

CITY OF CAPE TOWN

WAYLEAVES BY-LAW, 2025

DRAFT

CITY OF CAPE TOWN
WAYLEAVES BY-LAW, 2024

To provide for measures for managing wayleave applications and wayleaves; managing public access to City owned infrastructure within the jurisdiction of the City; 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; and

WHEREAS the City has legislative and executive competence relating to municipal planning, municipal public works, municipal roads, building regulations, and nuisance as pertaining to works carried out in public spaces in the jurisdiction of City;

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

ARRANGEMENT OF BY-LAW

Part A

1. Definitions
2. Objectives
3. Application

Part B

Provisions related to Wayleave applications

4. Wayleaves
5. Standard Wayleave Applications
6. Permit to Work
7. Request for Services Information
8. Extension of Wayleave Validity
9. Transfer of Wayleaves

Part C

Powers and Responsibilities

10. Obligations of the Wayleave Holder

11. Obligations of the City

Part D

General Provisions

12. Completion Certificates

13. Tariffs, Guarantees, Holding Deposits and Exclusions

Part E

Compliance and Enforcement

14. General Prohibitions

15. Compliance Notices

16. Suspension of Wayleaves

17. Offences and penalties

18. Disputes

19. Indemnity

20. Appeals

21. Confidentiality and Protection of Personal Information

22. Short title

Part A

DEFINITIONS

1. In this By-law, unless the context indicates otherwise –

“applicant” means a person or registered company, including its agents and contractors, applying for a wayleave;

“as-built drawings” means a set of drawings that are marked-up by a contractor building a facility or fabricating a piece of equipment that shows how the item or facility was actually built at the completion of a project versus the way it was originally designed;

“authorised official” means an employee of the City responsible for carrying out any duty or function or exercising any lawful power in terms of this By-law or any other applicable by-law and includes an employee delegated to carry out such duties, functions or exercise such powers;

“building” includes-

(a) any structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with the-

- (i) accommodation or convenience of human beings or animals;
- (ii) manufacture, processing, storage, display or sale of any goods;
- (iii) rendering of any service;
- (iv) destruction or treatment of refuse or other waste materials;
- (v) cultivation or growing of any plant or crop;

(b) any wall or part of the building;

“City” means the City of Cape Town, a municipality established by City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) or any structure or employee of the City acting in terms of delegated authority;

“City property” means any property, which the City owns or has the right to use, manage, occupy or control and includes all services infrastructure and street furniture located within the City’s jurisdiction;

“Electronic Communications Act” means the Electronic Communications Act, 2005 (Act 36 of 2005);

“emergency works” means the works required to restore failures of essential services, within 24 hours of such failure;

“essential services” means a service which, if interrupted, will endanger the life, personal safety or health of the whole, or any part of, the population;

“City property” means any property, which the City either owns or has the right to use, manage, occupy or control and includes all services infrastructure, street furniture and road reserves located within the City’s jurisdiction;

“owner” in relation to property means-

(a) the person or trust in whose name the property is registered in the relevant deeds office; or

(b) the person whose name in which the sectional title deed is registered if the property affected is a sectional title unit;

“permit to work” means a written approval issued by the City to a service provider or contractor, permitting them to commence the works outlined in the wayleave;

“property”-

(a) means any piece of land registered as a separate entity of land in a deeds registry as an erf, lot, plot, farm, stand or agricultural holding and includes any unit and land contemplated in the Sectional Title Act, 1986 (Act No. 95 of 1986); and

(b) includes any building on that piece of land;

“person” means a natural or juristic person;

“road reserve” means a designated area of land that contains a public street or public road, including the road and associated verge, which land may or may not be defined by cadastral boundaries;

“services infrastructure” means all infrastructure that delivers essential services to the public, including, transportation, roads, electricity, communication, sewage, drainage and water;

“service provider” means a person or organisation that provides consulting or other contractual services;

“supervision fee” means a fee paid to the City for undertaking supervision of works completed by the wayleave holder;

“wayleave” means a document issued by the City which grants the right of access to install, maintain or manage services infrastructure and sets out the terms and conditions upon which the holder of the wayleave may install and maintain such infrastructure;

“wayleave holder” means the person or registered company to whom a wayleave is issued;

“Wayleave Management System (WMS)” means a management system for the evaluation and processing of wayleave applications, that generates live data and monitors the wayleaves application process, including processing times, construction violations and other matters incidental to wayleaves; and

“works” means the specific activity authorised in a wayleave and includes clearing, grubbing, boring or excavation;

Objectives

2. (1) The objectives of this By-law are to —

- (a) facilitate centralised coordination of wayleave management within jurisdiction of the City;
- (b) enable effective regulatory enforcement of the City’s wayleave management system and conditions emanating from wayleaves;
- (c) ensure that roles and responsibilities between wayleave holders and the City are clearly set out;
- (d) outline timeframes for the issuing of wayleaves; and
- (e) minimise damage to City Infrastructure.

3. Application of By-law

3.1 This By-law applies to persons seeking to carry out works on City property.

3.2 Approval in terms of this By-law does not exempt the applicant from needing to comply with all other applicable laws.

Part B:

General Provisions related to Wayleave applications

Wayleaves

4. (1) A wayleave is required for the following activities undertaken on City property and any combination thereof:
- (a) excavation (including all forms of trenchless excavation);
 - (b) trenching and micro-trenching;
 - (c) clearing, grubbing or boring;
 - (d) siting and erection of poles, base stations, towers or masts;
 - (e) stringing of cable on existing poles; or
 - (f) any other maintenance and operational activities related to services infrastructure.

Standard wayleave applications

5. (1) Any person, who requires access to municipal property to carry out works, must apply for a wayleave.
- (2) A wayleave applicant must-
- (a) register for a profile on the WMS;
 - (b) submit all required documentation in support of the application. The documentation includes:
 - i) cover letter outlining the extent of work anticipated;
 - ii) locality plan indicating the proposed route;
 - iii) proposed works plan or engineering plans providing design details;
 - iv) programme with proposed timelines;
 - v) land use management notification letter. The notification letter applies where services must be installed as part of a

development approved by the City's Land Use Management Department;

- vi) proof of appointment of an Engineering Council of South Africa (ECSA) registered engineer and a Construction Industry Development Board (CIDB) registered contractor;
- vii) traffic management plan;
- viii) pavement reinstatement details;
- ix) drill plan; and
- x) any other necessary documents related to the anticipated works.

(c) Pay the non-refundable application fee determined by the City. The application will be cancelled if the fee is unpaid within twenty-one (21) working days of issuing of the invoice.

- (3) All City departments whose infrastructure services may be impacted by the anticipated works must evaluate all information provided and approve works relating to their department before the wayleave may be issued.
- (4) Fees charged by the City for supervising works and non-refundable deposit amounts determined by the City, and associated with the specific scope of works, must be paid in full before the wayleave is issued.
- (5) A security deposit, amount determined by the City, must be paid in full by the wayleave applicant before the wayleave is issued.
- (6) Applicants may be requested to provide a valid bank guarantee from any of the City approved financial institutions, in lieu of a cash security deposit.
- (7) Works may only commence after the wayleave and a permit to work is issued to the applicant.

Permit to work

6. (1) After obtaining a wayleave, the wayleave holder must apply for a permit to Work

(2) The City may issue a permit to work, subject to any conditions that it may impose, after;

- a) a wayleave is granted;
- b) a services verification meeting has taken place; and
- c) All City departments whose infrastructure services may be impacted by the anticipated works must evaluate all information provided and

approve works relating to their department before the wayleave may be issued.

(3) The applicable City Departments must undertake construction monitoring, which includes; -

- a) recording progress of the works;
- b) inspection for damage to adjacent infrastructure; and
- c) checking adherence to conditions contained on wayleave and permit to work.

(4) The wayleave holder may apply for a refund of the security deposit if; -

- a) all imposed penalty amounts have been settled by means of a cash deposit or an authorisation for deduction from the security deposit;
- b) all damage to City infrastructure that has occurred as a result of the works stipulated in the wayleave, or associated activities, has been repaired or reinstated;
- c) as-built drawings have been uploaded on WMS;
- d) all conditions stipulated in the wayleave and the permit to work have been met; and
- e) all contraventions , if any, have been resolved.

(5) The City may refund the security deposit if it is satisfied that the wayleave holder has fulfilled conditions contained in this sub-section.

Emergency works application

7. (1) An applicant must apply for an urgent wayleave for emergency works. Applications for an urgent wayleave for emergency works must be prioritised and handled outside of the WMS.

(2) Emergency wayleaves are only issued to City departments who are responsible for the maintenance of essential services.

(3) An emergency wayleave must be issued by the City before works can commence.

(4) Applications for emergency works will not be processed via the electronic WMS but rather via email and telephonic communication.

(5) The applicant must state the location and scope of emergency work.

(6) The wayleave approval letter will be issued via email and will also serve as permission to commence with the required works.

Request for services information

8. (1) An applicant may request information on the location of existing services infrastructure.
- (2) The application must be processed via the WMS.
- (3) An application letter, locality plan and sketch plan of proposed works must be submitted in support of the application.
- (4) After consideration of the application, the City may make the requested service plans accessible to the applicant.

Extension of wayleave

9. (1) Where a wayleave will expire before completion of the works, a wayleave holder must, before the wayleave expires, request for an extension of the wayleave validity period.
- (2) The application must include; -
- a) the original wayleave number;
 - b) the original expiry date of the wayleave;
 - c) planned completion date for associated works; and
 - d) a motivation explaining the circumstances and reason for the extension.
- (3) The City may, after consideration of the application, grant an extension of the wayleave validity period.
- (4) A wayleave will not be renewed once it expires. A new wayleave application must be submitted.

Transfer of Wayleaves

10. (1) A wayleave may only be transferred to another person, with the written approval by the City.
- (2) A written motivation must be submitted in support of the transfer.

Part C

Powers and Responsibilities

Obligations of Wayleave Holder

- 11.** (1) A wayleave holder must adhere to the conditions contained on the wayleave until the anticipated works are completed.
- (2) A wayleave holder is responsible for all acts or omissions undertaken for the duration of carrying out works.
- (3) A wayleave holder must take necessary steps to verify the exact location and type of already deployed services infrastructure prior to the commencement of the works.
- (4) A wayleave holder must commence with works within thirty (30) working days after the wayleave is issued.
- (5) A wayleave holder must request a Services Verification meeting and notify the City in writing, of the date and location of planned works no less than five (5) working days before commencement.
- (6) A wayleave holder must keep a physical copy of the wayleave and permit to work on location where the works are carried out.
- (7) All works must be undertaken during the hours indicated on the wayleave and permit to work. The City may impose conditions if the works are noisy, invasive or disruptive.
- (8) A wayleave holder must submit final as-built drawings on the WMS within ten working days of completing the works.
- (9) A wayleave holder is liable for the repairs of any damage caused to a pavement, sidewalk, or any other existing City services infrastructure, as a result of the works stipulated in the wayleave.
- (9) A wayleave holder remains liable for repairs of damaged infrastructure throughout the contractual period to rectify any defects and until the damage of infrastructure is repaired to the City's standard.
- (10) A wayleave holder must ensure that all other applicable laws in respect of works undertaken are adhered to.

Rights and Obligations of the City

- 12.** (1) The City must process all wayleave applications and consider the applications on a case-by-case basis taking into account the nature and scope thereof.
- (2) The City must prioritise emergency applications and triage these applications based on the severity of the emergency.
- (3) The City may monitor and supervise the execution of works authorised by a wayleave.
- (4) The City may lease available space in an existing duct or within the road reserve, at a monthly or annual cost to a service provider. Costs will be as provided in terms of the applicable City Tariff Policies.
- (5) The City may repair and then recover costs from the wayleave holder where damage to City infrastructure, as a result of works done, has not been adequately rectified.

Part D

General Provisions

Tariffs, Guarantees, Holding Deposits and Exclusions

- 13.** (1) All applicable fees and charges will be in line with the City's approved Tariff policies.
- (2) The non-refundable application fee will be charged per application and is not transferrable from one application to another.
- (3) Security deposits will be calculated based on the cost of specific material required to repair or reinstate damaged infrastructure as contained section 5(7).
- (4) A supervision fee may be charged to cover the cost of supervising the installation and repairs to infrastructure . This fee is payable in advance and is non-refundable.
- (7) All government departments and State Owned Entities are exempt from the payment of application, supervision fees and holding deposits. A guarantee in the form of a letter of undertaking must be furnished stating that any damage incurred will be at the cost of the applicant.

Completion Certificates

- 14.** (1) After completion of the construction works, the City will issue the wayleave holder with a preliminary completion certificate.
- (2) The preliminary completion certificate does not indemnify the wayleave holder from any claims for damage to municipal infrastructure that has resulted from the construction works associated with the wayleave.
- (3) A final completion certificate will be issued to the wayleave holder after the lapse of the contractual period to rectify any defects that may occur.
- (4) The final completion certificate will be issued after the City has verified that all—
- a) conditions stipulated in the wayleave and permit to work have been upheld;
 - b) Contraventions have been resolved and penalties settled; and
 - c) As-built plans have been uploaded on the WMS.
- (5) The final completion certificate must accompany the application for the release of security deposit.

Part E

Compliance and Enforcement

General Prohibitions

- 15.** No person may, without the written consent of the City—
- (1) Use Street lights as furniture for the bolstering of electronic communications infrastructure;
 - (2) Install electronic communications infrastructure in informal areas or areas where the layout is not structured or no approved surveyed plans exist.
 - (3) Carry out construction work in a road reserve;
 - (4) Install electronic communication infrastructure on the free ground between properties. Underground conduits must be used.
 - (5) Install electronic communication infrastructure on, over or under private property, unless the private property owner gives full written consent prior to installation thereof.

Compliance Notices

16. (1) An authorised official may issue an compliance notice to a wayleave holder or person who is contravening or likely to contravene the provisions of this By-law.

(2) A compliance notice issued in terms of subsection (1) must state the—

- a) condition of the wayleave or provision of the By-law that is being contravened or will be contravened if the condition is allowed to continue;
- b) measures that must be taken to rectify the contravention condition; and
- c) time period in which such notice must be complied with.

(3) If a person, to whom a compliance notice was issued, fails to comply with the requirements within the specified time, the authorised official may take steps to rectify the contravention, at the cost of the wayleave holder, or take any other action deemed necessary to ensure compliance.

Suspension of Wayleave

17. (1) The City may suspend the wayleave and the permit to work; where the works have not been carried out as specified on the wayleave or conditions have not been complied with. The wayleave holder will be notified in writing of such suspension.

(2) The City may after receiving written confirmation that the contraventions have been rectified and all other conditions have been met, reinstate the wayleave and permit to work.

Offence and Penalties

18. (1) Any person who -

- a) contravenes any provision of this By-law;
- b) fails to comply with any —
 - i) notice issued; or
 - ii) condition imposed in terms of a wayleave or permit to work; or

- c) deliberately furnishes false or misleading information to an authorised official to obtain a wayleave, permit to work or related;

is guilty of an offence in terms of this By-law and is liable, upon conviction to a fine or imprisonment for a period of up to 2 years or as determined by the relevant Court of law.

Indemnity

- 19.** The City is not liable for any loss sustained by, or damage caused to, a person or wayleave holder while carrying out works on City property.

Appeals

- 20.** A person whose rights are affected by a decision taken in terms of a power or duty delegated or sub-delegated in terms of this By-law, may appeal against that decision in accordance with section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000). A written notice of the appeal must be submitted to the City, within twenty- one (21) working days of receiving notification of the decision.

Confidentiality and protection of personal information

- 21.** (1) All plans, drawings and information pertaining to the application as provided in this By-law, which is not in the public domain, must be regarded as confidential.

(2) The City, wayleave holder or wayleave applicant, must not share confidential information other than to the extent necessary for the application or implementation of the wayleave.

(3) Any personal information obtained as a result of communications between the City and the wayleave applicant or holder, must be handled according to the provisions of the Protection of Personal Information Act, 2013 (Act 4 of 2013).

Short title

- 22.** This By-law is called the City of Cape Town Wayleaves By-law, 2025.

DRAFT