



DEVELOPMENT MANAGEMENT SCHEME COMPLIANCE ADVISORY: 10 OF 2021

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 includes the Development Management Scheme (DMS) as Schedule 3) authorises the City to prescribe categories of contraventions of the MPBL to which the provisions of sections 130(2) and (3) do 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.

- 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 Section 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

Council on 29 September 2021 prescribed the categories of contraventions attached hereto 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.
- 3.2. Any administrative penalty application, where the contravention is in line with the prescribed categories and currently in the system but not yet decided on may now formally be withdrawn.
- 3.3. The necessary requirements, such as those listed in the attached (categories of contraventions), for example A: 1. a. ; b. and c ; 2. a. ; b. and c. ; 4. a. and b.) should be submitted 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 where:
 - 3.4.1 the contravention is in a Heritage Protection Overlay Zoning; or
 - 3.4.2 the current owner has committed a previous contravention on the same land unit; or
 - 3.4.3 a telecommunication mast is in contravention of the DMS.



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 Development Management Department.



29 September 2021

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 or if no definition is provided for in the MPBL the ordinary meaning as confirmed by an authorized official will apply)

A: 1 to 4 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 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 18m² 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 136B Boundary walls; and
 - b. Item 140 Site access and exits.
4. An unauthorised land use that has ceased and was not in operation for a period longer than 3 months prior to the date of acceptance of the application for an administrative penalty, 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).

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;
2. The current owner has committed a previous contravention on the same land unit; and
3. A telecommunication mast is in contravention of the DMS.

C: Further provisions:

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.