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Stormwater Management By-law

1. Definitions

In this by-law, unless inconsistent with the Context: --

"Council" means the municipal council of the City of Cape Town, or any political structure, political office-bearer, committee, councilor, or official of the council, delegated to exercise powers or perform duties in terms of this by-law;

"floodplain" means the land adjoining a watercourse which, in the opinion of the Council, is susceptible to inundation by floods up to the one hundred year recurrence interval;

"private stormwater system" means a stormwater system owned, operated or maintained by a person other than the Council;

"stormwater" means water resulting from natural precipitation and/or the accumulation thereof and includes groundwater and spring water ordinarily conveyed by the stormwater system, as well as sea water within estuaries, but excludes water in a drinking water or waste water reticulation system;

"stormwater system" means both the constructed and natural facilities, including pipes, culverts, watercourses and their associated floodplains, whether over or under public or privately owned land, used or required for the management, collection, conveyance, temporary storage, control, monitoring, treatment, use and disposal of stormwater;

"water pollution incident" means an incident or occurrence which has a detrimental impact on a potential detrimental impact on the quality of the water in the stormwater system to such an extent that public health or the health of natural ecosystems may be threatened, and

"watercourse" means: -

- (a) a river, spring, stream, channel or canal in which water flows regularly or intermittently, and
 - (b) a vlei, wetland, dam or lake into which or from which water flows,
- and includes, where relevant, the bed and the banks of such watercourses.

2. Application

- (1) This by-law binds any organ of state.
- (2) Any provision in any other by-law dealing specifically with stormwater, is subject to the provisions of this by-law.

3. Prohibited discharges

No person may, except with the written consent of the Council and subject to any conditions it may impose, discharge, permit to enter or place anything other than stormwater into the stormwater system.

4. Protection of stormwater system

No person may, except with the written consent of the Council and subject to any conditions it may impose-

- (a) damage, endanger, destroy or undertake any action likely to damage, endanger or destroy, the stormwater system or the operation thereof;
- (b) discharge from any place, or place onto any surface, any substance other than stormwater, where that substance could reasonably be expected to find its way into the stormwater system;
- (c) discharge, permit to enter or place anything likely to damage the stormwater system or interfere with the operation thereof or contaminate or pollute the water therein;

- (d) construct or erect any structure or thing over or in such a position or in such a manner so as to interfere with or endanger the stormwater system or the operation thereof; or
- (e) make an opening into a stormwater pipe, canal or culvert; or
- (f) drain, abstract or divert any water directly from the stormwater system, or
- (g) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the stormwater system.

5. Prevention of flood risk

No person may, except with the written consent of the Council and subject to any conditions it may impose-

- (a) obstruct or reduce the capacity of the stormwater system;
- (b) change the design or the use of, or otherwise modify any aspect of the stormwater system which, alone or in combination with other existing or potential land uses, may cause an increase in flood levels or create a potential flood risk; or
- (c) undertake any activity which, alone or in combination with other existing or future activities, may cause an increase in flood levels or create a potential flood risk.

6. Studies and assessments

- (1) The conditions which the Council may impose in terms of Sections 3, 4, and 5, may include, but are not limited to -
 - (a) the establishment of flood lines;
 - (b) the undertaking of impact assessments, and
 - (c) environmental impact studies or investigations which may be required by any applicable environmental legislation.
- (2) The costs of any study undertaken in terms of the provisions of subsection (1), will be for the account of the applicant.

7. Water pollution incidents

In the event of an incident contemplated in Section 3 or Section 4(b) and (c) -

- (a) the owner of the property on which the incident took place, or is still in the process of taking place, or
- (b) the person responsible for the incident, if the incident is not the result of natural causes,

shall immediately report the incident to the council, and at own cost, take all reasonable measures which, in the opinion of the Council, will contain and minimise the effects of the pollution, by undertaking cleaning up procedures, including the rehabilitation of the environment, as required by the Council.

8. Stormwater systems on private land

- (1) Every owner of property on which private stormwater systems are located, shall-
 - (a) not carry out any activity which will or which, in the opinion of the Council, could reasonably be expected to impair the effective functioning of the stormwater system, and
 - (b) at own cost, keep such stormwater systems functioning effectively, including undertaking the refurbishment and reconstruction thereof if, in the opinion of the Council, it should be reconstructed or refurbished.
- (2) The provisions of subsection (1) do not apply to the extent that the Council has accepted responsibility for any of the duties contained therein, either in a formal maintenance agreement or in terms of a condition of a servitude.

9. Provision of infrastructure

- (1) The Council may-
 - (a) construct, expand, alter, maintain or lay any drains, pipes or other structures related to the stormwater system on or under any immovable property, and ownership of these drains, pipes or structures shall vest in the municipality;
 - (b) drain stormwater or discharge water from any municipal service works into any natural watercourse, and
 - (c) do any other thing necessary or desirable for or incidental, supplementary or ancillary to any matter contemplated by subsection (a).
- (2) When the Council exercises its powers in terms of subsection (1)(a) in regard to immovable property not owned by the municipality, it shall comply with the provisions of the By-law Relating to the Management and Administration of the City of Cape Town's immovable Property.

10. Powers of the council

- (1) The Council may-
 - (a) demolish, alter or otherwise deal with any building, structure or other thing constructed, erected or laid in contravention of the provisions of this by-law;
 - (b) fill in, remove and make good any ground excavated, removed or placed in contravention with the provisions of this by-law;
 - (c) repair and make good any damage done in contravention of the provisions of this by-law or resulting from contravention;
 - (d) remove anything discharged, permitted to enter into the stormwater system or natural watercourse in contravention of the provisions of this by-law;
 - (e) remove anything damaging, obstructing or endangering or likely to obstruct, endanger or destroy any part of the stormwater system;
 - (f) seal off or block any point of discharge from any premises if such discharge point is in contravention of the provisions of this by-law, irrespective of whether the point is used for lawful purposes;
 - (g) cancel any permission granted in terms of this by-law if the conditions under which the permission was granted are not complied with;
 - (h) by written notice, direct any owner of property to allow the owner of a higher lying property to lay a stormwater drain pipe or gutter over his or her property for the draining of concentrated stormwater,
 - (i) by written notice, direct any owner of property to retain stormwater on such property or, at the cost of such owner, to lay a drain pipe or gutter to a suitable place indicated by the Council, irrespective of whether the course of the pipe or gutter will run over private property or not, and
 - (j) discharge stormwater into a watercourse, whether on private land or not.
- (2) The Council may, in any case where it seems that any action or neglect by any person or owner of property may lead to a contravention of the provisions of this by-law, give notice in writing to such person or owner of property to comply with such requirements as the Council may deem necessary to prevent the occurrence of such contravention.
- (3) The Council may recover all reasonable costs incurred as a result of action taken in terms of subsection (1) from a person who was responsible for a contravention of the provisions of this by-law or the owner of the property on which a contravention occurred.

11. Offences and penalties

- (1) Any person who-

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- (a) contravenes any provision of this by-law;
- (b) fails to comply with the terms of any notice issued in terms of this by-law;
- (c) threatens, resists, hinders or obstructs or uses foul, abusive or insulting language towards or at a council or an employee or contractor of the Council in the exercise of any powers or performance of any duties or function in terms of this by-law, or falsely holds himself or herself to be a councillor or an employee or a contractor of the Council,

shall be guilty of an offence and be liable, on conviction, to the payment of a fine.