

CITY OF CAPE TOWN

DRAFT SPECIAL RATING AREA BY-LAW

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CITY OF CAPE TOWN
SPECIAL RATING AREA BY-LAW

1. INTERPRETATION

In this By-Law, the English text prevails in the event of any conflict with the Afrikaans or isiXhosa texts, and, unless the context otherwise indicates –

"additional rate" means an additional rate contemplated in sections 19(1)(d) and 22(1)(b) of the Property Rates Act and in section 12(2) of this By-Law;

"Applicant" means any owner who makes an application for the establishment of a Special Rating Area in accordance with the provisions of Part 1, or if a management body is established in terms of section 10, any reference to *"the Applicant"* means the management body;

"CFO" means the Chief Financial Officer of the City, or his/her nominee;

"City" means the City of Cape Town;

"Council" or *"the Council"* means the Council of the City of Cape Town;

"Implementation Plan" means an Implementation Plan as contemplated in section 6;

"management body" means the management body of the Special Rating Area to be established in accordance with the provisions of section 11;

"Motivation Report" means a Motivation Report as contemplated in section 6;

"owner" has the meaning assigned to it in section 1 of the Property Rates Act;

"Policy" means the Policy for the Establishment of Special Rating Areas, or any other policy adopted by the Council in relation to special rating areas, as in force from time to time;

"Property Rates Act" means the Local Government: Municipal Property Rates Act, No. 6 of 2004;

"rateable property" has the meaning assigned to it in section 1 of the Property Rates Act;

"Special Rating Area" means a Special Rating Area approved by the Council in accordance with the provisions of section 22 of the Property Rates Act and section 9 of this By-Law.

PART 1 – ESTABLISHMENT OF SPECIAL RATING AREAS

2. APPLICANT

- (1) Any owner located within the area of jurisdiction of the City may apply to the Council for the approval of the establishment of a Special Rating Area.
- (2) All costs incurred by the Applicant in respect of the establishment of a Special Rating Area shall be for his or her own account; provided that, after implementation of the Implementation Plan, the management body may reimburse the Applicant for some or all of those costs.

3. ESTABLISHMENT PROCESS

The procedures which must be followed for the establishment of a Special Rating Area are those set out in sections 4 to 7 of this By-Law and in the Policy.

4. THE APPLICATION

Any application for the establishment of a Special Rating Area must –

- (1) be in writing and be in the form (if any) as the Council may from time to time determine;
- (2) be submitted not more than 9 (nine) months after the date on which the public meeting referred to in section 5 is held, or if a second public meeting is held as provided for in section 5(2), then 9 (nine) months after the date of the second public meeting;
- (3) be accompanied by –

- (a) the Motivation Report and Implementation Plan;
- (b) the written consent of the majority of the members of the local community in the proposed Special Rating Area who will be liable for paying the additional rate, in a form determined by the CFO;
- (c) payment of the fee (if any) as the Council may from time to time determine.

5. PUBLIC MEETING

- (1) An application to establish a Special Rating Area must be preceded by the holding of a public meeting.
- (2) The purpose of the public meeting is to enable the City to consult with those owners within the proposed Special Rating Area with regard to the proposed boundaries of the area and the proposed improvement or upgrading of the area.
- (3) Prior to the holding of the public meeting, the Applicant must –
 - (a) give written notice in a manner approved by the CFO in writing to all owners of rateable property, who will be liable for payment of the additional rate, of the Applicant's intention to apply for the determination of a Special Rating Area;
 - (b) in the notice referred to in subsection (3)(a), give notice of a public meeting, which notice shall –
 - (i) state the purpose of such meeting; and
 - (ii) contain details of the place, date and time when such meeting is to be held;
- (4) The public meeting must be held not less than 7 (seven) days and not more than 30 (thirty) days after the date of publication of the last of the advertisements referred to in subsection (3)(a).

- (5) The public meeting must be held at such place, date and time as advertised in terms of subsection (3)(a); provided that it must be held at a place which is within the boundaries of the proposed Special Rating Area unless the CFO approves another venue in writing before the public meeting is held.
- (6) The public meeting must be chaired by a suitably qualified and experienced person appointed by the CFO.
- (7) At the meeting interested persons must be –
 - (a) furnished with all relevant information relating to the proposed Special Rating Area, including the information to be set out in the Motivation Report and Implementation Plan; and
 - (b) given an opportunity to ask questions and express their views.

6. MOTIVATION REPORT AND IMPLEMENTATION PLAN

- (1) Any application for the establishment of a Special Rating Area must include a Motivation Report and an Implementation Plan covering a period commencing on 1 July of the first year and ending on 30 June of the fifth year, or covering such lesser period as may be determined by the CFO.
- (2) If the Motivation Report or the Implementation Plan are materially amended after the public meeting referred to in section 5, the Applicant must call a second public meeting for approval of the Special Rating Area as amended. The provisions of section 5 apply with the necessary changes to the second public meeting.

7. ADVERTISING OF APPLICATION AND OBJECTIONS

- (1) The Applicant must within 14 (fourteen) days after the application is lodged in accordance with section 4, or within such further period which the CFO may approve –
 - (a) cause a notice of the application to be published in a manner approved by the CFO; and

- (b) either before or up to 7 (seven) days after the date of publication of the notice in terms of subsection (1)(a), give written notice of the application to all owners within the proposed Special Rating Area, who will be liable for payment of the additional rate, such notice to be given by pre-paid registered post, hand delivery or in any other manner approved of in writing by the CFO.
- (2) Every notice contemplated in terms of subsection (1) must state that written objections to the establishment of a Special Rating Area or the provisions of the Motivation Report and Implementation Plan may be lodged with the Council by a date specified in the notice, which shall not be less than 30 (thirty) days after the date of publication of the notice in terms of subsection (1)(a), and must state where the documentation specified in subsection (5) will be available for inspection.
- (3) Any owner of rateable property or who will be liable for paying the additional rate may submit written objections to the establishment of the Special Rating Area, which objections must be received by the Council not later than the date stipulated in the notice referred to in subsection (2).
- (4) The Council may allow the Applicant and any objector to make oral representations to it.
- (5) The application, including the Motivation Report and the Implementation Plan, and all objections must be available for inspection at the offices of the Council and at a venue within the proposed Special Rating Area determined by the CFO, for the period referred to in subsection (2).

8. **DECISION**

- (1) After the provisions of sections 4 to 7 have been complied with, the Council must, at the first full meeting of the Council held 30 (thirty) days or more after the last date for the submission of objections in accordance with section 7(2), consider the application and –
 - (a) approve the establishment of a Special Rating Area in accordance with the Motivation Report and Implementation Plan;
 - (b) approve the establishment of a Special Rating Area and the Motivation Report and Implementation Plan with such amendments or conditions as

the Council considers to be in the public interest;

- (c) approve the establishment of a Special Rating Area and the Motivation Report and Implementation Plan in respect of a limited area, as more fully set out in section 9;
 - (d) refuse the application, in which event the Council must within 30 (thirty) days furnish the Applicant with written reasons for not approving the establishment of a Special Rating Area or the Motivation Report and Implementation Plan; or
 - (e) refer the application back to the Applicant for amendment in such manner as the Council may direct.
- (2) If any application is refused by the Council in accordance with the provisions of subsection (1)(d) or referred back to the Applicant in accordance with the provisions of subsection (1)(e), the Applicant may within 6 (six) months of the Council's decision re-apply to the Council for the establishment of the Special Rating Area; provided that such re-application has been appropriately amended in the light of the reasons for refusal or referral back, as the case may be.
- (3) If the Motivation Report or Implementation Plan is at any time before the approval thereof amended in any material respect, the Council may require that the application be re-advertised in accordance with the provisions of section 7, with the necessary changes.

9. **APPROVAL OF A LIMITED SPECIAL RATING AREA**

If an application in terms of section 4 is not accompanied by the requisite number of written confirmations from owners required by section 4(3)(b), but the Applicant can demonstrate to the Council's satisfaction that –

- (1) there are such confirmations from owners of rateable properties in a discreet geographical area within the proposed Special Rating Area that would meet the requirements of section 4(3)(b) if they were to be applied to that area; and
- (2) the level of services to be provided will not be reduced and the budget will be reduced accordingly as a result of the provision of those services in the discreet area referred to in subsection (1) alone, as compared to the provision of those services in the whole of the proposed Special Rating Area,

then the Council may accept such an application and, subject to the other requirements of this By-Law, approve the establishment of a Special Rating Area in respect of the discreet area referred to in subsection (1) alone.

10. **ESTABLISHMENT OF SPECIAL RATING AREA AND COMMENCEMENT OF THE IMPLEMENTATION PLAN**

Once the Council has approved the establishment of the Special Rating Area, the Implementation Plan may only be implemented after the management body has been established in accordance with section 11 and the finance agreement has been concluded in terms of section 12(4).

PART 2 – SPECIAL RATING AREAS – STRUCTURES AND FINANCES

11. **ESTABLISHMENT, COMPOSITION, POWERS AND DUTIES OF MANAGEMENT BODY**

- (1) The Applicant must, before the Implementation Plan is implemented in accordance with the provisions of section 10, cause to be established a management body for the purposes of implementing the provisions of the Implementation Plan. Such management body must be a company incorporated in accordance with the provisions of section 21 of the Companies Act, No. 61 of 1973. The memorandum and articles of association of the management body shall be subject to the prior written approval of the CFO.
- (2) The management body must determine the name for the Special Rating Area in accordance with the Policy.
- (3) Within 2 (two) months after receipt of the first additional rate, the management body must commence to provide services in accordance with the Implementation Plan.
- (4) The management body must comply with the Policy and with all applicable guidelines published by the Council in terms of section 17.
- (5) Within 2 (two) months of the end of each financial year, the management body must provide the CFO with –

- (a) its audited financial statements for the immediately preceding year; and
- (b) a report on its progress in carrying out the provisions of the Implementation Plan in the preceding year, including the steps taken to improve and upgrade the Special Rating Area.

12. FINANCES

- (1) The financial year of the management body must coincide with the financial year of the Council.
- (2) Where a Special Rating Area has been established, the Council will levy in accordance with the provisions of the Property Rates Act, a property rate in addition to the rates that it already charges on the owners of rateable property in the Special Rating Area for the purposes of realising the Implementation Plan; provided that, when determining the additional rate, consideration may be given to imposing differential additional rates on one or more of the bases set out in section 8 of the Property Rates Act.
- (3) The additional rate due in terms hereof is a debt due to the Council and is payable and collected in the same manner as other property rates imposed by the Council.
- (4) Any payment by the Council to a Special Rating Area management body is conditional upon the conclusion of a finance agreement to be entered into between the Council and the relevant management body, such agreement to regulate, among other things, the mechanisms and manner of payment, and the other terms on which payment to the relevant management body is to be made.
- (5) The CFO may, after consultation with the management body, determine and impose on the management body an administrative charge to reimburse the Council for the costs incurred by it in fulfilling its obligations in terms of the finance agreements referred to in subsection (4).
- (6) The auditing function of the Special Rating Area management body must be carried out by an audit firm approved by the CFO.

13. THE ROLE OF THE CHIEF FINANCIAL OFFICER

- (1) In addition to the other responsibilities and obligations of the CFO as set out elsewhere in this By-Law, the CFO must:

- (a) establish separate accounting and other record-keeping systems regarding the revenue generated by the additional rate and the improvement and upgrading of the Special Rating Area;
 - (b) monitor compliance with the applicable provisions of this By-Law, the Policy, any guidelines adopted by the Council in terms of section 17 and any agreements entered into by the management body and the Council, by –
 - (i) receiving and considering the audited financial statements and reports regarding the carrying out of duties laid out in the Implementation Plan;
 - (ii) if it elects to do so, nominating representatives to attend and participate, but not vote, at meetings of the management body.
- (2) The Council may establish a committee composed of persons representing the community in the relevant Special Rating Area to act as a consultative and advisory forum for the City on the improvement and upgrading of the relevant Special Rating Area, provided that representivity, including gender representivity, is taken into account when such a committee is established.

PART 3 – AMENDMENT TO AND EXTENSIONS OF IMPLEMENTATION PLANS

14. AMENDMENT TO IMPLEMENTATION PLANS

- (1) An Implementation Plan, including the geographical boundaries of the Special Rating Area, may be amended by the Council on written application by the management body at any time after the formation of the Special Rating Area.
- (2) An amendment in terms of subsection (1), which the Council considers is not likely to materially affect the rights or interests of any owner, may be approved forthwith by the Council; provided that the Council may require the management body to cause notice of the application for such amendment to be published as approved by the CFO.

- (3) An amendment in terms of subsection (1) which the Council considers is likely to materially affect the rights or interests of any person, and/or which affects the approved budget for the Special Rating Area, and/or which changes the boundaries of the Special Rating Area, may only be approved by the Council in accordance with the provisions of Part 1 of this By-Law, with the changes required by the context; provided that the CFO may, for good reason, which he or she must record, on written application by the management body, exempt the management body from complying with any such provisions or condone any non-compliance with any such provisions.

15. **EXTENSION OF IMPLEMENTATION PLANS**

If a management body elects to extend the term of the Implementation Plan for a further period, then, on or before 1 January in the year in which the Implementation Plan is due to terminate, it must submit to Council an application for extension of the term of the Implementation Plan for approval by the Council, provided that –

- (1) the extension of the Implementation Plan may only be approved by the Council in accordance with the provisions of Part 1 of this By-Law, with the changes required by the context; provided that the CFO may, for good reason, which he/she must record, on written application by the management body, exempt the management body from complying with any such provisions or condone any non-compliance with any such provisions;
- (2) the provisions of section 14 shall apply in the same terms to any amendment of an Implementation Plan which has been extended in terms of this section.

PART 4 – DISSOLUTION OF A SPECIAL RATING AREA

16. DISSOLUTION

- (1) The Council may dissolve a Special Rating Area –
 - (a) upon written application signed by the majority of owners within the boundaries of the Special Rating Area who are liable for paying the additional rate; or
 - (b) after prior consultation with the management body, for any other good cause, whereupon the CFO may cause the management body to be wound up.
- (2) Upon the winding up of a management body, the assets remaining after the satisfaction of all its liabilities shall be utilised by the Council to provide additional municipal services in accordance with the provisions of the Implementation Plan for such area.

PART 5 – MISCELLANEOUS PROVISIONS

17. GUIDELINES

The Council may at any time publish guidelines in respect of the establishment and management of Special Rating Areas, including but not limited to guidelines in respect of the areas or categories of areas within which Special Rating Areas may be established, and regarding the services that may be provided by the management body.

18. TRANSITIONAL PROVISIONS

- (1) Any Special Rating Area or City Improvement District established or deemed to have been established in terms of the By-Law referred to in section 19 shall be deemed to have been established in terms of this By-Law.
- (2) Any –

- (a) application initiated by an Applicant, including a Motivation Report and Implementation Plan prepared for such an application;
- (b) advertisement or public meeting in respect of such application;
- (c) application submitted to Council;
- (d) approval by the Council of any application,

made, done or given prior to the date of this By-Law, shall be governed by this By-Law; provided that any Implementation Plan in force on the operative date of this By-Law shall, notwithstanding the provisions of section 6, terminate on the termination date of the relevant Implementation Plan or 30 June 2010, whichever is the earlier.

19. **REPEAL OF BY-LAWS**

The City of Cape Town City Improvement District By-Law, published in Provincial Gazette No. 6118 of 26 March 2004, is hereby repealed.

20. **OPERATIVE DATE**

This By-Law takes effect on the date of publication in the Provincial Gazette; provided that no new Special Rating Area established in terms of this By-Law may implement its Implementation Plan prior to 1 July 2009.

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