

City of Johannesburg

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27 September 2018

Dear Recipient

RE: COMMENTS ON PROPOSED DRAFT BYLAWS REGARDING CATS AND DOGS FOR THE CITY OF JOHANNESBURG

We refer to the Proposed Amendments to the Bylaws for Dogs and Cats in the City of Johannesburg (“**Bylaws**”) published for public comment on 28 August 2018 (“**Proposed Amendments**”).

We are very concerned with the amendments as they are currently construed and have set out the below the consolidated comments of Ban Animal Trading NPC (“**BAT**”) and Animal Law Reform South Africa NPC (“**ALRSA**”) for your consideration:

1. General Comments

- a. The Proposed Amendments place undue and unnecessary restrictions on the owners of dogs and cats.
- b. They undermine the rights of contracting rights to determine the terms of their relationship as well as the discretion of the home owners’ association to determine their own rules.
- c. The Proposed Amendments discriminate against those that (i) are not land owners and (ii) live in share block housing schemes, the provisions of which could potentially be unconstitutional.
- d. The proposals will mean noncompliance by the majority, unless they have contained consent which is the opposite of the current situation. This will result in many people being in breach of their legal operations.
- e. Furthermore, this will place an undue burden on law enforcement.
- f. We are of the view that there are many provisions in the Bylaws that can be improved drastically, and that the current Bylaws contain various provisions that do not adequately provide for animals nor humans.
- g. The City of Cape Town is looking at improving their Bylaws and have considered many progressive provisions. It is disappointing to see the use of resources of the City Council going into these Draft Amendments that we believe have not been adequately thought out or the consequences properly considered.

2. Specific Comments

- a. Proposed Amendments to Section 2
 - i. Insertion of sections 2(3)(h) and 2(3)(i):

1. The wording of the proposed amendments does not read well. If one puts together the proposed amendment in the current Bylaws, it is not clear as subsection (3) sets out exemptions to the provisions of subsection (1) whereas the proposed amendments add additional requirements.
 2. If one looks at the existing exceptions specified in paragraph 2(3), these are generally made for people with permits, persons with disabilities, persons who own pet shops, or persons who keep dogs for very specified purposes (such as for training guide dogs or dogs for use by the South African Police Services). The proposed insertion of requiring essentially **any person renting a property or any person living in a share block scheme** extends these exceptions to include a large majority of the South African population.
- ii. Section 2(3)(h):
1. If the owner of a property does not want dogs on the premises, this needs to be regulated in the relevant lease agreement. The default should not be that the tenant is not allowed dogs. Generally, the default is that the contracting parties have freedom to decide whether to allow animals or not. They would record this amongst themselves.
 2. Furthermore, we believe that this provision could potentially be unconstitutional as it discriminates against those that do not own land by providing that they may not keep any dog on the premises unless they have the written consent of the owner.
 3. There are no similar provisions against persons who own the property – therefore the provisions do not apply equally to those who own land and those that do not. In this regard, we refer you to section 9 of the Constitution of the Republic of South Africa¹ as well as the Court Case of *Mdodana v Premier of the Eastern Cape and Others*.²
- iii. Section 2(3)(i): Similarly to the point above, if the home owners' association has discretion to allow a dog, the default should not be that an animal may not be kept without consent. The Body Corporate Rules of the relevant scheme will set out the requirements to be complied with. By legislating in the manner proposed, this takes away their discretion and places unnecessary requirements on the owner of an animal.

¹ 1996 <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

² 1648/10 [2013] ZAECCGHC 66 (13 June 2013)

We therefore reject the proposed amendments to Section 2 as set out in the Draft Amendments.

b. Proposed Amendments to Section 3

- i. We have no comments on this proposed amendment.
- ii. We would like to note that it may be useful to set out where people can access the “prescribed form” referred to in this section.

c. Proposed Amendments to Section 9

- i. Insertion of section 9(2): The insertion of the new section 9(2) is unnecessary. The provisions of section 9 (1) are in force and came into force on the date of promulgation. This recordal is unnecessary and confusing as there are no similar dates of effectiveness recorded elsewhere in the Bylaws.
- ii. Insertion of section 9(4): Furthermore, it is necessary to record that a new section, section 9(4) is being included in the Bylaws. This is not recorded anywhere and needs to be included as a separate point, and not as part of the proposed replacement of sections 9(2) and 9(3).
- iii. Insertion of sections 9(3)(e) and 9(3)(f):
 1. The wording of the proposed amendments does not read well. If one puts together the proposed amendment in the current Bylaws, it is not clear as subsection (3) sets out exemptions to the provisions of subsection (1) whereas the proposed amendments add additional requirements.
 2. If one looks at other proposed exceptions specified in paragraph 9(3), these are generally made for people with permits, persons who own pet shops, the catteries, etc. The proposed insertion of requiring essentially **any person renting a property or any person living in a share block scheme** extends these exceptions to include a large majority of the South African population.
- iv. Section 9(3)(e):
 1. If the owner of a property does not want cats on the premises, this needs to be regulated in the relevant lease agreement. The default should not be that the tenant is not allowed cats. Generally, the default is that the contracting parties have freedom to decide whether to allow animals or not. They would record this amongst themselves.
 2. Furthermore, we believe that this provision could potentially be unconstitutional as it discriminates against those that do not own land

by providing that they may not keep any cat on the premises unless they have the written consent of the owner.

3. There are no similar provisions against persons who own the property – therefore the provisions do not apply equally to those who own land and those that do not. In this regard, we refer you to section 9 of the Constitution of the Republic of South Africa³ as well as the Court Case of Mgodana v Premier of the Eastern Cape and Others.⁴
- v. Section (9)(3)(f): Similarly to the point above, if the home owners’ association has discretion to allow a cat, the default should not be that a cat may not be kept without consent. The Body Corporate Rules of the relevant scheme will set out the requirements to be complied with. By legislating in the manner proposed, this takes away their discretion and places unnecessary requirements on the owner of an animal.

We therefore reject the Proposed Amendments to Section 9(2) and Section 9(3)(e) and 9(3)(f) as set out in the Draft Amendments.

- d. Proposed Amendments to Section 12
 - i. Proposed replacement of Section 12(1)(g) and 12(2) and 12(5)
 1. The way that the amendments have been proposed does not read well.
 2. The wording should read as follows:
“Section 12(1)(g) is deleted.”
“Sections 12(2) to 12(5) are deleted in their entirety and replaced with the following provisions:”
“New Sections, Section 12(6) to 12(8) are introduced as follows:”
 - ii. Section 12(7)
 1. The requirement should not only be for the dog not to be ill-treated but there should be an obligation on the person to ensure the dog has shelter, food and water and other necessary requirements – particularly if they are keeping the dog when the pound is closed until it re-opens.
 - iii. Section 12(8)
 1. Reference in Section 12(8) should be to Section 12 and not Section 11.
- e. Proposed Amendments to Section 13
 - i. Proposed insertion of Section 13(1)(b) to (d)

³ 1996 <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

⁴ 1648/10) [2013] ZAECHC 66 (13 June 2013)

1. Paragraph (b) should not be included for cats in the same way it is for dogs. Cats tend to wander and are much more likely to be “at large” than dogs. Furthermore, dogs generally wear collars to identify that they are owned, whereas the same is not true for cats. Many cats are owned but still do not have collars and wander.
 2. This provision will mean potentially thousands of cats being impounded, and this places an undue burden on the Council and its resources.
- ii. Proposed insertion of Section 9(2)(5)
1. This provisions should be deleted. As mentioned above, cats wander more than dogs and pass through various properties. This means that if a cat is simply passing over someone’s wall they may capture it and take it to the pound.
- iii. Proposed insertion of Section 13(7)
1. The requirement should not only be for the cat not to be ill-treated but there should be an obligation on the person to ensure the dog has shelter, food and water and other necessarily requirements – particularly if they are keeping the cat when the pound is closed until it re-opens.
- iv. Section 13(8)
1. Reference in Section 13(8) should be to Section 13 and not Section 11.
- v. Proposed Amendment to Section 15(1)
1. We support the extended time period of 7 days as well as the service on the owner.
 2. However, the wording “must sell or deal with the animal in his or her discretion, provided that the poundmaster may destroy the animal, irrespective of the condition of the animal, if the animal cannot be disposed of otherwise”, must be addressed. Furthermore, the use of the word “destroyed” is unnecessary and should rather use “euthanise”.
 3. The aforementioned wording **is highly problematic and is void for vagueness**. It is unclear what “deal with the animal” means in the context and could lead to abuse.
 4. Furthermore, the removal of the reference to the Animal Protection Act must be reinserted. Any actions in respect of the animal **must take into account the welfare of the relevant animal and must be done in accordance with the Animal Protection Act**.

vi. Proposed insertion of Section 17

1. We support the insertion of this section as it provides for the welfare of animals.
2. We believe the section should go further to include the internationally recognised five freedoms.⁵ The intent for welfare is already there, but it is not sufficient, for example no reference is made to food or water. We would be glad to assist in suggesting additional provisions for inclusion.
3. These are the five freedoms that should be included:
 - a. Freedom from hunger or thirst by ready access to fresh water and a diet to maintain full health and vigour
 - b. Freedom from discomfort by providing an appropriate environment including shelter and a comfortable resting area
 - c. Freedom from pain, injury or disease by prevention or rapid diagnosis and treatment
 - d. Freedom to express (most) normal behaviour by providing sufficient space, proper facilities and company of the animal's own kind
 - e. Freedom from fear and distress by ensuring conditions and treatment which avoid mental suffering

3. Additional Comments

a. Section 1:

- i. There is no definition for “veterinary clinic”. This needs to be included.
- ii. The definition of “kennels” includes premises on which “dogs are bred for commercial purposes”. This could include any dog breeders as well as people running puppy mills. This means effectively that for someone breeding dogs for commercial purposes **there is no limit to the number of dogs they may have on their property**. This is a loophole that should be closed.
- iii. Furthermore, the definition of “kennels” includes premises on which “dogs are kept for the purposes of being trained or hired out with or without handlers”. Due to the wording as set out, there is no clear meaning of what “being trained” means. This is a loophole that should be closed.

- b. Sections 2 and 9: The restrictions on the number of dogs and cats respectively apply to **persons** rather than to the **institutions they represent**. For example, the exceptions for getting a permit do not apply to **a person who is the owner or manager of a veterinary clinic** but the exception does not go further to indicate that

⁵ <https://www.animalhumansociety.org/health/five-freedoms-animals>

the exception applies to such person in relation to the veterinary clinic. This means that simply because someone owns a veterinary clinic, they are not required to comply with the requirements of Sections 2(3) or 9(3) – whether this be in their personal home or the veterinary clinic. The exceptions granted should only apply to those persons and the relevant premises provided for (e.g. a veterinary clinic; a cattery; a kennel; a pet shop; etc.) **It should not be the person granted an exception but rather the premises.** The way the Bylaws are worded leaves the exceptions open to abuse, simply due to someone's status as a specified person.

- c. Section 17 (Current): The amount of R50 for a continuing offense is too low and should be increased. This is not a sufficient deterrent to a person to not commit offences in terms of the Bylaws.

Should the City of Johannesburg wish to revamp the Bylaws, we would be happy to provide you with example of best practice from South Africa as well as around the world. As we mentioned, the City of Cape Town is currently undergoing a process where they are updating their Bylaws in line with best local and international practice. These bylaws contain various other necessary provisions which should similarly be addressed in the Johannesburg Bylaws.

We are of the view that the Proposed Amendments provide a bad precedent going forward and that the Bylaws need to be completely revisited. There are many more important issues that need to be properly legislated for with regard to animals.

We look forward to receiving your response and trust that you take our comments and concerns into account. Kindly confirm receipt at the email addresses below and keep us updated of any progress in this regard.

Yours sincerely,



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