GAUTENG LAND INVASION MANAGEMENT AND PREVENTION POLICY

JULY 2017
NOTICE

It is hereby notified that the Member of the Executive Council for Human Settlements in the Gauteng Legislature has consented to the following Policy for implementation and it is hereby forwarded to the relevant implementing agent for compliance.

Date of Consent________________________

Date of commencement________________________
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1. Title
This policy shall be known as the Gauteng Land Invasion Management and Prevention Policy.

2. Background
The challenge of delivering housing to the poor is particularly acute in the Gauteng Province owing to its economic attractiveness, and the resultant consequent massive migrations into the province. There are a few reasons for ongoing land/building invasions, despite measures to prevent them. They relate to ongoing farm evictions as well as the failure of rural and small-town development programmes in curbing city-ward migration of desperately poor households, in a context where the economy has not managed to even out the distribution of wealth or reduce inequality.

Various patterns associated with In-migration of people from other countries, seeking better economic opportunities in Gauteng further exacerbate the situation associated with land invasions. Additional reasons are localised, and related to processes of displacement. Often, these are in response to increases in property values and rentals in urban renewal areas.

Land invasion refers to the illegal occupation of land, with the intention of establishing dwellings on it. This also extends to the illegal occupation of property without obtaining consent from the property owner. An invasion could either be on a vacant land, or within the existing settlement. Such invasions occur on either privately owned land or state/municipal owned land. An invasion may be by one individual, family or by hundreds of households. The issue of land invasion in Gauteng and even around the world has been at the core of housing management, delivery and allocation for a long time.

Most often land invaders have been found in areas that are not habitable or that pose severe health and safety risks to occupants of the land and the natural environment. These include servitude areas, the most common being the Eskom servitudes (along electric lines or cables), in areas with low water levels (this usually leads to flooding during rainy seasons) and also in open spaces that have not been habilitated.

Section 26 of the Constitution guarantees everyone the right to have access to adequate housing. This requires the state to take reasonable legislative and other measures within its available resources to realise this right, and prohibits arbitrary evictions. Since 1994, the government has enacted legislation and policies which give effect to the housing and tenure rights as enshrined in the Constitution. It has also provided procedural and substantive protection to unlawful occupations. The government has a legal obligation to respect, protect and fulfil the right to adequate housing and not to sponsor, tolerate or carry out forced evictions.

While government continues to search for a way to bring an end to land and building invasions in South Africa, the poor, landless, and homeless continue to unlawfully invade and occupy the land. The primary purpose of the document is to develop a policy for managing unlawful occupations of land and buildings in the Gauteng Province.
3. **Situation Analysis**

3.1 **Status Quo**

The Gauteng City Region has 563 informal settlements with the majority of these found in the City of Johannesburg Metropolitan Municipality, Region F. Most of these settlements are located on government owned land and this includes land owned by national, provincial or local government including their entities and parastatals. This however does not deny occupation of privately owned land either by a private or juristic person. The municipalities have mainly served as the provider of basic services such as water and ablution facilities. Municipalities have further taken efforts to understand the profile of each settlement located within its municipal jurisdiction in order to better understand the kind of remedial intervention necessary.

The municipality and Province accepts that there are a number of informal settlements within its area of jurisdiction which have been established and which efforts have been made to provide rudimentary services to their respective residents.

Municipalities have in most instances derived means to take account of the number of shacks and its inhabitants in the provision of such services and the numbering of existing shacks and buildings built in bricks and mortar does not in itself mean that the residents thereof reside there permanently. The numbering of shacks whether fenced in or not does not qualify it as a stand number.

The occupant of a shack or building in these areas has no right to the land and cannot claim ownership of the land on whatever basis including the period of occupation of such land. These include cases where money has been exchanged with whatever under the pretext that land acquisition is being effected by such transaction.

3.2 **Land Invasion Management**

Managing land invasion is a huge task and involves a number of role players. The effective management of land invasions is not a core competency of the Department of Human Settlements but of several role players who are vital to the success of addressing land invasions. These role players would among others include the Province, municipality, civil society and the community.

The focus of land invasion management is primarily on prevention, early warning systems, engagement/participation, feedback, legal compliance, resolutions/alternatives, accountability, safety and security and response.

By such an understanding, the appropriate measures focus on process management and responses without simply focusing on eradication.

4. **Definitions**

For the purpose of this policy the following definition shall apply unless indicated otherwise
Informal Settlement: Unplanned, informal community of individuals who, without authority occupy land, which is usually plagued by unsanitary conditions and poverty and often characterised by unlawfulness, informality, insecurity of tenure, inappropriate locations, restricted public or private sector investments, poverty, vulnerability and social stress.

Integrated Development Planning (IDP): An overarching five years plan/strategy developed in accordance with section 25 of the Local Government: Municipal Systems Act 32 of 2000 by and encompassing the whole municipality, reviewed annually and mapping out the short, medium and long term future developments. It seeks to coordinate the interventions from different role players in the development of the municipality.

Land invasion: The unlawful entry onto land and occupation and/or use of said land without authorisation by the owner or person in charge of the land.


Meaningful Engagement: A two-way process in which the government and/or private land owners engage with occupiers of land in an attempt to arrive at an amicable solution

Member of the Executive Council (MEC): Member of the Executive Council of the Gauteng Legislature responsible for human settlements.

Unlawful occupiers: “unlawful occupier” as used in this policy means “unlawful occupier” in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act viz: “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, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act 31 of 1996.”

5. Scope
This policy shall be applicable to the province of Gauteng and its municipalities.
6. Objectives
(a) To develop a uniform framework for managing unlawful occupation and invasion of land and buildings in Gauteng.
(b) To control and manage the land available in terms of open spaces to prevent future unlawful occupation of land and the formation of informal settlements.
(c) To promote co-operation between stakeholders in the prevention and elimination of unlawful occupation of land.

7. Strategic, Legislative and Policy Levers

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<th>Strategy/Policy/Legislation</th>
<th>Application</th>
<th>Implication</th>
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| Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) | The PIE Act was enacted to give effect to Section (26)3 of the Constitution, which requires that anyone wanting to evict people or demolish homes must get a court order first. It is easy to derive from the title that the PIE Act seeks to prevent both illegal evictions from land and unlawful occupation of land. The purpose of the PIE Act is to provide both for the prohibition of illegal eviction and for the procedure for the eviction of unlawful occupiers. | The purposes of the PIE Act are closely linked to the two rights - the property rights of the landowner and the housing right of the unlawful occupiers.
<pre><code>                                                                                                               |                                                                                                                                                                                                             | This Act specifically aims to give effect to section 26(3) of the Constitution.                                                                                                                                                                                                                                                               |
</code></pre>
<p>| Constitution of the Republic of South Africa, Act 108 of 1996, Section (26)3 | No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.                                                                                     | The most fundamental requirement is that any eviction of people from their homes or demolition of homes can only occur in terms of a court order and the judicial officer must consider “all the relevant circumstances” before making such an order.                                                                                                                                                                         |</p>
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<th><strong>Housing Act 107 of 1997</strong></th>
<th>It sets out the basic principles that must guide housing development. It further defines the roles of national, provincial and local government on housing.</th>
<th>The Act aims to give effect to the right to have access to adequate housing.</th>
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<td><strong>Housing Development Agency Act 23 of 2008</strong></td>
<td>The Act promotes sustainable communities by making well-located land and buildings available for the development of housing and human settlements.</td>
<td>The Act addresses the land acquisition and assembly process in order that housing delivery may be accelerated.</td>
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<td><strong>White Paper on Housing</strong></td>
<td>The White Paper sets out government’s housing policy and outlines the responsibilities of the three spheres of government in relation to housing delivery.</td>
<td>Since housing is a basic human right, it is the duty of the government to take steps and create conditions that will lead to the effective realisation of the right to adequate housing for all and it is also the duty of government not to take steps that encourage or cause homelessness;</td>
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<td><strong>Breaking New Ground, 2004</strong></td>
<td>The policy document was developed in response to the fact that the housing delivery programmes of the government over a decade seemed not to have yielded the desired results.</td>
<td>It encourages affordable, well-located land human settlements and integration.</td>
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<td><strong>Spatial Development Framework</strong></td>
<td>This is a framework that seeks to guide, overall spatial distribution of current and desirable land uses within a municipality in order to give effect to the vision, goals and objectives of the municipal IDP.</td>
<td>The Spatial Development Framework needs to:</td>
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<td>• to promote sustainable functional and integrated human settlements,</td>
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<td>• maximise resource efficiency, and</td>
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<td>Town Planning Scheme</td>
<td>This is a legal instrument for regulating the use of land in terms of provincial or national legislation. This may also include system used to regulate land use in a municipality, including a planning or zoning scheme, or policies related to how land is used on a plot by plot basis.</td>
<td>A municipality needs to ensure orderly and proper planning of land use.</td>
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<td>Intergovernmental Relations Act, 2005</td>
<td>the Act aims to establish a framework for the promotion and facilitation of intergovernmental relations; Furthermore, the Act intends to enable the government to work coherently; to enhance service provision through consultation with other affected organs of state in accordance with formal procedures;</td>
<td>The principles of co-operative government and intergovernmental relations recognise the interdependence of the three spheres of government namely the national, provincial and local spheres. Section 41(2) of the Constitution puts emphasis to the importance of intergovernmental relations.</td>
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<td>Gauteng Pillars of Radical Transformation</td>
<td>Economic and spatial transformation must be underpinned by and support an accelerated programme of social transformation at the centre of which is raising the living standards, and quality of life of the all the people of Gauteng. New cities will be a combination of integrated and sustainable human settlements that are socially and economically</td>
<td>Better land use management and spatial development by the Department is critical to transform the spatial configuration and landscape of Gauteng. The Department will work with municipalities and national government to prevent illegal land invasion and growth of informal settlements. Better and integrated urban planning and</td>
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8. Policy Principles
In addressing the issue of land invasions, the following principles should be taken into consideration:

(a) **Meaningful engagement:** A process of substantive involvement and dialogue to get the affected parties to work together in an effort to resolve the differences and difficulties towards an amicable conclusion.

(b) **Consultation:** Regular updates and meetings relating to further invasions of land with the affected communities should be conducted. There must be on-going consultations with the land invaders when it comes to relocation.

(c) **Collaboration:** Maintaining the relationship among the spheres of government, civil society and communities is important in dealing with land invasions.

(d) **Decreased cost implications in addressing land invasions and evictions:** Timeous response to imminent land invasion is of prime importance as it will assist in long processes of eviction and having to provide alternative accommodation.

(e) **Making available a “suite” of housing options prior to evictions based upon qualifying criteria:** The Department shall identify and discuss different housing options to the affected communities before evictions.

(f) **Improvement of peoples living conditions thus limiting hazardous settlement:** The Department is set on safe communities and hence it discourages communities from settling on dolomitic land, land that is prone to sinking or under pylons.

9. Policy Position
The policy position is premised on the following:

(a) The National, Provincial and Local Governments must acknowledge that as land owners they have the authority to regulate the manner in which all areas under their jurisdiction have to develop taking into consideration their Development Plans.

(b) The Provincial and Local Governments have a legal and moral obligation to provide land for the development of residential areas to accommodate its residents in an orderly and proper manner as far as possible and within its financial constraints.

(c) The Provincial and Local Governments accepts that the migration from rural areas, other provinces within the Republic and areas outside the borders of the Republic to urban areas for whatever reason is a phenomenon of urbanisation and such must occur in a managed manner.

(d) The National, Provincial and Local Governments must work together to develop programmes aimed at intensifying urban densification and curb land invasions.
10. Institutional Arrangements

10.1 The need for a Land Invasion Plan

A municipality shall be responsible for drawing up its Land Invasion Plan detailing its intentions for land use, human settlements and future planning within its jurisdiction. The human Settlement plans shall promote densification and integration.

The Land Invasion Plan shall include measures for the monitoring and prevention of unlawful occupation of land.

This would facilitate a reduction of the potential of future land invasions by ensuring that effective Urban Management is in place and responding timeously and effectively, hence being proactive rather than reactive. In terms of private ownership it will further allow for an early warning system to possible land invasions and a halt to those in progress.

The issue of Urban Management is vital in this regard as certain problems attached to land invasions stem from deficient urban management processes. Of particular concern is the case of having land designated for future housing projects or other, being invaded when proper urban management by responsible municipality could have averted such.

10.2 Consultation with stakeholders

For the purposes of efficient and effective management of land and prevention of invasions it is essential that consultations with different stakeholders be conducted and that includes but not limited to ward councillors, ward committee members, residents groups and the community.

The concept of meaningful engagement is strongly emphasized to ensure that evictions are a last resort and reached after a consultative approach. A formal community engagement plan should be adopted to ensure meaningful engagement with the relevant community. Recent court cases have emphasised that the government must ‘meaningfully engage’ with poor people about the provision of services, such as housing.

Constitutional Court has not emphasised the provision of Mediation as it appears in the Housing related Acts mentioned above, instead it elected to define what it would consider as meaningful engagement, thereby making meaningful engagement the other form of Alternative Dispute Resolution in trying to resolve disputes relating to socio-economic rights. In the Olivia Road judgment, the Constitutional Court said that meaningful engagement is ‘a two-way process in which the City and those about to become homeless would talk to each other meaningfully in order to achieve certain objectives.

Importantly a distinction needs to be made as to the invasion of vacant land and the invasion of buildings. The above mentioned focus is on vacant land, but it is imperative to note that the process can/ should be applied to the invasion of buildings as well. Of critical important is the early warning
systems and monitoring through the unit and other appropriate agencies that will allow for quicker responses to the invasion.

10.3 Control measures
In instances where there are existing informal settlements both the Department and municipalities must:

Where a shack or structure has been put up for more than three (3) days, and the action of immediate eviction was not taken, a notice of illegal occupation of land shall be issued, advising the occupant to remove the structure or shack immediately. The Legal Section is to be notified and same must prepare and urgent application to the Court for and eviction order. This action must be accomplished within three (3) months.

Identify a particular area which will be a reception area for all new comers and when such an areas has been established, no new comers into the existing settlement will be allowed. Persons accommodated in a reception area have a housing opportunity while living or residing in that area. If such a person moves out of the area, unless same is buying a stand elsewhere, he or she would have surrendered the privilege of being a member in that settlement.

Notice boards are to be put up at entrances of affected township, informing prospective migrants into the area that they must consult the local municipal office to obtain a registration permit and site allocation before relocating.

Conduct awareness campaigns with a view to rally community co-operation to report suspected cases of unlawful occupation as they occur.

Erect signage to warn prospective unlawful occupiers.

Fence off land that would likely be unlawfully occupied.

10.4 Legal Provisions
The department or Municipality acknowledges that it has legal and moral obligation to provide alternative accommodation to residents of the said areas who have been so residing for more than six (6) months if so required to relocate as provided for by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

No person has a right to allow, encourage, motivate, organise and/or instigate the occupation of land of whatever nature without an expressed and written consent of municipality, province or private owner.
10.5 Prevention
It is thus of crucial importance that pro-active steps are taken to prevent land invasions and secure properties. The fencing off of properties and monitoring thereof could ensure that unlawful occupation is either prevented or immediately dealt with. Lighting and signage, where appropriate, can also be used as a deterrent or in asserting the owner’s rights. Forging of alliances against land invasions between spheres of government, community structures, civil society, councillors, officials is of paramount importance.

11. Responsibilities of the tiers of government

11.1 Provincial Department must:
(a) Conduct awareness campaigns with a view to rally the co-operation of the community to report instances of land invasion as soon as they occur;
(b) Fence off land that is likely to be invaded and erect a signage to warn prospective invaders;
Develop a land invasion strategy to provide an early warning of land invasion activity
Develop and implement a communication strategy including who to contact in the event where there is a threat of unlawful land occupations.

11.2 Municipalities must
(a) Identify all land that is likely to be unlawfully occupied
(b) Conduct regular on-site inspections to verify land use
(c) Conduct awareness campaigns with a view to rally the co-operation of the community to report instances of land invasion as soon as they occur;
(d) Fence off land that is likely to be invaded and erect a signage to warn prospective invaders;
(e) Promote and enhance spatial planning to ensure better co-ordination and land management.
(f) Number and capture the personal details of residents of existing informal settlements into its administrative systems.
(g) Endeavour to demolish and impound any shack or structure that has been erected within area of jurisdiction without its consent.
Develop a land invasion strategy to provide an early warning of land invasion activity
Develop and implement a communication strategy including who to contact in the event where there is a threat of unlawful land occupations

12. Policy Deviation
That the policy prescripts and applicable legislation be adhered to. Any deviation from the policy shall be the prerogative of the MEC

13. Policy Approval
The MEC shall sign and approve the policy for implementation by the municipalities and regional offices.
14. Policy Monitoring and Evaluation
Monitoring and evaluation of the policy remains the most critical area to ensure effective implementation of the policy. The Monitoring and Evaluation Directorate of the Department will be responsible for monitoring, evaluation and impact assessment on the implementation phase of the policy.

15. Policy Review
The implementing agent may call for a review / adjustment / amendment of this policy following 2 years of implementation of the policy or as and when it is required to do so.

16. Effective Date of Policy
This policy shall come into effect on the date of signature by the MEC or at a date determined by the MEC.