

PROVINCIAL NOTICE

[NO. 186 OF 2011]

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:  
PUBLICATION: STANDARD ENCROACHMENT ON PROPERTY BY-LAW**

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State Province, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), make standard by-laws as set out in the Schedule.

**SCHEDULE**

**Definitions**

1. (1) In these By-laws, any word or expression which 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 -
  - (a) the Local Municipality of .....established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), exercising its legislative and executive authority through its municipal Council ; or
  - (b) its successor in title; or
  - (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these by-laws has been delegated or sub- delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000); or
  - (d) a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act (Act No 32 of 2000) or any other law, as the case may be;**"encroachment"** means any physical object which intrudes on or over municipal property, or property which the Council has control over or other property in respect of which a servitude or other property right has been registered in favour of the Council;  
**"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 any 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 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) If any provision in these By-laws vests or imposes any power, function or duty of the Council in or on an employee of the Council and such power, function or duty has in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or any other law been assigned to a service provider, the reference to such employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.

**Council permission required**

2. (1) No person may, without prior written permission of the Council, make or construct any colonnade, veranda, balcony, bay window, pavement light, showcase or other encroachment on 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 work or service determined by the Council in each case and subject to payment of the prescribed fee.
- (3) The prescribed fee mentioned in subsection (2) is payable in advance at the beginning of each year which is calculated from date of the written permission or the date determined by the Council, and the owner of the encroachment is liable for the payment of the prescribed fee for each encroachment.
  - (4) The owner of an encroachment must within 90 days after the date of commencement of these By-laws notify the Council in writing 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 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 over which the encroachment exists, of the property on which the building concerned is situated.

#### **Rules for the construction of encroachments**

3. (1) The design, arrangement and construction of a veranda, balcony, bay window or other encroachment on or over a public road, 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.

#### **Columns**

4. (1) The Council may determine areas within the municipal area 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 kerb.
- (6) No person may place a twin or double veranda column over any public road or pavement.
- (7) If a veranda is supported on columns, the columns may not have square aris, 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) If the form of a column is classic in character, the shaft must have suitable entasis and cap and base in due proportions.
- (9) No column, including cap and base, may be less than 3 m or more than 3,6 m in height and more than 4,5 m including plinth.
- (10) No person may, without the prior written permission of the Council place a column on a public road where the footway or sidewalk is, or is likely to be occupied by any cable, pipe or other municipal service.
- (11) The minimum height from the footway or sidewalk to the underside of each cantilever or fascia girder is 3 m.
- (12) Plain piping or tubing may not be used for any column for a veranda and balcony over or on a public road unless architecturally treated for aesthetic purposes.
- (13) 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.
- (14) 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 complied with.

### **Balconies and bay windows**

5. (1) No balcony, bay window or encroachment may overhang a public road if it is at a height of less than 3 m above the pavement.
- (2) No balcony may encroach more than 1,35 m over any public road.
- (3) No bay window may encroach more than 900 mm over any public road.
- (4) The aggregate horizontal length of a bay window at any level over a public road may not exceed one-third of the length of the building frontage on to that road.
- (5) Any balcony superimposed upon a veranda must be set back at least 1,2 m from the line of such veranda.
- (6) No part of a balcony which is attached to any veranda may be carried up to a height greater than two storeys above the pavement level except that, if 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.
- (7) No dividing wall across a balcony over a public road may exceed 1 m in 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 article upon any balcony over a public road, except ornamental plants, tables, chairs, canvas blinds and awnings not used for signs or advertisements.
- (10) If any floor of a building is used solely for the parking of motor vehicles, no bay window at the level of the floor may project over any public road for more than 1,35 m for the full length of the building frontage on to that road.

### **Plinths, pilasters, corbels and cornices**

6. (1) No plinth, pilaster or other encroachment beyond a building line carried up from ground level is permitted to encroach on a public road.
- (2) Any pilaster, cornice, corbel or similar architectural feature which is at least 3 m above the ground may not exceed the following 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 any bay window 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 if 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.

### **Verandas around corners**

7. If a veranda is built around a corner of a public road it must be properly splayed or rounded to follow the curve of the kerb.

### **Pavement openings**

8. (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 1,2 m beyond the building line.
- (3) If flaps are permitted in a pavement opening, no flap may exceed 0,75 square metres in area and must open upwards and while open, must be provided with stout iron guardrails and stanchions.
- (4) A flap opening 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 kerb in every pavement opening must be built with a suitable batter to the satisfaction of the Council.
- (6) No pavement opening may be covered with a metal bar grating or with a metal plate or with wood.

### **Maintenance, removal and tenancy of projections**

9. (1) The owner of any encroachment must maintain the encroachment in good order and repair.
- (2) Any pavement opening, pavement light, wall thereof and basement wall must be made and kept water-tight by the owner.

### **Encroachment erected in front of building**

10. If any encroachment has been erected or constructed in front of 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.

### **Encroachments**

11. (1) (a) Any person wishing to erect or construct an encroachment 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 prescribed by the Council for that purpose.
- (b) If, in the opinion of the Building Control Officer, drawings are required for the conclusion of an encroachment agreement, the prescribed charges in addition to any other prescribed charge is payable to the Council.
- (2) The owner of any encroachment or fixture, whether in the course of construction or erection or completed, on, under or over any public road, is regarded as a tenant in respect of the encroachment 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 a reasonable period stated in the notice.
- (3) The owner of the building in connection with which any encroachment 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 of the Council.

### **Offences and penalties**

12. Any person who -
- (a) contravenes or fails to comply with any provision of these By-laws
  - (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 authorised 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 six months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Council and served on the person concerned requiring the discontinuance of such offence.

### **Repeal of by-laws**

13. Any by-laws relating to encroachment on property adopted by the municipality or any municipality now comprising an administrative unit of the Council is repealed from the date of promulgation of these by-laws.

### **Short title**

14. These By-laws are called the Encroachment on Property By-laws, 2011.