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**CITY OF CAPE TOWN
COASTAL BY-LAW, 2020**

DRAFT BY-LAW

To provide for measures for managing and protecting the coastal zone; protecting the natural environment of the coastal zone; managing public access to the coastal zone; manage, control and regulate public access and behaviour at beaches and beach areas; and to provide for matters incidental thereto.

PREAMBLE

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

WHEREAS the City has legislative and executive competence relating to matters such as, but not limited to, municipal planning, building regulations, use of and access to beaches, and nuisance, as pertaining to the coastal zone;

WHEREAS in terms of Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996, the City has legislative competence relating to pontoons, ferries, jetties, piers and harbours;

WHEREAS in terms of Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996, the City has legislative competence relating to beaches and amusement facilities, local amenities, noise pollution, and traffic and parking;

WHEREAS the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008), affords coastal municipalities the powers to administer matters contemplated in sections 18(1), 20(2) and 50 of the said Act;

AND WHEREAS there is a need to develop legislation to govern the access to and use of beaches and the coastal areas within the jurisdiction of the City.

NOW THEREFORE BE IT ENACTED by the Municipal Council of the City of Cape Town as follows:

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CHAPTER 1. DEFINITIONS (ss 1-2)

1 Definitions

(1) In this By-Law, unless the context indicates otherwise—

'adverse effect' means 'adverse effect' as defined in the Integrated Coastal Management Act;

'authorised official' means an employee of the City responsible for carrying out a duty or function or exercising any power in terms of this By-Law and includes any employee delegated to carry out or exercise the duty, function or power;

'bathing' means swimming or entering the waters or any tidal pool provided by the City;

'beach area' means the beach and any part of the coastal area and its immediate surroundings, including any public open space, park, road, lane, parking space, pathway, or any municipal property or public amenity located in such area;

'City' means the municipality of the City of Cape Town established by Government Notice No 479 of 2000 issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), or any structure or employee of the City acting in terms of delegated authority;

'coastal access land' means 'coastal access land' as defined in the Integrated Coastal Management Act

'coastal area' means the seashore and the sea for a distance of 200 m seaward and 100 m inland, but excluding any privately owned land and including all Admiralty Reserves and Public Roads as defined in the Road Traffic Act, 1996 (Act 93 of 1996);

'coastal environment' means the environment within the coastal zone;

'coastal zone' means 'coastal zone' as defined in the Integrated Coastal Management Act;

'delegated official' means the official to whom the authority has been delegated in terms of the City of Cape Town's System of Delegations;

'designated beach bathing area' means any portion of the seashore that is demarcated as a bathing area and may be protected from sharks by whatsoever means and may be under the supervision of lifeguards, and includes the sea for a distance of 100 m seaward;

'encroachment' means a condition in the coastal zone arising through human activity that has the design, effect or appearance of extending the extent of a private property or appropriating any part of the coastal zone;

'environment' means 'environment' as defined in the National Environmental Management Act;

'estuary' means 'estuary' as defined in the Integrated Coastal Management Act;

'fish' means 'fish' as defined in the Marine Living Resources Act;

'fishing' means 'fishing' as defined in the Marine Living Resources Act;

'high-water mark' means the 'high-water mark' as defined in the Integrated Coastal Management Act;

'illegal fishing' means engaging in fishing without every permit required by law or using a fishing method or fishing gear that is prohibited by law;

'infrastructure' means an object or structure, whether permanent or temporary;

'Integrated Coastal Management Act' means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);

'low-water mark' means 'low-water mark' as defined in the Integrated Coastal Management Act;

'Municipal Coastal Management Programme' means the municipal coastal management programme adopted by the City in terms of section 48 of the Integrated Coastal Management Act;

'permit' includes a licence, certificate, right or any other written permission granted by the City or any other competent authority;

'person' means a natural or juristic person and includes the state and an organ of state in the national, provincial or local sphere of government;

'pollution' means any human-induced change in the environment caused by—

(a) substances;

(b) radioactive or other waves, vibrations or shocks;

- (c) noise, odours, dust or heat—
emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person, where that change has an adverse effect on human health or well-being, including where a noise nuisance is caused, or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

‘sea defence’ means a measure taken or an artificial structure intended to prevent or promote erosion or accretion of the seashore or for protecting property from a coastal process, including wind-blown sand and storm surge, irrespective of—

- (a) the material used, if any;
(b) whether it is of a permanent or temporary nature;
(c) whether it is on public or private property; and
(d) whether it is on a person’s own property or another person’s property;

‘seashore’ or **‘beach’** means the area between the low-water mark and the high-water mark, or as may be determined or adjusted from time to time in respect of the coastal zone boundaries by a competent national or provincial authority in terms of the National Environment Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);

‘sign’ means a written notice erected by the City;

‘stormwater’ means ‘stormwater’ as defined in the City of Cape Town Stormwater Management By-Law;

‘surf riding’ or **‘surfing’** means any activity on or in the water with or on a surfcraft or personal watercraft made of a hard substance that has the potential to cause injury or harm to bathers;

‘unauthorised sea defence’ means a sea defence which the City has not authorised in terms of section 9(1);

‘vessel’ means ‘vessel’ as defined in the Integrated Coastal Management Act;

‘waste’ means ‘waste’ as defined in the City of Cape Town Integrated Waste Management By-Law.

(2) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.

(3) A reference to another law includes an amendment and a future amendment to that law.

2 Object of By-Law

(1) The objects of the By-Law are to—

- (a) fulfil the responsibilities and duties assigned to the City by the Integrated Coastal Management Act;
(b) ensure sustainable use and development of the coastal area by aligning municipal planning with the Integrated Coastal Management Act;
(c) promote the protection of the natural environment of the coastal zone;
(d) promote cooperative governance between the City and other relevant spheres of government relating to the management of the coastal zone;
(e) promote fair, equitable, safe and sustainable access to the coastal zone by members of the public;
(f) provide measures to mitigate and manage the impacts of coastal erosion and storm surge events;
(g) provide for related matters.

CHAPTER 2.
APPLICATION OF THIS BY-LAW AND CONFLICT OF LAWS
(ss 3-4)

3 Application

(1) This By-Law—

- (a) applies to the coastal zone;
- (b) binds every person;
- (c) binds the state;
- (d) governs conduct that takes place either wholly or partially in, or impacts upon, the coastal zone.

(2) This By-Law does not apply to the following activities when conducted by the City in the coastal zone—

- (a) provision of a safety measure intended to reduce the risk of injury to people;
- (b) implementation of a measure intended to protect against coastal erosion, storm surge events, estuary migration and sea level rise;
- (c) installation of shark exclusion nets for safe bathing;
- (d) manipulation, maintenance or clearing of an estuary, river mouth, river or stormwater outlet;
- (e) provision of a utility service, including water, desalinisation facilities, electricity, waste removal and disposal, stormwater management, and the demarcation and containment of pollution;
- (f) clearing of alien vegetation;
- (g) controlled burning of vegetation;
- (h) cleaning of a beach area;
- (i) management and disposal of sand that has accumulated on infrastructure, or lowering of beach levels for purposes of preventing wind-blown sand from smothering coastal infrastructure;
- (j) construction and removal of a temporary structure in accordance with the City's Filming By-Law or Events By-Law; and
- (k) rehabilitation and management of the coastal zone in accordance with the Municipal Coastal Management Programme and/or the Maintenance Management Plan: Dunes and Beaches.

(3) An approval, instruction or exemption granted in terms of this By-Law and the provisions of subsection (2) do not release any person from their duty to also obtain any other authorisation or permit required by this By-Law or another law, and to comply with all law.

4 Conflict with other laws

(1) If there is a conflict between this By-Law and another by-law, this By-Law prevails over the affected provision of the other by-law in respect of any matter concerning the regulation of the coastal zone.

(2) If there is a conflict of interpretation between the English version of this By-Law and a translated version, the English version prevails.

CHAPTER 3.
PROTECTION OF COASTAL ZONE
(ss 5-10)

5 Duty of care

(1) No person may cause, continue or contribute to an adverse effect on the coastal zone.

(2) A person who—

- (a) causes an adverse effect in the coastal zone;
- (b) contributes to an adverse effect in the coastal zone;
- (c) allows an adverse effect to continue in the coastal zone; or
- (d) owns, controls, or has the right to use land on, or premises in which an activity occurs, that—
 - (i) causes an adverse effect to continue in the coastal zone;
 - (ii) contributes to an adverse effect in the coastal zone; or

- (iii) allows an adverse effect to continue in the coastal zone—
must take reasonable measures to prevent the adverse effect from occurring, or continuing from recurring, and must remedy the adverse effect.

6 Fishing

- (1) No person may engage in illegal fishing or be in possession of illegally caught fish.
- (2) No person may, while fishing, or while on the beach, use or permit the use of fishing equipment, including any rod, net, trap or other device, in such manner as to cause danger to any other person or in such a way as to cause an obstruction to or to interfere with personal privacy of any other person.
- (3) Every person must clear away all bait, refuse and any fishing equipment, other equipment and items before leaving the place where that person had been for the purpose of fishing, and take any such bait, refuse, and any fishing equipment and other items with him or her, or place these in a refuse receptacle provided by the City.

7 Protection of coastal environment

- (1) In this section, unless the context indicates otherwise, ‘**natural dynamic coastal process**’ means a natural process that occurs within the coastal environment and which shapes the coastal environment, adjacent natural areas and inshore seabed and includes wind, wave, current and tidal action, river flow, long- and cross-shore sediment drift, coastal erosion, accretion and dune migration.
- (2) No person in the coastal zone may—
 - (a) interfere with, impede or restrict a natural dynamic coastal process unless written authorisation is granted by the City;
 - (b) prune, harvest or remove vegetation unless reasonably necessary;
 - (c) deposit, move, collect or remove sand, pebbles, rocks, shells, shell grit or kelp as per national thresholds and limits, provided that reasonable activity in relation to the listed actions together with the digging of holes by children or beachgoers in the ordinary use or enjoyment of the beach area is not prohibited; or
 - (d) interfere with geomorphic processes unless written authorisation is granted by the City.
- (3) Unless the City grants written authorisation, no person may within the coastal zone interfere with, cause damage to, collect, harvest, impede, harm, harass, hunt or restrict a living or dead wild animal or plant, or displace, disturb, destroy or remove its habitat, provided that reasonable activity in relation to the listed actions together with catching of fish in tidal pools by children in the ordinary use or enjoyment of the beach area is not prohibited.
- (4) No person in the coastal zone may—
 - (a) litter;
 - (b) without written authorisation from the City or any other competent authority—
 - (i) disturb, alter or contaminate a water body, water source or water supply or any portion thereof;
 - (ii) drain or redirect contaminated water from private land into the coastal zone; or
 - (iii) damage, dig, disturb, deface, destroy or remove a fossil, historical artefact or similar object.
- (5) No person may, without prior written authorisation from the City and where relevant a national permit is required, in the coastal zone—
 - (a) discharge solid, liquid or gaseous pollution;
 - (b) dump, deposit or store waste.
- (6) No person may use a vehicle without a permit issued in terms of, or contrary to the provisions of, the Control of Use of Vehicles in the Coastal Area Regulations, 2014, published in terms of the Integrated Coastal Management Act, or park a vehicle in any place where the use of a vehicle is prohibited under those Regulations.

8 Encroachment

- (1) No person in the coastal zone may –
 - (a) cause an encroachment;
 - (b) permit an encroachment;
 - (c) contribute to an encroachment; or

- (d) allow an encroachment to continue.
- (2) For purposes of subsection (1), an encroachment is caused by any of the following actions or activities, irrespective of whether the encroachment is of a temporary or permanent nature –
- (a) erection of a structure or building, including jetties, slipways, piers and pontoons;
 - (b) placement of an item;
 - (c) erection of a fence, wall, barrier, swimming bath, swimming pool, reservoir or bridge, or other structure connected therewith;
 - (d) erection of a facility or system for the provision of water supply, irrigation, drainage, sewerage or stormwater disposal, electricity supply or other similar service;
 - (e) any activity that causes an alteration to an estuary or water course;
 - (f) landscaping, gardening, planting, maintenance or removal of vegetation;
 - (g) placement, movement or removal of a dune; and
 - (h) dumping, infilling or excavation of any material or disposal of soil, rubble or garden refuse.
- (3) No owner of, person in control of, or person who has a right to use land which appears to be extended by or benefit from an encroachment may allow the encroachment to continue to exist, even if such owner or person did not cause, permit or contribute to the encroachment. A person who alleges that the owner of land that is encroached upon granted written, lawful permission for the encroachment has the onus of proving it.

9 Unauthorised sea defence

- (1) Unless authorised by the City in writing, no person may cause, permit or contribute to a sea defence or allow a sea defence to continue.
- (2) No owner of, person in control of, or person who has a right to use land which is intended to benefit from an unauthorised sea defence may allow the sea defence to continue to exist, even if such owner or person did not cause, permit or contribute to the sea defence.

10 Remediation of encroachment and unauthorised sea defence

- (1) In this section, unless the context indicates otherwise, ‘**responsible person**’ means—
- (a) a person who has caused, causes, permits or contributes to an encroachment or unauthorised sea defence, or allows an encroachment or unauthorised sea defence to continue; or
 - (b) in respect of land which appears to be extended by or benefit from an encroachment or is intended to benefit from an unauthorised sea defence, a person who –
 - (i) owns, controls, or has a right to use the land; or
 - (ii) previously owned, controlled, or had a right to use the land at any time that the encroachment or unauthorised sea defence existed.
- (2) A responsible person must take measures at their cost to—
- (a) eliminate or remove the encroachment or unauthorised sea defence; and
 - (b) rehabilitate the affected land, to the satisfaction of the City.
- (3) Before undertaking the action contemplated in subsection (2), the responsible person must—
- (a) satisfy the City of the appropriateness and adequacy of the proposed action;
 - (b) obtain written authorisation for the proposed action from the City; and
 - (c) obtain any other permit required in terms of any other law.

CHAPTER 4. REGULATION OF ACTIVITY (ss 11-17)

11 Designation of areas

- (1) In this section, unless the context indicates otherwise, ‘**activity**’ includes an act, an omission, a state, a recreational activity and a non-recreational activity.
- (2) (a) The City may, at various places within the coastal zone, erect signs displaying pictograms that set out activities which—
- (i) are allowed; or
 - (ii) are prohibited.

- (b) No person may undertake any activity in conflict with what is allowed or prohibited in terms of subsection (2)(a).
- (3) The City may withdraw or amend any sign erected in terms of subsection (2)(a).
- (4) If the withdrawal or amendment of a sign materially and adversely affects the public, then the City must consult the public before making the withdrawal or amendment unless in the interest of public safety.
- (5) If urgent action is necessary or it would be impractical to undertake prior consultation, the City may erect, withdraw or amend a sign, and consult the public as soon as possible.
- (6) Signs displaying pictograms erected by the City must be published on the City's website and may—
 - (a) vary by time of day and day of the week;
 - (b) be temporary or permanent; and
 - (c) be subject to conditions.
- (7) The City may temporarily prohibit bathing, presence or any other activity in a part of the coastal zone for as long as is deemed necessary without the need to consult or publish signs displaying pictograms, where a situation or the conditions of the sea are unsafe requiring urgent intervention, and may communicate this in any manner appropriate in the circumstances.

12 Bathing within certain areas

- (1) Subject to section 11(4), the City may erect signs in accordance with section 11(2) to permanently or temporarily prohibit bathing in any part of the beach area.
- (2) A delegated official may prohibit bathing in any part of the beach area at any time for as long as the conditions of the sea appear in his or her discretion to be unsafe.
- (3) No person may bathe in any part of the beach area where bathing is prohibited in terms of this section.
- (4) No person may, while a life-saving appliance or device is in use, perform an act which impairs or impedes or is likely in any manner to impair or impede its efficient operation.

13 Surf-riding or surfing within certain areas

- (1) No person may engage in surf-riding or surfing within a designated beach bathing area.

14 Safe and harmonious use of the coastal zone

- (1) Unless the City grants written authorisation, no person may undertake the following activities in the coastal zone where signs prohibiting such activities have been erected in terms of section 11 or another by-law of the City—
 - (a) start or maintain a fire;
 - (b) discharge a flare except in the event of a marine emergency;
 - (c) discharge a firework or firecracker or release a Chinese lantern;
 - (d) cause a motorised vessel to approach within 100 m of a person bathing or within 100 m of the low-water mark in a bathing area, save for rendering assistance in an emergency or in the course of law enforcement;
 - (e) fish—
 - (i) in a tidal pool;
 - (ii) within 100 m of a designated bathing area; or
 - (f) erect a structure of whatever nature, other than a beach umbrella or a gazebo that is safe, and no larger than 9 m²;
 - (g) erect a closed shelter;
 - (h) camp or sleep overnight;
 - (i) use a loudspeaker, amplifier or similar equipment.
- (2) No person may bathe, dive, snorkel or play within 50 m of or near a jetty or designated public launch site.

15 Liquor, drugs, food, performances and hawking

No person, while on the beach area or coastal area, may—

- (1) offer for sale, market or hawk any illegal goods or services in contravention of the City's by-laws dealing with informal trading or any other applicable legislation;
- (2) be in possession of or consume any alcohol except on licensed premises or where a temporary liquor licence has been granted;

- (3) be in possession of, use or consume drugs or any other dependence-producing substance;
- (4) be under the influence of alcohol, drugs or any other dependence-producing substance;
- (5) hold, convene or organise any entertainment, display, performance, procession, public meeting, recreation, or event without the permission of the City or do so in contravention of any condition attached to any such authorisation.

16 Undesirable conduct

- (1) No person may in the coastal zone—
 - (a) handle, interfere with, disturb or remove a safety rope or other appliance provided for the protection of bathers or the assistance of a distressed bather, except for the purpose of rendering assistance to such a bather;
 - (b) damage, tamper with, destroy or deface any equipment, amenity or structure;
 - (c) act in a manner that poses a risk to life, human well-being or property;
 - (d) possess or bring into a tidal pool a container made of glass;
 - (e) behave in an improper, indecent, unruly, violent or anti-social manner or cause a disturbance;
 - (f) perform an indecent act.

17 Animals

- (1) No person may in the coastal zone cause or permit an animal belonging to them, or in their charge, to—
 - (a) be in an area where, or at a time when, animals are prohibited;
 - (b) behave in a manner that may pose a risk to, cause nuisance, disturb or harm another person, or cause damage to the beach area or infrastructure;
 - (c) approach, disturb, harass, chase, hunt, attack or kill a wild animal, fish or bird without a relevant and valid permit; or
 - (d) attack or kill a domesticated animal.
- (2) If a dog defecates in the beach area or coastal area, a person in charge of the dog must immediately remove the excrement, place it in a bag or wrapper and dispose of it in a refuse bin.
- (3) No person may bring or walk a dog in the beach area—
 - (a) except on a leash where the area is designated in terms of section 11 as an area where a dog may be permitted if leashed or which is under control where the area is designated in terms of section 11 as an area where a dog may be unleashed;
 - (b) which is ferocious, vicious or dangerous unless it is humanely muzzled and held on a leash in terms of subsection 17(3)(a).
- (4) Subsections (1)(a) and (2) do not apply to a person who is assisted by a guide dog.
- (5) If an animal is found under circumstances which constitute a contravention of this section, the City may seize the animal and deal with it in the manner prescribed by the City's by-laws, irrespective of whether the animal is in the charge of or accompanying its owner or another person.

CHAPTER 5. COASTAL ACCESS LAND AND COASTAL FACILITIES (ss 18-20)

18 Coastal access land

- (1) Unless the City grants written authorisation, no person may block or impede coastal access land or damage or deface infrastructure relating to coastal access land.

19 Entry to and use of a coastal facility

- (1) In this section, '**coastal facility**' includes a public swimming pool, pavilion, change room, enclosure, shower, toilet, road, car park and boat shed situated within the coastal zone.
- (2) The City may—
 - (a) determine and indicate by means of a sign the times when a coastal facility may be entered and used;
 - (b) regulate the number of people entering and using a coastal facility;
 - (c) determine a fee for the entry to and use of a coastal facility; and
 - (d) prohibit entry to and use of a coastal facility.

- (3) An authorised official may—
- (a) refuse a person causing a nuisance admission to a coastal facility;
 - (b) order a person causing a nuisance to immediately leave the coastal facility;
 - (c) order a person who contravenes this section to immediately leave the coastal facility.
- (4) A person who has paid a fee contemplated in subsection 19(2)(c) must retain any proof of payment issued and produce it if required by an authorised official.
- (5) No person may—
- (a) enter or attempt to enter a coastal facility—
 - (i) other than through an entry point where an entry point is indicated; or
 - (ii) after a sign or an authorised official advises that the coastal facility is full;
 - (b) enter, attempt to enter or remain in a coastal facility—
 - (i) outside the times when the facility may be used; or
 - (ii) if the City has prohibited such entry or use;
 - (c) enter or attempt to enter a cubicle or other accommodation occupied or in use by another person without the consent of the other person;
 - (d) open or attempt to open a cupboard or locker unless authorised to do so by an authorised official or the person using it;
 - (e) impede or block access to a coastal facility.

20 Coastal closure

- (1) The delegated official may close or restrict access to the beach area and coastal area if the official considers it necessary in the public interest, including in the event of actual or anticipated—
- (a) pollution;
 - (b) dangerous sea conditions;
 - (c) severe weather;
 - (d) increased shark activity or shark bite;
 - (e) marine animal stranding;
 - (f) relocation of an animal or plant;
 - (g) breeding of a coastal animal;
 - (h) facilitation of the exercising of a fishing permit;
 - (i) ship or boat stranding or wreck;
 - (j) salvage operation;
 - (k) coastal rehabilitation;
 - (l) construction, repair or maintenance;
 - (m) concern for public health, safety or well-being; or
 - (n) emergency.
- (2) No person may enter or be present in an area closed or restricted in terms of this section unless authorised by an authorised official.
- (3) An authorised official may take reasonable steps to remove a person who enters or remains in an area in contravention of subsection (2).

CHAPTER 6. PUBLIC LAUNCH SITE (ss 21)

21 Public launch site

- (1) In this section, 'public launch site' means a site designated by the competent authority and published on the City's website as a site where a vessel may be launched in the coastal zone.
- (2) No person may launch a motorised vessel including a jet ski in the coastal zone unless—
- (a) the launch is from a public launch site;
 - (b) the person produces on demand to an authorised official all certificates, licences and permits required by applicable law; and
 - (c) the vessel carries—
 - (i) the certification, permits and identification required by law;
 - (ii) all the safety equipment required for that category of vessel; and
 - (iii) a kill switch and the kill switch is securely attached to the skipper during the launch and always while at sea, unless the vessel has an engine capacity of less than 15 hp.

- (3) No person may launch or operate a vessel in a manner or circumstance that causes harm, or poses a risk to the coastal zone or any person.
- (4) If another law requires a vessel to have a life jacket aboard, no person may launch the vessel unless all occupants are wearing the prescribed life jacket.
- (5) A person entering or in a public launch site with or operating a vessel must make the documentation contemplated in subsection (2) and the vessel and its safety equipment available for inspection by an authorised official.
- (6) No person may at a public launch site—
- (a) block or impede the launch site except to the extent necessary—
 - (i) to launch or recover their vessel;
 - (ii) in an emergency; or
 - (iii) under direction of an authorised official;
 - (b) damage or deface infrastructure relating to the public launch site;
 - (c) park a vehicle, vessel or trailer—
 - (i) overnight; or
 - (ii) other than in a parking place demarcated for a vehicle, vessel or trailers, unless otherwise directed by an authorised official;
 - (d) clean fish except where a fish cleaning facility is provided, or a fish cleaning site is allowed via signs erected by the City;
 - (e) sell or buy fish, except where allowed via signs erected by the City or with permission of an authorised official;
 - (f) dispose of fish waste, bait and bait packaging except in identified areas or containers designed for such waste disposal; or
 - (g) dispose of fuel or oil or wash blood from a vessel.

CHAPTER 7. ENFORCEMENT

(ss 22-28)

22 Instruction to leave

- (1) An authorised official may instruct a person who is in contravention of this By-Law to leave and remain out of an area of the coastal zone.
- (2) A person who fails to immediately comply with such an instruction is guilty of an offence.

23 Compliance notice

- (1) The authorised official may serve a written compliance notice on a person if there are reasonable grounds for believing that the person is in contravention of this By-Law.
- (2) The compliance notice must—
- (a) describe the conduct constituting a contravention of this By-Law;
 - (b) indicate which provision of this By-Law or condition of approval is contravened;
 - (c) where relevant, state that the unlawful conduct constitutes an offence and indicate the penalty;
 - (d) where relevant, be issued together with a fine;
 - (e) instruct the person to cease the unlawful conduct;
 - (f) where relevant, impose conditions which must be complied with and specify the steps to be taken to comply;
 - (g) state that a failure to comply with the notice constitutes an offence and indicate the penalty; and
 - (h) state that, in the event of non-compliance with the notice, the City may take one or more of the following measures—
 - (i) issue the person with a fine for not complying with the compliance notice;
 - (ii) take steps to remedy any adverse effect arising from the person's actions and recover the costs from such person;
 - (iii) apply to a competent court for appropriate relief including the costs of the application; or
 - (iv) institute a criminal prosecution.

- (3) The compliance notice may—
- (a) instruct the person within a specified time to, in writing, inform the City what steps have been taken to comply with the notice;
 - (b) instruct a person at their cost to take specified action to the satisfaction of the City within a specified time to—
 - (i) cease, modify or control an activity or an activity causing, continuing or contributing to an adverse effect on the coastal zone, encroachment or unauthorised sea defence;
 - (ii) investigate, evaluate and assess the impact of a specific situation or activity and report thereon;
 - (iii) undertake and complete specific measures;
 - (iv) eliminate or remove an encroachment or unauthorised sea defence;
 - (v) rehabilitate the affected environment; or
 - (vi) any combination of the provisions listed in paragraphs (i) through (v).
- (4) Should the person on whom a compliance notice under subsection (3) or authorisation under section 10(3) was issued, fail to comply, or inadequately comply, with the compliance notice or authorisation, then the City may take measures that the City considers appropriate to remedy the situation and may authorise another person to take such measures.
- (5) The City may recover costs to the City, or an authorised person, for the measures to be undertaken under subsection (4), and all costs incurred as a result of acting under subsection (4), from any or all of the persons on whom the compliance notice or authorisation was issued in terms of its Credit Control and Debt Collection Policy and the Credit Control and Debt Collection By-Law.

24 Conditions of approval

- (1) The City, when granting an authorisation in terms of this By-Law, may impose reasonable conditions.
- (2) No person may contravene a condition of approval.

25 Withdrawal or amendment of an authorisation or condition of approval

- (1) The City may in writing withdraw or amend an authorisation or a condition of approval.
- (2) Before withdrawing or amending an authorisation or a condition of approval, the City must give advanced notice in writing to any person who would be materially and adversely affected and provide the person with a reasonable opportunity to make representations in writing.
- (3) If urgent action is necessary or it would be impractical to give advanced notice, the City may withdraw or amend an authorisation or a condition of approval, and give a person who would be materially and adversely affected an opportunity to make representations as soon as thereafter is reasonable.

26 Powers and functions of authorised officials

- (1) In this section, unless the context indicates otherwise, 'article' means anything, including a structure, object, document, book, record or electronic information or extract, part or sample therefrom that is reasonably suspected in the use of contravening this By-Law.
- (2) Without a warrant, an authorised official may stop, enter and search any vessel, vehicle, premises or person if the authorised official has reasonable grounds to believe that an offence in terms of this By-Law has been or is being committed on or in such vessel, vehicle or premises if—
 - (a) the person in control of the vessel, vehicle or premises consents to such stop, entry, search or seizure; or
 - (b) the authorised official has reasonable grounds to believe that a warrant will be issued, if the authorised official applied for it, and the delay caused by the obtaining of such a warrant would defeat the object of the stop, entry, search or seizure.
- (3) If subsection (2) does not apply, then an authorised official may stop, enter and search any vessel, vehicle, premises or person and may seize an article contemplated in subsection (5)(h) only on the authority of a warrant.
- (4) A judge in chambers may issue a warrant contemplated in subsection (3) on written application by an authorised official if it appears from information under oath or affirmation that—
 - (a) there are reasonable grounds for believing that a contravention of this By-Law has occurred;

- (b) the search and seizure is likely to yield information pertaining to the contravention; and
 - (c) the search and seizure is reasonably necessary for the purposes of this By-Law.
- (5) In enforcing or investigating compliance with this By-Law, an authorised official may—
- (a) be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;
 - (b) inspect any article which may be relevant to the investigation;
 - (c) examine, analyse, measure or make a copy of an article and remove it for examination, analysis, measurement, copying or extraction;
 - (d) require a person to produce or to deliver at such time and place as may be determined by the authorised official, an article for inspection;
 - (e) take a photograph or make an audiovisual recording of any person or anything for his or her investigation;
 - (f) question a person who, in the opinion of the authorised official, may be able to furnish information on a matter to which this By-Law relates;
 - (g) direct a person to appear before him or her at such time and place as may be determined by the authorised official and question such person either alone or in the presence of any other person on a matter to which this By-Law relates; and
 - (h) seize an article—
 - (i) which is concerned in or is on reasonable grounds believed to be concerned in an offence in terms of this By-Law;
 - (ii) which may afford evidence of an offence in terms of this By-Law; or
 - (iii) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence in terms of this By-Law.
- (6) A person who so requests may, if possible, make a copy of an article to be removed or seized in terms of this section.
- (7) When an authorised official removes or seizes an article, the authorised official must issue a receipt to the owner or person in control thereof and, if possible, return the article as soon as practicable after achieving the purpose for which the article was removed or seized.
- (8) An authorised official must exercise their powers and functions with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

27 Impounding of vessel or vehicle

- (1) An authorised official may, without a warrant, seize and impound a vessel or vehicle which is concerned or is on reasonable grounds believed to be concerned with the commission of an offence in terms of this By-Law.
- (2) The authorised official, at the time of the impoundment, must give the holder of the impounded vessel or vehicle a notice setting out—
- (a) the reason for the impoundment;
 - (b) a description of the impounded vessel or vehicle;
 - (c) the address and contact details of the pound;
 - (d) the impoundment fee; and
 - (e) a warning that the impounded vessel or vehicle may be sold to recover the impoundment fee and any fine, costs or damages.
- (3) The authorised official must cause an impounded vessel or vehicle to be taken to a designated pound where it must be retained and dealt with in terms of this section.
- (4) The City must release the impounded vessel or vehicle to the owner upon presentation of proof of ownership if, in relation to the offence contemplated in subsection (1)—
- (a) a criminal charge is not laid, a fine is not issued or a notice of intention to prosecute is not issued within 72 hours of the impoundment; or
 - (b) the criminal case against all accused persons is disposed of because—
 - (i) the charges are withdrawn;
 - (ii) the accused persons are acquitted; or
 - (iii) the accused persons are convicted and either the impoundment fee and any fine, costs and damages are paid.
- (5) An impounded vessel or vehicle is forfeited to the City if—
- (a) a court orders such forfeiture; or

- (b) the lawful owner of the vessel or vehicle cannot be traced within 90 days of such impoundment after reasonable efforts to trace the owner have not been successful.
- (6) If any payment contemplated in subsection (4)(b)(iii) is not made within such time as the City may determine, and if no appeal has been lodged at the expiry of the time limit for an appeal, the City may sell, donate, destroy or in any other manner dispose of an impounded vessel or vehicle and deal with any net proceeds in accordance with subsection (7).
- (7) Any net proceeds from the sale of an impounded vessel or vehicle must be applied as follows and in this order:
- (a) the recovery of costs incurred by the City during forfeiture and impoundment;
 - (b) the payment of the impoundment fee, and any fine, costs or damages ordered by a court in relation to an offence contemplated in subsection (1); and
 - (c) return to the person who lawfully owned the vessel or vehicle at the time of the impoundment.
- (8) The City may determine an impoundment fee and designate a pound contemplated in this section.

28 Offences and penalties

- (1) A person is guilty of an offence if the person—
- (a) contravenes a provision of this By-Law;
 - (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By-Law;
 - (c) fails to comply with the terms of any notice or signage displayed by the City in terms of this By-Law;
 - (d) contravenes a lawful instruction given by an authorised official in terms of this By-Law;
 - (e) threatens, obstructs, hinders or uses abusive language to an authorised official or a person lawfully accompanying the authorised official in the exercise of a power conferred in terms of this By-Law;
 - (f) when called upon by an authorised official to furnish information, furnishes false or misleading information;
 - (g) falsely holds himself or herself to be an authorised official or a person authorised to act on behalf of the City in terms of this By-Law.
- (2) A person guilty of an offence in terms of this By-Law is liable to a fine, and upon conviction to a period of imprisonment not exceeding two years.
- (3) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence in terms of this By-Law—
- (a) to rectify the harm caused;
 - (b) to forfeit to the City a vessel or vehicle impounded in terms of section 27;
 - (c) to pay the costs incurred by the City because of the contravention; and
 - (d) to pay damages for harm caused to another person or property within the coastal zone, which order shall have the force and effect of a civil judgment.

CHAPTER 8. GENERAL (ss 29-34)

29 Appeals

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

30 Delegation

A function, power or duty conferred on the City in terms of this By-Law may be delegated or sub-delegated to an employee of the City in accordance with the system of delegation adopted by the Municipal Council of the City in accordance with section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

31 Exemption

- (1) The City may—
 - (a) in writing exempt a person, group of persons or an area of the coastal zone from the application of a provision or the whole of this By-Law for a specified period;
 - (b) impose conditions when granting an exemption; and
 - (c) may withdraw or amend the exemption.
- (2) Where exemption was granted to a person or group of persons, proof of exemption must be retained on the person at all times while in the coastal zone.
- (3) The City must publish on its website an exemption that applies to an area of the coastal zone.

32 Indemnity

The City and authorised officials are not liable for any loss sustained by or damage caused to a person by an act or omission in good faith relating to the performance of a duty under this By-Law, unless gross negligence is proved.

33 Transitional provisions

- (1) A prohibition, instruction, permission, determination, condition or sign in terms of regulations in terms of section 10(1) of the Seashore Act, 1935 (Act 21 of 1935), applicable to the coastal zone of the City and in existence at the commencement of this By-Law, is deemed to be in terms of this By-Law.
- (2) Subject to amendment in terms of section 21(1), a site listed as public launch site in terms of Regulation 2 of the Management of Public Launch Sites in the Coastal Zone Regulations published in terms of the Integrated Coastal Management Act is regarded as a public launch site contemplated in section 21(1).

34 Repeal

The following Regulations made in terms of the Seashore Act, 1935 (Act 21 of 1935), are hereby repealed:

- (a) Gordons Bay Seashore Regulations, 1991, published under Board Notice 68 of 1991 in the Western Cape Provincial Gazette 13239, dated 24 May 1991; and
- (b) Cape Town Municipality Seashore Regulations, 1994, published under Board Notice 38 of 1994 in the Western Cape Provincial Gazette 15636, dated 22 April 1994.

35 Short title and commencement

This By-Law is called the City of Cape Town Coastal By-Law, 2020.