



DEVELOPMENT MANAGEMENT SCHEME COMPLIANCE ADVISORY: 1 OF 2024

CATEGORIES OF CONTRAVENTIONS TO WHICH SECTION 130(2) AND (3) OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) DO NOT APPLY

1. BACKGROUND

- 1.1. Section 130(5) of the MPBL (which is inclusive of the Development Management Scheme (DMS) as schedule 3) authorizes the City to prescribe categories of contraventions of the MPBL to which the provisions of sections 130(2) and (3) will not apply:

“(5) The City may prescribe a category of contraventions of this By-law to which the provisions of section 130(2) and (3) do not apply.”

- 1.2. Section 130(1) to (3) of the MPBL reads:

- “(1) A person who is in contravention of this By-Law may apply to the City in terms of this By-Law for the necessary approval.*
- (2) Subject to subsection (3), a person contemplated in subsection (1) must submit an application for and pay an administrative penalty determined in terms of section 129 before the City may consider an application contemplated in subsection (1).*
- (3) If an application for an administrative penalty contemplated in section 129 has been submitted but not yet determined, or an administrative penalty determined in terms of section 129 has not yet been paid, in exceptional circumstances the City may consider an application contemplated in subsection (1) provided that the City, when granting an approval or making a determination, must impose appropriate conditions to ensure payment of any administrative penalty.”*

- 1.3. Section 129 of the MPBL sets the provisions relating to administrative penalties.

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- 1.4. In terms of the MPBL, any person who is in contravention of the MPBL, and who wishes to rectify the contravention in terms of section 130, may apply to the City for the determination of an administrative penalty if the City has not issued a demolition directive (in terms of subsection 128) in respect of the land or building or part thereof concerned.

2. PRESCRIPTION OF CATEGORIES OF CONTRAVENTIONS IN TERMS OF SECTION 130(5) OF THE MPBL

The City of Cape Town Council on 7 December 2023 prescribed the updated categories of contraventions indicated in Annexure A as contraventions to which the provisions of section 130(2) and (3) of the City of Cape Town Municipal Planning By-law, 2015 do not apply.

3. IMPLEMENTATION

- 3.1. A person who wishes to rectify any contravention prescribed may therefore now submit the necessary land use application without the need to submit an application for the determination of an administrative penalty in terms of section 42(r) of the MPBL, unless a notice of non-compliance has been served on an owner for categories A:5, A:6 and A:7, in which case an administrative penalty application will be required (until the necessary support referenced has been established).
- 3.2. Any administrative penalty application, where the contravention is in line with the now updated prescribed categories, currently in the City's system and not yet decided on, will not be required anymore and should be formally withdrawn. The necessary related land use application may therefore be processed and considered.
- 3.3. Applicants be advised to submit the necessary motivation requirements (e.g. those listed as A: 1. a. ; b. and c. ; 2. a. ; b. and c. ; 4. a. and b.) as part of the required land use application.
- 3.4. Note that as per B. of the prescription, a category prescribed in A. will not be exempted as per the requirements listed.



PLEASE NOTE

Always consult the City of Cape Town Municipal Planning By-law, 2015 (as amended), before any land use application is submitted to the Department.

ANNEXURE A

CATEGORIES OF CONTRAVENTIONS TO WHICH SECTIONS 130(2) AND (3) OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) DO NOT APPLY

(Note: In this prescription the same definitions apply as contained in the MPBL. If no definition is provided for in the MPBL or if it is not specifically defined in this prescription, the ordinary meaning as confirmed by an authorized official will apply)

A: 1 to 7 below are prescribed as categories of contraventions to which sections 130(2) and (3) of the City of Cape Town Municipal Planning By-law, 2015 do not apply, subject to B and C.

A: Subsections 130(2) and (3) of the MPBL as far as it is required to make an application for an administrative penalty will not apply to the following categories of structures or land uses which contravene the Development Management Scheme (DMS):

1. The erection of a structure that contravenes the development rules of the DMS (excluding a land use contravention) where the current owner was not responsible for the contravention, subject to:
 - a. the owner submitting an affidavit or proof to the satisfaction of the City, that he/she did not own the property at the time the contravention commenced;
 - b. the case officer verifying this information on City Maps where possible; and
 - c. the owner was not informed by the City, prior to taking transfer, that such contravention existed.
2. A structure or part/s thereof that contravenes a common boundary building line on land zoned Single Residential Zoning 1: Conventional Housing (SR1) or Single Residential Zoning 2: Incremental Housing (SR2), subject thereto that:
 - a. the total contravention/s does not exceed 25m² in extent;
 - b. the contravention/s is on the ground floor; and
 - c. the structure is a single storey and does not exceed 4m in height measured from existing ground level to top of roof.
3. Any contravention of the following items of the DMS:
 - a. Item 132 Satellite dish antenna systems;
 - b. Item 133 Geysers and solar panels or similar infrastructure affixed to the roof of a building;
 - c. Item 136B Boundary walls; and
 - d. Item 140 Site access and exits.
4. An unauthorised land use that has ceased prior to the date of acceptance of the application, subject to:
 - a. the owner submitting an affidavit or proof to the satisfaction of the City indicating when the unauthorised use has commenced and was ceased; and
 - b. the case officer verifying the application submission timelines on the Development Application Management System (DAMS).

5. The erection of a structure used as an affordable rental flat¹, subject thereto that:
 - a. the property has originally been developed with government subsidised housing funds by government or a development agency that acted on behalf of government, or within the area of the map attached hereto; and
 - b. the number of affordable rental units on the property does not exceed 12 units or a floor area of 240m², whichever is the most restrictive.
6. The land use activities of home child care, informal trading, place of worship and place of instruction, subject thereto that:
 - a. the property is located or the land use contravention is within a government subsidised housing development or informal township or within the area of the map attached hereto.
7. The erection of structures that contravenes development rules of the SR2 zoning, subject thereto that:
 - a. the property is located within a government subsidised housing development or informal township or within the area of a map attached hereto.

B: Subsections 130(2) and (3) of the MPBL will apply to the above where:

1. The contravention is in a Heritage Protection Overlay Zoning, excluding the contraventions as contemplated in A:2 and A:3 a. and b. above.
2. The current owner has committed a previous contravention on the same land unit.
3. A telecommunication mast is in contravention of the DMS.
4. Categories A:5, A:6 and A:7 is only valid for a period of 5 years from the effective date of its inclusion in the approved exemption list.

C: Further provisions:

1. Notwithstanding the above the City may still apply any other enforcement measure or make application to the High Court for relief or orders to compel an owner to take certain actions, as contemplated in sections 124 and 131 of the MPBL.
2. For categories A:5, A:6 and A:7: Once the city support is available and the owner is served with a notice of non-compliance, the owner will have a period of 12 months to submit the required land use rectification application/s. If the owner does not submit the necessary application/s within 12 months after been served with a notice, the exemption from the administrative penalty will be withdrawn for the contraventions in the notice.

¹ Until defined in the Municipal Planning By-law, '**affordable rental flats**' means a building containing two or more affordable rental units, that may not be sectionalised, with such outbuildings as are ordinarily associated therewith but excludes a dwelling house, second dwelling, third dwelling or flats; and '**affordable rental units**' means a self-contained inter-leading group of rooms or a single room, including sanitary and cooking facilities, that is for rental only and used for living accommodation;

