



**CITY OF CAPE TOWN
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Filename: Gelderbloem et al

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MEMORANDUM

CORPORATE SERVICES – LEGAL SERVICES

DATE 23/09/2019
TO CHIEF LE ROUX

RECEIVED BY THE OFFICE OF THE EXECUTIVE DIRECTOR	
	TIME
27 SEP 2019	15:40
BY (Print Name): L. Matthyis	
SIGNATURE: <i>L. Matthyis</i>	
Ref. No:	

Re: COURT ORDER IN THE GELDERBLOEM ET AL MATTER – IMPLEMENTATION NOTES

Following a meeting with the City Manager and Ald Smith this morning, I have been asked to draft explanatory notes to accompany the court order granted in the Gelderbloem et al matter on 05 September 2019 to assist implementation of the order. These notes are accordingly to be read together with the order.

Paragraph 1.1 of the order provides that pending the determination of proceedings in the main application, the Respondent (ie the City acting through its officers in Safety and Security and associated institutions such as the CID) must refrain from enforcing or further processing fines and summonses issued to the seven (7) named applicants in terms of the Bylaw relating to Streets, Public Places and Prevention of Noise Nuisances (Public Places Bylaw) and the Integrated Waste Management Bylaw (Waste Bylaw).

What this means is that until the main application is finalised (the hearing of which application is set down for 3 December 2019),

- (a) no fines or prosecutions already issued against the 7 named applicants in terms of the Public Places Bylaw or the Waste Bylaw must be further processed.
- (b) any further enforcement action in terms of the Public Places Bylaw or the Waste Bylaw against the 7 named applicants is suspended until the main application is finalised.

In order to execute this, it is recommended that persons encountered in enforcement situations be asked to identify themselves and/or photographs of the 7 named applicants be circulated amongst enforcement staff to allow for easy identification. The prohibition on enforcement however does not mean that enforcement officials cannot request these individuals to comply with the law. Accordingly, these individuals can still be requested to, for example, remove their personal belongings from a public space. It is strongly recommended that any refusal to adhere to such request be documented and reported.

Paragraphs 1.2 and 1.3 of the order provides that pending the determination of the proceedings in the main application, Safety and Security officials may not rely on the Public Places Bylaw or the Waste Bylaw to interfere with or confiscate personal property or harass or abuse any homeless person, including the 7 named applicants.

We are advised that this part of the order has particular implications for situations where temporary structures are being dismantled and advise as follows: where enforcement actions demand that items on site have to be retained and removed to clear an area in terms of the two bylaws under consideration, the persons confronted must be asked to

collect their personal belongings/property, so that such personal belongings/property can be distinguished from the remaining items/waste that may be removed from the area. If possible, complete notes of these items are to be made for reporting purposes and photographs taken. When encouraging people to vacate an area, those people must then remove their personal items.

In drafting the order, we were advised that enforcement officials do not confiscate personal property, and accordingly advise that when items are removed either as waste or for impoundment, care should be taken to ensure that these items are not regarded by any individual in the vicinity of the enforcement action as 'personal property'.

We were similarly advised that enforcement officials do not harass or abuse people in enforcing the bylaws and we encourage that this conduct continue. This is reiterated in para 2 of the order, which places on record that we do not admit to engaging in any interference with or confiscation of personal property or harassment and abuse. To avoid any action taken by enforcement officials to be interpreted as harassment or abuse, we strongly again encourage complete notes and photographs to be kept of each incident so that we can refute any allegation of harassment or abuse.

Paragraph 3 of the order indicates that the interdict granted does not prevent the City through its enforcement officers from enforcing bylaws, except for in the circumstances expressly outlined in paragraph 1. What that means is that the enforcement of bylaws and other legislation will continue as before, **except** in the following situations:

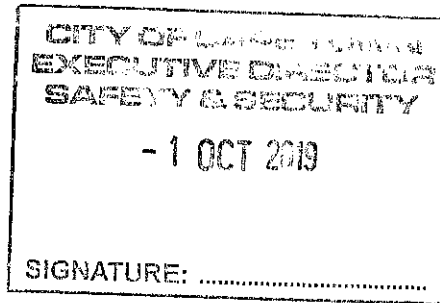
- (1) with regard to the existing fines or prosecutions in terms of the Public Places Bylaw and the Waste Bylaw pending against the 7 named applicants, these must be suspended until the determination in the main application;
- (2) no other enforcement action may be taken against the 7 names applicants in terms of the Public Places Bylaw and the Waste Bylaw until the main application is finalised;
- (3) the Public Places Bylaw and Waste Bylaw must not be used to interfere with or confiscate personal property of any homeless person;
- (4) the Public Places Bylaw and Waste Bylaw must not be used to harass or abuse any homeless person.

Please note - the Public Places Bylaw and Waste Bylaw may still be enforced against any person other than the 7 named individuals, taking care to apply the advice given above regarding personal property and proper record keeping.

I trust that this provides sufficient clarity to enable proper execution of the order. Proper enforcement instructions in relation to this order must be issued to all Safety and Security officials as well as officials and other persons who assist in law enforcement duties, eg ALIU and CID.



GLENDIA JEFFRIES
DIRECTOR: LEGAL SERVICES



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 14669/2019

In the matter between:

CARIN THERESA RHOODE GELDERBLOEM	First Applicant
EMILY SMITH	Second Applicant
VUYO IMBOZI	Third Applicant
BEULAH MEYER	Fourth Applicant
NATASHA PERSENT	Fifth Applicant
XOLANI SIBOXO	Sixth Applicant
PATRICIA GEYSER	Seventh Applicant

