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By-law Relating to the Management and Administration of the City of Cape Town's Immovable Property

WHEREAS the municipality of the City of Cape Town is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996, (Act 108 of 1996);

AND WHEREAS the municipality in the exercise of its functions has the right to acquire, lease, manage, let and alienate immovable property and rights in immovable property,

Be it therefore enacted by the City of Cape Town as follows:

1. Definitions

In this by-law, unless inconsistent with the context—

"advertise" means the giving of adequate notice of the nature and purpose including the material substance of the proposed administrative actions, by publishing a notice in the press, and where deemed necessary by the Council, any additional form of notice, which may include-

- (a) serving of a notice, or
- (b) displaying on a notice board, or
- (c) holding a public meeting;

"alienate" means to part with ownership of immovable property in favour of another person with the intention of transferring the ownership of the immovable property to the acquirer thereof;

"close" in relation to a public street or public place, means to close for all purposes or to vehicular or pedestrian traffic only;

"Council" means the council of the municipality and includes any sub-council, committee, functionary, councillor, or official, acting under delegated authority;

"municipal immovable property" means

- (a) immovable property and real rights registered in the name of the municipality;
- (b) immovable property and real rights the municipality is entitled to have registered in its name; and
- (c) any other immovable property which, by law vests in municipality;

"municipality" means the Municipality of the City of Cape Town;

"municipal area" means the area under the jurisdiction and control of the municipality;

"prescribe" means a policy approved by council and published in the Provincial Gazette;

"public place" means any land or portion thereof indicated on an approved plan, diagram or map as a public place of which ownership as such vests in the municipality, and

"public street" means

- (a) any street which has at any time been—
 - (i) used without interruption by the public for a period of at least thirty year
 - (ii) declared or rendered such by the Council or other competent authority;
 - (iii) constructed by the municipality, or
 - (iv) constructed by someone other than the municipality and which vests in municipality;
- (b) any land, with or without buildings or structures thereon, which is shown as a street on—
 - (i) any plan of subdivision or diagram approved by the Council or other competent authority and acted upon, or
 - (ii) any plan or diagram as defined in section 15 of the Land Survey Act, 1957 (Act 8 of 1957), registered or filed in the office of the Registrar of Deeds or the Surveyor-General's office,

unless such land is on such plan or diagram described as a private street.

2. Ownership of public places and public streets

The ownership of immovable property to which the community of the municipal area has or may acquire a common right and all public places and public streets and the land comprised in such places and streets vest in the municipality.

3. Acquisition of immovable property and rights in immovable property

- (1) The Council may acquire immovable property and rights in immovable property within or outside its municipal area by purchase, expropriation, exchange, donation, gift, lease or otherwise.
- (2) The Council may expropriate immovable property in terms of the Expropriation Act

(Act 63 of 1975), or any other applicable legislation, provided that such expropriation shall be for public purposes or in the interest of the public.

4. Alienation and letting

- (1) The Council may alienate or let municipal immovable property under such conditions, terms and circumstances as it may prescribe.
- (2) Unless permitted or prescribed otherwise, the Council shall not alienate or let municipal immovable property below market value.
- (3)
 - (a) The Council shall advertise its intention to alienate or let municipal immovable property and shall invite the public to lodge written comments.
 - (b) The provisions of paragraph (a) shall not apply when municipal immovable property is let for a period not exceeding 12 (twelve) months without a renewal option.
 - (c) Where:
 - (i) no comments were lodged, the municipal immovable property may be alienated or let, or
 - (ii) comments were lodged, the council shall consider every comment and decide whether or not to alienate or let the municipal property.
- (4) The council shall record its reasons for the alienation or letting of municipal immovable property in terms of this by-law.
- (5) No lessee of municipal immovable property shall without the prior consent in writing of the council, sublet such property or any portion thereof or assign any right acquired by him in respect thereof and any such subletting or assignment without such consent shall, as against the council, be null and void.

5. Servitudes and encroachments

The council may grant servitudes and permit projections, projecting structures and encroachments in, on, over or under municipal immovable property at a tariff determined by the Council and on such terms and conditions as it may prescribe.

6. Closure of public places and public streets

- (1) The council may close public places and public streets or any portion of such places or streets only after it has—
 - (a) advertised its intention to do so , and
 - (b) considered and rejected any objection lodged, if any, in accordance with such

advertisement and recorded in writing its reasons therefor.

- (2) Notwithstanding the provisions of paragraph (a), the council may temporarily close a public place or public street.

7. Prescriptive claims

The council may, if written proof to its satisfaction is submitted that any person has, prior to the expiration of the period of ten years contemplated by section 1 of the Prescription (Local Authorities) Ordinance, 1964 (Ordinance 16 of 1964), by prescription acquired the ownership of immovable property owned by the municipality or of any right in or over such property, admit or concede any claim to that effect by such person.

8. Date of commencement

This by-law shall commence on the date of publication.