

PROVINCIAL NOTICE

[NO. 204 OF 2011]

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:
PUBLICATION: STANDARD STORM WATER BY-LAW.**

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State Province, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), make standard by-laws as set out in the Schedule.

SCHEDULE

STORM WATER BY-LAW

Definitions

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

"Council" means -

- a) the Local Municipality ofestablished in terms of the Local Government: Municipal Structures Act, 1998, (Act No. 117 of 1998) as amended, exercising its legislative and executive authority through its Municipal Council; or
- b) its successor in title; or
- c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these by-laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); or
- d) except for the purposes of Chapters 6 and 8, a service provider fulfilling a responsibility under these By-laws, assigned to it in terms of section 81(2) of the Local Government: Systems Act, 2000 (Act No. 32 of 2000) or any other law; as the case may be;

"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 Municipality of

"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) a river, stream, channel or canal in which water flows regularly or intermittently, and (b) 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.

Prohibited discharges

2. 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.

Protection of storm water system

3. 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.

Prevention of flood risk

4. 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.

Studies and assessments

5. (1) The conditions which the engineer may impose in terms of Sections 2, 3, and 4, 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.
- (2) The costs of any study undertaken in terms of the provisions of subsection (1), is for the account of the applicant.

Water pollution incidents

6. (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.
- (2) If the owner or person responsible for the pollution incident fail 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.

Storm water systems on private land

7. (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.
- (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.
- (3) The provisions of sub-section (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.

Provision of Infrastructure

8. 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).

Miscellaneous powers of the engineer

9. (1) 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.
- (2) 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.
- (3) The engineer may recover all reasonable costs incurred as a result of action taken in terms of subsection (1) 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.

Offences and penalties.

10. 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.

Repeal of by-laws

11. Any by-laws relating to storm water adopted by the Council or any municipality now comprising an administrative unit of the Council is repealed.

Short title

12. These By-laws are called the Storm Water By-laws, 2011.