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**16 May 2020**

**Objection to the City of Cape Town's Draft Amendment to The Streets, Public Places and  
Prevention of Noise Nuisances By-law, 2020**

- 1 The Trust board of the Zeenatul Islam Mosque, District Six, objects to the City of Cape Town's proposed amendment to its by-law relating to Streets, Public Places and the Prevention of Noise Nuisances ("the amendment").
- 2 In our view the amendment, which aims to expand the ways in which the City may enforce its by-law, falls foul of the law for various reasons.
- 3 We reject the City's failure expressly to exclude the long-standing practices of religious institutions, such as the sounding of church bells, or the adhaan (call to prayer) from the ambit of 'noise nuisances' as contemplated by the by-law.
- 4 We further feel strongly that the City of Cape Town must extend the time-period for public comment and participation. The City must consider this request in view of the gravity of the amendment it has proposed and the restrictive circumstances of the national state of disaster.
- 5 We outline our objections to the amendment in greater detail below.

## ***FIRST OBJECTION: EXCESSIVE OFFICIAL POWERS ARE DISPROPORTIONATE TO OFFENCES***

6. The amendment will equip authorised officials with wide-ranging powers that are mismatched to the offences they concern. This makes the new provisions susceptible to frightening abuse.
7. While the amendment's provisions pertaining to the search of individuals and seizure of property are clearly modelled on the cognate provisions of our Criminal Procedure Act, these provisions are problematically transported to the by-law's context.
8. The by-law prohibits various types of conduct in public spaces. These range from noise nuisances, to obstructing public walkways and begging, to more serious and otherwise criminalised acts relating to public indecency and violence.
9. The amendment's enforcement mechanisms do not recognise varying degrees of seriousness of the by-law's offences and permit officials the full breadth of their powers in respect of all suspected infringements.
10. Consider, for example, where one has violated the by-law by hanging their washing on the fence between their plot and a public road, a listed offence under section 14. Subsection 4(5)(h) of the amendment provides for the seizure of an article which is concerned in an offence. Could an authorised official, responding to a complaint from a neighbour, lawfully confiscate the offending resident's laundry? The amendment suggests that they can.
11. In terms of subsection 4(1), authorised officials are permitted to access individuals 'documents...records or electronic information reasonably required for enforcing this by-law'. An official could therefore seize and inspect one's personal electronic devices for photographs or messages which they may deem relevant to their investigation. It is unclear which offences in the by-law could warrant such a drastic invasion of privacy.
12. These examples demonstrate plausible absurdities that could result from the amendment's implementation. Objective bases for the exercise of official powers like 'reasonable



grounds’ or ‘reasonable require[ment]’ are insufficient safeguards in view of the potential rights violations that could arise. Those seeking to challenge official conduct will be availed of them only after the violation of their rights has taken place.

13. The powers provided for by the amendment then present a crisis of disproportionality. The use of such wide-ranging powers to police comparatively minor offences is incompatible with the constitutional dispensation: one struggles to imagine circumstances where the abovementioned examples could be deemed reasonable and justifiable.

14. We are compelled to consider the amendment’s impact on the vulnerable and marginalised people in our City. Sleeping overnight in public spaces is prohibited, while being the daily reality for many homeless individuals. For them, the amendment poses grave risk of abuse.

15. Subsection 2 is particularly alarming, permitting officials effectively to banish persons (‘instruct...to leave and remain out of an area’) who contravene the by-law from the area where the infringement occurred. We strongly object to this provision and its hearkening back to the days of apartheid’s influx control legislation.

### ***SECOND OBJECTION: CITY LACKS AUTHORITY TO BESTOW POLICE POWERS ON LEAS OFFICIALS***

16. Policing the City of Cape Town is a duty concurrently shared by three distinct groups: the SAPS, Cape Town Metropolitan Police, and the City’s Volunteer Law Enforcement Auxiliary Service (‘LEAS’).

17. We are aware that the latter’s role, since its 2013 inception, has primarily concerned overseeing traffic violations, but that the City has gradually sought to increase its mandate to include broader crime prevention.

18. This objection pertains to the amendment insofar as the City may intend to grant powers, typically reserved for peace officers under the Criminal Procedure Act 51 of 1977 (“CPA”), to LEAS officials. This appears likely considering that SAPS and the Metro Police are already equipped with such powers.

19. It is our understanding that the City is not empowered to pursue this end by its own legislative efforts. This is because Section 334(1)(a) of the Criminal Procedure Act stipulates that the power— to designate the authority and powers of peace officers for specific purposes— resides with the Minister of Justice.
20. Should the City purport to extend police powers to its LEAS officials, we object on the grounds that it lacks the necessary authority to do so.

***THIRD OBJECTION: FAILURE TO EXCLUDE SPECIFIC RELIGIOUS PRACTICES FROM BY-LAW'S AMBIT***

21. The City will recall the controversy of May/June 2019 when a noise complaint was filed against the Muir Street Mosque for its sounding of the adhaan (call to prayer), a religious service it has provided to the District Six community for the last one-hundred years.
22. The adhaan is a fixture across the cityscape, as is the ringing of church bells. They are hallmarks of a diverse and tolerant society, wherein we enjoy our religious and cultural freedoms and afford respect to others' right to do the same.
23. In the wake of the City's investigation, we received assurances that future amendments to the by-law would provide special dispensation to religious institutions, exempting them from noise complaints in respect to the aforementioned practices.
24. No such provision is made in the City's proposed amendment. What has been provided instead are harsher means with which authorities could use to clamp down on such practices, should another noise complaint follow.

25. We object to the City's failure to deliver on its word in this respect.

***FOURTH OBJECTION: INSUFFICIENT TIME-PERIOD FOR PUBLIC COMMENT IN THE CIRCUMSTANCES***

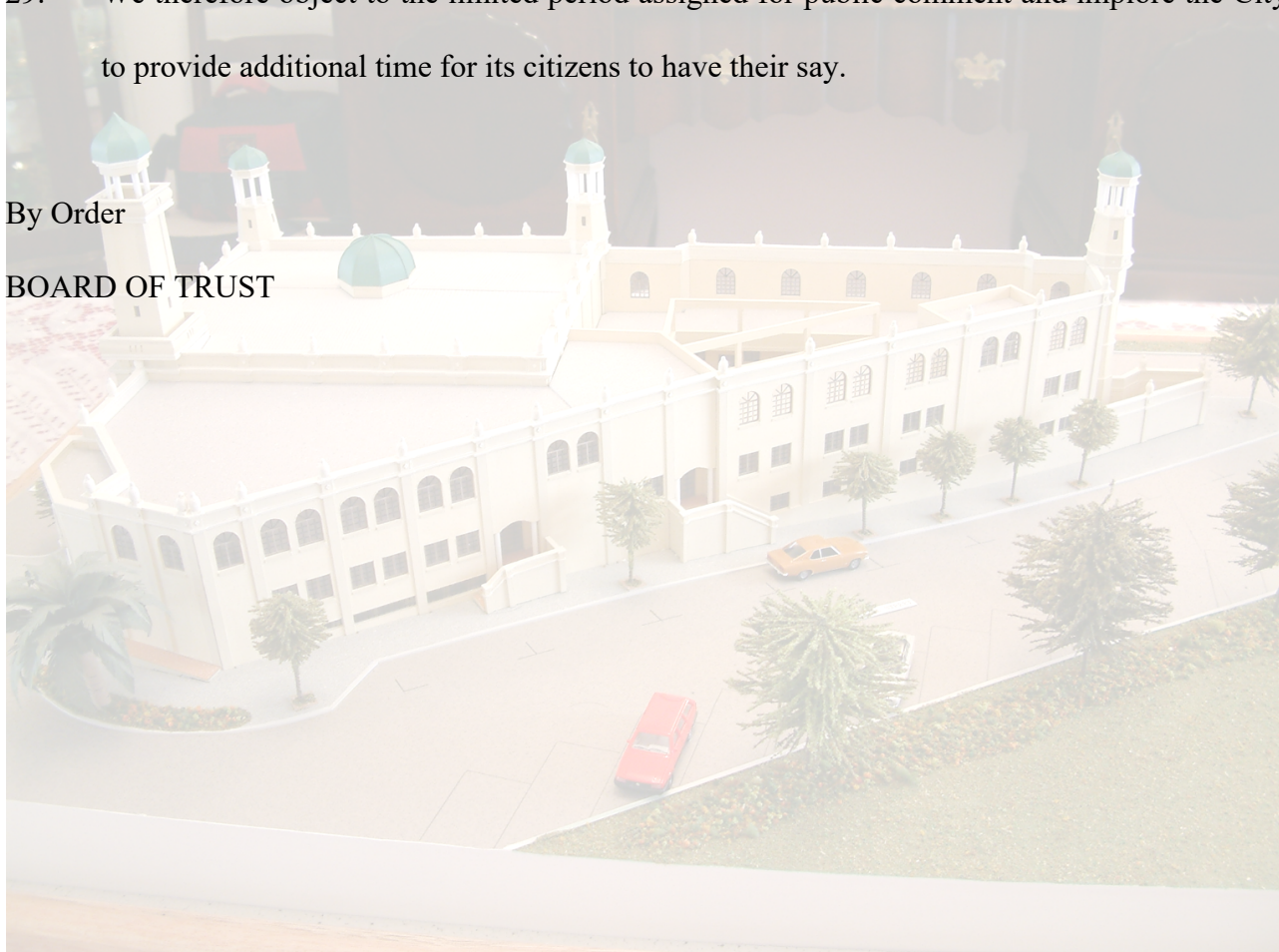
26. The period 17 April – 17 May 2020 was allotted for public comment on the amendment. This opportunity was insufficient.



27. The entire participation period has fallen during the national state of disaster. Lockdown restrictions have hamstrung communities' ability to mobilise engagement and discussion on the issues affecting them.
28. We believe that the allotted period did not pay mind to the difficulties faced by the populace during this time. This point is to be stressed given the far-reaching nature of the amendment, and the considerable affect it will have on the lives of Capetonians.
29. We therefore object to the limited period assigned for public comment and implore the City to provide additional time for its citizens to have their say.

By Order

BOARD OF TRUST



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