

MANDENI LOCAL MUNICIPALITY



LAND INVESION MANAGEMENT POLICY 2025

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1. LEGISLATION AND POLICY FRAMEWORK

There are two provisions in law which governs the handling of unlawful invasion of land:

1.2 The Constitution of the RSA, 1996 Section 26(3) states: *"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."*

1.2. The Prevention of illegal eviction from Unlawful occupation of Land Act, Act 19 of 1998 (PIE ACT)

"No person may evict an unlawful occupier except on the authority of a competent court."

The **definition of a structure**, in terms of the PIE Act, 1998 also needs to be taken into consideration.

In this Act, unless the context indicates otherwise- **"Building or structure"** includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter.

Both unlawful occupation and illegal eviction from land infringe upon basic Constitutional Human Rights as entrenched in the Constitution. Government (including a municipality) should therefore deal with the constitutional rights of both unlawful occupiers and landowners in a careful and balanced manner.

The purpose of the PIE Act is on the one hand to provide for the prohibition of illegal eviction and on the other to provide procedures for the eviction of unlawful occupiers. **The purpose of PIE is therefore to protect both the occupier and the landowner and applies to all land within the Republic of South Africa.**

The definition of unlawful occupier in PIE reads as follows: *"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, 1997, (ESTA) 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"*

1.3 The Trespassing Act, Act 6 of 1959 Trespassing means to gain access/entry to someone's property without his/her consent.

2. DEFINITIONS

2.1 The following terms will have the meanings assigned to them hereunder:

2.1.1 **"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.

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2.1.2 **“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.

2.1.3 **“council”** refers to the municipal council of Mandeni Local Municipality.

2.1.4 **“existing Informal settlement”** refers to unplanned settlement or settlements occupied in an informal manner with or without the permission of the landowner on a date before the adoption of this policy, 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.

2.1.5 **“infrastructure services”** refers to the municipality’s in-house unit responsible for provision and maintenance of the capital works necessary to provide municipal services.

2.1.6 **“land”** refers to immovable property and includes a portion of land.

2.1.7 **“planning unit”** refers to the municipality’s in-house planning team responsible for managing municipal land within the jurisdictional boundaries of the municipality.

2.1.8 **“land use”** refers to the lawful purpose for which land may be used in terms of the municipality’s land use scheme.

2.1.9 **“land use scheme”** refers to the land use scheme contemplated in in the Spatial Planning and Land Use Management Act 16 of 2013.

2.1.10 **“open space(s)”** refers to land set aside for use by a community for recreational purposes.

2.1.11 **“owner”** refers to a person who is the registered owner of land in the deeds registry or who is the beneficial owner of land.

2.1.12 **“peace officer”** refers to a person who is responsible for enforcing and implementing the municipality’s by laws and policies

2.1.12 **“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.

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

2.1.14 **“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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2.1.15 “**unlawful 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 in the absence of any other right in law to occupy the land.

3.1.16 “**urban areas**” refers to areas in and around the town of Mandeni including Sundumbili, Hlomendlini, Highview Park, Khenani and Tugela Mount that are characterized by high population density and an infrastructure of built environment.

2.1.17 “urban development” refers to those areas falling inside the urban fringe(s) as defined in the Spatial Development Framework of the municipality.

3. PREAMBLE

3.1 Both state land (land under the control of a national or provincial government or municipality) and privately-owned land can be invaded unlawfully.

3.2 A clear distinction must be drawn between trespassing and unlawful occupation. Trespassing is regulated by the Trespassing Act, 6 of 1959 and unlawful occupation by the Prevention of illegal Eviction and the Unlawful Occupation of Land Act, 19 of 1998.

3.3 The unlawful invasion of municipal land within Mandeni Municipal area is a very big risk and therefore measures should be put in place to handle such invasions. This policy seeks to spell out procedures to deal with land invasion within Mandeni be it state land or privately owned land.

3.4 The council does not have a specific policy that is aimed at dealing effectively with an unlawful invasion. It is believed that land invasion and, thus, the proliferation of informal settlements /illegal, is driven by the following issues:

3.4.1 A perception by rural migrants and people from poor small towns that settling in informal settlements in urban areas will usher them to a better life.

3.4.2 Initial occupants of informal settlements often rally the support of other potential occupants to strengthen their negotiating or bargaining power, for example, with the owner.

3.4.3 There is a perception that people in informal settlements are helped first before those on a housing waiting list and this perception appears to fuel the spread of informal settlements.

3.4.4 The lack of timeous planning to accommodate population growth.

3.4.5 Community ignorance concerning the intended use of land, vacant land, open areas earmarked for development within existing settlements, the land uses applicable to such land, the land use scheme or any combination of these.

3.4.6 The lack of a coordinated approach among spheres of government to release land and/or funding for the planning and servicing of priority areas.

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4. NECESSITY OF THE POLICY

4.1. Unlawful occupation of land/squatting takes place because of various reasons, such as:

- 4.1.1 Poverty and unemployment
- 4.1.2 Past policies that prevented people from obtaining housing in urban areas
- 4.1.3 Shortage of legally obtainable housing alternatives
- 4.1.4 Faster urbanization and natural growth than the development of housing in urban areas
- 4.1.5 "Jumping the queue", hoping to be helped to housing sooner.
- 4.1.6 Shortage of developed land in the vicinity of job opportunities
- 4.1.7 Intra-urban migration to better-located land
- 4.1.8 Encouragement of unlawful land occupations for political and financial gain
- 4.1.9 The perception of unfair housing allocation
- 4.1.10 The unlawful sub-letting and vacating of dwellings, leaving sub-tenants in occupation.
- 4.1.11 The illegal selling of land before the expiry of the applicable sales restrictions

5. POLICY OBJECTIVES

5.1 Some of the land parcels in the municipality are illegally occupied for the purposes of commercial trading and other activities. It is for these reasons that this policy is directed at addressing the following:

- 5.1.1 To contain and prevent land invasion and the spread of informal settlements; and

6. ADDRESSING LAND INVASIONS

6.1 The Policy: Land Invasion

6.1.1 Council shall not tolerate the illegal occupation of land within its area of jurisdiction.

6.1.2 All measures available to the Council shall be exhausted to prohibit the illegal occupation of land.

6.1.3 By taking a few basic measures, unlawful occupation of land can be contained with reasonable effectiveness. The following preventative measures, although not exhaustive, are recommended for effective containment:

6.1.3.1 Identification and prevention

- 1) Build a database of existing informal settlements within Mandeni Municipal area.
- 2) Such a database should contain information on at least the number of people, their identities and age of the inhabitants of each settlement.

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- 3) Mark and number each structure that is on the database.
- 4) Do not allow unauthorized extensions to existing structures, since this encourages the unseen growth of informal settlements. It might also be a good idea to take photographs of the structures to properly identify it as far as future extensions are concerned.
- 5) Identify land (not only municipal land but all land in the jurisdiction of the municipality) that is likely to be invaded, as well as the details of ownership.
- 6) If possible --fence off municipal land that is likely to be invaded.
- 7) Erect signage to warn prospective invaders; and
- 8) Lighting should be considered, if feasible

6.1.3.2 Communication

- 1) Establish a working relationship with the ward committee members in the particular community to assist with curbing the growth of illegal occupation.
- 2) Sensitize all officials in the municipality (Traffic & Law Enforcement, Peace Officers, Building Inspectors, etc.) to monitor, note and report incidents of invasion/ unlawful occupation.
- 3) Appoint a single person as lodging point for unlawful occupation and eviction complaints – this person should also be responsible for initiating the appropriate action.
- 4) Inform both the community and municipal officials about the proper procedure and contact persons in the lodging of an unlawful occupation/eviction complaint.
- 5) Inform all landowners about their rights and responsibilities as far as the protection of their properties is concerned.
- 6) Procure and maintain a good working relationship with SAPS and National prosecuting Authority to ensure swift action against invaders.
- 7) The South African Police Service (SAPS) will assist with ensuring the safety of municipal officials and occupiers and to maintain law and order.

7. **PROCEDURE TO FOLLOW WHEN LAND INVASION ON MUNICIPAL LAND OCCURS**

- 7.1 Structures in the course of erection and not yet occupied may be demolished in terms of “counter spoliation.”
- 7.2 When an invasion is reported, law enforcement officers will be sent to access the situation is it land invasion or vagrants?
- 7.3 If land invasion, alert all parties i.e. Municipal Manager, Director: Economic Development, Planning and Human Settlement, Director Community Services and Public Safety, Manager: Public Safety, Peace Officers, Law Enforcement Services and SAPS.

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- 7.4 Ownership of the land in question needs to be confirmed by the Director: Economic Development, Planning and Human Settlement Department of the Municipality. Make absolutely sure whether it is municipal land or private property.
- 7.5 The Department of Economic Development, Planning and Human Settlement must help to confirm the ownership of municipal land.
- 7.6 Determine the number of as yet uncompleted and un-occupied structures and remove them immediately and take the material of the structures to the municipal yard.
- 7.7 Determine how many structures are already occupied.
- 7.8 When structures are already occupied (Signs of living) the Building Inspectors with the help and back-up of Peace Officer and Law Enforcement will serve notices on all occupiers that they are on the land without the permission of the municipality and that legal steps will be taken against them for their removal.
- 7.9 Confront invaders with the instruction to vacate the property voluntarily.
- 7.10 Full detail of all the facts that led to the land invasion needs to be kept.
- 7.11 Officials/ staff members who attend to this land invasion issues will be required to state all the facts/information in affidavits that will be placed before the courts. It will also be required of staff to give expert evidence in the courts.
- 7.12 Officials/staff members to take photos of the illegal structures.
- 7.13 The invaded area/ land needs to be monitored to prevent further land invasions

8. COURT ACTIONS

- 8.1 Council shall apply to court for the eviction of illegal occupants and commence criminal proceedings of those responsible for initiating and/or facilitating the unlawful occupation or invasion of land.
- 8.2 The first step is to prevent further invasions by obtaining an interdict. An interdict can be obtained within hours. Remember that we cannot remove occupied structures
- 8.3 Second step is to obtain an eviction order via the court for the eviction of illegal occupants and removal of the occupied structures – the Municipal Council lawyers to handle this.
- 8.4 If the interdict is granted the sheriff will serve the notices.
- 8.5 If in this process new invaders (against whom the interdict is applicable) move onto the municipal land, charges of “contempt of court” may be laid. SAPS will then be in a position to arrest the new invaders, and vacant structures may then be removed.
- 8.6 If the court issues eviction orders, the sheriff assumes responsibility for the removal in conjunction with SAPS and Mandeni municipality.
- 8.7 NB: The local authority /municipality has locus standi to bring an eviction application, where the owner of the land, notwithstanding the municipality’s request that they do so, has failed

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to evict unlawful occupants, and if such removal of unlawful occupants is in the public interest.

- 8.9 The municipality may give notice to a private owner to bring an action in terms of section 6 of PIE for eviction if it is in the public interest to bring an application and the relevant landowner refuses to do so.

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

- 9.1 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.

10. CONCLUSION

- 10.1 Both municipalities and private landowners find it very difficult to deal with unlawful occupation of land /and invasions. This policy document is an effort to guide Maneni Municipality to act swiftly and within the ambit of legislation.

11. IMPLEMENTAION OF THE POLICY

- 11.1 The policy shall be implemented after consultation with Mandeni Municipal Management Team, Council's Lawyers and SAPS and the approval of the Municipal Manager.

Policy Section	Planning, Human Settlement and Building Control
Date of Approval by Council	25 June 2025
Council Resolution No.	C140


Mr S G KHUZWAYO
MUNICIPAL MANAGER

30/06/2025
DATE

