

Is it Lawful for a Municipality to Remove an Advertising Sign Without a Court Order?

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INTRODUCTION

This analysis examines a multifaceted issue presenting two distinct perspectives. On one hand we have the municipal by-law which at face value permits the Municipal Council (“**Council**”) to remove advertising signs at their own discretion. On the other side of the coin, we see the courts handing down a very different interpretation requiring judicial intervention before the Council may take such action. Let us unpack these two sides to answer the question as titled.

THE GENERAL RULE

The general rule from the City Of Johannesburg Outdoor Advertising By-Law, is that all advertisements must comply with specific safety, aesthetic, and structural standards to remain in place. In terms of the provisions relating to different advertising signs in the outdoor advertising by-law, the Council maintains the right to remove any signage that is poorly maintained, poses a danger to the public and is in contravention with that sign’s specific requirements in the by-law.

GENERAL APPLICATION UNDER CHAPTER 2 OF THE OUTDOOR ADVERTISING BY-LAW.

Section 3(1) states that no sign/advertising board may be erected without the prior written approval by the council.¹

Section 3(2) further states that no sign erected with the approval in subsection (1) may be removed, altered re-erected or upgraded, other than for maintenance work which may be required for the upkeep of an advertising sign, without prior written approval of the Council and subject to such conditions and requirements as the Council may consider appropriate which may include the submission of proof of compliance with section 32.²

GENERAL COMPLIANCE AND PROHIBITIONS

In terms of the City of Johannesburg Outdoor Advertising By-law, **all advertising signs must** meet these general requirements:

- **Safety and Visibility:** Signs must not obscure road traffic signs, interfere with traffic signals, or constitute a danger to any person or property.³
- **Aesthetics:** Signs must not be unsightly or detrimental to the environment, streetscape, or urban design or detract from the architecture of any building on which or where such sign is to be located⁴, by reason of its abnormal size, appearance, intensity of illumination, workmanship, design or its existence⁵. Furthermore, it may not obscure an advertising sign that was previously erected⁶.
- **Prohibited Content:** Advertisements cannot be indecent, suggestive of indecency, or prejudicial to public morals or is insensitive to the public or any portion thereof or to any religious or cultural group⁷.
- **Prohibited Locations:** Signs are generally banned on road islands (except street light poles), trees, verandas, and motorways⁸.

Sections 6 and 9 provide a more detailed list of compliance requirements advertising signs are to adhere to so that they are not removed. Above are the most general requirements and prohibited signs that underly the sections.

GENERAL CIRCUMSTANCES FOR COUNCIL REMOVAL

Beyond specific sign types, section 29(1) states that all signs including their surrounding areas must be maintained in a manner that they do not go against the provisions of the by-law. The Council or an authorised official can remove an advertising sign under the following conditions:

- **Imminent Danger:** If a sign constitutes an immediate threat to people or property, it can be removed **without notice**⁹.
- **Disrepair and Neglect:** If an owner fails to maintain a sign so that it becomes unsightly or unsafe, the Council can serve a notice for removal or repair. If not addressed, the Council will remove it at the owner’s expense¹⁰.

- **Withdrawal of Approval:** The Council may make a decision to withdraw approval and order the removal of the sign if the sign becomes detrimental to the area due to size, illumination intensity, or poor design¹¹. Prior to making any decision on the withdrawal of the approval of a sign, the council must notify the owner in writing of their proposed decision, and the owner is afforded 21 days to make written representation concerning the proposed decision¹².
- **Unauthorized Alterations:** Any sign altered, removed, or re-erected without new written approval is subject to enforcement as contemplated in the general application stated above¹³.
- **Lapsed Approval:** For hoarding signs, if no advertisement is displayed and the owner fails to comply with a written notice to display a community message from the council, the approval lapses, which may ultimately lead to removal in line with the withdrawal procedure¹⁴.

COSTS AND RECOVERY

If the Council removes a sign, they may recover all **costs for removal and storage** from the owner or the person whose activity is displayed on the sign¹⁵. If an advertising sign has been removed in terms of section 29(3), an authorised official must in writing give notice to the owner of that sign, if his or her address can be ascertained, of such removal and that he or she may claim the advertising sign concerned¹⁶.

Any advertising sign which has been removed and stored in terms of the By-laws may be released to its owner subject to payment of a prescribed fee¹⁷. Signs not claimed within **30 days** of impoundment may be destroyed or disposed of¹⁸. The council is also indemnified against claims for loss and damage of any advertising sign that has been removed¹⁹.

CASE LAW ANALYSIS

In reading the by-law, it becomes evident that it does not provide the Council with the authority to obtain a court order for the legal removal of advertising signs. In fact, the by-law places more emphasis on the provision of notice periods, and in some instances, it specifies that no notice is required for the Council to remove such signage. However, the courts tasked with interpreting these by-laws and assessing the constitutionality of their provisions have taken a different approach.

In **Midvaal**²⁰, the court established that **all persons** must respect public order by following appropriate conflict resolution channels²¹. The court further stressed that everyone is obligated to refrain from taking the law into their own hands. Following the judgment in **Ngqokumba**²², the court in Midvaal confirmed that the spoliation remedy can be applied against all parties,

including **government entities**, that resort to self-help, as this undermines due process²³.

In **Kena Media**²⁴, the court highlighted the emphasis of the need for a court order as it referenced the court in **African Billboard**²⁵, which stated that in terms of interpretation, courts would require the by-law to contain a provision explicitly **permitting** or **empowering** the Council to remove advertising signs without a court order²⁶. This means that if the by-law does not clearly authorise the removal of advertising sign without first obtaining a court order, it would be unlawful for the Council to do so. As a result, the person who has been dispossessed could pursue the **spoliation remedy**.

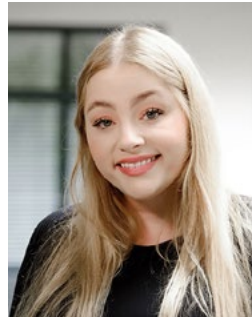
It's important to note that in **African Billboard**, as referenced in **Kena**, the court also noted the acknowledgment that there are situations in which an advertising sign could **pose a danger** to the public, as indicated in the by-law²⁷. The court further stated that in such cases, immediate removal of the sign may be necessary²⁸. However, the court also suggested that the Municipality should consider amending the by-law to allow for a **court approach** in all other instances, **except** where the immediate removal of the sign is required to ensure public safety and protection²⁹.

One common defence raised by municipalities against spoliation is the **defence of impossibility**. This defence applies when the Council, in removing an advertising sign, destroys it in such a manner that it **cannot** be restored to its original state or location³⁰. In such cases, the courts **would not grant** the spoliation remedy since restoration would be impossible³¹. **However**, this does not absolve the Council of accountability as it could be up to the courts discretion what kind of alternative remedy could be afforded to the dispossessed individual³².

CONCLUSION

In conclusion, the cases analyzed herein have set out precedence that law and order are of paramount importance and need to be adhered to by all persons at all times. It is clear that the removal of advertising signs by the Municipal Council without following due process in obtaining a court order is unlawful as it amounts to self-help. If you are faced with such a situation, it is advisable that you seek legal advice on your specific situation to better understand the options you have at your disposal. For further and comprehensive assistance, you may contact the HBGSchindlers Attorneys public law department at public@hbgschindlers.com.

¹Section 3(1): Approval of advertising signs.
²Section 3(2): Approval of advertising signs.
³Section 6(1): General requirements for advertising signs; Section 9: Prohibited signs.
⁴Section 6(1)(a): General requirements for advertising signs.
⁵Section 6(1)(a): General requirements for advertising signs.
⁶Section 6(1)(b): General requirements for advertising signs.
⁷Section 9(h): Prohibited signs.
⁸Section 9: Prohibited signs.
⁹Section 29(3): Maintenance of signs
¹⁰Section 29(2): Maintenance of signs
¹¹Section 5(1): Withdrawal and amendment of approvals.
¹²Section 5(2): Withdrawal and amendment of approvals.
¹³Section 3: Approval of advertising signs.
¹⁴Section 29(4): Maintenance of signs.
¹⁵Section 30(1): Costs of removal and storage.
¹⁶Section 30(2): Costs of removal and storage.
¹⁷Section 30(3): Costs of removal and storage.
¹⁸Section 30(4): Costs of removal and storage.
¹⁹Section 30(5): Costs of removal and storage.
²⁰*Midvaal Local Municipality v Meyerton Golf Club* (A3038/14) [2014] ZAGPJHC 256 (15 October 2014).
²¹Para 8 of (n 20) above.
²²*Ngqukumba v Minister of Safety and Security and Others* 2014 (5) SA 112 (CC).
²³Para 9 of (n 20) above.
²⁴*Kena Media (Pty) Ltd v Mangaung Metropolitan Municipality* [2022] 4 All SA 791 (FB).
²⁵*African Billboard Advertising (Pty) Ltd v North and South Central Local Councils, Durban* 2004 (3) SA 223 (N).
²⁶Para 57 of (n 24) above.
²⁷Para 63 of (n 24) above.
²⁸Para 63 of (n 24) above.
²⁹Para 63 of (n 24) above.
³⁰*Tshepo Gugu CC v City of Ekurhuleni Metropolitan Municipality and Another* (A5073/2021; 2020/21400) [2022] ZAGPJHC 776 (13 September 2022) at para 40.
³¹Para 47 of (n 30) above.
³²*Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality* 2007 (6) SA 511 (SCA).



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