

**AGENDA of the
Portfolio Committee : Infrastructure and Investment
2 June 2022
(Also the agenda for the Mayoral Committee Meeting : 27 June 2022)**

18.

**TOWN PLANNING: ADMINISTRATIVE PENALTY IN TERMS OF AMENDMENT OF
BY-LAW ON MUNICIPAL LAND USE PLANNING, 2020**

15/1/3/10/4

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24 May 2022

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1. Executive Summary

To inform the Council the process followed regarding how administrative penalties are applicable when contravention of the zoning scheme occurs.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance.

4. Delegated Authority

None

5. Legal Requirements

- Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)
- Amendment of the By-Law on Municipal Land Use Planning 2020

6. Background/Evaluation/Conclusion

Background

In terms of the Amendment By Law on Municipal Land Use Planning, 2020 Section 90 (1) determine the following:

“(1) ‘A person who is in contravention of the By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained abs issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.’”

A person who wants to rectify a contravention must submit an application and provide information in regard of Section 90 (3) stipulating the following:

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- “(3) The applicant must, to the satisfaction of the Municipality, provide the following information such as-*
- (a) the nature, duration, gravity and extent the contravention;*
 - (b) the conduct of the person (allegedly) involved in the contravention of;*
 - (c) a report by a quantity surveyor in matters of unauthorised building/construction;*
 - (d) whether the unlawful conduct was stopped; and*
 - (e) whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.”*

Section 90(4) state the following:

- “(4) The Report regarding the/an administrative penalty must be considered by the Authorised Official, the Municipal Tribunal Appeal Authority, as the case may be.”*

Section 90 (5) states further:

- “(5) “If the Authorised Official, the Municipal Planning Tribunal Authority decides to impose an administrative penalty on a person who has contravened this By-Law, it must be determine an amount which -*
- (a) for building work in contravention of the By-Law – may not be more than 100% of the value of the building, construction and engineering work unlawfully carries out, as determined by the Municipality;*
 - (b) for land use in contravention if this By-Law – may not be more than 100% of the municipal valuation of the area that is used unlawfully, as determined by the municipality; and*
 - (c) for the building work and land use in contravention of this By-Law – must be comprise the penalties in both paragraphs (a) and (b).”*

Discussion

In terms of Section 90 of the Overstrand Municipality By-Law on Land Use Planning, 2020 (hereafter to referred to as the By-Law) the determination of an administrative penalty can be applied for when the property which is in contravention of the By-Law submits an application to rectify the contravention. An application must be submitted to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.

When considering the application for determination of an administrative penalty all the relevant information and circumstances that led to the contravention needs to be considered.

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In many instances the applicant is not the person responsible for the contravention but inherited the situation from previous owners.

If the Authorized Official, Municipal Planning Tribunal or Appeal Authority decides to impose an administrative penalty it may do so subject to certain parameters.

When determining the penalty, the amount the Authorized Official, Municipal Planning Tribunal or Appeal Authority may determine may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out or more than 100% of the valuation.

In many of the cases an administrative penalty will not be imposed as the applicant submitted the application at his own free will and were not responsible for the contravention in the first place. The applicant in this case normally wants to correct the contravention. It must be borne in mind that the contravention will only be supported if it is desirable.

There are however also cases where applicants were requested to submit such application and where the applicant knowingly contravened the applicable legislation.

In these cases, an administrative penalty will be determined according to circumstances and severity of contravention. In most of the cases a penalty of 10% of the construction cost for the area of contravention will be determined.

In instances where the owner does not submit an application, a legal process is started by serving of a notice and then prosecuting the owner. In these cases, the court decides on the penalty.

Conclusion

That Council take note of the process followed regarding applications for administrative penalties.

7. Financial Implications

Income when penalty is imposed

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that the process regarding administration penalty applications **be noted**.

RESPONSIBLE OFFICIAL:

R KUCHAR

TARGET DATE FOR IMPLEMENTATION:

N/A

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
2 JUNE 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the process regarding administration penalty applications **be noted**.

RESPONSIBLE OFFICIAL:

R KUCHAR

TARGET DATE FOR IMPLEMENTATION:

N/A