policy reflects the inputs received during these sessions.

2. LEGAL MANDATE

Section 39, as read with section 46 of the Land Use Planning Ordinance no 15 of 1985 (LUPO) places an obligation on Council to enforce compliance with this law and zoning scheme regulations promulgated in terms of it and a reciprocal obligation on all people to comply with the provisions of the law.

Section 11(3) (a) of the Municipal Systems Act no 32 of 2000, entitles a municipality to exercise its executive authority by creating inter alia developing and adopting policies.

In addition, section 4(2) (i) of the Municipal Systems Act no 32 of 2000 places a duty on Council to provide a safe and healthy environment for its citizens. This policy contributes to the fulfilment of this duty.

3. POLICY OBJECTIVES

To guide the City's enforcement of LUPO and the zoning scheme regulations by:

- Creating a framework to ensure that officials in the Planning and Building Development Management department adopt a consistent and effective approach to land use enforcement throughout the City's area of jurisdiction.

To create a framework which results in the resolution of complaints within a reasonable time.

To create a framework which discourages people from commencing with unlawful land uses prior obtaining the relevant permission to conduct such operations.

4. SCOPE OF APPLICATION

This policy applies to enforcement carried out in terms of LUPO, the Scheme Regulation and the Regulations promulgated in terms of the Black Community Development Act no 4 of 1984.

The policy guides the Land Use enforcement officials in the Planning and Building Development Management department throughout the City who are required to enforce the law as well as to planners and building inspectors.

This policy does not deal with contraventions of the National Building Regulations and Building Standards Act No 103 of 1977.

5. POLICY

5.1 Complaints

5.1.1 A complaint may be lodged in the following ways:

A written request to investigate from a complainant or a ratepayers association;

A report on an potential unlawful activity from an official within the Planning and Building Development Management department or another department or official;

A request in writing from the Executive Director, Director, politician, or political structure;

An area sweep instituted by the Director, Area Manager, Regional Manager or Enforcement Co-ordinator within the Planning and Building Development Management department;

A notification from the tracking system that a land use approval has lapsed.

5.1.2 A complaint must:

- be in writing.

A complaint must be made in writing and submitted by mail, fax or email to the address specified. *(To be furnished before adoption)* Complainants may fill out a standard complaints form. No telephonic or verbal requests will be dealt with. No anonymous complaints will be investigated. The reason for this is that there must be a record of the information on which the investigation is based. In the event of a matter going to court, the complainant's details must be available in case they need to give evidence.

If a Councillor complains on behalf of a ratepayer, or a ratepayers association complains, the information listed in the paragraph immediately below must be furnished.

If the person, who is being investigated, requests a copy of the complaint, the nature of the complaint may be furnished but the identity of the complainant will be withheld unless the complainant is required to give evidence in court proceedings in which case, their identity will become known when they give evidence.

- contain sufficient information in order to investigate

This includes:

The name and address of the complainant

The name of the alleged offender .

The address of the property and erf number, if known, where the offence is allegedly being committed. (The second yellow house on the left is not a sufficient description)

A detailed description of the alleged contravention of the zoning scheme. It is helpful to provide dates, times, frequency, intensity / extent of the activity and to this end it useful to keep a log of when such activities take place and to record car registration numbers, if relevant.

Photographs, if available.

The impact that the alleged unlawful activity is having on the complainant and/or the neighbourhood.

The complainant must be advised to respect the alleged offender's privacy, not to trespass on their property and not to make defamatory statements.

Be lodged with the Head: Customer Interface in each district

See annexure for contact details. (This is to be attached once policy adopted)

5.2 Investigation

5.2.1 Once a complaint is lodged it is:

5.2.1.1 *Checked to see if it is one which can be investigated by the Department.*

If the contravention falls under the jurisdiction of a different department, the complainant will be advised accordingly and a copy of the inspector's response should be forwarded to the relevant department. The file will then be closed.

If the complaint could be investigated by more than one department, the enforcement co-ordinator for the area must liaise with the relevant people in the other departments in order to determine how to co-ordinate investigations.

5.2.1.2 *Entered on the tracker system*

5.2.1.3 *Acknowledged in writing within 24 hours (using the standard letter format).*

5.2.1.4 *Prioritised according to the categories set out below*

Category A: complaints are investigated within 36 hours

Category B: complaints are investigated withindays (provide timeframes after consultation)

Category C: complaints are investigated within....days (provide timeframes after consultation)

5.2.1.5 *Referred to the relevant land use inspector for investigation.*

5.2.2 Initial assessment

The inspector will carry out a “desktop” investigation to ascertain the erf number, ownership details zoning rights applicable to the erf.

If this assessment reveals that the property is being utilised in accordance with the zoning, he or she will write to the complainant and advise that the property is being used in accordance with the zoning. The file will be closed.

5.2.3 On site inspection

If the inspector cannot determine from a desktop investigation that the property is being used in accordance with its zoning, or it appears that there is a contravention, then the inspector will carry out a site inspection withindays (provide timeframes after consultation) of receiving the complaint.

The inspector will request access to the site. If access is denied, he or she must issue a notice in terms of section 41 of the Ordinance and diarise for the relevant date. Once on site, he or she will complete the standard inspection form and take note of inter alia who is carrying out the unlawful activity, the time of the inspection, the nature of the unlawful use, the scale of the use, how many people are on the property and how many involved in the unlawful activity. If necessary, he or she will take photographs. The inspector must carry official identification when on inspection. They will check if the complainant is available to depose to an affidavit.

5.2.4 Notice

If, after inspecting the premises, the inspector forms the opinion that a land use contravention is occurring, after noting the relevant information, the inspector must issue and **serve a notice based on the categories set out in 7.3 below**. The owner/operator must be advised of the contact details of the relevant planning official in order to discuss whether a land use application can be made, but it must also be made clear that they remain liable to be prosecuted while any application is being decided upon.

The complainant will be advised by letter that a notice has been issued.

5.2.5 Additional evidence

If, from the inspection, the inspector forms the opinion that there is no evidence of a land use contravention, the inspector must notify the complainant and invite them to furnish further evidence on affidavit and inform them that they must be prepared to give evidence in court. If a Councillor or ratepayers association has submitted the complaint, the response will be directed to them and they will need to advise the individual complainant of the requirement to furnish further evidence.

If the complaint arises from issues such as noise, and there is a subjective element to the complaint (i.e the degree of disturbance can vary from person to person), the complainant will have to depose to an affidavit (the police station can commission an affidavit) and will have to give evidence in court, if the affidavit provides sufficient evidence of a contravention. The reason for this is that a criminal court will only accept the evidence of the person who actually saw or experienced the offence being committed. If an inspector did not see the offence being committed, he or she cannot give direct evidence in a court.

It is for this reason that if the complainant refuses to sign an affidavit or refuses to give evidence in court, after discussions with the prosecutor, the file will be handed to the enforcement co-ordinator, who will review the case. If there is not sufficient evidence to prosecute, this will be recorded on the file and the complainant advised accordingly. The file will then be closed.

5.3 Land Use Contraventions

The approach of the City to land use planning contraventions in terms of section 39(2) of LUPO is to ensure that the unlawful activity ceases until such time as the appropriate land use rights are in place. A person will be given a reasonable opportunity to cease such operation. The determination of what is reasonable will be guided by the criteria set out in annexure A.

5.3.1 Determination of categories

In determining whether an unlawful activity falls into category A, B or C, one of the factors officials must have regard to is the nature of the complaint and the alleged impact of the unauthorised activity on the complainant and neighbourhood.

In the case of uncertainty as to which category a land use contravention falls into, the land use inspector shall refer the matter to the Enforcement Co-ordinator who shall make such determination.

5.3.2 Failure to comply with notice

In the event that the person does not cease the unlawful use within the time periods set out in the notice, no extension of the time period to cease will be given and no further notices will be served. A summons must be issued.

Should offenders require more time, they will have to make such representations to the Directorate of Public Prosecutions office or request the Magistrate to postpone the matter. The prosecutors have been requested to oppose all such applications.

In the event that the Magistrate or Director of Public Prosecutions postpones the matter, Council may still elect to launch Civil court proceedings to interdict the person from carrying on the unlawful activity.

The person who is contravening the law must be informed that he or she is entitled to make an application for the land use rights required in order to conduct the activity however, the submission of such application does not impact on the obligation to cease operations until such time as the requisite authority has been granted. Inspectors are required to give the offender a pro forma information sheet which sets out the zoning of the property and the permissible use rights, the process for applying for the appropriate land use rights and the contact details of the planner for the area.

5.4 Buildings erected in contravention of LUPO

Section 40 of LUPO provides as follows:

*“(1)(a) If a **building** or any part thereof was erected in contravention of section 39(2)(a), the local authority shall serve an instruction (hereinafter referred to as the instruction) on the owner concerned-*

- (i) to rectify such contravention before a date specified in the instruction, being not more than six months after the date of the instruction **or** at the option of the said Council,*
- (ii) to apply for the determination of a contravention levy, **or** in terms of section 15 for a departure, before a date specified in the instruction, being not more than 30 days after the date of instruction.”*

It is the City’s discretion to determine which of the three options to implement. The owner may dispute the option chosen by Council by following the process set out in LUPO.

5.5 Criteria for determining which option to use

See annexure B.

5.6 Procedure

The unlawful building work will usually be discovered by a Building Inspector on a routine visit or after having received a complaint about unauthorised building work. Such work may also be discovered by Land Use Inspectors whilst carrying out an inspection for a different purpose.

If unauthorised building work is discovered, the Building Inspector issues a notice in terms of the National Building Regulations as the person will have built without an approved building plan or will be deviating from an approved building plan.

Should the person fail to submit building plans as required by the notice on or before the specified date, this is an offence in terms of the National Building Regulations and Building Standards Act and prosecution will take place in terms of that Act.

If the building plan is submitted after construction has commenced, the person who assesses the plan must flag that there is a zoning scheme contravention and must not automatically tell the person to apply for departures.

Once the building plan is sent to the Zoning section, the Area planner must confirm that there is a contravention of the zoning scheme regulations. The area planner must in conjunction with the Area manager, determine which option in terms of section 40 is applicable.

A notice must be served on the **owner** of the land setting out:

- The details of the property and the development rights set out in the zoning scheme applicable to the property.
- The nature and extent of the contravention
- The proposed option which officials wish to adopt in terms of section 40.
- The time period within which the action must be taken.
- The time period (usually 7 days) within which the owner may direct written representations to Council as (i) the existence, nature and extent of the contravention; (ii) why such option should not be implemented; (iii) whether there are any circumstances which warrant a different time period from that contemplated.
- Once the period for representations has expired, after considering any representations made, a decision must be made as to which option to adopt and the period within which the action must be taken.

A second notice (being the instruction contemplated in section 40) must be served on the owner instructing him/her to implement the option decided upon within the time periods set out in the notice.

A requirement to demolish/ remove unauthorised work must be carried out within 90 days of the date of the notice. An application for a departure must be received within 30 days of the date of instruction. An application for a contravention levy must be made within 30 days of the date of the instruction.

The instruction must notify the owner of the right of appeal in terms of section 62 of the Municipal Systems Act, 2000 and must also point out the right of appeal contained in section 40(1)(c) and (d) to the Provincial sphere of government. Details of the appeal authority must be provided.

The instruction must inform the owner that if he or she fails to comply with the instruction and in the event that no appeal to the Provincial sphere of government is received, Council shall take all steps as may be necessary to rectify the situation and that, in terms of section 40(2), any amount spent by the local authority in terms of subsection (1) shall be recoverable by that local authority from the owner.

If the owner fails to comply with the instruction and fails to launch an appeal, Council will launch an application to demolish such work.

6. IMPLEMENTATION PLAN

6.1. Outcomes

It is envisaged that this policy will reduce the number of land use contraventions which take place within the City of Cape Town and thus contribute to the improving the living environment and amenity of the neighbourhood of the citizens of Cape Town.

Furthermore, it will assist in a uniform and effective approach to land use enforcement issues within the area of the City of Cape Town.

6.2. Critical success factors

It must be emphasised that the failure to appoint enforcement staff and enforcement co-ordinators will have a material impact on the success of this policy.

Training of current staff.

7. PROCEDURE AND SANCTION FOR NON COMPLIANCE

All staff are obliged to comply with this policy. Should they not comply the processes set in the disciplinary procedures will be followed. Offenders who fail to comply with the requirements of the policy will face civil or criminal litigation.

8. DATE OF DECISION (APPROVED)

9. DATE OF IMPLEMENTATION (ENFORCEMENT)

9.1 This policy comes into effect on the date specified by the PEPCO.

9.2 This policy repeals the following enforcement policies from date of implementation of this policy:

9.2.1 the land use contraventions: operational policy for South Peninsula Municipality.

9.2.2 Prosedurehandleiding vir die hantering van Grondgebruikoortredings: Oostenberg.

9.2.3 Operational Practice relating to land use enforcement: City of Cape Town

10 EVALUATION OF POLICY

This policy will be reviewed one year after the date of implementation.

ANNEXURE A

Land Use Contraventions

The approach of the City to land use planning contraventions in terms of section 39 of LUPO is to ensure that the unlawful activity ceases until such time as the appropriate land use rights are in place. A person will be given a reasonable opportunity to cease such operation. The determination of what is reasonable will be guided by the criteria set out below.

Category	Description	Example	Time Frame	Remedy
A	<p>Where a contravention of the zoning scheme in the opinion of the official (position) or Council results in a danger to life on the property or danger to adjoining neighbours or the public, has a material impact on the safety and welfare of the community concerned, constitutes a danger to an individual neighbour or results in an irreversible change to land, has a substantial detrimental effect on the natural or built environment, a notice must be served on the person requiring them to cease with the unlawful activity immediately. Fire, pollution, noise</p> <p>A person has been warned not to commence operation of an unlawful land use activity and notwithstanding the warning, commences operation. Complaints have been received from the community about this pending operation.</p>	<p>Examples include, but are not limited to: Activities carried out in residential areas which are provided for in the industrial zones of the zoning schemes, the storage of explosives, or any activities which involve the use of hazardous substances as declared in the Hazardous Substances Act 15 of 1973.</p>	Immediate cessation	<p>Urgent Court application to interdict the activity. Officials must immediately hand the matter over to the legal department.</p> <p>Urgent court interdict.</p> <p>Officials must approach the legal department on the day that the warning letter is sent.</p>

B	<p>The contravention of the zoning scheme results in the opinion of the official in demonstrable harm to the amenity of an area through noise pollution, traffic, parking, pollution, loss of light, or to the safety and welfare of the community, a notice must be issued giving the person a maximum of 30 days to cease with the unlawful activity.</p>	<p>Examples of this include but are not limited to: pubs, restaurants and night clubs, panel-beating, vehicle repairs, activities within residential areas which create the above impacts.</p>	<p>Maximum of 30 days</p>	<p>Criminal prosecution Council may approach the Court for an interdict to prohibit activity.</p>
C	<p>C (i) In cases where the cessation of the contravention results in an impact on the wider public, notwithstanding the fact that the contravention falls into category B, or C (ii) in cases where an activity does not result in the opinion of the Council, demonstrable harm to the amenity of an area through noise pollution, traffic, parking, pollution, loss of light; a notice must be served giving the person a maximum period of 2 months (60 days)/ 3 months(90 days) to cease such activity.</p>	<p>The case of C (i) is limited to schools and crèches where parents are unable to relocate their children at 30 days notice and Institutions as defined in the applicable zoning scheme regulations. This provision may only be used in cases where the activity is discovered after it has commenced.</p>	<p>30 days but can be extended if owner agrees to move at end of period.</p>	<p>Criminal prosecution on non compliance with notice. City retains the option of launching civil proceedings.</p>

ANNEXURE B

Criteria for determining which option to use when implementing section 40 of LUPO

Option	Description	Criteria for using this option
Rectify within a certain time period	This is interpreted to mean that the owner must remove or demolish the unauthorised work within the time period set by Council which may not be more than 6 months;	<p>The Area Manager (Section Head) has formed the prima facie opinion that the effect of the unauthorised work has major adverse impacts on existing rights, light, privacy or the general amenity of an adjoining property (ies), or has a material impact on the streetscape.</p> <p>Building occurs over Council infrastructure, on public open space, or in environmentally sensitive areas such as flood plains.</p> <p>In cases where building work is not complete, the owner continues building after being notified in writing to cease building operations?</p>
Apply for a departure	The owner is required to apply for a building regulation departure which enables them to obtain approval for the unauthorised building work.	The contravention of the zoning scheme is, in the opinion of the Area Manager/ Section Head, minor. (<i>1m or less deviation?</i>) and there are minimal impacts on the neighbour's property and issues which may arise should be able to be addressed by means of conditions.
Apply for a contravention levy	Council may instruct the owner to apply for the determination of a contravention levy. This means that the owner must pay a sum of money to Council. The amount is based on the nature and extent of the contravention. At present, such contraventions are assessed using the market value of the extent of the contravention and Council has delegated authority in terms of the circular from Province dated September 1993, to impose a contravention levy of up to R5 000.00 provided agreement is reached with the owner. Should Council wish to impose a higher amount, it must make a recommendation to Province. An owner is entitled to dispute the nature of the	<p>This could be an alternative to the departure route in cases where the immediately adjoining neighbours indicate that they do not object to the structure.</p> <p>Contravention levy would be a minimum of R 5000.00. The levy is calculated at R 5 000.00 per m² of unauthorised work. Unauthorised work limited to 50 m². Contravention levy may only be used once on property.</p> <p>Province to be requested to amend the Provincial circular.</p>

	<p>contravention and the amount required to be paid. The result of paying the contravention levy is that in terms of section 40(4)(c) the land is deemed to be zoned in accordance with its utilisation.</p> <p>Province will be approached in order to adjust the amount which can be imposed under delegated powers.</p>	
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