

# FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

*(Incorporating Fish Hoek, Clovelly and Sun Valley)*

Central Circle, Fish Hoek 7975

Web: <https://www.fishhoekratepayers.com/> Facebook: [www.facebook.com/FHVRRA/](https://www.facebook.com/FHVRRA/)

Heritage Western Cape: Conservation Body

TO: LEON WENTZEL, [lawenforcement@capetown.gov.za](mailto:lawenforcement@capetown.gov.za)

SUBJECT: COMMENTS ON STREETS, PUBLIC PLACES AND PREVENTION OF  
NOISE NUISANCES BY-LAW <sup>1</sup>

DUE DATE: 17 MAY 2020

## 1. DISCUSSION

In terms of section 17 of the Local Government: Municipal Systems Act, Act 32 of 2000, the public and interested parties or groups are given the opportunity to submit comments, recommendations or input of the draft by-law update to the municipality by 17 May 2020.

We understand that this proposed document is to replace Section 21 of the 2007 Streets, Public Places and Prevention of Noise Nuisances By-Law. However, we have some concerns with the wording and its negative impacts. It also seems at odds with the Criminal Procedure Act #51 of 1977<sup>2</sup> as amended by the Law of Evidence Amendment Act #45 of 1988<sup>3</sup> and the Declaration of Peace Officers in Terms of Section 334 of the Criminal Procedure Act #51 of 1977: Law Enforcement Officers Appointed by a Municipality.<sup>4</sup>

Section 1) Inspections hint of discovery rather than direct commissioning of an offence. Discovery is a way of gathering evidence. If abused, this would allow a case to be built when evidence was not present initially, thus becoming a self-fulfilling prophecy. We think Section 4) (2) is better worded, "(2) Without a warrant, an officer may stop, enter and search any vessel, vehicle, premises or person for a prima facie offence in terms of this By-law occurring in his / her presence." in that there must be prima facie evidence in the officer's presence. Then it isn't hearsay nor what is normally inadmissible evidence gathered afterwards just to support their initial claim. "Jurisdictions that respect the [rule of law](#) and a right to privacy constrain police powers, and typically require search [warrants](#) or an equivalent procedure for searches police conducted in the course of a [criminal investigation](#)." <sup>5</sup> The purpose of requiring a search warrant is to allow a neutral party to provide a considered opinion rather than a heat of the moment, knee jerk reaction at the scene. Our concern is that this by-law as written appears to infringe upon our basic human rights of personal privacy and human dignity according to our Human Rights Commission<sup>6</sup> and enshrined in our Constitution's Bill of Rights.<sup>7</sup>

Section 4) (5) (c) needs to include the threshold decibels and hours of operation. Section 3. Noise Nuisance in the 2007 by-law also lacks this clarity with no definition being given for disturbance. <sup>8</sup> Smartphones have apps that can use the phone's microphone to "measure" the sound level. Obviously this would need to be calibrated and the app would need to log the readings and date / time stamp the recording along with a photo being taken to document the approximate distance from the sound source. This is basic gathering of evidence and surety of legislative meaning.

1 Direct email from [Anathi.Dywili@capetown.gov.za](mailto:Anathi.Dywili@capetown.gov.za) as the City's Have Your Say website was not working during Co-vid-19.

2 <https://www.justice.gov.za/legislation/acts/1977-051.pdf>

3 <https://www.justice.gov.za/legislation/acts/1988-045.pdf>

4 <http://www.mile.org.za/QuickLinks/News/Enforcement%20and%20Prosecution%20Workshop/Government%20Gazette%20-%20Peace%20Officers%2019%20October%202018.pdf>

5 [https://en.wikipedia.org/wiki/Search\\_warrant](https://en.wikipedia.org/wiki/Search_warrant)

6 <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1262-15-basic-human-rights-you-should-know>

7 <https://www.gov.za/documents/constitution/chapter-2-bill-rights>

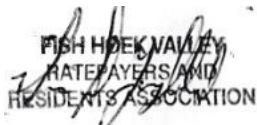
8 <http://resource.capetown.gov.za/documentcentre/Documents/Bylaws%20and%20policies/Streets%20Public%20Places%20and%20the%20Prevention%20of%20Noise%20Nuisances%20By-law.pdf>

Is 5) Impounding the ...vehicle really necessary? With the above app's collection of admissible evidence, impounding should not be required. This is an example of excessive force.

The impounded asset in 5) (5) must be released "sans impoundment fee", if any of these conditions are met. This foregone recovery of the impoundment cost to the City should prevent unfounded seizures. According to Section 28 of the Criminal Procedure Act #51 of 1977, this is equivalent to wrongful search and damages may be awarded.

## 2. SUMMARY OF RECOMMENDATIONS

- Rewrite Section 1) to reflect Section 4) (2) and reconsider the "without a warrant" in both;
- Define accurately the threshold decibels and hours of operation in Section 4) (5) (c) that describe a nuisance for surety of legislation and better ability to be upheld in a court of law;
- Delete Section 5) relating to impounding vehicles; and
- Release impounded vehicles without financial charges if any of the conditions mentioned in Section 5) (5) are met.

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<b>SIGNATURE</b>	
<b>DATE</b>	28 April 2020