

**DRAFT FOR PUBLIC PARTICIPATION**  
**BY-LAW RELATING TO IMMOVABLE PROPERTY**

**PREAMBLE**

**WHEREAS** the metropolitan municipality of the City of Cape Town is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996;

**AND WHEREAS** the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) and the Local Government: Municipal Finance Management Act, 2003 Municipal Asset Transfer Regulations apply to the transfer and disposal of certain immovable property owned by municipalities and the granting by municipalities of rights to use, control or manage certain immovable property;

**AND WHEREAS** the City of Cape Town wishes to deal with certain additional matters in respect of immovable property in a by-law;

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

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1. **DEFINITIONS** – In this by-law, unless inconsistent with the context –

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

“**municipality**” means the metropolitan municipality of the City of Cape Town;

“**municipal area**” means the area under the jurisdiction and control of the municipality;

“**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;

“**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 years;
  - (ii) declared or rendered as such by the municipality or other competent authority;
  - (iii) constructed by the municipality; or
  - (iv) constructed by someone other than the municipality and which vests in the 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 municipality or other competent authority and acted upon; or
  - (ii) any plan or diagram as defined in section 15 of the Land Survey Act, 1997 (Act 8 of 1997), 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. ACQUISITION OF IMMOVABLE PROPERTY AND RIGHTS IN IMMOVABLE PROPERTY**

- (1) The municipality may acquire immovable property and/or rights in immovable property within or outside its municipal area by way of sale, expropriation, acquisitive prescription, donation, gift, lease or otherwise.
- (2) The municipality may expropriate immovable property and/or may take the right to use immovable property temporarily, provided that such power(s) may only be exercised *mutatis mutandis* rights in accordance with the provisions of the Expropriation Act, 1975 (Act 63 of 1975), or any other applicable legislation, provided that such expropriation shall be for public purposes or in the public interest and subject to the payment of compensation.

## **3. 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.

## **4. CLOSURE OF PUBLIC PLACES AND PUBLIC STREETS**

- (1) The municipality 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 municipality may temporarily close a public place or public street.

## **5. PRESCRIPTIVE CLAIMS**

Notwithstanding any rule of the law to the contrary, immovable property owned by the municipality shall not be capable of being acquired by any person by prescription.

## **6. DATE OF COMMENCEMENT**

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

## **7. REPEAL**

This by-law shall, with effect from the date of commencement, repeal the By-Law Relating to the Management and Administration of the City of Cape Town's Immovable Property published in the Provincial Gazette 5988 of 28 February 2003.