

PROPERTY ENCROACHMENT BY - LAW

Be it enacted by the Council of the Endumeni Municipality, and approval of the Member of the Executive Council responsible for local government in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

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CHAPTER 1
DEFINITIONS

1. Definitions

In these By-laws, any word or expression that has been defined in the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) has that meaning and, unless the context otherwise indicates –

“**Council**” means the Council of the Endumeni Municipality;

“**council property**” means any property, including but not limited to public roads –

- (a) which is owned by the Council;
- (b) over which the Council has control over; or
- (c) in respect of which a servitude or other property right has been registered in favour of the Council;

“**encroachment**” means any physical object which intrudes on Council property;

“**prescribed**” means determined by resolution of the Council made from time to time;

“**prescribed fee**” means a fee determined by the Council by resolution from time to time;

“**public road**” means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes –

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare.

2. Council permission required

(1) No person may, without prior written permission, make or construct any encroachment into, over or under any Council property.

(2) The Council may -

- (a) refuse the permission required in terms of subsection (1); or
- (b) grant such permission either unconditionally or upon the conditions and subject to the payment of the prescribed fee annually or the performance of the works or services determined by the Council in each case.

(3) The prescribed fees mentioned in subsection (2) are payable in advance at the beginning of each year which is calculated from date of approval or the period determined by the Council, and the owner is liable for the payment of prescribed fees in terms of these by-laws for each encroachment.

(4) The owner of any existing encroachment must within three months after the date of commencement of these by-laws make application to the Council on the prescribed form for permission for the existence of the encroachment in terms of these by-laws.

3. Rules for the construction of encroachments

(1) The design, arrangement and construction of verandas, balconies, bay windows and other encroachments over Council property, as well as the paving, kerb and gutter thereof, must be to the satisfaction of and to the levels approved by the Council.

(2) If corrugated iron is used for covering a veranda, its exposed surfaces must be painted.

(3) A veranda over a public road must correspond in line, height and detail with existing adjoining verandas.

4. Columns

(1) The Council may determine areas within the municipal boundary where no person is permitted to place veranda columns over any public road or pavement.

(2) No person may place any veranda column -

- (a) over any pavement where such pavement is less than 2,6 m wide;
- (b) more than 3 m from the building line measured to the outside of the column or at less than 3 m centre to centre;
- (c) over any pavement at the corner of a public road that is beyond the alignment of the building lines; and

- (d) at a distance lesser than 600 mm back from the front edge of any kerb.
- (3) No person may place a twin or double veranda column over any public road or pavement.
- (4) Where verandas are supported on columns-
- (a) the columns may not have square arras;
 - (b) no base may project more than 50 mm beyond the bottom diameter of the column;
- and
- (c) the maximum horizontal axial dimensions of such base may not exceed 350 mm.
- (5) Where the form of a column is classic in character, the shaft must have suitable entasis and cap and base in due proportions.
- (6) Columns, including cap and base, may not be less than 3 m or more than 3,6 m in height and not more than 4,5 m including plinth.
- (7) The minimum height from the footway or sidewalk to the underside of each cantilever or fascia girder is 3 m.
- (8) A coping, blocking course or balustrade, if any, may not extend less than 750 mm nor more than 1,05 m above the floor of a balcony.
- (9) Nothing in these by-laws prohibits –
- (a) the erection and use of a party column common to two adjoining verandas if the column stands partly on the extended boundary lines of two properties or adjoins the same; or
 - (b) in the case of adjoining verandas, the placement of any column upon a plinth if this is necessary for alignment and all the other provisions of these by-laws are observed.

5. Balconies and bay windows

- (1) Balconies, bay windows or other similar encroachments may not –
- (a) overhang a public road if they are at a height of less than 3 m above the pavement;
 - (b) encroach more than 1,35 m over any public road; or

(c) encroach more than 900 mm over any public road.

(2) The aggregate horizontal length of bay windows at any level over a public road may not exceed one-third of the length of the building frontage to that road.

(3) Any balcony superimposed upon any veranda must be set back at least 1,2 m from the line of such veranda.

(4) No part of any balcony that is attached to any veranda, may be carried up to a height greater than two storeys above the pavement level except that, where the top portion of the balcony is roofed with a concrete flat roof forming a floor, a balustrade not exceeding 1 m in height is allowed above the level of the floor.

(5) Any dividing wall across a balcony over a public road may not exceed 1 m in height or 225 mm in thickness.

(6) A balcony over any public road may not be the sole means of access to any room or apartment.

(7) No person may place or permit or cause to be placed any article upon any balcony over a public road, except ornamental plants, tables, chairs, canvas blinds and awnings not used for signs or advertisements.

(8) Where any floor of a building is used solely for the parking of a motor vehicle, bay windows at the level of the floor may not project over any public road for more than 1,35 m for the full length of the building frontage to that road.

6. Plinths, pilasters, corbels and cornices

(1) No plinths, pilasters or other encroachments beyond building lines carried up from ground level are permitted to encroach on a public road.

(2) Any pilaster, cornice, corbel or similar architectural feature that is at least 3 m above the ground may not exceed the following level of encroachment over a public road:

(a) a pilaster: 450 mm the total aggregate frontage length of the pilaster may not exceed one-fifth of the building frontage and bay windows in the same storey must be included in the calculation of the maximum aggregate length for bay windows;

(b) a fire-resisting ornamental hood or pediment over a door: 600 mm and in any part not less than 2,75 m in height above the footway or pavement;

(c) a cornice: 1,05 m where not exceeding 10,5 m above the footway or pavement and one-tenth of the height from the footway or pavement if exceeding 10,5 m with a maximum of 1,8 m.

7. Verandas around corners

Where verandas are built around corners of public roads they must be properly splayed or rounded to follow the curves of the kerb.

8. Pavement openings

(1) No pavement opening may –

(a) be the sole means of access to any vault or cellar; and

(b) extend more than 1,2 m beyond the building line.

(2) Where flaps are permitted in pavement openings each flap may not exceed 0,75 square metres in area and must open upwards and while open, must be provided with stout iron guard rails and stanchions.

(3) Flap openings may be opened and used only for the purpose of lowering and raising goods and must be kept closed except when lowering and raising operations are in progress.

(4) The front wall or wall parallel to the kerb in every opening must be built with a suitable batter to the satisfaction of the Council.

(5) No pavement opening may be covered with metal bar gratings or with metal plates or with wood.

9. Encroachment erected in front of building

Where any encroachment has been erected or constructed in front of any building, the owner must at his, her or its own expense –

(1) pave the whole of the footway or pavement under the encroachment or in front of the building in which the pavement opening is fixed; and

(2) lay the road kerbing and guttering and paving in front of the building for the full width of the footway or pavement.

10. Maintenance, removal and tenancy of projections

(1) The owner of any encroachment must maintain the encroachment in good order and repair.

(2) Pavement openings, pavement lights, walls thereof and basement walls must be made and kept water-tight by the owner.

(3) The owner of any encroachment on, under or over any public road or pavement, or sign or other fixture on or over any public road, is regarded a tenant in respect of the encroachment, sign or fixture and, if called upon by the Council to remove any or all of them and restore the public road or pavement to its former conditions, and must do so within a reasonable time.

11. Encroachments

(1)(a) Any person other than the owner wishing to erect or construct an encroachment or any other fixture on, under or over any public road, or any immovable property owned by or vested in the Council, must apply to the Building Control Officer on a form provided by the Council for that purpose.

(b) Where in the opinion of the Building Control Officer drawings are required for the conclusion of an encroachment agreement, the prescribed charge in addition to any other prescribed charge is payable to the Council.

(2) The owner of the building in connection with which any encroachment or fixture exists, or is proposed –

(a) must defray any cost incurred in connection with wires or property of the Council;

(b) must allow the Council to erect on, or attach to the encroachment or fixture or anything required in connection with electrical or other activities.

12. Offences and penalties

A person who contravenes any of these by-laws is guilty of an offence and be liable on conviction to a fine not exceeding R5000.00 or to imprisonment not exceeding 6 months or to both that fine and that imprisonment.

13. Regulations

The municipality may make regulations not inconsistent with this by-law, prescribing -

- (a) any matter that may or must be prescribed in terms of this by-law; and
- (b) any matter that may facilitate the application of this by-law.

14. Repeal of by-laws

Any by-laws relating to Property encroachment adopted by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality shall be repealed from the date of promulgation of this by-law.

15. Short title and commencement

This by-law is called the Property Encroachment By-Law, 2008, and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.