

**THEMBISILE HANI LOCAL MUNICIPALITY**



**DRAFT THEMBISILE HANI LOCAL MUNICIPALITY BY LAW  
ON LAND INVASION**

**THEMBISILE HANI LOCAL MUNICIPALITY DRAFT BY-LAW ON LAND INVASION**

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## THEMBISILE HANI LOCAL MUNICIPALITY DRAFT BY-LAW ON LAND INVASION

### THEMBISILE HANI LOCAL MUNICIPALITY: BY-LAWS RELATING TO LAND INVASION AND THE MANAGEMENT AND CONTROL OF INFORMAL SETTLEMENTS

Under the powers conferred by section 156 of the Constitution of the Republic of South Africa, 1996 the Thembisile Hani Local Municipality enacts as follows:

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### PREAMBLE

**WHEREAS** section 156(2) of the Constitution of the Republic of South Africa, 1996 confers on municipalities the competence to make and administer by-laws in respect of local government matters set out in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution;

**WHEREAS** Part B of Schedule 4 of the Constitution confers on municipalities the competences in respect of building regulations, municipal planning, and municipal health services;

**WHEREAS** the Thembisile Hani Local Municipality seeks to prevent the unlawful occupation of land and buildings while being cognizant of the requirement in section 26(3) of the Constitution that no one may be evicted from their home or have their home demolished without an order of court;

**THE COUNCIL OF THE THEMBISILE HANI LOCAL MUNICIPALITY** hereby enacts the following by-law:

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### 1. Definitions

1.1. The following terms will have the meanings assigned to them here under:

1.1.1. **“Allocate”** means to assign a specific number to a site, stand or structure in an informal settlement for administrative purposes without granting any rights or security of tenure;

1.1.2. **“Authorized official”** means the authorised official appointed or assigned in terms of section 4;

means an employee of the municipality responsible for carrying out any duty or function or exercising any power in terms of this By- law and includes-

a) a law enforcement officer appointed by the Municipal Manager

b) any other employee delegated or person authorized to carry out or exercise the duty, function or power;

c) appointed service provider to deal administer unlawfull occupation within the jurisdiction of the municipality

1.1.3. **“Boundary”** in relation to land, means a line prescribed in any town planning scheme or any other law designating the boundaries of the particular piece of land, outside of which the erection of any building is prohibited;

1.1.4. **“Building control”** refers to the municipality’s in-house building control team responsible for the circulation and approval of building plans for all building work to be executed, namely, the construction of new buildings and structures, extensions and alternations to new buildings and structures, the erection of boundary walls and signage and all other activities that fall within the ambit of the activities undertaken by the building control team from time to time.

1.1.5. **“Building or structure”** refers to any hut, shack, tent or other informal dwelling or similar structure, whether temporary or permanent, and regardless of whether or not such building or structure is still in the process of being erected.

1.1.6. **“By-law”** refers to this municipal land invasion by-law.

1.1.7. **“Consent”** means the express or implied consent of the owner or person in charge of the occupied land to the occupation of land by a resident of a

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shack, irrespective of whether such consent was given in writing or otherwise;

- 1.1.8. **“Contractual agreement”** means the contractual agreement entered into between the head of a household and the Municipality in terms of which the household is authorised to occupy a shack in an authorised informal settlement;
- 1.1.9. **“Council”** refers to the municipal council of the Thembisile Hani Local Municipality.
- 1.1.10. **“Court”** means any division of the High Court or the magistrate's court in whose area of jurisdiction the land is situated;
- 1.1.11. **“custodian of land”** means any person in charge of that land or building;
- 1.1.12. **“Eviction”** means the permanent removal, in accordance with the provisions of a court order, of a person and his or her personal property from occupation of a shack or any other type of structure or the land on which the shack or structure is constructed against his or her will, and includes the demolition and removal from the land of any building materials used to construct the shack or structure, and “evict” has a corresponding meaning;
- 1.1.13. **“Existing Informal settlement”** refers to any unplanned settlement or settlements occupied in an informal manner with or without the permission of the landowner, or where the court did not grant a court interdict for the eviction of illegal occupants from the land in question and to which basic services have or have not been rendered on a date before the adoption of this By-law.
- 1.1.14. **“Formal Settlement”** refers to a settlement that has been proclaimed in the government gazette in line with the municipality's land use scheme and, to which a township register has been opened and zoning allocated to erven within the township.
- 1.1.15. **“Head of the household”** means –
- The *de facto* head of a household;
  - The single parent, where the household has only one parent with dependents living permanently with him or her in the household; and
  - any person in the household who has legal capacity to act and is recognized by the majority of the other persons in the household as the

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person responsible for the maintenance of the welfare and discipline within the household;

- 1.1.16. **"Infill"** refers to the upgrading or development of open spaces within built-up areas to improve or to better utilize existing services and infrastructure.
- 1.1.17. **Informal Settlement refers to a settlement** are defined as unplanned settlements which are setup illegally either on the public or private land in a haphazard manner without following norms or planning regulations.
- 1.1.18. **"Informal Dwelling"** means any temporary shelter, shack, building, hut, tent, dwelling or similar structure which does not comply with the provisions of the National Building Regulations and Building Standards Act, 1977 (act 103 of 1977), the regulations promulgated under that Act and the Municipality's Building Control By-laws and which is primarily used for residential purposes; and
- 1.1.19. **"Infrastructure services"** refers to the municipality's in-house unit responsible for provision and maintenance of the capital works necessary to provide municipal services.
- 1.1.20. **"In-situ upgrading"** refers to progressive upgrading of settlements on informally occupied land by the authorities through a range of interventions to create habitable environments.
- 1.1.21. **"Invasion"** means the illegal occupation of land, with the intention of establishing dwellings / a settlement upon it.
- 1.1.22. **"Land"** refers to immovable property and includes a portion of land within the municipality's area of jurisdiction
- 1.1.23. **"Land management unit"** refers to the municipality's in-house land management team responsible for managing municipal land within the jurisdictional boundaries of the municipality.
- 1.1.24. **"Landowner"** means the registered owner of land, including an organ of state.
- 1.1.25. **"Land use"** refers to the lawful purpose for which land may be used in terms of the municipality's land use scheme.
- 1.1.26. **"Land use scheme"** refers to the land use scheme contemplated in in the Spatial Planning and Land Use Management Act 16 of 2013.

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- 1.1.27. **“Law Enforcement Unit”** means a group of officers or workers consisting of any combination of one or more of the following components:
- Members of a private security company contractually engaged by the Municipality to perform certain duties on its behalf; and
  - Members of the Municipality's Law Enforcement Unit;
  - Any combination of employees of the Municipality, which group is designated by the Municipality to assist the authorized official in the execution of his or her duties and to execute any eviction order contemplated by **Section 9 of the By-law** to terminate an unauthorized informal settlement.
- 1.1.19 **“Legal services”** refers to the municipality's in-house legal services unit/department.
- 1.1.18 **“Municipality”** refers to the Thembisile Hani Local Municipality.
- 1.1.19 **“Municipal manager”** refers to the municipal manager or acting municipal manager of the municipality, from time to time.
- 1.1.20 **“National Housing Needs Register”** means the consolidated National Housing Needs Register that is the only official database from which prospective beneficiaries will be drawn and be invited to complete housing subsidy application forms
- 1.1.28. **“New Informal Settlement”** refers to any unplanned settlement or settlements occupied in an informal manner with or without the permission of the landowner, or where the court did not grant a court interdict for the eviction of illegal occupants from the land in question and to which basic services have or have not been rendered on a date after the adoption of this By-law.
- 1.1.21 **“Owner”** means the registered owner of land, irrespective of whether such owner is the National Government, the Provincial Government, the Municipality, State-owned Enterprise or a private individual, company or other legal entity;
- 1.1.22 **“Open space(s)”** refers to land set aside for use by a community for recreational purposes.
- 1.1.23 **“Person in charge”** refers to a person who has, or at the relevant time had, legal authority to give permission for land to be accessed, utilized or settled

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by another person as defined in section 1 of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, No. 19 of 1998.

1.1.24 **“Rural areas”** refers to an areas of land outside the densely populated urban areas

1.1.25 **“Rural development”** refers to those areas that fall outside the urban fringe(s) as defined in the Spatial Development Framework of the municipality.

1.1.20 **Safety and Security Cluster**

- Members of South African Police Service;
- Members of the Municipality's Law Enforcement Unit;
- Community Development Workers
- Ward Committee Members
- Members of the sheriff or messenger of the court with jurisdiction in the area;
- Gazetted Tribal Council

1.1.26 **“Sustainable human settlement”** refers to a place designed for a wide variety of developmental needs and activities of humans, which utilizes local resources efficiently, creates opportunities for people to achieve their full potential and which is convenient, offers choice and quality and promotes equality of access.

1.1.27 **“Town planning and environmental management”** refers to the municipality's in-house unit responsible for creating an economically viable, attractive and friendly town, promoting spatial efficiencies, advancing the principles of sustainable development, promoting the spatial development of the town, promoting spatial transformation, proper land use management, encouraging spatial planning, development management and facilitation and built environment and enforcement.

1.1.28 **“Traditional council”** means a traditional council that has been established and recognized for traditional community in accordance with the provisions of section 16 of the Traditional and Khoisan Leadership Act 3 of 2019

1.1.29 **“Unlawful occupant”** refers to a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land.

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- 1.1.30 “**Unlawful land occupation**” refers to the situation where an unlawful occupier has invaded land with the intention of occupying it in the absence of permission from the owner or person in charge and/or the express or tacit consent of the owner of the land or the person in charge of the land and/or, in the absence of any other right in law to occupy the land.
- 1.1.31 “**Urban areas**” refers to areas that are characterized by high population density and an infrastructure of built environment.
- 1.1.32 “**Urban development**” refers to those areas falling inside the urban fringe(s) as defined in the Spatial Development Framework of the municipality.
- 1.1.33 “**Urban renewal**” refers to the improvement of depressed urban environments to boost investor confidence by channeling social, economic and infrastructure investment in these areas.

## **2. APPLICATION AND PRINCIPLES OF BY-LAW**

1.2 This by-law applies to all land and informal settlements within the area of jurisdiction of the Thembisile Hani Local Municipality.

### **1.3 In principle it is recognized that:**

2.2.1 The municipality is faced with the continuous proliferation of informal settlements and land invasion, particularly on the periphery of the urban areas and that most of these informal settlements have developed through the invasion of privately or state-owned land which makes service delivery implementation by the municipality difficult;

2.2.2 The process of transferring such occupied land to the municipality is cumbersome and restricts the municipality from exercising its mandate in rendering basic services to the affected communities;

2.2.3 Illegal letting or the 'selling' of sites by individuals who plan and lead land invasions are prevalent; and

2.2.4 The municipality has developed an informal settlements upgrading and management plan and housing delivery plan which forms part of the Integrated Development Plan as an attempt to expedite housing delivery to its homeless citizens. The following housing related issues present immediate challenges that require tailor-made By-law intervention:

- Poverty and unemployment;
- Past policies that prevented people from obtaining housing in urban areas;
- "Jumping the queue", hoping to receive an allocation sooner;
- Shortage of developed land in the vicinity of job opportunities;
- Encouragement of unlawful land occupations for political and financial gain;
- Sporadic land invasion of municipal land;
- Abandoned shacks where beneficiaries have been relocated;
- The unlawful sub-letting and vacating of dwellings, leaving sub-tenants in occupation; and
- The illegal selling of houses before the expiry of the applicable sales restrictions; and

- Management of informal settlements and the provision of socio-economic amenities.

### **3. OBJECTIVE OF THE BY-LAW**

1. The municipality acknowledges that some of its citizenry reside in informal settlements. It recognizes that many of these informal settlements offer shelter to the poor and destitute, but that it creates undesirable urban environments due to the lack of services and security of tenure. Furthermore some of the land parcels in the municipality are illegally occupied for the purposes of commercial trading and other activities. Land parcels within the municipality's area of jurisdiction are, therefore, invaded for residential and commercial reasons, amongst others. It is for these reasons that this By-law is directed at addressing the following:

- 1.1. To contain and prevent land invasion and the spread of informal settlements; and
- 1.2. To plan for sustainable human settlements through the rapid release of land for development.
- 1.3. To assist municipality to control and manage the land available in terms of open spaces.
- 1.4. Prevent development of settlements in hazardous areas

### **4. STATUS QUO**

1. Thembisile Hani is presented with diverse challenges with the administration, management and ownership of land within its area due to legacy policy gaps in the administration of land.
2. Land within the municipality is widely registered with the state and traditional councils have authority over the administration of the land as promulgated from time to time.

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3. The municipality has authority over planning and, in particular, is mandated by the Constitution and the Spatial Planning and Land Use Management Act, to oversee the coordination of planning and development across the Municipality.
4. The land administration challenges are further compounded by the lack of proper coordination between the various stakeholders in the land administration value chain.
5. There is also discontent amongst various stakeholders as a result of these challenges, further perpetuating land invasion cases and the rapidly increasing informal settlements.
6. The land invasion bylaw, is therefore intended to address the identified policy gaps and provide guidelines to deal misconduct and the administration of the unlawful occupation of land.

### 5. LEGISLATION AND POLICY FRAMEWORK

1. Although not exhaustive, the following legislation and policies provide the appropriate legislative framework within which the Thembisile Hani Land Invasion By-law is drafted:

- Constitution of the Republic of South Africa 108 of 1996
- Interim Protection of Land Rights Act 31 of 1996
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998
- Extension of Security of Tenure Act 62 of 1997
- Municipal Systems Act (Act 32 of 2000)
- Local Government Municipal Finance Management Framework Act 56 of 2003
- Housing Act 107 of 1997
- Rental Housing Act 50 of 1999)
- National Environmental Management Act 107 of 1998
- The White Paper on Local Government of 1998
- Traditional and Khoisan Leadership Act 3 of 2019
- Spatial Planning and Land Use Management Act 16 of 2013
- National Building Regulations and Building Standards Act, 1977 (act 103 of 1977)

## **6. LEGAL PROVISIONS**

- 6.1 No person has a right to allow, encourage, motivate, organize and/or instigate the illegal occupation of land
- 6.2 Where such concurrent as mentioned in above happen, Council reserve the right to take any appropriate legal action to rectify the situation.

## **7. APPOINTMENT OF AUTHORISED OFFICIAL**

- a. The Municipality may appoint an official or assign one of its officials as its authorised official to manage and control all the informal settlements in accordance with the provisions of this by-law.

## **8. ROLES AND RESPONSIBILITIES**

### **8.1 AUTHORISED OFFICIAL**

**The authorized official must:**

- 8.1.1 Conduct regular surveys to determine the location, origin, extent of land and the conditions prevailing in each informal settlement;
- 8.1.2 Monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality;
- 8.1.3 Undertake and promote liaison and communication with local communities with a view to obtaining their understanding and cooperation regarding the prevention of land invasion in the area of jurisdiction of the Municipality;
- 8.1.4 Establish and maintain relationships with private land owners and state land owners.
- 8.1.5 Keep a register of all the residents who are entitled to reside in each existing informal settlement, and in such register the following details must be entered in respect of each informal dwelling in each existing informal settlement:

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- The number allocated to the stand or site on which the informal dwelling is constructed;
  - The name and identity number of the head of the household who is entitled to occupy the informal dwelling ;
  - The names, identity numbers and relationships to the head of the household of each and every other person occupying the informal dwelling as a member of the household;
  - The reference number of the file of the authorised official that contains a copy of the contractual agreement in respect of the informal dwelling ;
  - The number of the informal dwelling's rental account;
  - The number of the informal dwelling's municipal services account;
  - The previous address of the household that is entitled to occupy the informal dwelling; and
  - The names, addresses and telephone numbers, if any, of at least two family members of the head of the household who do not live at the same address as the household that is entitled to occupy the informal dwelling;
- 8.1.6 Ensure that all the residents living in an existing informal settlement are registered in the Municipality's National Housing Needs Register;
- 8.1.7 Submit quarterly written reports on the control and management of any informal settlement, or the conditions prevailing in the informal settlement to the Municipality;
- 8.1.8 For the purpose of informing residents of informal settlements, ensure that a copy of this by-law is posted on the municipal website, is available at the municipal offices and libraries.
- 8.1.9 Ensure that no new informal dwellings are erected in any informal settlement and that no new residents/dweller take up residence in such an informal settlement; and
- 8.1.10 Perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.

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### 8.2 **Gazetted Traditional Council**

- Play a role in land administration by controlling development within their area of jurisdiction and ensuring that development is in line with the municipal Spatial Development Framework and other related policies
- Promote sustainable use of land by ensuring that development take place at developable area as outline in the Spatial Development Framework
- Play a role in communication and information dissemination of government policy and programmes which includes this By-law

### 8.3 **Ward Councilors**

- Ward Councillors play a more proactive role by engaging with community members regarding this situation and by assisting and supporting the Land Management Unit in preventing such illegal activity.
- Ward councillors, in collaboration with ward committee members shall, as a matter of urgency, report all the identified land invasion cases within their wards, whether it involves land owned by the municipality or not.
- Once a ward councillor has reported a case of land invasion, the administrative procedures outlined in the policy shall be adhered to.

### 8.4 **Members of South African Police Service**

- Assist with the enrollment of criminal cases related to land invasion
- Report on investigation process of charges related to land invasion cases
- Act within a shortest period of time and ensure the complaint is attended to and the situation the land is assessed to determine if there is a threat of land invasion
- Assist the municipality/ the sheriff with execution of eviction order by rendering protection.

### 8.5 **Members of the Municipality's Law Enforcement Unit**

- Conduct daily observation and selective patrols of informal settlements and open areas vulnerable to possible illegal occupation.
- Keep record of each daily patrol activity and take pictures of illegal activities for record purposes and evidence gathering of illegal activities
- Report any illegal activities to the Manager of the unit

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- Identify and report any illegal extensions and any new structures to the Manger of the unit
- Containment of area of responsibility – ensure that no new structures are being erected within any contained or interdict area.
- Report all structures that is unoccupied for more than 3 (three) months to the Manger of the unit
- Advise families that is illegally erecting structures and immediately serve notices verbally and in writing on illegal squatters/dwellers to remove their structures or stop preparation of land to erect structures and to ensure that the structures is taken down and removed from the property.
- Proceed with any demolishing action required of identified illegal structures as instructed by the Manger of the unit

### **8.6 Community Development Workers**

- In general, CDW should be enablers rather than implementers of service delivery
- Community development workers members must report all cases of illegal occupation of land taking place within their communities of which they are aware or of which they should reasonably be aware, whether it is council property or not, to the authorised official.

### **8.7 Ward Committee Members**

- Ward committee members must report all cases of illegal occupation of land within their wards of which they are aware or of which they should reasonably be aware, whether it is council property or not, to the authorised official.

### **8.8 Legal Department Unit**

- On instruction of the Municipal Manager obtain respective court interdicts pertaining to the various scenarios regarding illegal land invasion.
- Inform the MM /Mayor / Ward Councillor of an interdict or court order that was obtained for the demolishing of structures or re allocating of any persons.

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- Handle all legal matters related to the land invasion.
- On instruction of the Municipal Manager, handle all legal related matters flowing out of the demolition of illegal structures and removal of illegal squatters and any other incidental actions taken in the process.
- Assist and advise on all legal matters in terms of land invasions
- Receive, collate and coordinate all evidence and information to be presented for any court matter or application.
- Assist with the compilation and advice on notices to private and state landowners to protect their properties and put certain measures in place.
- Establish and maintain relationships with the courts.
- Receive and distribute court interdicts to all relevant departments and role-players.
  
- Receive and distribute agreements between the Municipality and Landowners and all relevant departments or role-players.

### **8.9 Members of the sheriff or messenger of the court with jurisdiction in the area;**

- The Sherriff or deputy sheriff must serve and execute all documents issued by the court
- May carry out an eviction order provided that the sheriff must at all times be present during such evictions or actions authorized by the court.

### **8.10 Members of a private security company**

- Assist with Evictions
- Removal of Building Material, Rubble and Dangerous Trees
- Monitoring/Patrolling/Whistle Blowing As and When Required
- Backfilling of Dangerous Holes on Site
- Compiling Data
- Dismantling and Relocation of Structures
- Provision of Management/ Labour/ Trucks/ Plants and Equipment

**9. INCIDENTS OF LAND INVASION**

1. The authorised official must, within a period of 24 hours after he or she becomes aware of an incident of land invasion or the existence of a newly established informal settlement, irrespective of whether such informal settlement was established as a consequence of an incident of land invasion or not:
  - a) Commence with the process prescribed by the Municipality regarding the determination of the status of the informal settlement in terms of the Municipality's existing housing policies and programmes;
  - b) Inform the residents regarding the commencement of the process to determine the status of the informal settlement and that, depending upon the outcome of the determination, the informal settlement will be dealt with in accordance with section 11, whichever is applicable in the circumstances.
  - c) Complete the process contemplated in section(9)(1b) within 48 hours after commencement; and
2. In the event of the status of an informal settlement contemplated in section 9(1) being determined as an existing informal settlement, the authorised official must deal with the matter in accordance with the provisions of section 11.
3. In the event of the status of an informal settlement contemplated in section 9(1) being determined a new informal settlement, the authorised official must deal with the matter in accordance with the provisions of section 12.

**10. LAND INVASION ON PRIVATELY, MUNICIPAL OWNED AND LAND ADMINISTERED BY TRADITIONAL COUNCILS**

1. Any person may report a land invasion case to the Municipal Manager/ his/her delegated official of the municipality.
2. The municipal manager shall inform the municipality's senior management team and the tribal council of the subject land.
3. The senior management team shall, in turn, inform the senior manager building control, town planning and environmental management, and human settlements and Legal Services of the situation.
4. The land management unit shall, in conjunction with the law enforcement

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unit, investigate and verify land ownership.

5. The land management unit, in conjunction with the law enforcement unit, will number and capture the personal details of residents of existing informal settlements and capture such information in the municipality's information technology systems.
6. The municipal manager henceforth, will endeavor to demolish and impound any informal dwelling or structure that is being erected within area of jurisdiction without its consent.
7. Where an informal dwelling or structure has been put up for more than three (3) days immediate demolition is impossible, a notice of illegal occupation of land shall be issued, advising the occupant to remove the structure or informal dwelling immediately.
8. In the event that the illegal occupants fail to remove the structure/ the informal dwellings, legal services must be notified to take such steps as may be necessary to secure an urgent order for eviction. This action must be accomplished within three (3) months in so far as this may be possible.

### **11. PROCEDURES RELATING TO THE MANAGEMENT AND CONTROL OF EXISTING INFORMAL SETTLEMENTS**

1. As soon as a determination of the status of an existing informal settlement has been made and within the period contemplated in section 9(1), the authorized official must:
  - 1.1. Personally or through a subordinate official designated by him or her for that purpose, visit the informal settlement and notify the residents of the status of the existing informal settlement in the manner contemplated in section 11(2) or by means of a letter delivered to each informal dwelling in the informal settlement, whichever is appropriate in the circumstances;
  - 1.2. Compile a comprehensive register of all the residents who are entitled to reside in the existing informal settlement contemplated in section 11(1), and the details set out in section 8(8.1. 4) must be entered in respect of each informal dwelling in the existing informal settlement;
  - 1.3. Allocate to each site or stand in an existing informal settlement contemplated in section 11(1) a unique number as the temporary address of the site or stand and must ensure that the number is legibly painted or inscribed in a prominent place on the site or stand; and

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- 1.4. Ensure that no new informal dwellings are constructed in the existing informal settlement contemplated in section 11(1) and that no new residents take up residence in the existing informal settlement by implementing appropriate measures to manage, monitor and control the occupancy of residents in the existing informal settlement in general.
2. Any unauthorised occupancy in an existing informal settlement contemplated in section 10(1) must be dealt with in accordance with the provisions of section 13.
3. In respect of an existing informal settlement contemplated in section 11(1), the authorised official must ensure that:
  - 3.1. The Municipality's Budget and Treasury directorate institutes, operates and maintains an appropriate account for services rendered by the Municipality to each registered informal dwelling in the existing informal settlement and for any charges levied for the right of occupation of a particular site or stand in the existing informal settlement; and
  - 3.2. Such an account is supplied to the head of the household of each registered informal dwelling in the existing informal settlement.

### **12. PROCEDURES RELATING TO THE TERMINATION OF NEW INFORMAL SETTLEMENTS**

1. As soon as a determination of the status of a new informal settlement has been made, the authorised official must, personally or through a subordinate official designated by him or her for that purpose, visit the new informal settlement and notify the residents of the status of the new informal settlement by means of a written notice hand-delivered to each informal dwelling in the informal settlement.
2. The written notice contemplated in section 12(1) must:
  - 2.1 Notify the residents of an informal dwelling in the new informal settlement that their occupation of the informal dwelling and the site or stand on which it is situated is illegal; and
  - 2.2 Request the residents of the informal dwelling to vacate the informal dwelling and remove any building materials and other personal property from the new informal settlement within a period of 24 hours after receipt of the written notice.
3. If the residents notified in terms of section 12(1) cooperate and vacate their

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informal dwellings and remove their building materials and other personal property from the site or stand in the new informal settlement, the authorised official must take such steps as he or she may deem appropriate to prevent a recurrence of any incident of land invasion or illegal land occupation on that site, stand or new informal settlement and must regularly monitor the situation to ensure the non-recurrence of such land invasion or illegal land occupation.

4. If the residents notified in terms of section 12(1) fail to cooperate and vacate their informal dwellings and remove their building materials and other personal property from the site or stand in the new informal settlement, the authorised official must immediately institute the necessary legal procedures to obtain an eviction order contemplated in section 12(5).
5. Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in section 12(1), the authorised official must lodge an application in a competent court to obtain an eviction order contemplated in section 4, 5 or 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998), against any person or persons, jointly or severally, occupying or residing in an informal dwelling or on a site or stand in the new informal settlement.
  - 5.1. The authorised official must, within a period of 24 hours after obtaining the eviction order referred to in section 12(5), deploy the Land Invasion unit/ Private Security Company to execute the eviction order and to terminate the new informal settlement by:
    - Evicting the residents of the new informal settlement;
    - Demolishing and removing all informal dwellings and removing all building materials and other personal property from the new informal settlement; and
    - Disposing of the building materials and other personal property in accordance with the provisions of this by-law.
    - Any costs incurred by the authorised official for the purposes of executing the provisions of this by-law must be borne by the Municipality in accordance with its approved budget.

**13. REMOVAL AND DISPOSAL OF BUILDING MATERIALS AND PERSONAL PROPERTY**

1. Any building materials and other personal property belonging to a resident or occupier of an informal dwelling in a new informal settlement must be removed and stored in a safe place by the authorised official.
2. The authorised official must compile and maintain a register in which is recorded:
  - 2.1. Particulars of all building materials or other personal property removed and stored in terms of this by-law, save where it is manifest that the item is waste material;
  - 2.2. The date of the removal and storage of building materials or other personal property in terms of section 13(1) and the name and site or stand number of the owner of the building materials or personal property; and
  - 2.3. The signature or left thumb print of the person who is claiming ownership and to whom delivery of building materials or other personal property has been made; or
  - 2.4. Full details of the amount realized on the sale of building materials or other personal property in terms of section 13(2) and the date of the sale.
3. The authorised official must photograph all material removed and record the place, date, and time of removal and record it by a cross reference to the inventory.
4. Officials deployed to perform the exercise must be clearly identifiable as officials of the Municipality, and a log must be kept of the name of every official who is present at every such exercise.
5. When intent on removing material from a public place, officials must make reasonable enquiries in the immediate vicinity as to the presence of possible claimants of the material sought to be removed, and if they can be located, and their identity confirmed, and they can demonstrate, convincingly, that that any item is their belongings, they must:
  - 5.1. Be put in possession of all items that they are able to carry away; or
  - 5.2. Be invited to call at a designated place during office hours to collect the balance of their claimed possessions, which shall, in the inventory, be so recorded, and the items tagged.
6. All such items removed must be kept in a designated place for not less than 30 days. Should the period exceed 30 days, and should the rightful owners of the items not claim the items, the items can be disposed/destroyed/ auctioned.
7. A notice must be displayed at the place from which the materials were taken and it must contain information about the location where the material is being kept, the period the material will be stored, the procedure to retrieve any items and the relevant municipal department to be contacted.

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8. If the building materials and other personal property contemplated in section 13(1) are not claimed by their owner within a period of thirty days after the date of the removal and storage, the Municipality may, after obtaining a court order authorizing such action, dispose of the building materials and personal property in a manner prescribed by the court and the proceeds must be deposited into the Municipality's Revenue Account, provided that, subject to the laws governing the administration and distribution of estates, nothing contained in section 13(8) may deprive the heir of any deceased person of his or her right to the balance of the proceeds of the property.

OR

If the building materials and other personal property contemplated in section 13(1) are not claimed by their owner within a period of thirty days after the, date of the removal and storage, the Municipality may dispose/destroy/auction the building materials and personal property. The proceeds must be deposited into the Municipality's Revenue Account, provided that, subject to the laws governing the administration and distribution of estates, nothing contained in section 13(8) may deprive the heir of any deceased person of his or her right to the balance of the proceeds of the property.

- 8.1 Employees and councillors of the municipality, or a family member, or a close associate of any municipal employee or councillor, may not purchase any goods offered for sale in terms of this by-law, either personally or through any otherperson, directly or indirectly.
- 8.2 Neither the municipality nor any of its officials acting within the reasonable scope of their authority are liable for any loss of or damage to property or injury to any resident or occupier of an informal dwelling in a new informal settlement or any other person for any reason whatsoever.

**14. IDENTIFYING AND MONITORING LAND PRONE TO UNLAWFUL OCCUPATION**

(1) The municipality must –

- (a) identify land in its jurisdiction that it reasonably considers may be prone to land invasion taking into account its location, terrain, and previous attempts to occupy it;
- (b) continuously monitor land in its jurisdiction with a view to –
  - (i) detect signs of a potential land invasion; and
  - (ii) keep a register of the identified land and the details of its owners.

**15. STEPS TO PREVENT LAND INVASION ON IDENTIFIED LAND**

(1) If the municipality is the owner of the identified land, it must ensure –

- (a) That reasonable measures are taken to prevent land invasion on identified land which may include that –
  - (i) signage or fencing prohibiting unauthorized entry and occupation is erected;

(2) If municipality is not the owner/custodian of the identified land, an authorized official must –

- (a) Give notice to the owner/custodian that the land has been identified as land prone to unlawful occupation in terms of section 14(1a);
- (b) Require the owner/custodian within a reasonable period stipulated in the notice to take appropriate measures to prevent the land invasion which may include: –
  - (i) Signage or fencing prohibiting unauthorized entry and occupation is erected;

(3) Subject to the municipality's Credit Control and Debt Management Policy and the Credit Control and Debt Collection By-law, -if an owner contemplated in subsection (2) fails or refuses to comply with a requirement contemplated in subsection (2)(b)(i) within the stipulated period, the municipality may, at the owner's cost, fence the land and place the signage contemplated in the subsection 2 (b)(i)

**16. PROHIBITED CONDUCT**

1. No person may:

- 1.1. Individually or as part of a group:
  - clear any land of any vegetation without the prior written consent of the owner;
  - invade or occupy any land to which he or she does not have lawful title;
- 1.2. Erect a structure on any land to which he or she does not have lawful title;
  - Continue with the construction of an incomplete structure after a written warning to stop construction was issued by the municipality;
  - Demarcate or continue to demarcate any piece of land with any form of material, including, but not restricted to string, rope, pegs, stones, pebbles, wire, wood or any other material after a written warning to stop any form of demarcation was issued by the municipality;
  - Move or remove any demarcation or surveying pegs affixed in terms of any law. This includes removal of any fence, sign, marking placed by the municipality or owner (under the direction of the municipality), on land
- 1.3. Without the written consent of the municipality allow, encourage, motivate, organize or instigate the occupation of any land;
- 1.4. Move furniture into an informal structure in order to defeat the provisions of any law;
- 1.5. Assist another person or persons, directly or indirectly, to occupy land unlawfully or to invade it;
- 1.6. Erect any additional informal dwelling or structure on a site in any existing informal settlement or reception area;
- 1.7. Lease any additional informal dwelling or structure or land on a site in any existing informal settlement
- 1.8. Access land in contravention of a sign prohibiting such access;
- 1.9. Sell any land or structure on any land to which he or she does not have lawful title; or
- 1.10. Interfere with or obstruct an authorised official in the execution of his or her duties in terms of this by-law.

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- 2 No government/ municipal official/political office bearer may be involved in the land invasion processes
- 3 A person who contravenes a provision of section 16 of this by-law commits a criminal offence and on conviction may be liable to imprisonment or the payment of a fine as determined by the court

### **17. RESTRICTION OF LIABILITY**

1. No authorized employee of the municipality shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

### **18. APPEAL**

1. A person whose rights are affected by a decision of the municipality may appeal that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.
2. Any person making a decision or exercising a discretion in terms of this by-law must inform any person affected by such decisions or exercise of discretion that he or she has a right to appeal in terms of section 18 (1) of this by law.

### **19. REPEAL OF BY-LAWS**

1. The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

### **20. SHORT TITLE AND COMMENCEMENT**

1. This by-law shall be known as the By-law relating to land invasion in the Thembisile Hani Local Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.