



City of Johannesburg
Special Process for the Relocation
of Evictees (SPRE)

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DEFINITIONS

“**CoJ**” means City of Johannesburg Metropolitan Municipality;

“**Disaster**” means a disaster as defined in the Disaster Management Act 57 of 2002;

“**Emergencies**” means emergency situations of exceptional housing need as referred to in Part 3 of the National Housing Code, 2009;

“**Emergency Housing Programme**” means the programme provided for in Part 3 Volume 4 of the National Housing Code, 2009;

“**Engagement**” or “**Engage**” means a process by which CoJ, evictees and property owners engage in meaningful discussions with a view to reaching a collective outcome that will benefit all or most parties;

“**Evictee**” means a person who has been or will be deprived of occupation of a building or structure or the land on which such building or structure is located;

“**Owner**” means the registered owner of land and property, including an organ of state;

“**Policy**” means this Policy together with the annexures set out in this document, as amended from time to time;

“**Temporary Emergency Accommodation**” (**TEA**) means temporary assistance provided to Evictees who may find themselves in Emergencies;

“**TEA building**” means either the whole building or a part only of the building which is used for TEA;

“**Temporary Relocation Area**” (**TRA**) means a site where Evictees are intended to be accommodated on a temporary basis.

2. PREAMBLE

On 1 December 2011, the Constitutional Court ruled in the matter of *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39(Pty) Ltd and Another* 2012 (2) SA 104 (CC), *inter alia*, the CoJ's housing policy "...is declared unconstitutional to the extent it excludes the Occupiers and other persons evicted by private property owners from consideration for temporary accommodation in emergency situations."

In response to the jurisprudential developments, a revision of the CoJ's existing housing policy in terms of how it provided temporary assistance to Evictees in Emergencies became essential. This Policy takes cognisance of the changes in the *status quo* of evictions in the CoJ thereby ensuring the CoJ rises to the challenge of meeting its constitutional and statutory obligations in the provision of TEA in Emergencies.

3. INTRODUCTION

This Policy seeks to establish a framework for the implementation of TEA to Evictees who find themselves in Emergencies by reason of an eviction. This policy has a limited housing focus, in that, it only deals with the provision of TEA in a TEA building or TRA and as such does not address permanent housing solutions.

The provision of TEA does not detract from the municipality's overall objectives in regard to facilitation access to permanent housing in terms of the section 26 of the Constitution of the Republic of South Africa, 1996 ("Constitution") or the Housing Act, 1997 (Act No. 107 of 1997) and does not promote queue-jumping. The Policy further seeks to clarify the processes and procedures involved in the provision of TEA and to ensure that all role-players understand their part in contributing to the successful implementation of this Policy.

4. POLICY STATEMENT

The CoJ recognises its constitutional and statutory obligations to provide temporary accommodation to certain Evictees in Emergencies. In order to achieve this, it must endeavour to have a coherent policy or programme that is implemented within its available resources. This Policy is implemented in furtherance and fulfilment of these obligations and lays down certain guidelines in this regard.

The provision of TEA in terms of this Policy, should not be construed to mean the progressive realisation of the right of access to housing for the Evictees. The main objectives of this Policy are to:

- a) *Facilitate the provision of TEA to Evictees who may find themselves in an emergency situation of exceptional housing need, namely in one or more Emergencies;*
- b) *Provide guidance to municipal officials who identify or encounter situations of potential risk or high vulnerability that requires an emergency housing response;*
- c) *Provide an execution plan for TEA in the form of the SPRE Implementation Guidelines; and*
- d) *Create an enabling environment where the CoJ, Evictees and Owners engage with each other to reach a mutually beneficial outcome.*

The Policy will be implemented in the context of competing priorities and available resources and is not intended to:

- a) *assist Owners with suitable forms of alternative accommodation for Evictees evicted from their properties in the ordinary course;*
- b) *provide alternative accommodation to Evictees where such onus is on the Owner;*
- c) *assist Evictees that can address their housing need out of their own financial or other resources; or*
- d) *promote queue jumping under any circumstances whatsoever.*

5. LEGISLATIVE FRAMEWORK

There have been numerous jurisprudential developments relating to the role of municipalities in evictions. In this context, the CoJ recognises that it has a shared responsibility within available resources to provide TEA to those Evictees who may find themselves in an Emergency. This section highlights some of the key legislation and policy.

5.1 The Constitution of the Republic of South Africa, 1996 (Constitution)

Sections 26(1) and (2) respectively state that *“everyone has the right to have access to adequate housing”* and *“the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.”* Section 26 (3) further 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.”*

Several other rights enshrined in the Bill of Rights are affected by the “right to have access to adequate housing,” These include,

Section 9(1) - *“Everyone is equal before the law and has the right to equal protection and benefit of the law.”*

Section 10 - *“Everyone has inherent dignity and the right to have their dignity respected and protected.”*

Section 12 – *“Everyone has the right to freedom and security of the person...”*

Section 14 – *“Everyone has the right to privacy...”*

Section 25(1) - *“No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”*

Section 27 (1) (c) - *“Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.”*

Section 28 (1) (c) - *“Every child has the right to basic nutrition, shelter, basic health care services and social services.”*

Section 36 (1) – *“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –*

- a) the nature of the right;*
- b) the importance of the purpose of the limitation;*
- c) the nature and extent of the limitation;*
- d) the relation between the limitation and its purpose; and*
- e) less restrictive means to achieve the purpose.”*

Sections 152 and 153 respectively sets out the objectives and developmental duties of municipalities.

5.2 Housing Act 107 of 1997 (Housing Act)

Section 4(1) of the Housing Act requires the Minister to publish a code called the National Housing Code. In terms of section 4(2) of the Housing Act the Code must contain national housing policy and may after consultation with every MEC and national organisation representing municipalities include administrative and procedural guidelines in respect of the effective implementation and application of national housing policy and any other matter that is reasonably incidental to national housing policy. Furthermore, in terms of section 4(6) the Code shall be binding on the provincial and local spheres of Government.

Section 9(1)(a)(i) and (ii) of the Housing Act states that every municipality must, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis and that conditions which are not conducive to the health and safety of the inhabitants of its areas of jurisdiction are prevented or removed.

5.3 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE)

PIE was enacted to give effect to section 26(3) of the Constitution. Section 4 (2) of PIE states, *“At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.”*

Section 4 (6) and (7) obliges a court to consider all the relevant circumstances before it may grant an eviction order, including, the rights and needs of the elderly, children, disabled persons, households headed by women and whether land has been made available or can reasonably be made available by a municipality or other organ of state. Courts are often reluctant to grant eviction orders where the eviction will result in homelessness unless some form of temporary accommodation has been provided.

Section 7 makes provision for the municipality to mediate by appointing one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of PIE.

5.4 National Housing Code, 2009 (Housing Code)

The Emergency Housing Programme is contained in Part 3 Volume 4 of the Housing Code and states that the programme will apply to emergency situations of exceptional housing need and refers to situations of “Emergencies” as follows:

- a) *Have become homeless as a result of a declared state of disaster, where assistance is required, including cases where initial remedial measures have been taken in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002) by government, to alleviate the immediate crisis situation;*
- b) *Have become homeless as a result of a situation which is not declared as a disaster, but destitution is caused by extraordinary occurrences such as floods, strong winds, severe rainstorms and/or hail, snow, devastating fires, earthquakes and/or sinkholes or large disastrous industrial incidents;*
- c) *Live in dangerous conditions such as on land being prone to dangerous flooding, or land which is dolomitic, undermined at shallow depth, or prone to sinkholes and who require emergency assistance;*

- d) *Live in the way of engineering services or proposed services such as those for water, sewerage, power, roads or railways, or in reserves established for any such purposes and who require emergency assistance;*
- e) *Are evicted or threatened with imminent eviction from land or from unsafe buildings, or situations where pro-active steps ought to be taken to forestall such consequences;*
- f) *Whose homes are demolished or threatened with imminent demolition, or situations where proactive steps ought to be taken to forestall such consequences;*
- g) *Are displaced or threatened with imminent displacement as a result of a state of civil conflict or unrest, or situations where pro-active steps ought to be taken to forestall such consequences;*
- h) *Live in conditions that pose immediate threats to life, health and safety and require emergency assistance; or*
- i) *Are in a situation of exceptional housing need, which constitutes an emergency that can reasonably be addressed only by resettlement or other appropriate assistance, in terms of this Programme.*

6. SPECIAL PROCESS FOR THE RELOCATION OF EVICTEES (SPRE)

6.1 Application for TEA

The CoJ shall establish a properly constituted SPRE Unit within ninety (90) days of adoption of this Policy. The SPRE Unit's powers, functions and objectives shall be properly recorded in a memorandum and approved by the Executive Director: Housing.

Evictees who wish to receive TEA must apply to access such assistance by following the process prescribed by the CoJ. The SPRE Unit will thereafter evaluate the applications on a case-by-case basis and make a determination as to whether or not the Evictees qualify for TEA. The process for TEA will only begin when the CoJ confirms an Emergency does in fact exist. Evictees who wish to make an application for TEA must begin by registering with the CoJ's Expanded Social Package (ESP) programme by prior arrangement with the SPRE Unit. The full details of the registration process is set out in the Implementation Guidelines which forms an annexure to this Policy.

Applications for TEA may be disqualified or limited assistance provided where Evictees:

- a) are in a position to address their housing Emergency from their own financial or other resources or from such other sources, which may include the proceeds of superstructure insurance policies and whether they have previously benefited from permanent housing assistance from the State;
- b) have caused their exceptional housing need;
- c) housing Emergency can be remedied through the provision of time to vacate their current residence;
- d) have provided false or misleading information to the CoJ in regard to the provision of TEA;
- e) refuse to engage;
- f) refuse to apply for TEA;
- g) have previously benefitted from state-subsidised housing.

Evictees who received initial remedial assistance in terms of the Disaster Management Act 57 of 2002 (Disaster Management Act) following a declaration of Disaster can also apply for TEA in certain circumstances. Evictees who are able to return to their homes or procure alternative accommodation out of their own financial or other resources after the Disaster will not qualify for TEA. Evictees who continue to face homelessness through no fault of their own upon receiving initial remedial assistance in terms of the Disaster Management Act qualify to apply for TEA. The CoJ will endeavour to assist Evictees in applying for TEA on an expedited basis under these circumstances so as to ensure the process is completed before the expiry of the period allowed for remedial assistance in terms of CoJ's disaster management policy.

6.2 Application for temporary on-site assistance

Whilst it is not the aim and scope of this Policy to deal with this category of assistance, brief reference thereto is warranted in the circumstances. Where settlements have been damaged wholly or partially by fire, storms or other weather elements and is not declared a Disaster, Evictees may apply in writing to the SPRE Unit for temporary on-site assistance. The application process for temporary on-site assistance differs from the application process for TEA and the SPRE Unit shall be expected to finalise the application process in the shortest possible time thus allowing for individuals and families to return to their normal everyday lives. Evictees may also be required to

provide an affidavit on oath confirming their alleged place of residence prior to receiving any such assistance. Depending on the circumstances of each case the SPRE Unit will determine the most suitable form of assistance to be provided taking into consideration, among other factors, reducing Evictees vulnerability, building method and materials to be used.

6.3 *Meaningful Engagement*

There will be a process of meaningful Engagement with Evictees. The Engagement process can occur before and after the implementation of the Policy and can include an agreement to relocate voluntarily. When CoJ receives an application for TEA, either from the Evictees directly or through their legal representatives, it should immediately begin a process of initial Engagement. Where possible, the CoJ should initiate the Engagement process and continue to make reasonable efforts to engage with Evictees when initial efforts are resisted.

The Engagement shall include, but not be limited to:

- the number and circumstances of the Evictees;
- any special circumstances of the Evictees;
- the circumstances at the property;
- the location of the property in question;
- the current use of the property;
- the typology of the structure occupied by the Evictees;
- the availability of suitable temporary accommodation or vacant land within the area of the property;
- the circumstances giving rise to the eviction;
- the willingness of the Evictees to engage;
- the living conditions at the property;
- whether in the City's view the eviction is likely to lead to homelessness,
- the implication of a delay to the Owner;
- whether mediation between the Evictee and Owner is possible as envisaged in section 7 of PIE; and
- the interests of the Owner and of the CoJ.

The CoJ, Evictees and if applicable, Owners should approach the Engagement process in good faith and with a willingness to listen to the concerns of each party and

need not necessarily reach agreement on every aspect of the dispute. Parties should not make unreasonable demands or adopt an intractable attitudes. There is no *numerus clausus* of objectives that must be achieved during the Engagement process.

The Engagement process should be open and transparent and any agreement resulting from the process shall be recorded in writing. The CoJ shall furthermore ensure proper record keeping of each step of the Engagement process. In the case of evictions from private property, the Engagement process will also include the Owner, if that Owner is willing to participate in the process. Courts have remarked that, “engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process.” Where Evictees do not apply for TEA and/or are not willing to engage with the CoJ, despite its reasonable effort to do so, Evictees may not be provided with TEA. An Engagement with the Evictees may take place in on sessions or over several phases.

6.4 Presenting alternatives to Evictees

In the course of the Engagement process, the CoJ will use its reasonable endeavours to present the Evictees with alternative accommodation options for permanent housing, such as, but not limited to, RDP houses, affordable rental or social housing options. This presentation is based on the understanding that Evictees must comply with the relevant application procedures prescribed by the prospective landlords and/or State. The CoJ shall also take reasonable steps to provide Evictees with information on formal rental opportunities in the vicinity but will not be obliged to facilitate any further intervention. In these instances Evictees will negotiate and interact with the prospective landlord directly to the exclusion of the CoJ.

Evictees who have not registered for or benefited from state-subsidised housing previously and who satisfy the qualifying criteria must apply for subsidies for permanent housing provided for under the National Housing Code. Where possible, the CoJ will guide Evictees in this regard.

6.5 *Categories of Assistance*

Where an Evictee's application for TEA is successful, the typology, terms and conditions of relief provided may differ from case to case. Eligible Evictees may be assisted in one or more of the following ways:

6.5.1 *TEA buildings*

TEA buildings consist in managed care facilities and are designed to accommodate Evictees on a temporary basis. TEA buildings will be required to continuously serve new Evictees and as a result thereof Evictees are not to consider TEA buildings a permanent housing solution under any circumstances whatsoever. As managed care facilities, TEA buildings will include the implementation of the managed cared model which involves the provision of social assistance to the Evictees in order to empower them thereby improving their personal circumstances and allowing them to become self-sustaining with the possibility of finding a permanent housing solution. House rules shall be applied at TEA buildings, which shall be fair and reasonable. The house rules that are to be applied may differ among TEA buildings. The CoJ shall be entitled, to the extent necessary, to move Evictees to temporary accommodation at another TEA building following a process of Engagement with the Evictees.

6.5.2 *TRAs*

The CoJ may provide Evictees with a TRA with basic municipal engineering services (water, sanitation and refuse removal). Where the CoJ provides Evictees with a TRA, it may provide materials to Evictees for the constructions of shelters, undertake the construction of the shelters itself or through a service provider or provide other forms of shelter as it deems appropriate. The materials or shelters provided shall at all times remain the property of CoJ and are intended for reuse, once Evictees vacate, return to their reconstructed homes (where their homes have been damaged by fire, storms or other severe weather elements and the site became temporarily unavailable) or enter into other formal housing programmes. Evictees in a TRA are not excluded from participating in and benefitting from the managed care model. Whether or not the managed care model will be made available to occupants of a TRA will be determined on a case-by-case basis. TRAs differ from TEA buildings in that there is the possibility of it becoming a permanent housing solution where studies demonstrate the site can be formalised and the CoJ decides to formalise the settlement. The decision to

undertake such studies and to formalise the settlement shall be solely at the discretion of the CoJ. The CoJ shall be entitled, to the extent necessary, to move Evictees to temporary accommodation in another TRA following a process of Engagement with the Evictees.

6.6 *Eligibility for TEA*

Evictees who qualify for TEA shall be accommodated in either a TRA or TEA building subject to the available resources of the Codi. Evictees shall be accommodated for a period of six (6) to nine (9) months, which can on application to the SPRE Unit, be extended to twelve (12) months in order to allow Evictees additional time to access alternative accommodation. Evictees who qualify for assistance in TEA buildings or TRAs shall be required to conclude agreements where, *inter alia*, the rights and obligations of the parties are fully set out. Evictees who have not been able to access alternative accommodation at the end of this period may be relocated to a TRA so that the TEA building is vacant and available for incoming Evictees. This ensures TEA is accessible to other Evictees in need.

The application for extension from the initial six (6) to nine (9) months period to twelve (12) months will be evaluated based on various factors such as - need, behaviour, efforts made by the Evictee to find alternative accommodation, efforts made by the Evictee to secure adequate employment and individual participation in self-betterment programs that have been provided. Evictees are expected to co-operate with the social workers and participate in the self-betterment programme offered at facilities so that they can improve their socio-economic circumstances and find other permanent accommodation as opposed to developing a dependency on the Codi. Evictees who *inter alia*, refuse to conclude the necessary agreements, co-operate with the social workers, participate meaningfully in the self-betterment programmes and abide by the house rules may be removed from the facility. Such conduct on the part of the Evictees shall be construed to mean their rejection of the relief provided by the Codi.

Where applicable, the Codi will request the Court to specify the period of accommodation of an Evictee in a TEA building after which an Evictee may be relocated to a TRA. This will negate the need for a new court order to relocate an Evictee upon expiry of the period in the TEA building.

6.7 Identifying TEA buildings or TRAs

In identifying and providing TEA facilities, the Codi will take the following factors into consideration, *inter alia*,

- demographic profile of Evictees;
- proximity of TEA from where the Evictees have been displaced;
- provision of basic municipal services such as water, sanitation, refuse removal and other municipal services;
- prospect of the allocation of permanent housing opportunities to the Evictees;
- budgetary implications;
- availability of resources;
- strategic considerations;
- any other relevant factor.

6.8 Logistics of Relocation

Where Evictees application for TEA is successful, the CoJ may assist the Evictees with transport to the TRA or TEA building. Where necessary, a reasonable timetable for the relocation should be made available to the Evictees. Property of Evictees, apart from their personal effects will be noted in a register and shall be signed off by the relevant CoJ official and countersigned by the Evictee who owns the property. The property will then be placed in secure storage until such time the Evictees leave the TEA facility and collect their property or until a period of two months has passed since the Evictee left TEA after which the CoJ will dispose of the property as it sees fit.

6.9 Recordal of TEA applications

Aside from the mandatory requirement that all Evictees who apply for TEA must apply in the prescribed manner through registration on the ESP system, the CoJ shall also keep a database of all the Evictees who have been allocated TEA in terms of this Policy including but not limited to, for the purposes of:

- detection of trends;
- good governance; and
- reporting.

6.10 Principles of SPRE

- i. TEA is a form of relief of distress in an institutional context designed to provide an emergency and short-term respite from a housing crisis and to provide an opportunity for empowerment and upliftment of occupiers through programmatic interventions and assistance supervised by an assigned social worker. It is thus an institutional environment offering a time-limited programme of managed care and is not a residence or home in the sense contemplated in section 26 of the Constitution.
- ii. Absence from the TEA building or TRA for a period of seven (7) days or longer without prior written consent from the CoJ and/or its authorised service provider may result in the Evictees forfeiting his or her allotted space.
- iii. A minimal contribution to costs shall be payable by the Evictee staying at a TEA building or TRA in terms of this Policy. The value of the contribution payable shall be determined by the SPRE Unit in line with the CoJ's parameters for the making of such determinations.
- iv. The CoJ in recognition of its shared constitutional and statutory obligation in relation to the role of municipalities in evictions shall pro-actively plan and budget for TEA and/or TRA in its Integrated Development Plan (IDP). The prospect for developing a TRA into a permanent housing solution where the TRA might be found to be suitable should also be provided for in the IDP. Whilst the CoJ will endeavour to fund TEA out of its own means, it has the right to apply for funding for temporary accommodation from the Provincial Department as prescribed by the Housing Code.
- v. The vehicle for the implementation of SPRE shall be the SPRE Implementation Guidelines.
- vi. The programme contained in this Policy does not replace any Provincial or National Department of Human Settlements (NDoHS) housing programme. This Policy shall replace any existing CoJ emergency housing programmes forthwith from date of implementation.
- vii. This Policy shall replace any existing CoJ emergency housing programmes forthwith from date of implementation.

- viii. The CoJ shall provide the necessary resources, create awareness and build capacity to support the implementation of this Policy.
- ix. Where a state of disaster has been officially declared and Evictees initially face homelessness, interaction, must first occur within CoJ's disaster management framework. This Policy under no circumstances replaces the powers and functions performed by the CoJ Emergency Management Services (EMS) Unit.
- x. Procurement processes must be fair, equitable and transparent for the acquisition of TEA goods or services and the CoJ must be guided by the Preferential Procurement Policy Framework Act 5 of 2000 and guidelines thereto.

7. SHORT TITLE AND COMMENCEMENT

This Policy together with the annexures set out in this document is the only document that regulates TEA and shall be called the Special Process for the Relocation of Evictees (SPRE) and shall come into operation on the date of final adoption by the Council of the CoJ.