

# People's Bylaw

## Manifesto for a new Civic Participation Bylaw in Cape Town

### Background:

On the 17<sup>th</sup> August 2017, eight Civic Associations in Cape Town (**Bo Kaap Civic Association, Observatory Civic Association - OCA, Phillipi Horticultural Association, Pinelands Ratepayers Association, Sybrand Park Civic, Woodstock Residents Association, Princess Vlei Forum and Greater Cape Town Civic Alliance - GCTCA**) met to explore the possibility of a Civic-led bylaw on participation. The meeting was prompted by our consistent previous experiences of being frustrated in our engagements with local government. All civics reported examples of problematic, unproductive and tokenist engagements, which have left all parties dissatisfied, adversely impacting on the trust of communities in the very democratic processes established by our Constitution to give communities greater voice in decisions affecting them.

This initiative seeks to be proactive about the participation we would like to see - by exploring the idea of a Municipal bylaw which would set out terms for participation governing City-civic interactions. Other countries and cities have succeeded in establishing similar kinds of bylaws and systems that try to entrench more meaningful forms of participation.

We therefore see this bylaw as a civic-driven initiative intended to consolidate participative processes as part of democratic governance within a city framed as a Commons. It would be based on our Constitutional principles and provide clearer guidance to City officials about how to pursue public participation. How we get to the final outcome and exactly what form the final outcome is to take, will be determined by the Civics who drive this process. But it was felt more important to initiate the process and let the participants define the details as we go forward.

Accordingly, a first workshop on 9<sup>th</sup> September 2017, attended by 20 participants from ten civic structures (**Forum of Cape Flats Civics, De Waterkant Civic, Phillipi Horticultural Association, Observatory Civic Association - OCA, Woodstock Residents Association, Greater Cape Town Civic Alliance - GCTCA, Princess Vlei Forum, Fish Hoek Valley - RRA, Electricity Tariffs Must Fall, District 6 Working Committee**) brainstormed broad principles for a manifesto that could help to guide the process going forward. These are presented in this document as a series of discussion points, all focused on what we would as Civics like to see contained in a future bylaw on participation. The idea is that we will hold a series of workshops with broader civic membership, supported by some key pieces of research and informed by solid legal opinion, to further develop this document as a manifesto. This will enable us to then approach City officials who might be amenable to this proposal and to draw on other resources available to us. The Development Action Group (DAG) have, for example, indicated their willingness to support the initiative, where they can, and we will try to tap other useful research and legal support.

## 1. PARTECIPATION

Participation is a fundamental human right. It is both a right itself and is instrumental to realizing other rights. Our Constitution emphasizes the importance of meaningful participation in decision-making by people who are affected by such decisions.

At the same time, we believe it important to recognize the City as a Commons. The principal function of the City is to be the common house of the people who live there, the place where social life is built,

where the varying needs and interests of different people and groups are discussed and compared and where conflicts are managed – a process that is integral to the social life of a city.

The City's principal function is to assure that all citizens, residents, communities and social groups have a structure where contestation over resources and decision-making between different social groups is done in a common space and in a more inclusive way. We cannot exist as individuals but must work within social relationships if we are to ensure inclusive, equitable and positive development. As the principle of Ubuntu makes it clear, we are who we are through our relationships and engagements with others.

We must have a system at municipal level that allows participation to inform decision-making in a way consistent with this constitutional imperative. This is because the service delivery function of the Municipality will be a reflection and consequence of how confrontation over resources and decision-making within the city is conducted. Depending on how these processes are structured, these may lead to greater social cohesion and inclusiveness, or to perpetuation of social injustice and separation with increased frustration.

## 2. CAPACITY BUILDING

Capacity building is core to ensuring the fulfillment of people's participation. In order to participate in decision-making, people will need to understand the reasons, options, assumptions and elements in the decision-making process. Simply providing information is insufficient to ensure participation.

A municipal by-law should introduce the modalities and define a **Capacity building programme** for the public to increase people's capacity to understand issues and to develop participatory and self-organizing skills. The Capacity building programme is aimed not only at the citizen but also at any City officials working at community level or involved in decision-making affecting communities. Where appropriate, resources, such as at Educational Institutions, should be drawn upon through the bylaw to support capacity building for participation with adequate budgeting.

Stronger capacity in communities will translate into a more effective ward council systems, stronger civics, greater accountability of officials and more successful interventions.

## 3. FORMS AND LEVELS OF PARTICIPATION

Forms and levels of popular participation cover a very broad scope. The by-law must define these different forms of popular participation and the level of engagement.

Forms of participation

- **Self organisation:** The municipal by-law must recognise and promote the right of the people to organise themselves, including the provision of concrete tools and resources to promote such organization (e.g. a capacity building program). The municipal by-law must also provide, where necessary, for the use of third parties (e.g. access technical experts) to support communities and civics. This should be without financial burden to communities so that civics should have access to the same resources as are available to the City using our rates and taxes. This should preserve community autonomy and avoid party political manipulation.
- **Collective participation:** Participation does not require only the opinions of individual members of the public but also looks at the ways in which communities are organised (associations of citizens, voluntary associations, NGOs, organisations of faith, sports and cultural organisations etc). The by-law needs to recognize both individual and collective elements required for meaningful participation in decision-making.

- **Participation structures mandated by law:** In some contexts, there are structures established by law to effect community participation (for example, SGBs at Schools, Health Committees under the National Health Act, etc). The bylaw needs to recognize these statutory structures, including how they are elected (for example through a public call) and what specific budget is required for the functioning of the structure. With regard to municipal level structures (such as the Municipal Planning Tribunal or MPT), the bylaw should define the criteria for membership and its decision-making to reflect a more participatory process.
- **Civic conversations:** The by-law must define the structures that the City establishes for public discussion with various forms of associated civilians, such as, for example, the establishment of a Public-City Forum or similar structures, whether at city, ward or sub-council levels - and define the necessary budget to maintain their activities.
- **E-Democracy:** The internet and the social media could play a key role in enhancing participation but also carry the risk of aggravating social exclusion due to unequal access. The by-law must establish pilot projects to explore how the internet and the social media can be used for promoting transparency and access to information, public consultation, open dialogue and in general increase participation in the public sphere.

### Levels of participation

- **Information (Notification):** When a City activity is just to provide information, this is a notification action. The by-law must provide the criteria for when this approach is indicated, the cases when this approach is appropriate and the communication tools and methods which are to be used.
- **Expression of an opinion (Consultation):** When the City is seeking people's opinion, this is a Consultative Action. The municipal by-law must specify the definition of consultation and the types of cases when this is appropriate, including the modalities, times, tools and information resources made available to the public to make these decisions.
- **Partnership (Collaborative Governance):** Civic identities emerge in the process of doing things together by collective engagement, thus acquiring a sense of empowerment and awareness of having influence on decisions and processes. The partnership approach for public engagement is an opportunity for the municipal government and the public to define a new model for partnership based on effective public participation. At this level, activities are examples of a partnership between public administration and active citizen to develop, treat, and reuse public interest resources with a view to improving the quality of life in cities. To effect these arrangements of level and form of participation, the bylaw will need to **establish a specific administrative tool for a partnership approach** (in the Italian experience, this is defined as a **Collaboration Agreement** between the authorities and citizens). Its main purpose is to regulate the collaboration between the public and the City for specific urban commons, activities or projects. A local prototype of this kind of administrative tool that may be explored further is the **MOU between the City and the Princess Vlei Forum** for the development of the natural area around Princess Vlei.

## 4. TRANSPARENCY, COMMUNICATION, INFORMATION, INCLUSIVITY AND ACCOUNTABILITY

The principles of transparency, communication, information, inclusivity and accountability are all inter-linked and mutually dependent. Disaggregated data is required, as outlined in the approved Sustainable Development goals (SDGs).

Meaningful public participation requires full information, that is provided in accessible and, where appropriate, simplified language, free of jargon, using diverse forms of communication and in all languages. Information sharing should be based on recognising the importance of bottom-up rather than top-down communication. There should be sufficient notice to allow for community processes to take place rather than providing timelines that suit public officials. Forms of advertising should

be shown to be effective in reaching target audiences, rather than being done for tick-box reasons. Inclusivity needs to be advanced by the way in which information is shared and sought by officials and from communities. Easy ways to contact the city - e.g. a single entry point for citizens/communities to access information – should be established consistent with the City's Open Data Policy. Any office or structure set up to facilitate the flow of information needs to have the powers to achieve its mandate. Without inclusivity we will not achieve social justice, redistribution and dignity.

The City not only has the duty to make data about their activities accessible to all, but also all monitoring and evaluation reports. Further, the methodology and criteria used for the evaluation needs to be part of a participatory process.

Because the **city budget** is so critical for development, we focus particularly on participation related to budgets: To increase public participation in the city budget process and decisions, the bylaw needs to establish a document (such as a **City budget guideline**) which bridges the Integrated Development Plan (IDP) and the City budget. Such a document should define how the city budget is divided by disaggregated categories and what are the indicators for each category that define how projects were chosen for implementation. The City Budget participatory process should be:

- Robust and consistent with meaningful public participation
- Transparent and able to effect quick access to information
- Subject to Auditor-General review - both of processes and outcomes
- Open to monitoring by Civil Society (including Universities, NGOs/NPOs, Civics and Community Organisations)

**Performance Agreements and job descriptions of public officials:** The by-law must define how civic participation will become part of the Performance Agreements for public officials, starting from the Municipal Manager and other senior management, defining specific mandates and goals for each function. For example, it should become a specific mandate for the Chief Financial Officer to develop information that is accessible and understandable for the public on the draft municipal budget and to develop a specific programme to involve civil society organisations and the public in participatory discussion of the budget from an early stage. The bylaw must recognize that municipal officials are custodians of taxpayers funds intended to serve the public good.

## 5. AN ADEQUATE BUDGET AND RESOURCES FOR PARTICIPATION

If the principal function of the City is to be the common house for its people, then the budget that the City allocates to this function must match its policy intent. The extent of this budget determines whether civilian participation is a fundamental aspect for the City, or whether it is a general statement without any concrete application.

It is therefore necessary to include in the municipal regulation the principle that every project, action and activity carried out by the municipal administration must include the adequate cost of public participation and related processes.

## 6. DEMOCRATIC WARD GOVERNANCE

Currently the capabilities and the strengths of the individual ward structures are somewhat limited and lack sufficient budgets. At the root of the problem is that the ward system does not ensure that councillors are accountable to their constituencies. The bylaw should ensure that Ward Council meetings prioritise ward issues, that councillor accountability to their constituencies is enhanced by limiting the discretion they can exercise, and that active capacitated members of the public, through their civics, can prevent undemocratic, non-transparent processes.

In this context, two principles must be introduced in the bylaw. The first is the **prioritization of the local community** in the ward system and in the choices of the councillor. The second is the **principle of solidarity and equity** at the city level. By solidarity, we mean the mutual support across civics in a common interest; by equity, we mean we should work to overcome/avoid inequity such as only rich areas having the economic and human resources to undertake actions and projects, whereas areas with fewer resources and historically disadvantaged, will be in a negative spiral. In other words, there should be a principle of redistribution of resource, an even spread of support as well as co-operation/collaboration.

For a large and complex city as the City of Cape Town, it is necessary to open a public and participatory debate on which is the best scale to tackle the various problems. There are no simple answers to this issue. Many cities around the world face the same questions. It would be extremely useful if the City started an exchange and comparison activity with other cities, in South Africa and internationally.

## **7. MINIMISING CONFLICT OF INTEREST AND ITS CONSEQUENCES**

The City is there to serve the people of Cape Town. It is inevitable that some people, groups and other stakeholders will have private interests which mean they can benefit from certain public decisions. It is important to ensure that Conflicts of Interest (cOi) are rendered visible (not hidden) and are expressly managed so as to minimize adverse consequences. The bylaw should create public participation processes that limit the potential for cOi to influence decisions and which open decision-making processes up to oversight – through transparency and access to information; and through auditing by Civil Society.

## **8. INTERSECTORAL ACTION**

There are too many silos in the way services are delivered or projects are planned. This has negative effects on equity, and complicates participation. The bylaw should address participation seamlessly across sectors and remove these additional barriers for communities.

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