

LEGAL NOTICE NO. OF 2024

THE URBAN GOVERNMENT ACT, 1969

(ACT NO. 8 OF 1969)

EZULWINI GATED COMMUNITY BYE-LAWS, 2024

(Under Section 77)

In exercise of the powers conferred by section 77 of the Urban Government Act, 1969, the Minister for Housing and Urban Development makes the following Bye-laws -

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PART I

PRELIMINARY PROVISIONS

Citation and Commencement

1. (1) These Bye-laws may be cited as the Ezulwini Gated Community Bye-laws, 2024.

(2) These Bye-laws shall come into force on the date of publication in the Gazette.

Interpretation

3. In these Bye-laws, unless the context otherwise requires –

“authorized officer” means –

- (a) any person authorized by the Municipality to perform the duties of the Municipality in terms of these Bye-laws;
- (b) an employee of the Municipality who is responsible for the performance of any function or the exercise of any power in terms of these Bye-laws; or

(c) any employee of the Municipality assigned or delegated to perform any function or exercise any power in the enforcement of these Bye-laws;

“Common area” means an area and facility within the gated community that is collectively owned or maintained by home owners for the benefit of community, such as parks, playgrounds, roads, sidewalks, and recreational amenities;

“gated community” means is a residential development or housing complex or collection of homes accessible only to residents and their guests, surrounded or enclosed by physical barriers such as walls fences, or gate or one or two entrances or security booths or automatic gates that residents can open with a key card, passcode or remote control or operated by a security guard or equipped with security measures such as access control systems, or surveillance cameras to ensure that only those with authorization of access;

“homeowner” means the registered owner of a gated community property and includes a property developer, property manager, estate agent or real estate agent; the trustee in an insolvent estate, the liquidator of a company which is an owner of the gated community property and the legal representative of an owner who has died or who is a minor or is of unsound mind or is otherwise under disability, provided such trustee, liquidator or legal representative is acting within the authority conferred upon such person by law;

“home owners’ association” means an organization formed by the owners of a gated community and recognized by the Municipality to manage common areas, facilities, and services, and to establish rules and regulations for the community;

“Minister” means the Minister responsible for Urban Government Administration;

“Municipality” means the Ezulwini Town Council established in terms of section 4 of the Urban Government Act. No. 8 of 1969;

“notice” means a document issued by an authorized officer in terms of these Bye-laws;

“permit” means the permit issued by the Municipality in terms of these By-laws;

“resident” means any individual residing within a gated community, including homeowners, tenants, or occupants of residential units.

“infrastructure” means to all physical facilities, utilities, and services provided within the community, including roads, drainage systems, lighting and landscaping.

“maintenance” means regular upkeep, repair, and enhancement of infrastructure components.

Objects

3. The objects of these Bye-laws are -
- (a) to govern the planning, development, maintenance and management of infrastructure within a gated community;
 - (b) to ensure safety, functionally and overall wellbeing of residents, while maintaining the community's aesthetics and value; and
 - (c) oversee the safety, security, access control and well-being of residents while promoting community harmony and compliance with local laws and Regulations.

Application

4. (1) These Bye-laws shall apply to all gated communities, residential compounds or communities, housing estates, apartment complexes or similar developments within the jurisdiction of the Municipality.

(2) Where a local disaster or emergency has been declared by the Municipality these Bye-laws shall be applied in line with the Disaster Management Act, 2001 and the applicable disaster management Laws and Regulations.

PART II

GOVERNANCE AND MANAGEMENT

Requirements for operation of Gated Community

5. (1) A person who desires to operate a gated community shall apply to the Municipality for a gated community certificate.

(2) An application made in terms of sub bye-law (1) shall be accompanied by detailed plans outlining the layout, design, security measures, and infrastructure provisions of the proposed gated community.

(3) In considering an application for a gated community the Municipality shall ensure compliance with land use laws and standards, zoning restrictions, environmental standards, and community safety requirements including integration of community amenities, access points, and overall impact on the local infrastructure.

(4) The Municipality shall issue a certificate for the establishment of the gated community no later than ninety (90) days, upon the satisfaction of the application requirements prescribed in the Schedule.

Home owners' association

6. (1) Residents of a gated community shall establish a home owners association responsible for the governance, management, and administration of the community, including the enforcement of these Bye-laws, collection of dues or fees, maintenance of common areas, and provision of services.

(2) A home owners' associations shall apply for registration and recognition by the Municipality.

(3) An application for registration and recognition of a home owners association shall be accompanied by the applicable instruments establishing the association.

(4) In considering an application by a home owners association the Municipality shall be guided by prescribed criteria, guidelines and standards governing home owners' associations.

(5) Where the Municipality is satisfied that the home owner association meets the prescribed criteria, guidelines and standards, it shall register the home owner's association and issue the registration and recognition certificate.

(6) A home owner association shall comply with applicable Bye-laws governing the Municipal area.

(7) A home owner's association shall not amend or alter land use requirements without approval of the Municipality.

PART III

REGULATION OF INFRASTRUCTURE

Gated Community infrastructure

7. (1) A home owner shall adhere to standards recommended or adopted by the Municipality including but not limited to infrastructure on water supply and sewage, energy or power, street lighting, roads and perimeter walls.

(2) A home owners association shall, subject to approval by the Municipality, hand over the gated community infrastructure to the Municipality.

Rules and regulations

8. A home owners association shall adopt and enforce rules and regulations governing the use of common areas, maintenance of property, conduct of

residents, parking, noise, pets, and other matters relevant to community living, subject to approval by the Municipality.

Municipal requirement on terracing

9. A home owner shall seek the approval of the Municipality prior to undertaking landscaping that requires terraces, in order to avoid excessive terracing.

Drainage and Energy

10. (1) Home owners shall ensure that -

- (a) proper drainage systems are in place to prevent flooding during heavy rainfall;
- (b) no draining system is blocked in order to ensure the flow of stormwater;
- (c) regular cleaning of drains, culverts, and retention ponds is done periodically; and
- (d) reputable service providers are engaged for the design, installation and provision of energy or power or the supply of alternative energy for the Gated Community.

(2) Gated community designs, installations and street lighting shall be approved by the Municipality.

(3) The supply of energy or power for the Gated Community shall be approved by a certified energy service provider by the designated Municipality.

(4) The supply of water and sewage services for a gated community shall be approved by the Eswatini Water Service Corporation.

Environmental management

11. A home owner shall ensure -

- (a) environmentally sound conservation water practices;
- (b) safe electrical installations and regular inspections;
- (c) the promotion of energy-efficient practices;
- (d) the adherence to applicable waste management legislation including adoption of gated community guidelines for waste disposal, recycling, and composting;

- (e) that the gated community roads and streets are designed and maintained according to safety standards for pedestrians and vehicular traffic, including proper signage, speed limits, and road markings; and
- (f) that emergency access and exit routes for both pedestrians and vehicular traffic clearly marked and accessible at all times.

PART IV

SECURITY AND EMERGENCY REQUIREMENTS

Security Measures

12. A home owner shall in collaboration with the home owner's association, where applicable, shall implement adequate security measures, including access control systems, surveillance cameras, security patrols, and perimeter fencing, to ensure the safety and security of residents and property within the community.

Emergency Preparedness

13. A home owner in collaboration with the home owner's association shall develop and implement emergency preparedness plans to address potential risks and hazards, such as fire, natural disasters, medical emergencies, or security threats, and to facilitate the evacuation and assistance of residents as may be necessary.

PART V

RIGHTS AND RESPONSIBILITIES RESIDENTS

Rights of residents

14. Residents of gated communities have the right to peaceful enjoyment of their property, access to common areas and facilities, participation in community governance, and protection of their privacy and security.

Responsibilities of residents

15. Residents shall comply with the rules and regulations established by the home owner's association, maintain their properties in good condition, respect the rights and privacy of fellow residents, and contribute to the upkeep and maintenance of common areas and facilities.

PART VI

MISCELLANEOUS PROVISIONS

Enforcement

16. (1) These Bye-laws shall be enforced by authorized officers, including municipal land-use, zoning or environmental health inspectors.

(2) A home owners association shall enforce these bye-laws, community rules and regulations through monitoring, inspections, warnings, fines, or other appropriate measures as necessary to ensure compliance and maintain community standards.

Offences and penalties

17. (1) A person who contravenes the provisions of these Bye-Laws shall be liable to penalties which may be determined by the home-owners association, including fines, suspension of privileges, or legal action where necessary.

(2) A person who wilfully fails to comply with any provisions of these Bye-laws commits an offence and shall upon conviction, be liable— -

(a) to a fine not exceeding five thousand Emalangeni (E5000.00) or imprisonment for a period not exceeding one (1) year; or

(b) in the case of a continuing offence, to a further fine not exceeding five thousand Emalangeni (E5000.00), or imprisonment for a period not exceeding one (16) year, for every day during which the offence is continued after a date set by the Court.

(3) Half of the amount paid as fines imposed for a continuing offence shall accrue to the Municipality in terms of the provisions of Section 86 of the Urban Government Act No. 8 of 1969 or its successor.

Objections and appeals

18. (1) A person who is affected or aggrieved by a decision made by the Municipality in terms of these Bye-laws in respect of any matter or the conditions imposed by the Municipality under a duty or power which has been delegated or sub-delegated may object against that decision by giving written notice of the objection to the Municipality, setting out the grounds thereof and the remedy sought within twenty-one (21) days of the date of the notification of the decision of the Municipality.

(2) The Municipality shall commence with an objection within six (6) weeks from the date of lodgement and shall decide the appeal within a reasonable period.

(3) The Municipality shall confirm, vary or revoke the decision, but no such revocation or variation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) The Municipality shall furnish written reasons for its decision on all objection matters.

(5) A person who is aggrieved by a decision of the Municipality may within thirty (30) days of receipt of the decision on the objection appeal in writing to the Minister who after making such enquiries as the Minister deems fit and giving due consideration to any representations made by the interested parties may make such order as the Minister deems just in the circumstances.

Transitional Provisions

19. (1) A person who at the date of commencement of these Bye-laws, operates gated community establishment shall, within six (6) months of that date, apply for a registration certificate as contemplated in sub bye-law (5).

(2) A home owners association which is has been established for a gated community establishment shall, within six (6) months of that date of coming into force of these Bye-laws, apply for a registration certificate as contemplated in sub bye-law (5).

Amendment of Bye-laws

20. The Municipality may amend or modify these Bye-laws as necessary to address changing circumstances, community needs, or legal requirements, subject to approval by the home owner's association.

First Schedule

(Bye-law 5)

Application requirements for gate community