



OBSERVATORY
Civic Association

31st January 2018

**SUBMISSION BY THE OBSERVATORY CIVIC ASSOCIATION ON THE CITY OF CAPE TOWN DRAFT
WATER AMENDMENT BY-LAW, 2017**

1. The Observatory Civic Association (OCA) is a recognised Civic body, representing residents and businesses in the Observatory area.
2. The OCA wishes to make the following submission on the City of Cape Town Draft Water Amendment By-Law, 2017 (The Draft Amendment By-Law).
3. We note that the Draft Amendment By-Law is being presented in the context of an unprecedented water crisis facing Cape Town. We note that a number of measures are being introduced in order to help the City have the tools to improve its capacity to address the crisis.
4. Of these measures, **we are supportive of the changes to the Draft Amendment By-Law that:**
 - Encourage overall water savings, and put in place disincentives for water wastage;
 - Encourage industry to contribute to water savings, including definition of industry best practice norms as applicable to commercial car wash businesses;
 - Expects all new developments to provide for the installation of alternative water systems for non-domestic purposes (section 43, sub-section 5) – this is a recommendation we made in our submission on the Drought levy. (**However, we would like to see explicit mention of rain water storage tanks either above or below ground.**);
 - Hold property owners responsible for ensuring the installation and maintenance of water related equipment; and water consumers responsible for any water wastage (Section 2);
 - Requirements for certificates of approval for new building developments (Section 24).
5. We note a number of amendments which seek to enhance the information available to the city in different aspects (for example, that an owner must notify the City when any fixed water heaters, heat

pump installations and solar hot water panels are installed or changed – see the new s43(7) of the principal by-law (s21 of the Draft Amendment By-Law); plans and alterations affecting grey water systems must be notified to the City, etc). It is unclear if the amendments will provide for electronic water meters to be installed so that the City can monitor real time compliance with water restrictions which would be essential for planning water provision. Inasmuch as these measures will increase the information available to the City for appropriate decision making on planning and protecting water resources, these measures might be justifiable. However, if this information was to be used to block or hinder the installation by private owners of such devices, or to disadvantage them in relation to other water users, then the collection of such information may be quite problematic.

6. The OCA therefore submits that the Draft Amendment By-Law be amended to clarify for what purpose all information under the By-Law is collected, how it will be stored, who the custodian of the information will be, who will have access to the information and that the information will be stored in compliance with the Protection of Personal Information Act 4 of 2013.

7. Similarly, maintaining a register of plumbers, if implemented to protect residents from unscrupulous vendors who will not a professional job nor ensure water saving measures in the installation, would be acceptable.

8. The provisions for installing water management devices are not clear to us in the bylaw. The amendment to section 28(9) of the principal by-law (s13(d) of the Draft Amendment By-Law) introduces the notion of a ‘private sub-meter’ which is a change from the existing bylaw but does not mark it as a change in the amendment. This is introduced in relation to properties seemingly with sections, or separate business or dwelling units and is presumably an effort by the City to establish better information about who is using water and in what quantity where there is a body corporate or multiple legal entities in one property. In principle, we do not have a problem with this idea but the formulation is somewhat confusing.

9. The OCA therefore submits that the proposed amendment to s28(9) of the principal by-law be clarified and indicate exactly which properties would be affected by the private sub-meters, water management devices or prepayment meters.

10. The amendments to s28 (21) of the principal by-law (s13(g) of the Draft Amendment By-Law) seems a rather cumbersome way to hold owners accountable for overuse by tenants. In the way the amendments are written, there is no incentive for an owner to report a delinquent tenant, since the bylaw allows the City to take enforcement steps against the owner even when the tenants are at fault. Rather than

punishing the owner, the bylaw should find ways to support owners who want to do the right thing. The by law could also place an expectation on owners to write into their leases with any tenants compliance with water restrictions so that common law support the public objectives of water saving here.

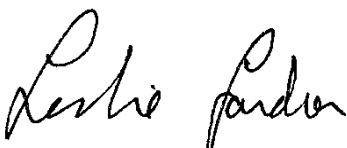
11. **The OCA therefore submits that the proposed amendment to s28(21) of the principal by-law include incentives for an owner to report a delinquent tenant to the City, and encourage owners to hold tenants accountable for lack of compliance with water restriction measures.**

12. **Furthermore, the OCA is concerned about the following proposed changes:**
 1. The proposed amendment to s2(5) of the principal by-law (s3 of the Draft Amendment By-Law) completely excises any role for the Executive Director of Health for the City with respect to decisions not to provide a consumer with domestic water via the municipal system but to provide “an alternative manner of water supply.” Since such a decision may have manifold health implications and may compromise the human rights of residents (particularly s27 of the Constitution), we believe this is an incorrect move not consistent with the checks and balances provided for under our Constitutional democracy. **The OCA therefore submits that the Executive Director City Health be expressly mandated in the By-Law to be consulted when a consumer is to be provided with an alternative manner of water supply.**
 2. Section 8 of the principal by-law (s4 of the Draft Amendment By-Law) provides for an obligation to report where wastage of water is observed by a member of the public. By any standard, there must be a corollary obligation on officials to respond to such a report timeously. In other words, it is patently unfair to impose the possibility of a punishable offence on members of the public when there is no compulsion on any officials to do anything with such information, let alone directive that prompt action should be taken to correct the wastage (fix the leak). For procedural fairness, the bylaw should set out the corresponding obligations on public officials. **Therefore, the OCA submits that the By-law should include a provision for the City to be obliged to respond timeously to a water emergency.**
 3. We note that the amendment to s57 of the Draft Amendment By-Law, which adds sub-section (e) provides for a very weak directive for control of borehole water use. In the formulation in the amendment, owners who installs or operates a borehole or well-point must inform the city but are only encouraged to use water “sparingly and efficiently and where used for irrigation purposes in line with the watering times of the water by-laws of the City.” We believe this is insufficient a

formulation. **Rather, the OCA submits that any restrictions on municipal water should apply equally to the use of borehole water.**

4. Lastly, the OCA notes that the Draft Amendment By-Law is silent on some issues it raised in its submission on the Drought levy. The OCA raises them here again because it believes this is the correct moment to intervene. **The OCA submits that the Draft Amendment By-Law be further amended to include:**
- a. Borehole use should not only be registered with the City but metered, since borehole water is a public good, not a private benefit.
 - b. The City should provide incentives/subsidies for households to adopt water saving technologies.
 - c. In all policies and directives, transparency and accountability must be evident.
 - d. In general, measures should aim to encourage and incentivise for use of greywater, rainwater and efficient devices so as to reduce use of municipal water and increase access to recycled/grey/rainwater for productive purposes. This is particularly important for individuals whose livelihoods are dependent on water use and where punitive measures may have inequitable consequences for the poorest members of our community seeking to make a living from informal work requiring water.

We note as well from our submission the urgent necessity for the City to develop a policy for its own buildings which will accelerate retrofitting of its own buildings with water saving and water harvesting technologies making optimal use of rainwater, grey water and other recycled water. If the City expects residents to undertake such measures, then the City should walk its talk with regard to its own water use.



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