

BY-LAW RELATING TO STORM-WATER MANAGEMENT#

PREAMBLE

WHEREAS a municipality, in terms of Section 156(1) (a) and (b) of the Constitution of the Republic of South Africa, 1996, has the executive authority in respect of, and right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5, and any other matters assigned to it by national or provincial legislation.

WHEREAS a municipality may, in terms of Section 156(2) of the Constitution of the Republic of South Africa, 1996, make and administer by-laws for the effective administration of the matters which it has the right to administer;

WHEREAS it is the intention of the Mangaung Metropolitan Municipality to provide, plan, control, regulate and maintain storm-water systems in built-up areas within the jurisdiction of the Mangaung Metropolitan Municipality;

AND NOW THEREFORE, BE IT ENACTED by the Council of the Mangaung Metropolitan Municipality, as follows:

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1. Definitions

1.1 In this by-law, unless the context otherwise indicates –

“built-up area” means that portion of the area of jurisdiction of a municipality which has by actual survey been subdivided into erven or farms or is surrounded by surveyed erven or farms, and includes the public roads abutting thereon or an area where there is a permanent concentration of people, buildings and other man-made structures and activities;

“Council” means the Municipal Council of the Mangaung Metropolitan Municipality;

“engineer” means the person appointed by the municipality to act as engineer for the purpose of administering this by-law;

“flood level” means that level reached by flood waters resulting from a storm designated in terms of recognised engineering criteria as being of a frequency to be expected once in every 50 years;

“flood plain” means the area subject to inundation by the flood level;

“Municipality” means the Mangaung Metropolitan Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, No 117 of 1998 (as amended) under the Free State Provincial Notice No. 155 of 2016;

“private storm water system” means a storm water system owned, operated or maintained by a person other than the Council;

“storm water” means water resulting from natural precipitation or accumulation and includes rainwater, groundwater and spring water;

“storm water 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 storm water;

"water pollution incident" means an incident or occurrence whereby a substance or matter, other than storm water, is discharged directly or indirectly into the storm water system and which may be a danger to health or may adversely affect the general quality of water in the storm water system to such an extent that public health or the health of natural ecosystems may be threatened, and

"watercourse" means a river, stream, channel or canal in which water flows regularly or intermittently, and a vlei, wetland, dam or lake into which or from which water flows, and includes, where relevant, the bed and the banks of such watercourse.

2. Purpose of By-law

2.1 The purpose of this by-law is to regulate storm-water management and activities that may have an adverse impact on the development, operation and maintenance of the storm-water system.

3. Application of By-law

3.1 This by-law –

- (a) applies to all persons, natural and juristic persons; and
- (b) applies to storm-water systems in built-up areas.

3.2 In the application and enforcement of this by-law, the Municipality may take into consideration the realities of the Municipality area, the different customs, cultures, circumstances, geographical areas, kinds of premises, levels of development and conventions, and the Municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines, and the granting of exemptions.

4. Prohibited Conduct

4.1. No person may, except with the written consent of the engineer and subject to any conditions the engineer may impose, discharge, permit to enter or place anything other than storm water into the storm water system.

5. Protection of Storm-water System

5.1. No person may, except with the written consent of the engineer and subject to any conditions the engineer may impose-

- (a) damage, endanger, destroy or undertake any action likely to damage, endanger or destroy, the storm water system or the operation thereof;

- (b) discharge from any place, or place onto any surface, any substance other than storm water, where that substance could reasonably be expected to find its way into the storm water system;
- (c) discharge, permit to enter or place anything likely to damage the storm water 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 storm water system or the operation thereof;
- (e) make an opening into a storm water pipe, canal or culvert;
- (f) drain, abstract or divert any water directly from the storm water system, or
- (g) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the storm water system.

6. Prevention of Flood Risk

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

- (a) obstruct or reduce the capacity of the storm water system;
- (b) change the design or the use of, or otherwise modify any aspect of the storm water system which, alone or in combination with other existing or future 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.

7. Studies and Assessments

7.1 The conditions which the engineer may impose in terms of Sections 4, 5, and 6, 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.

7.2 The costs of any study undertaken in terms of the provisions of subsection (7.1), is for the account of the applicant.

8. Water Pollution Incidents

- 8.1 Whenever a water pollution incident takes place on any property or premises-
- (a) the owner of the property or premises 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, must immediately report the incident to the municipality, and at own cost, take all reasonable measures which will contain and minimise the effects of the pollution.
- 8.2 If the owner or person responsible for the pollution incident fails to introduce measures to contain and minimise the effects of the pollution or have introduced insufficient measures, the engineer may at the cost of such owner or person-
- (a) undertake cleaning up procedures;
 - (b) rehabilitate the environment;
 - (c) take any other reasonable measures to neutralise the effect of the pollution incident.

9. Storm-water Systems on Private Land

- 9.1 An owner of property on which a private storm water system is located-
- (a) may not carry out any activity which will or which, in the opinion of the engineer, will adversely affect the functioning of such storm water system;
 - (b) must keep such storm water system functioning effectively; and
 - (c) must undertake the refurbishment and reconstruction thereof if, in the opinion of the engineer, it should be reconstructed or refurbished.
- 9.2 In cases where the flow of storm water in a private storm water system has been increased as a result of new building developments or changes to the storm water system by the council, the council may, either on request of the owner or on own volition, decide to take over the responsibility for the private storm water system.
- 9.3 The provisions of sub-section (9.1) 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.

10. Provision of Infrastructure

- 10.1. The Council has the power to-

- (a) construct, expand, alter, maintain or lay any drains, pipes or other structures related to the storm water system on or under any immovable property, and ownership of these drains, pipes or structures vests in the municipality;
- (b) drain storm water 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 paragraph (a).

11. Powers of the Municipality

11.1 The municipality may at all reasonable times enter upon 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.

11.2 The engineer may-

- (a) demolish, alter or otherwise deal with any building, structure or other thing constructed, erected or laid in contravention with 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 with the provisions of this by-law or resulting from a contravention;
- (d) remove anything discharged, permitted to enter into the storm water 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 storm water system;
- (f) seal off or block any point of discharge from any premises if such discharge point is in contravention with 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 storm water drain pipe or gutter over his or her property for the draining of storm water;
 - (i) by written notice, direct any owner of property to retain storm water on such property or, at the cost of such owner, to lay a storm water 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 storm water into any watercourse, whether on private land or not.
- 11.3 The engineer 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 to such requirements as the engineer may deem necessary to prevent the occurrence of such contravention.
- 11.4 The engineer may recover all reasonable costs incurred as a result of action taken in terms of subsection (11.2) 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.

12. Application and Conditions which Municipality may Impose

- 12.1 A person who wishes to obtain the consent of the municipality as in section 4, 5 and 6, must submit an application form obtainable from the Municipality.
- 12.2 When considering an application the municipality may require the applicant to provide the Municipality, at own cost, with impact studies such as, but not limited to, environmental impact studies or environmental impact investigations which are required by environmental legislation.
- 12.3 The Municipality may also require the applicant to establish and provide documentation indicating flood lines.

13. Raising of Levies

- 13.1 If an owner of property or any person on behalf of an owner of property submits an application for the development or rezoning or subdivision of any property or for special consent in relation to the use of any property which necessitates the installation of storm water services infrastructure or which may increase the burden on the existing storm water services infrastructure, the municipality may raise a once off storm water services development levy.
- 13.2 The levy referred to in subsection (13.1) shall be payable by the owner upon such terms and conditions as may be determined by the Municipality when

approving the rezoning, subdivision or application for special consent and such levy will be determined in the Municipality's annual schedule of tariffs.

- 13.3 The levy referred to in subsection (13.1) will be payable by the owner to the Municipality within the period and on such conditions as may be imposed by the Municipality.

14. Discharges from Swimming Pools, Fountains or Reservoirs

- 14.1 No person may discharge or cause the discharge of any water from a swimming pool, fountain or reservoir, either directly or indirectly onto any public street or public place, or to any site other than onto the site upon which such pool, fountain or reservoir is situated without the written permission of the Municipality.

- 14.2 Any person who contravenes the provisions of subsection (14.1) is guilty of an offence.

15. Service of Notices and other Documents

- 15.1 Any notice or other document that is served on a person in terms of this by-law is regarded as having been 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 with a person apparently over the age of 16 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, and an acknowledgment of the posting thereof from the postal service is obtained;
- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
- (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates;
- (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or
- (g) when it has been delivered, at the request of that person, to his or her e-mail address.

- 15.2 Service of a copy is deemed to be service of the original.

- 15.3 When any notice or other document must be authorised or served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the

owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

- 15.4 Any legal process is effectively and sufficiently served on the Municipality when it is delivered to the Municipal Manager or a person in attendance at the Municipal Manager's office.

16. Right of Appeal

- 16.1 A person whose rights are affected by a decision of the Municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the Municipal Manager within 21 days of the date of the notification of the decision.

17. Exemptions

- 17.1 Any person may by means of a written application, in which the reasons are given in full, apply to the Municipality for exemption from any provision of this by-law.
- 17.2 The municipality may –
- (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- 17.3 An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the Municipality under subsection (17.2), however, if an activity is commenced before such undertaking has been submitted to the Municipality, the exemption lapses.
- 17.4 If any condition of an exemption is not complied with, the exemption lapses immediately.

18. Offences and Penalties.

- 18.1. Any person who-
- (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 a councillor or an employee or contractor of the Municipality in the exercise of any powers or performance of any duties or function in terms of this by-law, is guilty of an offence and, on conviction, liable to the payment of a fine not exceeding R10 000, 00 or in default of payment, to imprisonment not exceeding one (1) year, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

19. Repeal of By-laws

- 19.1 The provisions of any by-laws previously adopted promulgated by the Council or by any of the disestablished municipalities' Council now incorporated in the Municipality are hereby repealed as far as they relate to matters provided for in this By-law.

20. Short title and commencement

- 20.1 This by-law is called ***Mangaung, Storm-water Management By-law*** and commences into operation on the date of publication thereof in the Provincial Gazette.