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The Council of the Kouga Municipality has in terms of Section 156(2) of the Constitution read in conjunction with Section 11 of the Local Government: Municipal Systems Act 32 of 2000, approved the following By-Law:

KOUGA LOCAL MUNICIPALITY MANAGEMENT & CONTROL OF INFORMAL SETTLEMENTS BY-LAW

Document Control

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PURPOSE

The purpose of this by-law is to provide mechanisms and procedures to address, prevent, mitigate, and monitor the continuous proliferation of unauthorized informal settlements and unlawful land invasions, with the Kouga Municipal area as well as prevent the unlawful expansion of authorized informal settlements.

PREAMBLE

WHEREAS a Municipality may, in terms of Section 156(2) of the Constitution of the Republic of South Africa, 1996, make and administer by-laws for the effective administration of the matters which it has the right to administer, and

WHEREAS Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996, confers on the municipality the competence in respect of building regulations, municipal planning and municipal health services, and

WHEREAS the municipality is faced with continuous proliferation of informal settlements and land invasion, unlawful expansion of formalized informal settlements in respect of municipal owned land, and

WHEREAS it is the intention of the Municipality to prevent the unlawful occupation of land, while duly considering the requirement in section 26(3) of the Constitution of the Republic of South Africa, 1996 that no one may be evicted from their home or have their home demolished without an order of court.

AND NOW THEREFORE, BE IT INACTED by the Kouga Local Municipality, as follows:

1. DEFINITIONS.—

In these By-laws, unless the context otherwise indicates—

“authorized informal settlement” means any informal settlement which is recognized by the Municipality as an authorized informal settlement or a settlement regarded by the municipality as a transit camp to house landless and/or evictees who will be ultimately be relocated to a formally established township;

“authorized official” means an employee of the Kouga Municipality responsible for carrying out any duty or function or exercising any power in terms of this By-law;

“consent” means the expressed or implied consent of the owner or person in charge of the land, for a resident or occupant of a shack/informal structure irrespective of whether such consent was given in writing or otherwise;

“court” means any division of the High Court or the Magistrate's Court in whose area of jurisdiction the land is situated;

“eviction” means the permanent removal, in accordance with the provision of a court order, of a person and his or her property from occupation of a shack/informal structure or the land on which the shack/informal structure is constructed, and

includes a demolition of, and removal from the land of any building materials, pegging material or any other material used to construct the shack/informal structure, and the reference to the word “evict” shall have a corresponding meaning;

“head of the household” means—

- a) the father in a household, where the father and mother of the household are legally married;
- b) the single parent, where the household has only one parent with dependants living permanently with him or her in the household; and
- c) 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 person responsible for the maintenance of the welfare and discipline within the household;
- d) a child who bears the responsibility in a household where all members of the household is younger than 18 years or where there are adults who may be too sick, old or incapacitated to head the household and so designated by the Provincial Department of Social Development.

“informal settlement” means one or more unauthorized shack/structure constructed on land with or without the consent of the landowner or the person in charge of the land;

“land” means any land within the area of jurisdiction of the Kouga Municipality, irrespective of whether such land belongs to the National Government, the Provincial Government, a Municipality or a private individual, company or other legal entity;

“land invasion” means the illegal occupation of any land or any settlement or occupation of people on land without the express or tacit consent of the owner of the land or the person in charge of the land, or without any other right to settle on or occupy such land;

“land owner” means the registered owner of land, irrespective of whether such owner is the National Government, the Provincial Government, the Municipal or Private individual, company or other legal entity;

“Municipal Manager or his representative” means the official assigned in terms of section 2;

“Municipality” means Kouga Local Municipality established in terms of section 12 of the Municipal Structure Act, No. 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorized agent thereof or any employee thereof acting in connection with these By-laws by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“official” any person who is employed or is contracted by the municipality or government;

“person in charge” in relation to land, means a person who has the legal authority to give permission to other person to enter or reside on that land;

“shack/informal structure” means any temporary shelter, 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 No. 103 of 1977) and the regulations promulgated under that Act and which is primarily used for residential purposes; and

“unauthorized informal settlement” means any settlement which is not recognized by the Municipality as an authorized informal settlement which will be demolished and removed in terms of these By-laws.

“unlawful occupant” a person, individual or entity who occupies land without the consent of the Kouga Municipality or person or entity in charge of such property, or without any other right in law to occupy such land.

2.ASSIGNING OFFICIAL TO PERFORM FUNCTIONS RELATING TO INFORMAL SETTLEMENT

The municipality may designate and assign an official from the Human Settlements Department to manage and control all the informal settlement in accordance with the provisions of these By-laws, otherwise the duties in these By-laws are executed by the Municipal Manager or his/her representative.

3.RIGHTS AND DUTIES IN RESPECT OF INFORMAL SETTLEMENTS —THE MUNICIPAL MANAGER OR HIS REPRESENTATIVE MUST—

- 1) conduct regular survey to determine the location, origin and extent of and the conditions prevailing in each informal settlement;
- 2) monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality;
- 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;
- 4) keep a register of, **and may enter into rental agreements with** all the residents who are entitled to reside in each authorized informal settlement, and in such register the following details must be entered in respect of each shack in each authorized informal settlement, **and charge a monthly rental based on a rental amount as approved by Council from time to time** —
 - a) the number allocated to the stand or site on which the shack is constructed;
 - b) the names, and identity number of the head of the household who is entitled to occupy the shack;
 - c) the names, identity numbers and relationships to the head of the household of each and every other person occupying the shack as a member of the household;
 - d) the reference number of the municipal file that contains a copy of the contractual agreement in respect of the shack;
 - e) **the number of the shack's rental account;**
 - f) the number of the shack's municipal services account;
 - g) the previous address of the household that is entitled to occupy the shack; and
 - h) 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 shack;

- 5) ensure that all residents living in an authorized informal settlement are registered in the Municipality's Housing Demand Data Base;
- 6) submit written report on the control and management of any informal settlement, or the conditions prevailing in the informal settlement, if and when required to do so by the municipality;
- 7) for the purpose of informing residents of informal settlements and all other persons visiting informal settlements, ensure that—
 - a) the contents of these By-laws are communicated to all residents of every informal settlement; and
 - b) a copy of these By-laws is posted and maintained in every informal settlement in a prominent place at the venue where the residents' committee contemplated in section 6 usually holds its meeting;
- 8) allocate to each site or stand in an authorized informal settlement an individual number as the temporary address of the site or stand and must ensure that such number is legibly painted or inscribed in a prominent place on the site or stand;
- 9) perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.

4. INCIDENTS OF LAND INVASION —

- 1) The Municipal Manager or his representative 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) make a determination of the status of the informal settlement as an authorized or an unauthorized informal settlement; and
 - b) inform the residents of the informal settlement of the status of the informal settlement in accordance with section 5 or section 7, whichever is applicable in the circumstances.
- 2) In the event of the status of an informal settlement completed in subsection (1) being determined as an authorized informal settlement, the Municipal Manager or his representative must deal with the matter in accordance with the provisions of section 5.
- 3) In the event of the status of an unauthorized informal settlement, the Municipal Manager or his representative must deal with the matter in accordance with the provisions of section 7.

5. PROCEDURES RELATING TO THE MANAGEMENT AND CONTROL OF AUTHORIZED INFORMAL SETTLEMENT —

- 1) As soon as a determination of the status of an authorized informal settlement has been made and within the period contemplated in section 4 (1), the Municipal Manager or his representative must, personally or through any other Council official designated by the Municipal Manager to assist him or her for that purpose, visit the informal settlement and notify the residents of the status of the authorized informal settlement in the manner contemplated in section 6 (2) or by means of a letter delivered in the circumstances.

- 2) The Municipal Manager or his representative must compile a comprehensive register of all the residents who are entitled to reside in the authorized informal settlement contemplated in subsection (1), and the following details must be entered in respect of each shack in the authorized informal settlement—
 - a) the number allocated to the stand or site on which the shack is constructed;
 - b) the name and identity number of the head of the household who is entitled to occupy the shack;
 - c) the names, identity numbers and relationship to the head of the household of each and every other person occupying the shack as a member of the household;
 - d) the reference number of the file of the Municipal Manager or his representative that contains a copy of the contractual agreement in respect of the shack;
 - e) the number of the shack's rental account;
 - f) the number of the shack's municipal services account;
 - g) the previous address of the household that is entitled to occupy the shack; and
 - h) the names, address and telephone numbers, if any, of at least two family members of the head of the household that is entitled to occupy the shack.
- 3) The Municipal Manager or his representative must ensure that the names, addresses and other relevant details of all residents living in an authorized informal settlement contemplated in subsection (1) are registered in the Municipality's Housing Demand Data Base.
- 4) The Municipal Manager or his representative must allocate to each site or stand in an authorized informal settlement contemplated in subsection (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.
- 5) The Municipal Manager or his representative must ensure that no new unauthorized shacks are constructed in the authorized informal settlement contemplated in subsection (1) and that no new unauthorized residents take up residence in the authorized informal settlement by implementing appropriate measure to manage, monitor and control the occupancy of residents in the authorized informal settlement in general. To this end, if the intended occupier of an unauthorized structure is not identifiable and, after taking all reasonable steps to identify who the intended occupier is, or who the owner of the building material and possessions is, the authorized official may impound such materials, subject to section 9 below, and place a notice in a prominent place at the entrance or boundary of the subject land, upon proof of ownership and payment of any fine and/or recovery of goods.
- 6) Any unauthorized occupancy in an authorized informal settlement contemplated in subsection (1) must be dealt with in accordance with the provisions of section 7.

- 7) In respect of an authorized informal settlement contemplated in subsection (1), the Municipal Manager or his representative must ensure that—
 - a) the Municipality's Finance Department institutes, operates and maintains an appropriate account for services rendered by the Municipality to each registered shack in the authorized informal settlement and for any charges levied for the right of occupation of a particular site or stand in the authorized informal settlement; and
 - b) such an account is supplied to the head of the household of each registered shack in the authorized informal settlement.

6. WARD COMMITTEES —

- 1) The Ward Committee and the Municipal Manager or his or her representative, must meet on a regular monthly basis, and at such meetings the Municipality must consult the resident's committee on all matters relating to the authorized informal settlement and communicate matters of general concern to the residents of a collective basis. After such meetings, it is the sole responsibility of the Ward Committee to inform the individual residents of matters discussed at the meetings.
- 2) Special meetings of residents may be convened from time to time by the Ward Committee to communicate with and inform the individual residents of matters relating to the authorized informal settlement.
- 3) The Ward Committee must give notice of a meeting of the residents of the authorized informal settlement by placing the notice prominently at a venue whose location has been determined by the Ward Committee and communicated to the residents at an official meeting of the residents.

7. PROCEDURES RELATING TO THE TERMINATION OF UNAUTHORIZED INFORMAL SETTLEMENTS —

- 1) As soon as a determination of the status of an unauthorized informal settlement has been made and within the period contemplated in section 4 (1), the Municipal Manager or his representative must, personally or the Land Invasion Monitoring Team—
 - a) Inform residents of a shack in the unauthorized informal settlement that their occupation of the shack and the site or stand on which it is situated is illegal; and
 - b) Request the Municipal Manager to assist him or her for that purpose, visit the informal settlement and notify the residents of the status of the unauthorized settlement by means of a written notice hand-delivered to each shack in the informal settlement.
- 2) The written notice contemplated in subsection (1) must notify the residents of the shack to vacate the shack and remove any building materials and other personal property from the unauthorized informal settlement within a period of 24 hours after receipt of the written notice.
- 3) If the residents notified in terms of subsection (1) cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorized informal settlement, the Municipal Manager or his representative 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 unauthorized 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 subsection (1) fail to cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorized informal settlement, the Municipal Manager or his representative must immediately institute the necessary legal procedures to obtain an eviction order contemplated in subsection (5).
- 5) Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (1), the Municipal Manager or his representative 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 No. 19 of 1998), against any person or persons jointly or severally, occupying or residing in a shack or on a site or stand in the unauthorized informal settlement.
- 6) The Municipal Manager or his representative must, within a period of 24 hours after obtaining the eviction order referred to in subsection (5), deploy the Sheriff of the Court to execute the eviction order and to terminate the unauthorized informal settlement.
- 7) Any costs incurred by the Municipal Manager or his representative for the purposes of executing the provision of these By-laws be borne by the Municipality in accordance with its approved budget.

8. PROHIBITED CONDUCT -

- 1) No person may contravene or fail to comply with any provision of this By-law or disobey any instruction or compliance order by an authorised official enforcing this By-law.
- 2) No person may –
 - a) Instigate or organize the unlawful occupation of land;
 - b) Occupy land unlawfully;
 - c) Assist, instigate and/or organise another, directly or indirectly another to occupy land unlawfully or invade it;
 - d) Clear or prepare land, with the intention of occupying it, by removing vegetation or by any other means;
 - e) Remove or damage a sign put up in managed settlement;
 - f) Remove or damage a sign put up on land that is owned by the Municipality
 - g) Remove or damage survey pegs installed by the Municipality
 - h) Demarcate or mark any land with the purpose of allocating it to unlawful occupiers;
 - i) Solicit payment for arranging or organizing a person to occupy land without the consent of the owner of the land;
 - j) Sell or purport to sell land and or structures on land that is or is intended to be invaded;
 - k) Lease or purport to lease land or structures on land that is or is intended to be invaded;
 - l) Transport persons, building materials and personal possessions for the purpose of an unlawful occupation;

- m) Refuse to disclose his or her details when asked by an official of the municipality, if that person is occupying land unlawfully or has invaded it;
- n) Remove any fence, sign, marking placed by the municipality or owner (under the direction of the municipality), on land;
- o) Erect or occupy a structure on land without the consent of the owner; or
- p) Interfere or obstruct an authorised officials in preventing the erection or dismantling of a structure or the removal of the building materials and personal possessions of an unlawful occupier of land.

3) Any vehicle driven and/or operated in contravention of this by-law:

- a) Is deemed for the purpose of this By-law to have been driven, in the absence of evidence to the contrary-
 - (i) On the instruction or with the consent of the owner; or
 - (ii) (By the owner, if a natural person; and
- b) May be impounded together with the building materials and possessions conveyed in/on the vehicle.

9. DISPOSAL OF BUILDING MATERIALS AND PERSONAL PROPERTY —

- (1) In the execution of the provisions of section 7 (6), any building materials and other personal property belonging to a resident or occupier of a shack in a unauthorized informal settlement must be removed and stored in a safe place by the Municipal Manager or his representative.
- (2) If the building materials and other personal property contemplated in subsection (1) are not claimed by their owner within a period of three months after the date of the removal and storage, the building materials and personal property must be sold to the best advantage by the Municipal Manager or his representative, or a person designated by the Municipal Manager who must after deducting the amount of any charges due or any expenses incurred, deposit the net proceeds into the Municipality's Revenue Account, provided that—
 - a) subject to the laws governing the administration and distribution of estate, nothing in this subsection contained may deprive the heir of any deceased person of his or her right to the balance of the proceeds of the property; and
 - b) any building materials or other personal property which is, in the opinion of the Municipal Manager or his representatives, valueless and unable to realize any meaningful amount may be destroyed, abandoned, dumped or otherwise disposed of by the Municipal Manager or his representative.
- 3) The Municipal Manager or his representative must compile and maintain a register in which is recorded and appears—
 - a) Particulars of all buildings material or other personal property removed and stored in terms of these By-laws;
 - b) The date of the removal and storage of building materials or other personal property in terms of subsection (1) and the name and site or stand number of the owner of the building materials or personal property; and (c)

- (i) the signature or right thumb print of the person who is claiming ownership and to whom delivery of building materials or other personal property has been made; or
 - (ii) full details of the amount realized on the sale of the building materials or other personal property in terms of subsection (2) and the date of the sale; and
 - (iii) if building materials or other personal property has been destroyed, abandoned, dumped or otherwise disposed of in terms of subsection (2), a certificate by the Municipal Manager or his representative to the effect that the building materials or personal property was valueless.
- 4) 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 a shack in an unauthorized informal settlement or any other person for any reason whatsoever.

10. POWER TO SEARCH AND SEIZE

- 1) An authorised official may, without a search warrant, search any person, vehicle, or structure for the purpose of seizing any article which is, or is on reasonable grounds believed to be, concerned with the commission of an offence in terms of this By-law if:
- 2)
- a. The person consents to the search;
 - b. The person does not consent, the official, on reasonable grounds believes-
 - (i) That a search warrant will be issued under paragraph (a) of section 21(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) if application is made for a warrant; and
 - (ii) (ii) That the delay in obtaining a warrant would defeat the object of the search; or
 - (c) In terms of Section 23 of the Criminal Procedure Act, 1977 (Act 51 of 1977)
- 1) A search of any person must be conducted with strict regard to decency and order provided that –
- (a) A woman may only be searched by a woman;
 - (b) If no female authorised official is available, the search may be made by any woman designated for that purpose by an authorised official.
- 2) The authorised official may seize anything found as a result of the search referred to in subsection (1) which-
- a. Is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence in terms of this By-law;
 - b. May afford evidence of the commission or suspected commission of such an offence;
 - c. Is intended to be used or is on reasonable grounds believed to be used in the commission of such an offence.

10. PROHIBITION OF RECEIPT OR SOLICITATION OF CONSIDERATION IN RESPECT OF UNLAWFUL OCCUPATION OF LAND —

- 1) No person may directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organizing or permitting a person to occupy land without the consent of the owner or person in charge of that land.
- 2) The court that convicts any person of a contravention of this section must order any money or other consideration which was received by that person and which has been seized to be forfeited, and the money and the proceeds of the consideration may be paid to the persons from whom the money or consideration was received, and where such person or persons cannot be positively identified, such money or proceeds of the consideration must be paid into the Municipality's Revenue Account.
- 3) If any money or other consideration has been received in contravention of subsection (1), but has not been seized or made available for purposes of confiscation, the court that convicts a person of a contravention of this section may order the amount proved to the satisfaction of the court to have been received by such person to be paid to the person or persons from whom the money or consideration was received, and where such person or persons cannot be positively identified, the money or proceeds of the consideration must be paid into the Municipality's Revenue Account. Such order has the effect of a civil judgment and may be executed against such person who received the money or consideration as if it were a civil judgment in favour of the person or persons from whom the money or other consideration was received or in favour of the Municipality.

11. OFFENCES AND PENALTIES

A person who contravenes a provision of this by-law, is guilty of an offence and on conviction liable to the payment of a fine as approved by the Municipal Council from time to time or to imprisonment for a period not exceeding two (2) years.

12. INDEMNITY

Neither the Municipality nor any authorised official is liable for any damages in respect of anything done, or omitted, in the reasonable exercising of any power or carrying out any function in terms of this By-law.

13. APPLICATION OF BY-LAWS —

This By-laws apply to all informal settlement within the area of this Municipality.

14. DATE OF COMMENCEMENT —

This By-laws will take effect on the day of publication in the Government Gazette.

15. SHORT TITLE —

This By-law shall be called the Kouga Local Municipality Management & Control of Informal Settlements By-Law.