

# **ENCROACHMENT ON PROPERTY BYLAWS FOR NYANDENI MUNICIPALITY**

## **1. DEFINITIONS**

In these Bylaws, any word or expression that has been defined in 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 Nyandeni Municipality and its successors in law, and include the Council of that municipality or its Executive Committee or any body acting by virtue of any power delegate any power to it in terms of legislation, as well as any officer to whom the Council has delegated any powers as duties with regard to these bylaws

“encroachment” means any physical object which intrudes on municipal property, or property which the Council has control over or other property in respect of which servitude or other property right has been registered in favour of the Council;

“m” means metre;

“mm” means millimeter;

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

“prescribed fee” means a fee determined by the Council by resolution in terms of section 10G(7)(a)(ii) of the Local Government transition Act, 1993 (Act No. 209 of 19993), or any other applicable legislation.

“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 an 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 colonnades, veranda, balconies, bay windows, pavement lights, showcases or other projections into or over any part of a public road, and pavement opening in or under any public road.
- (2) The Council may refuse the permission required in terms of subsection (1) or may 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 determine by the Council in each case and subject to payment of the prescribed fee.
- (3) The prescribed fee mentioned in subsection (2) are payable in advance at the beginning of each year which is calculated from date of approval or the prior determined by the Council, and the owner is liable for the payment of prescribed fees in terms of these Bylaws for each encroachment.

- (4) The owner of an encroachment must within three months after the date of commencement of these B-laws apply to the Council in writing for condonation of –
  - (a) the existence of the encroachment; and
  - (b) the horizontal dimension of every encroachment measured – parallel to the road boundary on or over which the encroachment exists.
- (5) Until the Council is notified of the horizontal dimension of the encroachment mentioned in terms of subsection (4)(b), every encroachment relating to a building is deemed to have an aggregate horizontal dimension equal to the total road frontage on or which the encroachment exists, of the property on which the building concerned is situated.

### **3. RULES FOR THE CONSTRUCTION OF ENCROACHMENT**

- (1) the design, arrangement and construction of verandas, balconies, bay windows and other encroachment over public roads, as well as the paving, curb 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 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 is permitted to place any veranda column over any pavement where such pavement is less than 2,6 m wide.
- (3) No person may place any veranda column more than 3 m from the building line measured to the outside of the column or at less than 3 m centre to centre.
- (4) No person may place any veranda column over any pavement at the corner of a public road that is beyond the alignment of the building lines.
- (5) No person may place a portion of any veranda column at a distance less than 600 mm back from the front edge of any curb.
- (6) No person may place a twin or double veranda column over any public road or pavement.
- (7) Where veranda are supported on columns, the columns may not have square arris, no base may project more than 50 mm beyond the bottom diameter of the column and the maximum horizontal axial dimensions of such base may not exceed 350 mm.
- (8) Where the form of column is classic in character, the shaft must have suitable entasis and cap and base in due proportions.

- (9) Columns, including cap and base, may not be less than 3m or more 3,6 m in height
- (10) No person may place a column on a public road where the footway or sidewalk is, or is likely to be occupied by cables, pipes or other municipal services, without permission of the Council.
- (11) The minimum height from the footway or sidewalk to the underside of each cantilever or fascia girder is 3 m.
- (12) The cost of the notarial deed of servitude mentioned in subsection (11) is payable by the owner of the abutting property.
- (13) Plain piping or tubing must not be used for columns over or on public road verandas and balconies unless architecturally treated for aesthetic purposes
- (14) The 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.
- (15) Nothing in these By-laws prohibits –
  - (a) the erection and use of a party column 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 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 encroachments may not overhang a public road if they are at a height of less than 3 m above the pavement.
- (2) Balconies may not encroach more than 1,35 m over any public road.
- (3) Bay windows may not encroach more than 900 mm over any public road.
- (4) The aggregate horizontal length of bay windows at any level over a public road may not exceed one-third of the building frontage to that road.
- (5) Any balcony superimposed upon any veranda must be set back at least 1,2 m from the line of such veranda.
- (6) No part of any balcony that is attached to any veranda, may be carried up to a height greater than two storey's 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 height is allowed above the level of the floor.
- (7) Any dividing wall across a balcony over a public road may not exceed 1 m height or 225 mm in thickness.
- (8) A balcony over any public road may not be the sole means of access to any room or apartment.

- (9) No person may place or permit or cause to be placed any balcony over a public road, except ornamental plants, tables, chairs, canvas blinds and awnings not used signs or advertisement.
- (10) 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 the 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 encroachment over a public road:
  - (a) A pilaster: 450 mm 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 2,75m in height above the footway or pavement;
  - (c) a cornice : 1,05 m where not exceeding 10,5m 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 road they must be properly splayed or rounded to follow the curves of the curb.

## **8. PAVEMENT OPENINGS**

- (1) No pavement opening may be the sole means of access to any vault or cellar.
- (2) No pavement opening on any public road may extend more than 1,2m beyond the building line,
- (3) Where flaps are permitted in the 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.
- (4) 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.
- (5) The front wall or wall parallel to the curb in every opening must be built with suitable batter to the satisfaction of the Council.
- (6) No pavement opening may be covered with metal bar gratings or with metal plates or with wood.

**9. MAINTENANCE, REMOVAL AND TENANCY OF PROJECTIONS**

- (1) The owner of any encroachment must maintain in good order and
- (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, must do so within a reasonable time.

**10. ENCROACHMENT ERECTED IN FRONT OF BUILDING**

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

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

**11. ENCROACHMENTS**

- (1) (a) Any person other than the owner wishing to erect or construct an encroachment or any other fixture on, 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 on an encroachment agreement, the prescribed charge in addition to any other prescribed charge is payable to the Council.
- (2) Any person erecting, constructing or possessing an encroachment or fixtures on, under or over any public road, is regarded as a tenant in respect of the encroachment or fixture, and, if notified in writing by the Council under the hand of the Building Control Officer to remove any such encroachment or fixture, must do so within the period stated in the notice.
- (3) The owner of the building in connection with which an y 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 other activities.

**12. PRESCRIBED FEE FOR SPECIAL SERVICES**

Any person who requires any special from the Council, including the attendance necessary in respect of a dangerous building, must pay to the Council the prescribed fee with regard to the special service as well as a prepaid prescribed fee for the Council to attend at a building on request or for the Council to give advice as to effect of these By-laws on proposals put forward by architects, builders or owners.

**13. OFFENCES AND PENALTIES**

Any person who –

- (a) contravenes or fails to comply with any provisions of these By-laws; or
- (b) fails to comply with any notice issued in terms of these By-laws; or
- (c) fails to comply with any lawful instruction given in terms of these By-laws; or
- (d) who obstructs or hinders any authorized representative or employee of the Council in the execution of his or her duties under these By-laws,

is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding 6 months or R500 fine or both.

**14. CONFLICT OF LAWS**

If there is any conflict between these bylaws and any other bylaws of the Council, these bylaws will prevail.