

POLICY 038/2015 RAADSBELEID

ONDERWERP: PREVENTION OF UNLAWFUL LAND OCCUPATION/INVASION/
SQUATTING POLICY

VERWYSING: 13.4.2.4.5

BESLUIT NR: 16.8/12/2015

DATUM: 3 Desember 2015

1. POLICY OBJECTIVES

- A. This Policy is intended to give effect to the prevention of the unlawful occupation of land/land invasion/squatting.
- B. This policy indicates why the unlawful occupation of land/land invasion/squatting is taking.
- C. It indicates the balanced approach that the Municipality must embark on in dealing with the prevention of unlawful occupation of land/invasion/squatting
- D. It also spells out the necessary legislation that necessitates the Municipality to have a pro-active and a re-active approach to prevent the unlawful occupation of land/land invasion/squatting
- E. Emphasises the need to work integratedly with other Departments in realising the Prevention of unlawful land occupation/invasion/squatting.

2. INTRODUCTION

Various National Government policy documents have made it clear that land invasions pose a great threat to stability and development and that the unlawful occupation of land must be discouraged at all costs. (White Paper on SA Land Policy - par. 4.8.1 on page 47). The Municipalities to adopt a wider approach than only the reactive management of unlawful occupation of land/squatting. PIE provides for reactive measures in dealing with "after the fact" unlawful occupation of land/squatting (have already occurred). Both unlawful occupation of and illegal eviction from land infringe upon basic Constitutional human rights as entrenched in the Constitution. The Municipality should therefore deal with the Constitutional rights of illegal land occupiers in a careful and balanced manner. This Policy by no means implies or otherwise, promote the acceptance and nurturing of the unlawful occupation of land or the rewarding thereof by allowing it to dictate housing delivery priorities.

3. LEGAL FRAMEWORK

- 3.1 Although not exhaustive, the following legislation and policies provide the appropriate legislative framework relevant to prevention unlawful land occupation/invasion/squatting, within the //Khara Hais Housing Policy.
 - (a) The Constitution of the Republic of South Africa, 1996 [Act 108 of 1996] particularly section 26
 - (b) The Prevention of Illegal Eviction from an Unlawful Occupation of Land, 1998 [Act 19 of 1998].
 - (c) The Housing Consumer Protection Measures, 1998 [Act 95 of 1998].

- (d) The Development Facilitation Act, [Act 67 of 1995] and the Housing Act, 1997 [Act 107 of 1997].
- (e) Section 153 of the Constitution refers to the developmental duties of Municipalities. In terms of these duties, priority should be given to the community's basic needs. Since access to housing is a basic community need, section 153 of the Constitution interacts with the unlawful occupation and land invasion question.
- (f) The White Paper on SA Land Policy, Transitional Local Government Act, 1993 [Act 209 of 1993] and the Local Government: Municipal Systems Act, 2003 [Act 32 of 2000].

4. VARIOUS REASONS THAT COULD LEAD TO THE UNLAWFUL LAND OCCUPATION / INVASION / SQUATTING

- 4.1 Poverty and unemployment.
- 4.2 Past policies that prevented people from obtaining housing in urban areas.
- 4.3 Shortage of legally obtainable housing alternatives.
- 4.4 Faster urbanisation and natural growth than the development of housing in urban areas.
- 4.5 "*Jumping the queue*", hoping to be helped to housing sooner.
- 4.6 Shortage of developed land in the vicinity of job opportunities.
- 4.7 Intra-urban migration to better-located land.
- 4.8 Encouragement of unlawful land occupations for political and financial gain.
- 4.9 The perception of unfair housing allocation.
- 4.10 The unlawful subletting and vacating of dwellings, leaving subtenants in occupation.

5. THE BALANCED APPROACH TO BE UNDERTAKEN BY //KHARA HAIS MUNICIPALITY PREVENT THE UNLAWFUL LAND OCCUPATION / INVASION / SQUATTING

- 5.1 Timeous provision should therefore be made by identifying and developing enough land for affordable housing and also identifying and developing land with rudimentary services, as "*reception areas*" where the homeless can settle as an alternative to the unlawful occupation of land / land invasions.
- 5.2 These programmes should form an integral part of the Municipality's Integrated Development Plan (IDP) or frameworks (IDF) and spatial plans.
- 5.3 Land identified for housing development purposes should be well located in relation to work opportunities and historical inadequacies, as a preventative measure against further unlawful land occupations.

5.4 **Identification and prevention**

- (a) Build a database of existing informal settlements in the //Khara Hais area.
- (b) Such a database should contain information on at least the number of people, their identities and age of the inhabitants of each settlement;
- (c) Mark and number each structure that is on the database;
- (d) 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;
- (e) 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;
- (f) Fence off land that is likely to be invaded;
- (g) Erect signage to warn prospective invaders; and
- (h) Lighting should be considered, if feasible.

5.5 **Communication**

- (a) Establish a working relationship with the representatives of the particular community(ies) to assist with curbing the growth of the informal settlement.
- (b) Sensitize all officials in the municipality (i.e. health, law enforcement, housing, engineering, community facilities, etc.) to monitor, note and report incidents of invasions / unlawful occupations.
- (c) Appoint the law enforcement unit as lodging point for unlawful occupation and eviction complaints. This unit should also be responsible to initiate the appropriate action.
- (d) Inform both the community and officials about the proper procedure and contact persons in the lodging of an unlawful occupation / eviction complaint.
 - (i) Via the local community radio Station, Local Newspaper(s), Ward Community meetings, via the Municipal monthly account sheets, Public participation meetings, Letters to churches, Sport groups, other departments, at the LGCF etc.
- (e) Consumer education, where consumers are educated about the disadvantages of unlawful land occupation / invasion / squatting, discouraging thereof and the lawful way of acquiring land.
- (f) Establish and maintain a working relationship with the SA Police Service to ensure swift action against invaders.
- (g) SA Police Service will not generally evict unlawful occupiers but will assist with ensuring the safety of officials and occupiers and to maintain law and order.

6 **ACTION**

6.1. The Municipality may embark on the following action:

- (a) Confront invaders with the instruction to vacate the property voluntarily.
- (b) If unlawful land occupiers do not voluntarily vacate the property, dismantle all incomplete or uninhabited structures.
- (c) Do not destroy materials from the dismantled structures. Compile an inventory thereof instead, and store materials off site.
- (d) Lay a charge, or encourage the owner to lay a charge, of trespassing at the SA Police Service, conveying details of the property and the (municipality' and / owner's) capacity to act.

- (e) The Municipality must get a court prohibiting the illegal land occupations / invasions / squatting on any Municipal land.
- (f) Get a court order to have illegal occupants removed from Municipal property, if granted the following applies: (Do not destroy materials from the dismantled structures. Compile an inventory thereof instead, and store materials off site). Our law enforcement unit and/or Security unit can be used to do the dismantling in the prescribed manner. The using of temporal workers may be left for the discretion of the Accounting Officer of the Municipality or His delegated.
- (g) Any person occupying the relevant land and/or houses or erecting structures, after the granting of the interdict, will be in contempt of court.
- (h) If some people were in unlawful occupation prior to the issuing of the interdict, an eviction order will be necessary. The interdict will also be effective in stemming the flow of unlawful occupiers.

7. INTEGRATED APPROACH IN PREVENTING UNLAWFUL OCCUPATION OF LAND / INVASION / SQUATTING

7.1. Section 41 of the Constitution provides for the concept of cooperative government. In the context of settlement management, this implies that the various spheres of government have to co-operate with each other in dealing with the problem of unlawful occupation of land/land invasions.

- (a) The Municipality should enter into MOUs with other sister Departments with clear terms of reference with regard to the integrated approach to be used proactively and reactively with regards to the prevention of unlawful occupation of land / invasion / squatting. The MOU should be reviewed annually.
- (b) Prevention of unlawful occupation of land / invasion / squatting should be a standing agenda on the various forums such as the LGCF, Community meetings etc.

8. POLICY REVIEW

This policy must be reviewed annually so as to be aligned to any possible amendment(s) of legislation like the PIE and other legislation that speak to Prevention of unlawful occupation of land / invasion / squatting.