



CITY OF CAPE TOWN
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PROPOSED AMENDMENTS TO THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (THE BY-LAW)

GUIDELINE DOCUMENT

Updated: 21 February 2019

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Background

New planning legislation has been adopted and implemented in Cape Town since 1 July 2015, inclusive of the City of Cape Town Municipal Planning By-law, 2015 (the by-law). The by-law also includes the City of Cape Town Development Management Scheme (DMS), which is the zoning scheme for the City. All land units within the City have a base zoning that determines what the land can be used for, and how the land may be developed. Zoning provisions are indicated in the DMS.

The City is proposing a number of amendments to the by-law as part of its annual review process and to give effect to the policies and strategies that have been adopted by the City Council in the past few years.

Some of the proposed amendments are explained below; but the full set of proposed amendments is available as Annexure A which has been set out in the required legal format.

The City will, from 1 March 2019, commence with a public participation process for the proposed amendments. The purpose of this process is to provide residents and interested and affected parties with the opportunity to provide comment and suggestions on the proposed amendments. Thus, the City is encouraging residents and interested and affected parties to read this guiding document, and to refer to Annexure A for further information. The outcome of the public participation process, inclusive of all of the comments received, will be presented in a report before Council who will make the final decision on the proposed amendments.

Category summary

1. Improved efficiency for 'emergency housing' provision

For more information, see amendment 7 and 24 in Annexure A.

The City is, in emergency situations such as fires and floods, obligated to provide temporary housing to those residents who have been affected by the emergency and do not have the means or resources to find alternative accommodation by themselves. Given the nature of an emergency – the fact that it happens unexpectedly and cannot be planned for in advance – the City must be able to quickly provide temporary housing on land that may not be appropriately zoned for such purpose.

Past experience has proven that the current provisions in the by-law hamper the City's ability to respond timeously to emergency situations.

Improved provisions are now proposed which will allow the City to establish emergency housing on City owned land or private land once the owner of such land has provided his/her written consent for a period of up to 6 months. A notice in the Provincial Gazette and on the City's website would need to be published. The City may extend the provision of emergency housing for a further period of up to 6 months, but must advertise the intention and provide opportunity for input.

The proposed amendment will allow for families in emergency situations to be temporary relocated to an alternative site, which may not be necessarily zoned for this use, in a timeous and efficient manner.

2. Provisions to enable e-communication during development applications

For more information, see amendment 20 in Annexure A.

The proposed amendment will allow the City to also use email as a way of corresponding with those who comment or object to development applications.

The City is often required to advertise/notify residents and interested parties about a development application that may affect them. The proposed amendment will enable the City to, whenever such affected party has submitted their comment or objection by email, to use that particular email address for all future communication about the said development application.

This will streamline and fast-track interaction between the City and affected parties who choose email as their preferred method of communication.

3. Transitional provisions for approved amendments to the by-law

For more information, see amendment 25 in Annexure A.

The proposed transitional clause confirms that amendments to the by-law cannot be applied retrospectively. This means that those applications that have been accepted for assessment by the City must be considered and finalized in terms of the provisions in the by-law as it was at the time the application was accepted.

4. Regulation of boundary walls in terms of the zoning scheme

For more information, see amendment 26(e), (o), (mm) and 75 in Annexure A.

Boundary walls in the City are currently controlled by an approved policy, and the proposal now is to amend the by-law to provide more control over boundary walling as well as to provide more certainty about what is permitted.

The proposal is to insert provisions in the by-law to regulate the height and visual permeability, among others, of boundary walls. These are basic provisions only, and do not include additional controls applicable to properties/land that are situated in overlay zones, such as Heritage Protection Overlay Zonings, etc.

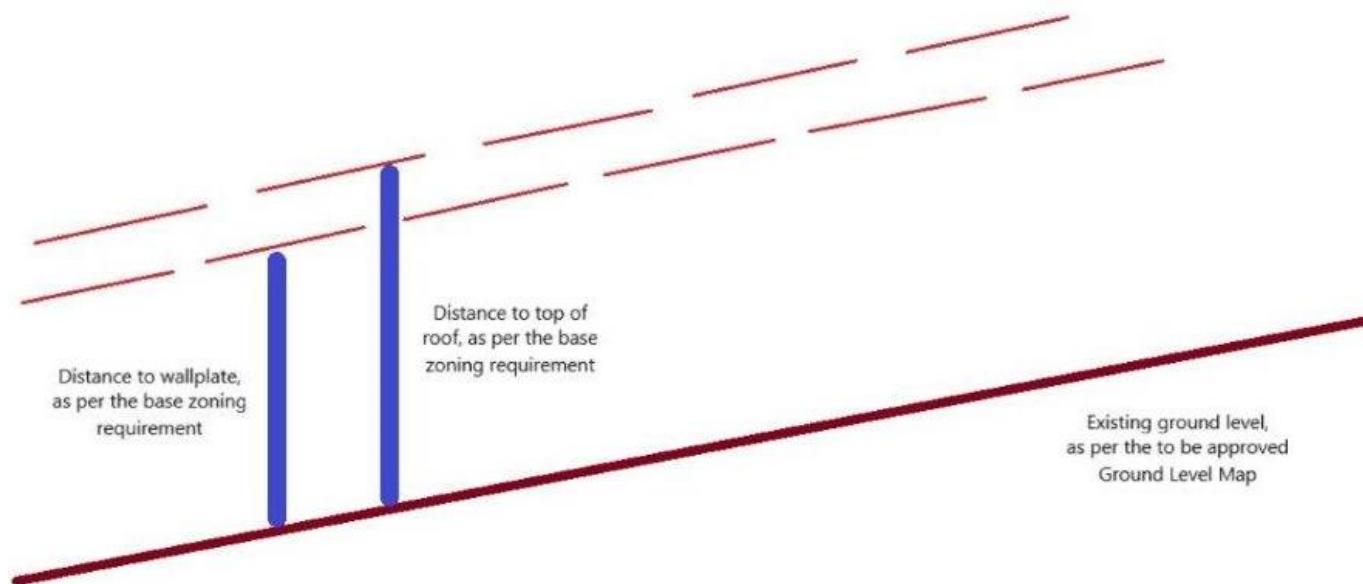
5. Revised method to calculate and determine height of buildings

For more information, see amendment 26(j) and other related amendments in Annexure A.

The method of measuring height has always been a contentious issue, especially on sites and in areas with steep slopes. Most complaints relate to the impact of height on neighbour's views, privacy, and sunlight.

Land owners on the other hand, are also affected as it is difficult for them to design their own structures because the maximum height of a development can be affected by the design, placement and excavation of the site.

The City is now proposing an additional method to measure the height of buildings that can be illustrated by the following generalized diagram:



Height will no longer be measured from a base level as an imaginary plane, but rather from all points above the existing ground level. A specified height above existing ground level can be seen as a 'parallel' plane to the existing ground level.

This creates a clearly identifiable height 'envelope' within which an owner can build.

Should this amendment be approved, the City will still need to produce a ground level map that will cover all sites and land in the Municipality of Cape Town. This map will be the subject of further public participation. The adopted map of ground levels for the City would become the benchmark for height determination of all buildings. It is to be noted that the bylaw will continue to allow where necessary, for the City to determine existing ground level in the case of graded new townships and detailed measured ground surveys undertaken by owners or the City.

6. Proposal to allow short-term letting from a house or flat

For more information, see amendment 26(i) and (jj) in Annexure A.

The by-law currently does not address the concept of short-term letting in flats. Short term letting in flats is currently not permitted. The by-law does cater for guest houses and bed & Breakfast in dwelling houses.

The City is now proposing that the by-law allows for short-term letting from a dwelling unit – a house or flat – for a period not exceeding 30 consecutive days. This is irrespective of the platform that facilitates the said transaction, be it through traditional means or online letting platforms.

Furthermore, it is expected that body corporates, home owners' associations and the like, control or prohibit short-term letting or accommodation in accordance with their own rules.

7. Inclusion of minor freestanding and minor rooftop telecommunication infrastructure in certain zonings

For more information, see amendment 26(u), (v) and other related amendments in Annexure A.

The intention of the proposed amendment is to allow for less bulky and less tall cell masts or towers to be constructed by cellular network and telecommunication providers. This type of infrastructure is intended to be usually attached to existing infrastructure, such as a lamp post or rooftop, and is less intrusive than conventional telecommunication masts.

This proposal puts into effect the provisions made in the policy on telecommunication and infrastructure approved by Council in 2015

The maximum height of a minor freestanding mast is 12 m.

The maximum height of a minor rooftop mast is 1,5 m.

A minor rooftop structure is allowed as a consent use for properties zoned as Single Residential 1 and Single Residential 2; as well as for General Residential 1 - 6. Meaning, the owner of the property must still apply to the City for permission for such structure.

It is proposed that properties zoned as Community Use such as churches, schools, clinics and hospitals; Utilities; Transport 1 and Transport 2, Public Open Space, as well as Agriculture, be allowed to install a minor freestanding mast or minor rooftop mast as of right. Meaning, freestanding masts and rooftop masts can be installed at or on these sites without prior approval from the City in terms of the by-law. Building plan approval may still be required.

8. Third dwelling to be permitted as an additional use right on properties zoned Single Residential

For more information, see amendment 35 and other related amendments in Annexure A.

Densification is pivotal in promoting the long-term sustainability and efficiency of Cape Town's rural, natural, and urban environment. Also, controlled and incremental densification methods are promoted city-wide by several City strategies and policies.

The proposal is to add a third dwelling use as an additional use right in the Single Residential zonings. Properties zoned as Single Residential 1 are generally speaking free standing houses, and those zoned as Single Residential 2 are usually incremental housing areas.

A third dwelling as an additional use right means that the property owner is allowed to add a third dwelling on the property providing it complies with the normal development rules of the property, as well as with specified conditions.

These conditions would, for example, determine the floor space (thus, the size) and the height of a third dwelling. Also, the construction of a third dwelling shall be subject to the City's municipal services departments certifying that capacity is available for the provision of water, sanitation, and electricity, among others, to the third dwelling. Also, the property owner is still required to obtain building plan approval from the City.

9. Redrafting of the provisions for a Small and Micro Enterprise Overlay Zoning in the by-law

For more information, see amendment 26(p), (t), (dd) and 80(f) in Annexure A.

All land units within the City have a base zoning that determines what the land can be used for, and how the land may be developed. An overlay zoning can set additional development rules over and above the provisions of a base zoning. They can be more permissive or more restrictive than the base zoning development rules.

The By-law was amended in 2016 to include a new "Small and Micro Enterprise Overlay Zoning".

The proposed amendment to the by-law will allow for more permissive land uses on properties zoned Single Residential 1 or Single Residential 2 in immediate proximity to scheduled public transport services. The scheduled public transport services could be road-based, such as the MyCiTi bus service, or it could be passenger rail.

Property falling within an area demarcated to form part of the new overlay zoning will be categorised as either high or low intensity residential land units. Depending on the intensity and zoning, additional land uses of an office, guesthouse, place of instruction, business premises, service trade and restaurant would be permitted.

Specific development rules and limitations on scale are also applicable to these additional uses.

The new proposed overlay zoning supports the City's Transit-Oriented Development Strategic Framework which promotes the appropriate mix of land uses so that public transport can be more cost effective, and to also contribute to a more functional City.

Should this amendment be approved by Council, the City will then proceed to prepare a map depicting the high and low intensity properties that will be subject to the overlay. Residents and affected land owners, as well as other interested parties, will have the opportunity to participate during a further public participation process. The map will only become effective once it has been approved by the City.

10. Clarity on when the City may grant or may not grant an application that would be in conflict with a restrictive title condition or servitude

For more information see amendment 4 in Annexure A.

Depending on the specific wording of a title condition and/or the legislative basis for its incorporation into the title deed, it may not be necessary for the condition to be removed or amended before the City can approve a land use application in terms of this by-law.

The new insertion in terms of the by-law provides clarity on this issue.

11. To increase the validity period of some approvals and extensions of approval validity from 2 years to 5 years

For more information see amendment 2 in Annexure A.

A validity period is the time in which an approval has to be acted upon. If it is not acted upon in time then the approval will lapse unless an extension of time has been granted.

Most application approval types in terms of the by-law are specified as having a validity period of 5 years. Some applications types are not specified and then the default validity period is only 2 years.

This leads in some instances where there are multiple applications granted which have different validity periods.

The amendment proposal is to make the default validity period to be 5 years (except for a temporary land use departure).

Extension of time of validity period is also to change to 5 years for all application types for the same reason.

12. Provisions to clarify the need for subdivision conditions of approval to be met prior to a 'certificate of registered title' transfer clearance of a land unit arising out of an approved subdivision

For more information see amendment 5 in Annexure A.

The amendment clarifies that the City regards a 'certificate of registered title' in terms of the Deeds Registries Act to be subject to the same provisions and approval from the City for transferring of a land unit arising out of an approved subdivision to a new land owner.

This is to ensure that prior to the transfer of any new land unit the conditions of approval have been complied with (primarily these relate to the provision of services to each new land unit).

13. Inclusion of further exemptions from the requirement to obtain approval for subdivision and consolidations by the City

For more information see amendment 6(a) in Annexure A.

The by-law currently lists scenario's which are exempt from requiring a subdivision or consolidation approval by the City. Three more scenarios are proposed to be added, as the City believes that they do qualify for exemption status due to their low impact.

This will improve efficiencies and minimise unnecessary applications.

14. Prescribed form for objections and appeals

For more information, see amendment 14 and 18 in Annexure A.

It is proposed that objections to an application, or an appeal against a decision made in terms of the by-law be submitted on a standardised form.

The intention of the standardised form is to ensure that the objection or appeal provides the City with the relevant and required information. A standard form will also ensure clarity and a better understanding of the formal requirements for an objection or appeal set out in the by-law.

Additional and supporting documentation can still be submitted together with the standardised form.

15. Decision making criteria on land use applications

For more information, see amendment 16 in Annexure A.

Criteria for decisions are to be simplified to ensure clarity and increased transparency in the decision making process.

The changes are not intended to make it either easier or more difficult to obtain an approval.

16. Procedure for circulating appeals

For more information, see amendment 19 in Annexure A.

Clarity is provided that:

- The City is required to notify all objectors when an applicant submits an appeal against a decision made in terms of this by-law so that the objectors can comment on the appeal.
- The City is required to notify the applicant when an appeal is submitted by any other person who is permitted to appeal a decision in terms of the by-law.

17. Addition to administrative penalty provisions

For more information, see amendment 22 in Annexure A.

The City intends to provide for the opportunity to prescribe certain contraventions which are of a minor nature such that they would not be subject to the administrative penalty process.

Such contraventions still need to be formulated and would be subject to a further public participation process at a later stage.

18. The introduction of a new zoning category – Transport Zoning 3: Toll Road

For more information, see amendment 26(aa), (bb), (ii), 31 and 63 in Annexure A.

A toll road is currently not defined in the by-law and therefore provides no regulation over the potential impact for the City and its residents.

An amendment to the by-law is to create a definition as well as a new base zone.

If approved this will be a new base zone and land for a toll road use would need to be rezoned and this will allow the City to evaluate potential impacts in the decision making process.

19. Number of Domestic Staff Quarters permitted on a property

For more information, see amendment 26(h) in Annexure A.

The by-law permits domestic dwelling quarters in an outbuilding associated with a dwelling providing a maximum floor space is complied with and that it be used for accommodation of domestic staff employed at the dwelling house. This provision is clarified to state that no more than one staff quarter is permitted on a land unit without the consent of the City.

The City believes that some land owners have been constructing or converting structures into multiple staff quarters as accommodation for non-domestic staff quarters on a land unit.

Single residential zoned properties already permit a primary dwelling and second dwelling and now it is proposed in these amendments that a third dwelling be permitted.

Clarity is provided that a series of staff quarters for each dwelling cannot be permitted on a single residential land unit without the City considering the legitimacy of the domestic staff quarters and the potential impact upon neighbours.

20. Amendment to Heritage Protection Overlay provisions; Land deemed as a heritage area in accordance with the National Heritage Resources Act; Amendment to Environmental Management Overlay provisions

For more information, see amendment 30, 82, 83 and 84 in Annexure A.

Deleting the reference to land being deemed as a heritage area as the City does not currently have the legal competency to deem heritage areas in terms of the National Heritage Resource Act. This clause can be re-introduced should this delegation is given to the City.

Clarity provided when assessing a land use application that allows for consideration of architectural form and treatment together with imposition of new development rules as conditions of approval.

The Heritage Protection Overlay and Environmental Management Overlay Zoning have the opportunity to prescribe special provisions relating to land use and development rules. Reference to heritage management plans, environmental site- or activity-management plans are omitted as the process and procedures for their approval are not yet in place.

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