

Civic Participation By-Law Draft (version 1.0)

[This is an initiative that we first heard about on 6 September 2017 in an invitation from Hazel Brown of Observatory Civic Association. Andrea Couvert, Leslie London and Patrick Melly are part of this Civic Action for Public Participation group (CAPP) as is the Development Action Group (DAG) of Cape Town, Greater Cape Town Civic Alliance (GCTCA), Woodstock Residents Association, Ottery Civics, Alliance for Cape Town Future and us (FHVRRA). Webber Wentzel will provide pro bono legal services.

We have put all our comments in square brackets and “~~crossed-out~~” all deletions that we feel need to be made.

Firstly, you are proposing a City of Cape Town By-Law, not a National Regulation or Act.

Secondly, this By-Law needs to permeate every other City By-Law that needs a public participation process (PPP) in order for PPP to be effective. The process should include how comments / objections will be recorded, if summarization is allowed and reasons given where comments / objections are not followed.

A By-Law needs an introduction (executive summary), Table of Contents (chapters) and Definitions section.

Introduction

The goal / aim / purpose of this By-Law is to provide a process for civic participation that will ...

This ~~aet~~ By-Law recognises that the citizens’ self-organization is an important aspect towards building a sustainable and inclusive City. The City promotes and supports self-organization and active citizenship through a specific **Structure for Public Participation** and a **Capacity Building Programme** for carrying out activities of general interest, based on the principle of subsidiarity.

The provisions of this Civic Participation By-Law shall apply in each and every case where the City activates a process of public consultation and / or a participatory process.]

~~1~~ General provisions

[All City text is full justified, except when centred.]

PREAMBLE

~~1.1~~

[**WHEREAS** section 156(1) of the Constitution of the Republic of South Africa, 1996 confers on municipalities the executive authority and right to administer local government matters set out in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution;

WHEREAS section 156(2) of the Constitution empowers municipalities to make and administer laws for the effective administration of matters that it has the right to administer;]

~~This Regulation is in line with~~

WHEREAS sections 59, 72, and 118 of the Constitution of the Republic of South Africa, ~~which~~ require that national and provincial government facilitate public participation, ~~Furthermore,~~ section 195 of the Constitution maintains that the public is to be encouraged to participate in policy-making.

~~This Regulation is in line with the provisions of~~

WHEREAS the Municipal System Act 32 of 2000, Chapter 4, ~~and the present act~~ constitutes its implementation ~~in the City Regulation.~~

~~This Regulation is in line with the provisions of PAJA — Promotion of Administrative Justice Act. [relevance?]~~

~~This Regulation is in line with the provisions of Spatial Planning and Land Use Management Act No 16 Of 2013 [Other By-Laws besides the City's Municipal Planning By-Law needs PPP.]~~

~~[This Regulation is in line with similar international legal regulations:~~

- ~~• Regulation on collaboration between citizens and the City for the care and regeneration of Urban Commons, 19 May 2014, City of Bologna, Italy (1)~~
- ~~• Regulation on Citizen Participation, October 6, 2017, City of Barcelona, Spain (2)~~
- ~~• New York City Council Participatory Budgeting, July 2011 (3)~~

~~The above is white paper stuff and is not part of a By-Law.]~~

~~1.2~~

~~This section was moved to Introduction.~~

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

ARRANGEMENT OF BY-LAW

CHAPTER 1.

DEFINITIONS]

1.3

[1 Definitions

In this By-Law, unless the context indicates otherwise –

~~For the purpose of this Act the terms are defined as follows:~~

This needs to be arranged alphabetically, as illustrated below. Each is followed by a ‘;’.]

‘**Active citizen**’ [~~Indicates~~ means] all subjects, single or associated, anyhow gathered in social formations;

‘**Civic Participation**’ [~~Indicates~~ means] the participation and involvement of Civic Associations in the City’s decision making process;

‘**Civic Association**’ [~~Indicates~~ means] Residents’, Ratepayers’ and other forms of citizen-based associations that allow their members to democratically participate in the choices and life of the association;

‘**Civic Conversation Forum (CCF)**’ [~~Indicates~~ means] is the structure that the city establish[es] to [realize effect] dialogue and collaboration with citizens’ civic organizations, promoting the principle of a shared administration / Collaborative governance ;

‘**Collaboration proposal**’ [~~Indicates~~ means] the expression of interest, formulated by active citizens, to intervene or to take part in the care and regeneration of urban commons. The proposal may be spontaneous or solicited by the City[; Americanism] and may lead to the stipulation of a Pact for Citizen Participation (PCP); [This is not used anywhere!]

‘**Horizontal Principle of Subsidiarity**’ [~~Indicates~~ means that] the City recognises that the exercise of public responsibilities falls by preference on those authorities that are closest to the citizens;

‘**Pact for Citizen Participation (PCP)**’ [~~Indicates~~ means all] PCPs are legal Memorandum of Understanding documents (MoU) between citizen organisations and/or other stakeholders, and the City.

‘**Public Participation**’ [~~Indicates~~ means] the citizens’ participation and involvement in the City’s decision making process;

‘**Shared Administration / Collaborative governance**’ [~~Indicates~~ means] the processes and structures of public policy decision making and management that engage people constructively across the boundaries of public agencies, levels of government, and / or the public, private and civic spheres in order to carry out a public purpose that could not otherwise be accomplished ;

‘**The Administration**’ or ‘**the City**’ [~~Indicates~~ means] the City of Cape Town, including its Departments and structures;

‘**Urban commons**’ [~~Indicates~~ means] the goods, tangible, intangible and digital, that citizens and the Administration, also through participative and deliberative procedures, recognise to be functional to the individual and collective wellbeing; and

‘Urban Development Pacts (UDP)’ [Indicates means all] UDPs are legal Memorandum of Understanding documents (MoU) aimed at achieving integrated multi-sector development across a specific portion of territory, guided by a spatial vision of desirable future[; Americanism] and supported by strategic infrastructure investments, environmental management[; Americanism] and civic participation.

2 - General principles

2.1

This [aet By-Law] recognizes that €cities are complex, socio-economic systems and that the City of Cape Town can be conceived as a Commons (4). 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[.– It is] a process that is integral to the social life of a city.

2.2

The collaboration and partnership between citizens and the City is based on the following values and general principles:

[re-aligned indent below]

- a) **Mutual trust:** based on the public prerogatives regarding supervision, planning and control, the Administration and active citizens shape their relationship on mutual trust; they assume that the mutual willingness to collaborate is aimed at the pursuit of the general interest.
- b) **Publicity and transparency:** the Administration ensures the widest knowledge of opportunities of partnership, of the proposals received, of the forms of aid allocated, of the decisions made, of the results and of the evaluations made. It identifies transparency as the main tool to ensure fairness in the relationship with active citizens and verifiability of the actions made and of the results obtained.
- c) **Responsibility:** the Administration considers its responsibility and the citizens' 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.
- d) **Inclusiveness and openness:** the collaboration must be structured to allow for the participation of any interested citizen at any time.
- e) **Horizontal Principle of Subsidiarity:** the City recognises that the exercise of public responsibilities falls by preference on those authorities that are closest to the citizens. This principle is implemented according to three criteria:
 - **Sustainability:** the Administration, by exercising its discretion in making decisions, ensures that the collaboration with citizens does not cause greater costs than benefits, and that it does not determine negative consequences.
 - **Solidarity and equity:** the City, with the involvement of civil society, promotes mutual support activities across different geographical and social communities; The City acts and works to overcome and avoid inequality and the legacy from Apartheid.
 - **Redistribution of resources:** the City's Administration recognizes that redistribution policies must be implemented to overcome the legacy of racial, economic and social separation across the City.
 - **Civic autonomy:** the Administration acknowledges and respects the citizens' own initiative and autonomy.

3 - Structure for civic participation

3.1

The structure envisaged to drive civic participation processes shall comprise the following bodies and instrumentalities:

- **Public Register of Civic Associations (PRCA);**
- **Civic Conversation Forum (CCF);**
- **Pacts for Citizen Participation (PCP).**

3.2

Public Register of Civic Associations (PRCA)

- a) The City institutes a Public Register of Civic Associations (PRCA). The Public Register is kept within the City's Legal Services Department, which is responsible for the correct and appropriate keeping of the register.
- b) Civic Organisations may apply to be included within the PRCA by means of a letter signed by their Chairperson, attaching a copy of the Associations Constitution and copy of records of appointment of the office bearers. [Our Sub-council requires: completion of their "Community Organisation Registration Form", proof of membership number, annual financial statement, AGM minutes showing appointment of Executive Committee member and map showing our boundaries]
- c) The Civic Organisations that apply for registration need to have a clause on the Constitution that:
 - provides for the possibility for citizens to be members of it and to participate in the choices of the association in a democratic way; and
 - ~~prevents the office bearers from being employees, directors, owners or shareholders of any company that takes part into development projects whose value exceeds 10 million Rand.~~ [We are aware of the problems experienced by some civics in this regard, but due to the fluidity of circumstances, we prefer a recusal mechanism. Our proposed wording is, "provides for office bearers to declare their interests in the subject under discussion whereupon conflicts of interest that are not declared may result in the affected decisions being rescinded."]
- d) The association must renew registration details every year, ~~or within 30 days from any change of office bearers,~~ or in the articles of association constitution. [At every AGM we officially elect our Exco members with officers being elected at the first subsequent Exco meeting, but every year the number of Exco members (and sometimes officers) diminishes throughout the year. Having to renew the registration details would become onerous. The form makes adequate provision for contacting alternatives.]
- e) The PRCA is public and must be fully accessible to everyone on the City's official website.
- f) The City makes available the services of its Legal Department free of charge to groups of citizens willing to set up a Civic Organisation and to civic associations willing to merge or to set up a legal framework to foster better collaboration. [We can't see the City agreeing to this, but you can try.]
- g) The PRCA is the main tool of communication between the City and civic organizations; every public participation process ~~that does not make use the PRCA is null and void~~ must also automatically include the PRCA in their list of I&AP. [Most acts with PPP make provision for any juristic person to register as an Interested and Affected Person (I&AP). The proposed wording would have excluded their rights.]

3.3

Civic Conversation Forum (CCF)

The Civic Conversation Forum (CCF) has the specific mandate to manage the following activities:

Capacity building programme

The City establishes a Capacity building programme. The programme will be defined according to the following process:

- a) The Civic Conversation Forum (CCF) general meeting approves the general principles of the Capacity building programme.
- b) CCF Management Committee drafts the programme and sends it to the Mayoral Committee for review, and to the Civic Conversation Forum (CCF) general meeting for approval.
- c) The **Co-design Citizen Lab** (see 5.1) is the structure responsible for implementing the Capacity building programme

Budget participatory process

The City will prepare City Budget Guidelines (CBG) bridging the Integrated Development Plan (IDP) and the City budget. The CBG defines 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 CBG document will be presented to the CCF for approval.

Municipal Planning Tribunal

The members of the Municipal Planning Tribunal are nominated by means of a public call and communication through the PRCA. The CCF Management Committee is responsible for the screening of the candidate nominations received, and submits its proposal to the ~~by the~~ City Council for the appointment. To avoid conflicts of interest, direct developers' employees, ~~shareholders~~, and directors cannot be part of the Municipal Planning Tribunal. [In general, we would rather see a declaration of interests with an offer of recusal if perceived as being conflicted. While we want to see the City developed, it must be done to the benefit of all. Our concern with shareholders specifically is that many pension funds invest in construction companies rendering many prospective tribunal candidates conflicted, albeit often covertly. What we want to see is vested interests being blocked as these are probably not objective views.]

Preferred candidates for the MPT are:

- a) professionals who do not carry out any active professional activity
- b) professionals performing mainly academic activity.

[We'd rather also include active professionals, but have their input limited when conflicted or in direct competition.]

Civic Conversation Forum (CCF) - Other Activities

The scope of activity of the Civic Conversation Forum (CCF) consists in designing, developing, and overseeing the implementation of specific programmes, including, but not limited to:

- A programme for the involvement of Civic Organisations and citizens in the elaboration of the Municipal Spatial Development Framework (MSDF) and in the Integrated Development Plan (IDP);
- A programme for citizens' involvement on the elaboration of the Municipal Budget, including pilot projects on Citizen Participatory Budget; and
- A programme on E-Democracy, Open Data and online public access as possible tools aimed at strengthening citizen participatory processes.

Furthermore, the Civic Conversation Forum (CCF) may produce white papers on various topics relating to citizen participation.

The structure of the Civic Conversation Forum (CCF):

- a) Within six (6) months from the institution of the Public Register of Civic Associations, the City shall call a general meeting to constitute the Civic Conversation Forum whose members are the organizations registered in the Public register of civics association. The forum appoints a chairperson, a deputy chairperson, and a Managing Committee (CCF-MC).
The two main executives, Chairperson and Deputy Chairperson, shall be one expression of civic organizations and one of the public administrations, in no particular order. The Managing Committee shall have 24 members, half of whom being representatives of civic associations and the other half being representatives of the City (the original number of 24 can be increased by a resolution taken by the CCF General Meeting);
- b) Only the chairperson of registered organizations, or in case of impediment the deputy-chairperson, can take part to the CCF General Meeting. Voting by proxy is not allowed; [Why is voting by proxy not allowed? This represents another 12 meetings requiring travelling time, etc.]
- c) If a civic organization loses the PRCA registration, its representative automatically loses his/her right to take part to the CCF-MC meetings;

- d) The City must select its representative in the CCF-MC (either chairperson or deputy chairperson) among the members of the MAYORAL COMMITTEE; [We assume the Mayoral Committee requirement is due to wanting sufficient status to influence the Mayor?]
- e) The meetings of the CCF-MC must be convened monthly during the year;
- f) The ~~annual~~ [Annual is once a year. Did you mean quarterly?] general meeting of the Civic Conversation Forum (CCF) must be convened at least four (4) times during the year;
- g) The City shall make available office facilities for the CCF-MC activities, equipped with computers and internet access, a phone line and secretarial resources for the convening of meetings and the drafting of minutes; and
- h) To achieve its goals the Civic Conversation Forum (CCF) may set up sub-committees and working groups.

3.34

Pacts for Citizen Participation (PCP).

The PCP are legal Memorandum of Understanding documents (MoU) between the City and citizen organisations. Other stakeholders may be part to a PCP.

Every Pact shall include at least:

- a) A definition of its scope, area of application, vision, goals, objectives, and expected outcomes;
- b) Who are its signatories, their respective roles and responsibilities, and its governance structure;
- c) Specific rules aimed at avoiding potential conflicts of interest from partners;
- d) The resources, material and immaterial, that each partner makes available within the Pact;
- e) A formal letter from the top manager of each of the City Departments participating to the Pact indicating ~~who are~~ the city officials responsible for the implementation and ~~what are~~ their budget and resources available to the Pact. If more ~~that~~ than] one Department is involved, one of said Departments shall ensure co-ordination within the City; and
- f) Every Pact must define accountability procedures with regard to resources used, periodic monitoring, measurement of outcomes and of the results produced by the collaboration between citizens and public administration.

The PCP may be used as a tool to establish Urban Development Pacts (UDP) aimed at achieving integrated multi-sector development across a specific portion of territory, guided by a spatial vision of desirable future, and supported by strategic infrastructure investments, environmental management, and civic participation. The Urban Development Pacts may also lead to the creation of specific Local Development Agencies or other similar structures.

The proposal to establish a PCP may come both, from the City and from civil society organisations.

If the initiative comes from the City, a public call for expression of interest to participate in the PCP shall be disseminated ~~through~~ [~~to~~ via] the Public Register of Civic Associations (PRCA). The City may, however, make use of additional channels of communication. Once that the public call is issued, the City shall convene a General Meeting with the stakeholders that indicated their interest to participate in the PCP. The City shall chair such meeting, where the first act shall be the election of a Committee; the elected Committee shall define the legal Memorandum of Understanding document (MoU) that will then have to be signed by the legal representatives of all stakeholders.

If the initiative come[s] from a civil society organization, the City shall [~~to~~] formally reply; should the City be in agreement with the initiative, the same procedure outlined above shall be followed; in case the City rejects the initiative, it shall give written motivation and deliver such motivation to both, the proponents, and the Public Register of Civic Associations (PRCA). Within 60 days from the approval of this [~~act~~ By-Law] the City establishes a specific Office in charge of receiving the proposals of the CFP, carrying out the necessary verification within the Departments involved, and providing the final reply on the proposal. The City shall provide a reply to PCP proposals within 60 days of receipt.

3.45

Civic participation on building development projects

Requisite for all building development projects with a budget of R10 million and below: a formal communication shall be sent through [via] the Public Register of Civic Associations (PRCA); the civic organisations shall submit their considerations within 60 days. In this case, the civic organisations may establish a sub-committee for plan approval.

Requisite for all development projects with a budget above R10 million:

- a) Formal communication to all the civics affected; the City shall arrange for a presentation meeting with the civics involved;
- b) Copy of the presentation and of the relevant documents must be made available to civic organizations, at the developer's cost;
- c) After the meeting, the civic organisations have 60 days to submit their consideration;
- d) If requested from the Civics, the City shall arrange for a public meeting to inform the citizens; the developer shall cover the organisational and advertising costs for this events. In this case the Civic organisations must submit their considerations 30 days after the public meeting; and
- e) If a developer approaches the City for preliminary consultations on a possible development, the City, by means of the PRCA register, sends a communication the civic organizations that have the right to be informed and to participate [to in] each and every meeting during this preliminary activity.

No developers' application approval can be issued unless the participatory process outlined in this [act By-Law] was followed.

4 - Support to public participation.

4.1

Exemption and relief from levies and local taxes

Activities carried out in the context of the Pact for Citizen Participation (PCP) concerned in this [act By-Law], are considered as having particular public interest as far as the effects of the exemptions and concessions provided by the municipal regulation on the occupation of public space and relative fees are concerned.

For the purpose of exemptions and reliefs from relevant fees as indicated in the municipal regulation on occupation of public space, it is established that public fundraising activities in the context of a Pact for Citizen Participation (PCP) do not constitute business activities, as long as all the following conditions are met:

- a) They are occasional events;
- b) They are concomitant with celebrations, anniversaries or awareness campaigns; and
- c) Goods sold at fundraising events are of moderate value.

4.2

Access to municipal spaces

Groups of active citizens or civic organisations upon ~~that~~ request~~—it~~, may temporarily make use of municipal spaces for meetings and / or for activities without being charged rental and other fees.

5 - Services supporting Civic Participation

5.1

Co-design Citizen Lab

The City shall establish a Co-design Lab service; aim of the Co-design Lab shall be that of supporting the collaboration between the City and Civic Organisations in organising co-design and participatory design workshops and projects. The Co-design Lab shall promote activities aimed at training facilitators that could be both, citizens and public administrators, on the themes of common goods and shared administration,

shared administration processes, participatory democracy and Participatory Budgeting. The Co-design Citizen Lab governance structure will be defined by the CCF-MC.

5.2

Cape Town International Relations Unit and civic participation

The City shall establish a specific project on civic participation under the International Relations Unit (IRU). IRU will establish a work group in collaboration with the CCF-MC to identify international exchange activities on Civic Participation.

5.3

Evaluation and Monitoring Committee

The City shall establish an Evaluation and Monitoring Committee with the aim of monitoring the implementation of this [Aet By-Law] and to suggest possible amendments and integrations to this [Aet By-Law]. The Evaluation and Monitoring Committee shall include a representative from the CCF, as well as representatives of educational institutions.

6 - Final provisions - Civic Participation Bylaw Budget

6.1

The City shall allocate a portion of its budget to cover for the annual cost for the activities described in this By-Law; the allocation shall not be inferior to XX% of the City budget.

Reference:

1. Regulation on collaboration between citizens and the City for the care and regeneration of Urban Commons, 19 May 2014, City of Bologna, Italy
2. <https://peoplesbylaw.files.wordpress.com/2018/01/bolognaregulation.pdf>
3. Regulation on Citizen Participation, October 6, 2017, City of Barcelona, Spain
<http://ajuntament.barcelona.cat/participaciociudadana/ca/documentacio-juridica>
4. New York City Council - Participatory Budgeting, July 2011
5. <https://council.nyc.gov/pb/>
6. Yale Law & Policy Review (Volume 34 | Issue 2 - Article 2 - 2016)
The City as a Commons
Sheila R. Foster, Fordham Law - Christian Iaione, LUISS Guido Carli University
7. <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1698&context=yldr>