

CITY OF CAPE TOWN

COMMUNITY PARTICIPATION BY-LAW, 2018

BY-LAW

PREAMBLE

WHEREAS section 152(1)(e) of the Constitution of the Republic of South Africa, 1996 identifies "encouraging the involvement of communities and community organisations in local government" as one of the objects of local government;

WHEREAS section 16(1) of the Local Government Municipal Systems Act obliges a municipality to develop "*a culture of municipal governance that complements formal representative government with a system of participatory governance*";

WHEREAS section 5(1) of the Local Government Municipal Systems Act, 32 of 2000, provides that the local community have the right to submit written or oral recommendations, representations and complaints to the municipal council or to another political structure or a political office bearer or the administration of the municipality and the right to prompt responses to their written or oral communications, including complaints;

WHEREAS section 6(2) of the Local Government Municipal Systems Act, 32 of 2000, provides that administration of a municipality must be responsive to the needs of the local community, facilitate a culture of public service and accountability amongst staff and establish clear relationships, and facilitate co-operation and communication, between it and the local community;

WHEREAS section 16(1)(a) of the Local Government Municipal Systems Act, 32 of 2000, obliges municipalities to encourage the local community to participate in the affairs of the municipality and to create the conditions for the participation of the local community municipalities;

WHEREAS section 16(1)(b) of the Local Government Municipal Systems Act, 32 of 2000, provides that municipalities must contribute to building the capacity of the local community to enable it to participate in the affairs of the municipality and to the capacity of councillors and staff to foster community participation;

WHEREAS section 16(1)(c) of the Local Government Municipal Systems Act, 32 of 2000, provides that a municipality must use its resources and annually allocate funds in its budget as may be appropriate for community participation;

WHEREAS section 17(2) of the Local Government Municipal Systems Act, 32 of 2000, provides that a municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality and in particular must provide for consultative sessions with locally recognised community organisations

WHEREAS section 17(3) of the Local Government Municipal Systems Act, 32 of 2000, provides that when establishing appropriate mechanisms, processes and procedures to enable the community to participate it must take into account the special needs of people who cannot read or write people with disabilities women other disadvantaged groups; and

WHEREAS section 17(4) of the Local Government Municipal Systems Act, 32 of 2000, provides that a municipal council may establish one or more advisory committees consisting of persons who are not councillors to advise the council on any matter within the council's competence;

AND NOW THEREFORE, BE IT ENACTED by the Council of the City of Cape Town as follows:

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CHAPTER 1

DEFINITIONS

1. Definitions

In this By-Law, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

"By-Law" means this by-law approved by the Council on [•]

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

"City Manager" means a person appointed by the Council in terms of section 54A of the Municipal Systems Act;

"Civic Organisation" means a group of people from the community with a common identity or interest who have organised into a formal organisational structure which can include but not be limited to a voluntary association, private company, or trust;

"Council" means the Municipal Council of the City of Cape Town;

"committees" mean the Mayoral Committee as well as portfolio committees and any other committee established by the Council;

"community" means the residents within the area of jurisdiction of the City or the organisations who have an interest in the area of jurisdiction of the City;

"designated sites" will include municipal buildings, libraries, Ward Councillor offices and the City's website;

"Events By-Law" means the Events By-Law approved by the Council on 30 March 2009, as amended;

"the Forum" means the Civic Conversation Forum which shall be a voluntary association consisting of members who are Civic Organisations;

"IDP" means the Integrated Development Plan approved by Council;

"Language Policy" means the language policy 50554 approved by the Council on 25 April 2018, and amended;

"MFMA" means the Local Government: Municipal Finance Management Act 56 of 2003, as amended;

"Municipal Systems Act " means the Local: Government Municipal Systems Act 32 of 2000, as amended;

"official" means an official as defined in the MFMA in relation to a municipality or municipal entity meaning:

an employee of a municipality or municipal entity;

a person seconded to a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity;

or a person contracted by a municipality or municipal entity to work as a member of staff of the municipality or municipal entity other than an employee;

"Public Register" means a register of civic organisations that is administered by the City;

"Rates Policy" means the rates policy published annually by the Council;

"Rules for Ward Committees" means the rules for the operation of ward committees in the metropolitan area for the City of Cape Town approved by Council on 16 October 2016, as amended;

"Structures Act" means the Local Government: Municipal Structures Act 117 of 1998, as amended;

Ward Committee" means a committee established in terms of section 72 and 73 of the Structures Act and governed by the Rules for Ward Committees; and

"Ward Councillor" means the person elected to represent the ward.

CHAPTER 2

APPLICATION OF THIS BY-LAW AND CONFLICT OF LAWS

2. Application of this By-Law and conflict of laws

(1) This By-Law applies to all officials, Councillors, public representatives, Ward Committees, Civic Organisations, municipal entities and members of the public in as far as their rights, duties, responsibilities and roles are outlined in terms of this By-Law.

(2) The Rules for Ward Committees is an additional public participation instrument and must be read together with this By-Law.

(3) In the event of any conflict between this By-law and any other by-law or any policy which relates to matters of public participation, the provisions of this By-law shall prevail in so far as it relates to matters of public participation.

CHAPTER 3

PRINCIPLES

3. Principles

This By-Law recognizes that the principal function of the City is to be the common house of the people who live there, the place where social life is created, where the 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. Accordingly this By-Law reflects the following principles:

(1) **Mutual trust:** is based on the public's prerogatives regarding supervision, planning and control and the mutual willingness to collaborate in the pursuit of the public's interest.

(2) **Accountability and Transparency:** is based on the assumption that all role-players will accept full responsibility for their individual actions and that the City will ensure it is transparent and fair in its relationship with the public.

(3) **Responsibility:** the City considers its responsibility and the public's responsibility as key factors in the relationship with citizens, as well as a necessary pre-requisite in order for the partnership to be effectively oriented to the production of useful and measurable outcomes.

(4) **Access:** accessible and responsive arrangements are to be developed to enable members of the public to enjoy the rights and privileges guaranteed by legislation.

(5) **Consultation:** consultation is an important process for sharing and gathering various insights with regard to addressing a particular issue. Consulting internal and external role-players is therefore critical when planning and/or initiating programmes and projects. Given the fact that the services of local government are for public consumption, it is imperative that the users of public services are consulted about their needs and priorities. Their inputs and comments must be taken into account when making decisions.

(6) **Sustainability:** the City, by exercising its discretion in making decisions, ensures that the collaboration with the public does not cause greater costs than benefits, and that it does not determine negative consequences.

(7) **Diversity:** South Africa is a diverse society. Public participation processes must therefore take into account differences that may stem from gender, religion, race, ethnicity, language, sexual orientation, age, economic status, and so on. These differences should be allowed to emerge and, where appropriate, ways sought to develop an approach that allows for inclusiveness, based on respect and dignity.

(8) **Information:** Effective decision-making and conduct are augmented by the availability and provision of comprehensive and accurate information. Information sharing often contributes to educating communities and fostering better understanding and appreciation for project decisions and implementation plans.

(9) **Redress:** Residents are entitled to an apology, explanation and remedial action, if the promised standard of service is not delivered.

(10) **Civic autonomy:** the City acknowledges and respects the citizens' own initiative and autonomy.

CHAPTER 4

METHODS OF PARTICIPATION

4. Petitions

(1) Petitions lodged by the local community will be received by the City at a facility provided for the City's offices or by the Executive Mayor and the City Manager and/or their delegates.

(2) Any petition must comply with the following requirements –

- (a) it must be in legible writing or typed;
- (b) it must clearly indicate the topic; and
- (c) it must indicate the relevant department or official, where possible.

5. Consultation

(1) The City must actively seek the community's input or comments on matters pertaining to service delivery to ensure that all the needs of the community are catered for.

(2) The following activities, apart from those other matters specifically provided for in legislation, require community consultation:

- (a) development of the IDP;
- (b) compilation of the City's budget
- (c) relevant policy formulation;
- (d) developing a by-law; and
- (e) determining performance indicators for the performance management system.

(3) Where applicable the Ward Councillor and the Ward Committee must hold regular community meetings in their respective wards to ensure that all the comments and inputs of the communities are received.

(4) The representatives of the various organisations, sectors and geographical blocks within a ward serving as Ward Committee member must hold feedback meeting with the sectors on a regular basis and give feedback to the ward committee.

(5) Information regarding matters for consultation will be advertised at libraries, on the municipal notice boards, on the City's website, in community papers, and will also be available at meetings.

(6) Staff must be present at meetings to assist people with special needs and those who cannot read or write.

6. **Complaints**

(1) All complaints will be addressed to the City Manager and may be submitted by way of Ward Council structures, municipal offices or any other mechanisms provided by Council.

(2) Complaints may be submitted on an official form that must be relatively simple to complete, and could be submitted per e-mail or post. Complaints submitted must:

- (a) be legible;
- (b) clearly indicate the topic;

(c) highlight the proposed solution/recommendation; and

(d) stipulate a reply address or contact details.

(3) The City Manager or his/her designated representative is responsible for responding to a petition or complaint within thirty (30) days of receipt of the petition or complaint in a manner appropriate to the matter at hand. These should also be submitted to the appropriate committee for record purposes.

7. Communication and Language

All communication issued by the Council and any of its committees must comply with the City's Language Policy.

CHAPTER 5

MUNICIPAL BUDGET AND IDP REVIEW PROCESS

8. Municipal Budget and IDP Review Process

(1) The IDP is a five-year plan that informs the strategic agenda of Council and, together with the budget, is reviewed annually. Initial community involvement and stakeholder consultation is an essential component of both processes. Over and above legislative compliance, the participation of members of the public in these processes constitutes good corporate governance and fulfils the spirit of government for the people by the people.

(2) The initial development of the content of the budget and IDP must commence by no later than June of the preceding financial year for which the budget and IDP are being prepared to ensure input into these processes by the community.

(3) The draft budget, its related policies and the draft IDP will be placed in the Municipal Libraries, offices of Area managers and the Website to ensure that the public has access to the documents in order to make informed comments.

(4) The Ward Councillor will have the duty to explain the draft budget, its related policies and the IDP to the Ward Committee and the Ward Committee to their respective Wards. (The City will provide support to the Ward Councillor and Ward Committee during this consultative process and on invitation by the Ward Committee attend the meetings of the Ward Committee).

(5) In order to ensure that all stakeholders are informed about these budget consultation meetings, notices will be placed in print media and the municipal website. Announcements will also be made through the electronic and / or social media including the short message service (sms) system, for those whose contact numbers are registered on the municipal database.

(6) All submissions received through the consultation process including written submissions, must be submitted to the Budget Steering Committee for consideration.

(7) The City Manager's office will ensure that public submissions are collected within seven days of the deadline.

(8) All submissions will be acknowledged and recorded in a central register. These will be monitored and responded to by the Budget Steering Committee.

CHAPTER 6

POLICIES AND BY-LAWS

9. Policies and By-Laws

Presentation of draft policies and by-laws to the public will be dealt with as follow:

(1) The Mayoral Committee will grant approval to conduct public participation sessions.

(2) A schedule of public meetings will be determined through consultation with key stakeholders and then advertised in various media formats as approved by the Mayoral Committee (e.g. media, radio, pamphlets).

(3) The full version of the draft policy and by-law will be published in English and summaries will be made available in the three recognised languages of the City in terms of the Language Policy.

(4) A sufficient amount of copies for distribution, as determined by the Mayoral Committee, will be made available in soft and hard copy for public comment.

(5) Public submissions (verbal or written) will be recorded, and submitted by the City Manager to Council for consideration.

(6) Copies of the approved document or policy, or promulgated by-law will be made available in soft/hard format at designated sites.

(7) The City Manager is responsible for ensuring that public comments are channelled through the correct decision-making structures within Council, and for informing the public of outcomes of decisions taken by Council.

CHAPTER 7

CIVIC PARTICIPATION

10. Public Register

(1) The City is required to create the Public Register.

(2) The City is responsible for ensuring that the Public Register is updated every month and contains accurate information.

(3) Civic Organisations may apply to be registered in the Public Register by means of a letter signed by an authorised representative and including the following records:

(a) a copy of the founding document of the Civic Organisation; and

(b) a list of its official representatives (e.g. directors, trustees, or members).

(4) Civic Organisations bear the onus to ensure that it provides the City with regularly updated information in the event that it amends its founding document or its official representatives change.

(5) The Civic Organisations that apply for registration need to have a clause in its founding document that provides for the possibility for the public to become members and to participate in the choices of the Civic Organisation in a democratic way.

(6) The Public Register is a publically accessible document which must be made available on the City's official website.

11. Pacts for civic participation

(1) The City may enter into contracts with Civic Organisations in order to give effect to the objectives of the City.

(2) Every pact shall include, but not be limited to, the following factors:

- (a) a clear scope, area of application and expected outcomes;
- (b) the roles and responsibilities of members of the Civic Organisation and officials from the City;
- (c) consideration of any conflict of interest by members of the Civic Organisation; and
- (d) be compliant with the Municipal Systems Act, Structures Act, MFMA and the City's policies and by-laws.

12. Civic Conversation Forum

- (1) Within 6 (six) months from the creation of the Public Register, the City shall communicate to all registered Civic Organisations its intention to constitute the Forum with every Civic Organisation being eligible to be a member of the Forum.
- (2) The purpose of the Forum shall be to facilitate an organised and integrated forum for Civic Organisations operating within Cape Town.
- (3) The initial members of the Forum must create a constitution for the Forum which must include the following compulsory terms:
 - (a) provide for the appointment of a chairperson, a deputy chairperson, and a managing committee;
 - (b) either the chairperson or deputy chairperson is required to be an official;
 - (c) at least half of the members of the managing committee must be officials;
 - (d) if a Civic Organisation is no longer registered in the Public Register, provision must be made for its membership in the Forum to be terminated;
 - (e) the managing committee must convene monthly meetings; and
 - (f) a general meeting must be convened at least twice a year.

(4) The City must make available office facilities for the Forum's activities, equipped with computers and internet access, a phone line and secretarial resources for the convening of meetings and the drafting of minutes.

(5) To achieve its goals the Forum may set up sub-committees and working groups.

(6) The scope of the Forum may include the development of the following programmes:

(a) a programme for the involvement of Civic Organisations and citizens in the public participation process in respect of the IDP and Municipal Budget;

(b) a programme aimed at strengthening citizen participatory processes and improving the public's access to City documents; and

(c) producing and contributing to policy documents on various topics relating to citizen participation.

(7) Civic Organisations can participate in public participation processes conducted by the City either as individual Civic Organisations or as a collective in the Forum or as both.

13. Exemption from rates

Civic Organisations may be eligible for rates rebates as provided for within the Rates Policy provided that they are

14. Use of public places

Civic organisations may host events within public places in accordance with the terms of the Events By-Law.

15. International exchange programmes

The City's International Relations Unit shall work with the Forum to facilitate the participation of Civic Organisations in appropriate international exchange programmes.

CHAPTER 8

PUBLIC PARTICIPATION IN BUILDING DEVELOPMENT PROJECTS

16. PUBLIC PARTICIPATION IN BUILDING DEVELOPMENT PROJECTS

(1) Where the City intends on undertaking or approving any building development with a budget of exceeding R10 000 000 (ten million Rand) within the area of jurisdiction of the City, the City will be required to publish the building development's business plan for public comment.

(2) The business plan must contain the following:

(a) evidence that the business development is in line with the IDP and other applicable City policies;

(b) draw attention to any deviation from legislation or regulation and provide a justification for the deviation;

(3) The City is required to arrange for a public participation process that is similar to the public participation process for policies and by-laws as set out in paragraph 0 above. The City is permitted to provide for truncated timelines in order to facilitate the construction of the building development.

(4) The City is required to consider public comments prior to approving any building development exceeding R10 000 000 (ten million Rand) within the area of jurisdiction of the City.

CHAPTER 9

SHORT TITLE AND COMMENCEMENT

17. Short title and commencement

This By-Law is called the Community Participation By-Law, 2018 and comes into operation on the date fixed by the mayor by proclamation in the Provincial Gazette.