

THEEWATERSKLOOF MUNICIPALITY
STORM WATER MANAGEMENT BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Municipal Council of the Theewaterskloof Municipality, hereby enacts as follows:

PREAMBLE

The purpose of this by-law is to regulate storm water management and related activities in the area of jurisdiction of the Theewaterskloof Municipality, that may have an adverse impact on the development, safety and well-being of the community, and to provide for matters related thereto and the maintenance and / or operation of storm water systems.

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1. INTERPRETATION

In this by-law, the English text prevails in the event of any conflict with the Afrikaans text, and unless the context indicates otherwise –

“authorized official”, means any peace officer authorized in terms of section 334 of the Criminal Procedures Act, 1977 (Act No 51 of 1977), as amended, or any employee of the Theewaterskloof Municipality, who is authorized by the Theewaterskloof Municipality to enforce the provisions of this by-law;

“built-up area”, means the portions of the area of jurisdiction of a municipality, which by actual survey have been subdivided into erven or is surrounded by

surveyed erven, and includes the public roads abutting such erven or an area where there is a permanent concentration of people, buildings and other man-made structures;

“development”, means the construction of a building or a structure on a vacant premises;

“flood plain”, means the land adjoining a watercourse, which is predisposed to flooding at a hundred year recurrence interval;

“Municipality”, means the Theewaterskloof Municipality, and includes reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Theewaterskloof Municipality;

“organ of state”, means -

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution –
 - (i) exercising a power or performing a function in terms of the Constitution of the Republic of South Africa, 1996 or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation,

but does not include a court or judicial officer;

“owner”, means with regard to property, the registered owner of a property, who can be either or a natural or a juristic person, and include the occupant, lessee, holder of a servitude right, holder of a land tenure right, holder of a letter of land rights, trustee, executor, curator or appointed agent or administrator of a property;

“pollute”, bears the meaning assigned to it in the National Water Act, 1998 (Act No 36 of 1998), as amended;

“premises”, means any portion of land situated within the area of jurisdiction of the Theewaterskloof Municipality, of which the outer boundaries are demarcated on a general plan or a diagram or a sectional title plan registered in accordance with applicable legislation;

“pollute”, bears the meaning assigned to it in the National Water Act, 1998 (Act No 36 of 1998), as amended;

“private storm water system”, means a storm water system which is owned, operated or maintained by a person or an entity, and not the Theewaterskloof Municipality;

“**public place**”, means any premises or property or land, under the control of the Theewaterskloof Municipality, to which the public have access, and includes, but are not restricted to: any square; building; park; recreational area; sports grounds; open space; nature reserve; municipal street, alley or road reserve; public road; parking area, municipal commonage; unused, used, build-up or vacant municipal land; or a cemetery;

“**public road**”, means any public road as referred to in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996), as amended, and includes any municipal road, alley or road reserve;

“**public storm water system**”, means a storm water system which is owned, operated and maintained by the Theewaterskloof Municipality;

“**storm water**”, means water accumulated as a result of natural rainfall, and includes ground water and spring water, ordinarily conveyed by a storm water system, but excludes potable water in a drinking water reticulation system or grey water in a waste water system;

“**storm water system**”, means both constructed systems and natural watercourses, including, but not limited to, roadways, hardened surfaces, pipes, culverts, channels, waterways, natural watercourses and their associated floodplains, whether over or under public or privately owned property, used or required for the management, collection, conveyance, temporary storage, control, monitoring, use or disposal of storm water;

“**watercourse**”, has the meaning assigned to it in the National Water Act, 1998 (Act No 36 of 1998), as amended;

2. APPLICATION OF BY-LAW

This by-law shall be –

- (a) binding on the owner of any premises in a built-up area;
- (b) binding on any organ of state; and
- (c) applicable for storm water systems in built-up areas.

3. PROHIBITED CONDUCT

- (1) No person may, except with the written consent of the Municipality –
- (a) drain, discharge, dispose or permit the draining, discharging or disposal of –
 - (i) anything other than water;
 - (ii) anything likely to damage a storm water system or interfere with the operation thereof;
 - (iii) anything likely to pollute the water in a storm water system, into a storm water system;
 - (b) drain or discharge from any place, or drain or discharge onto any hard surface, any substance other than water, where that substance could reasonably be expected to drain into a storm water system;
 - (c) drain or discharge any storm water into a sanitation system; or
 - (d) undertake any action that is likely to impair, alter or limit the free flow of water in a storm water system, or interfere with the operation or the maintenance of a storm water system as such, which actions may include, but are not limited to -
 - (i) obstructing or reducing the capacity of a storm water system;
 - (ii) opening a pipe, culvert or canal which forms part of a storm water system;
 - (iii) constructing or erecting any structure or object in such a way or in such a manner, that it may endanger or interfere with a storm water system or the operation thereof;
 - (iv) abstracting or diverting any water directly from a storm water system or to drain any water directly into a storm water system;
 - (v) filling, excavating or landscaping the soil above, within, under or immediately next to any part of a storm water system;
 - (vi) changing the design or the use of, or otherwise modify any part of a storm water system, which in itself or in combination with other existing or potential land uses, may cause an increase in storm water volumes and a change in flood levels, or create a potential flood risk; or
 - (vii) any activity which in itself or in combination with other existing or proposed activities, may cause an increase in storm water volumes and a change in flood levels, or create a potential flood risk.
- (2) When any incident occurs or any unauthorized action has been undertaken, as contemplated in subsection 3(1)(a), 3(1)(b), 3(1)(c) or 3(1)(d) of this by-law, without the written consent of the Municipality –
- (a) when the incident is not the result of natural causes, the person responsible for the incident; or

- (b) the owner of the premises, on which the incident or action occurred or took place or is occurring or is taking place,

shall immediately report the occurrence to the Municipality and undertake at own cost, all reasonable measures to contain and / or minimize the effects of the incident or the action, which measures may include, but are not limited to the undertaking of cleaning-up operations, the repair of damaged water courses and / or storm water systems, and the rehabilitation of the environment.

4. APPLICATIONS FOR CONSENT

- (1) Any person who wishes to obtain the consent of the Municipality as contemplated in subsection 3(1) of this by-law, shall submit an application for consent, on the prescribed form obtainable from the Municipality.
- (2) The Municipality may in writing, after consideration of an application –
- (a) grant a consent, with or without any pre-determined conditions; or
 - (b) refuse approval of any approval for consent, and provide the reasons therefore to the applicant.
- (3) When considering an application for consent, the Municipality may require from an applicant to provide the Municipality, at the cost of the applicant, with environmental studies, structural engineering designs and environmental impact assessments, as required by statutory stipulations.
- (4) The Municipality may also require from an applicant to determine and document the flood lines applicable for a premises.

5. STORM WATER SYSTEMS ON PRIVATE PROPERTY

- (1) The owner of a premises on which a private storm water system is located –
- (a) shall not carry out or undertake any activity or action which may impair the effective functioning of the public storm water system or which could reasonably be expected to impair the effective functioning of the public storm water system, into which accumulated storm water of the premises concerned, is drained, disposed or discharged; and
 - (b) shall at the cost of the owner keep such private storm water system functioning effectively, including undertaking on written instruction by the Municipality, the refurbishment and reconstruction of such a private storm water system, when deemed necessary by the Municipality.

- (2) Subsection 5(1)(b) of this by-law, does not apply where the Municipality has accepted responsibility for any of the maintenance and / or operational duties for a private storm water system, as contained in an approval for consent or a maintenance agreement or in terms of the conditions of a servitude.
- (3) When an owner of a premises fail or refuse to comply with an instruction issued by the Municipality in terms of subsection 5(1)(b) of this by-law, the Municipality may undertake the required work, and the Municipality may recover from the owner of the premises involved, all reasonable costs incurred as a result of actions undertaken.

6. POWERS OF THE MUNICIPALITY

- (1) An authorized official of the Municipality may at all reasonable times enter any premises or any portion thereof, with the aim of carrying out any inspection or test to determine the current status of a storm water system, or for purpose of the repair of a storm water system.
- (2) The Municipality may for the purpose of managing, operating and maintaining infrastructure for a storm water system –
- (a) construct, expand, alter, maintain or install any drain, pipe or other structure related to a storm water system on or under any premises, and may undertake any other actions necessary or desirable or incidental or supplementary or ancillary to such construction, expansion, alteration or maintenance of such a storm water system;
 - (b) drain or discharge storm water from any municipal storm water system into any watercourse;
 - (c) repair any damage resulting from contraventions of this by-law, by –
 - (i) demolishing, altering or otherwise dealing with any building, structure or any other object constructed, erected or installed; and
 - (ii) back-filling any soil excavated, and removing any filling of soil;
 - (d) remove from a storm water system, anything –
 - (i) drained, discharged, disposed or spilled into such a storm water system, and considered to be undesirable; and
 - (ii) that may damage or endanger any part of a storm water system;
 - (e) seal or block off any point of discharge from any premises into a storm water system;
 - (f) cancel any consent granted by the Municipality in terms of section 4 of this by-law, when any condition in terms of which a consent was granted has not been complied with;

- (g) by written notice and with mutual consent from adjoining and affected property owners instruct any owner of a premises –
 - (i) to retain storm water on such premises or to install at the cost of such an owner, a storm water drain pipe or storm water drain gutter on a suitable place indicated by the Municipality, irrespective whether such drainage pipe or drainage gutter shall run over private property or not; or
 - (ii) to allow the owner of another higher lying premises to install a storm water drain pipe or storm water drain gutter over his or her property, for the draining of concentrated storm water from the higher lying property concerned; and
 - (h) discharge storm water into any watercourse, whether on private or public property or not.
- (3) When an owner of a premise fail to comply with an instruction as contemplated in subsection 6(2)(g) of this by-law, the Municipality may undertake any measures required, to retain such storm water or to install such storm water drain pipes or storm water drain gutters.
- (4) When it can be determined without reasonable doubt, that any actions or neglect by a person or an owner of a premises, may lead to a contravention of the provisions of this by-law, the Municipality may in writing notify such person or owner of a premises to comply with any such requirement as may be necessary to prevent the occurrence of such a contravention.
- (5) The Municipality may recover all reasonable costs incurred as a result of actions taken –
- (a) in terms of subsections 6(2)(c) or 6(2)(d) of this by-law, from the person who was responsible for a contravention of the provisions of this by-law or the owner of the premises on which a contravention occurred; or
 - (b) in terms of subsection 6(3) of this by-law, from the owner of a premises.
- (6) The ownership of any drain, pipe or structure installed or constructed in terms of subsection 6(2)(a) of this by-law, shall be vested in the Municipality, irrespective whether such drain, pipe or structure is on private or public property.

7. LEVIES FOR STORM WATER

- (1) When an owner of a premises or any person acting on behalf of any owner of property, submits an application for the development or rezoning or subdivision of any premises, or for special consent in relation to the use of any premises, which –
- (a) necessitates the installation of storm water infrastructure on such premises; or

(b) when the development of a premises as a result of a projected increase in volumes of storm water, shall increase the burden on an existing storm water system,

the Municipality may levy a once off storm water services development levy for such premises.

(2) The levy referred to in subsection 7(1) of this by-law shall be payable by the owner of a premises, on such terms and conditions as may be determined by the Municipality, when approving the rezoning, subdivision or an application for special consent, and such levy shall be determined in terms of the Tariff By-law of the Theewaterskloof Municipality.

(3) The levy referred to in subsection 7(1) of this by-law, shall be payable by the owner of a premises to the Municipality within a period and on such conditions, as may be determined by the Municipality.

8. WATER DISCHARGES

No person may without the written permission of the Municipality, discharge or cause the discharge of any water from a swimming pool or a fountain or a water reservoir or any dam, either directly or indirectly into any public storm water system, sanitation system, public road or onto any public place or any premises, other than onto the premises upon which such pool, fountain, water reservoir or dam are situated.

9. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended, by giving written notice of the appeal against such a decision and the reasons for the appeal to the Municipal Manager, within twenty one (21) days of the date of the notification of the decision.

10. APPLICATION FOR EXEMPTIONS

(1) Any person may by means of a written application, in which the reasons for the application for exemption are stated, apply to the Municipality for exemption from any provision of this by-law.

(2) The Municipality may –

(a) grant an exemption in writing, and stipulate in writing in such exemption, the conditions and period in terms of which such exemption shall be granted, as applicable;

- (b) alter or cancel any exemption or condition for an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all the conditions imposed by the Municipality, as contemplated in subsection 10(2) of this by-law, and when any action or activity related to the exemption applied for, is commenced before such undertaking has been submitted to the Municipality by the applicant, the exemption granted shall lapse.
- (4) When any condition of an exemption is not complied with, the exemption granted shall lapse immediately.

11. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by-law, is deemed to be duly issued, when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively served –
- (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic of South Africa, with a person apparently older than sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic of South Africa, and proof of the posting thereof is provided;
 - (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 11(2)(a), 11(2)(b) or 11(2)(c) of this by-law;
 - (e) if that person's address and agent or representative in the Republic of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of the body corporate.
- (3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purpose of the serving of the notice, instruction, letter of demand or other document, to describe the person in the notice, instruction, letter of demand

or other document, as the owner, occupant, or holder of the property or rights in question, and it is not a requirement to name that person.

- (4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

12. OFFENCES AND PENALTIES

Any person who -

- (a) fails to comply with the instructions of an authorized official issued in terms of this by-law or a notice posted on a notice board;
 - (b) fails to comply with any notice served in terms of this by-law;
 - (c) contravenes any provision of this by-law; or
 - (d) deliberately obstructs an authorized official in the execution of his or her duties in terms of this by-law,
- is guilty of an offence and is liable on conviction, for –
- (i) a fine or imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment;
 - (ii) in the case of a successive or continuing offence, to an additional fine or additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment, for every day such offence continues; and
 - (iii) any further amount as an order of court for costs, equal to any costs and / or expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

13. CONFLICT BETWEEN LEGISLATION

When any stipulation of this by-law, is in conflict with national and provincial legislation or regulations, the national and provincial legislation or regulations shall prevail.

14. REPEAL OF BY-LAWS

- (1) The provisions of any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the Municipality are hereby repealed as far as they relate to matters provided for in this by-law.

(2) The following by-law of the Theewaterskloof Municipality is hereby specifically repealed –

Name of by-law	Date published	As a whole or partially
Storm Water Management Bylaw	PG 7020 dated 5 October 2012	As a whole

15. SHORT TITLE

This by-law shall be called the Storm Water Management By-law of the Theewaterskloof Municipality.

16. OPERATIVE DATE

This by-law shall take effect on the date of publication.