

## COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg

CASE NO: **2025-092906**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE NPC** Plaintiff / Applicant / Appellant

and

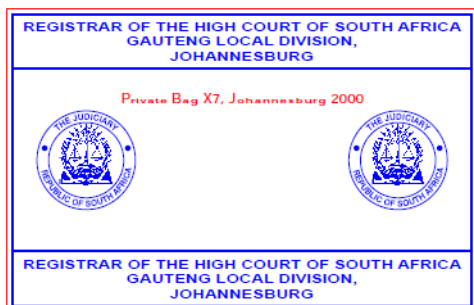
**CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY, THE  
MUNICIPAL MANAGER CITY OF  
JOHANNESBURG METROPOLITAN  
MUNICIPALITY, THE EXECUTIVE  
MAYOR CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY** Defendant / Respondent

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### Founding Affidavit

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ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng  
Local Division, Johannesburg**

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case No: \_\_\_\_\_

In the matter between

**ORGANISATION AGAINST TAX ABUSE NPC**  
(Registration no: 2012/064213/08)

**Applicant**

and



**CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

**First Respondent**

**THE MUNICIPAL MANAGER  
CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

**Second Respondent**

**THE EXECUTIVE MAYOR  
CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

**Third Respondent**

**FOUNDING AFFIDAVIT**

I, the undersigned,

STEFANIE FICK

do hereby make oath and say:

1.

I am an adult female executive director of the applicant's Accountability Division with offices situated at Unit 4, Boskruin Village Office Park, Cnr President Fouché and Hawken Road, Bromhof, Johannesburg, Gauteng.

2.

I am duly authorised by a resolution from the applicant's executive committee to represent the applicant in these proceedings, which has resolved to bring this application, and to depose to this affidavit on behalf of the applicant. The resolution is appended as annexure "FA1".



3.

The facts deposed to below are within my personal knowledge. To the best of my belief, the contents of the affidavit are true and correct. The annexures appended to this application was not obtained from the First to Third Respondents ("the respondents"), and which documents do not constitute the full record supporting the issue under review.

4.

Submissions of a legal nature are made on the advice of the applicant's legal representatives, which advice I accept as correct.

## A PARTIES

5.

### Applicant

- 5.1. The *Applicant* is the ORGANISATION UNDOING TAX ABUSE NPC (hereinafter referred to as "**OUTA**"), a non-profit company duly registered in terms of the Company laws of the Republic of South Africa with registration number 2012/064213/08 and principal place of business at Unit 4, Boskruin Village, Cnr President Fouché and Hawken Road, Bromhof, Johannesburg, Gauteng.



### Respondents

- 5.2. The *first respondent* is the City of Johannesburg Metropolitan Municipality ("**COJ**"), a Metropolitan Municipality duly established in terms of the Municipal Structures Act 117 of 1998.
- 5.3. The COJ is a category A Metropolitan Municipality as described in section 155 (1) (a) of the Constitution, 1996 ("**the Constitution**").
- 5.4. The COJ has exclusive municipal, legislative and executive authority within its jurisdiction and conducts its activities from premises situated at its head office and principal place of business at Metropolitan Centre Building, 158 Civic Boulevard, Braamfontein.
- 5.5. The *second respondent* is the Municipal Manager ("**the manager**") of the COJ, with his place of employment at the Metropolitan Centre Building, 158 Civic Boulevard, Braamfontein. The manager is the head of the COJ's administration and appointed in terms of section 54A of the

Systems Act, 32 of 2000 ("**Systems Act**") and fulfils his duties as set out under section 55 of the Systems Act, which also determines that the manager is the accounting officer of the COJ, who is responsible and accountable for the proper and diligent compliance with the Municipal Finance Management Act, 2003. The manager is responsible for carrying out the decisions of the political structures and political office bearers of the municipality and the administration and implementation of the municipality's by-laws and other legislation.

- 5.6. The third respondent is the Executive Mayor ("**the Mayor**") of the COJ with his place of employment at Metropolitan Centre Building, 158 Civic Boulevard, Braamfontein. The Mayor is the chairperson of the COJ's Mayoral Committee and is the head of the COJ's political executive structure.



## B PURPOSE

### 6.

- 6.1. The applicant is seeking to review the COJ's Privately-owned Closed-circuit Television Surveillance Camera By-Law ("the By-Law") and to have it set aside on the basis that it offends the principle of legality.
- 6.2. In this legality review, it will be shown that the By-Law offends several constitutional rights and principles, is irrational and unreasonable, is incomplete by the COJ's own standards and the COJ has failed to follow a fair process in terms of mandatory public participation.

- 6.3. A copy of the By-Law is appended as annexure "FA2", which By-Law was published in the Provincial Government Gazette of 28 February 2025.
- 6.4. The applicant reserves the right and intends to supplement the review grounds in terms of Rule 53, once the record has been made available.
- 6.5. In this affidavit, I will deal with the following:
- 6.6. The applicants' *locus standi*;
- 6.7. Review grounds, which premised on:-
- 6.7.1. First, lack of public participation;
- 6.7.2. Second, want of legality, under the subheadings of:-
- 6.7.2.1. *Ultra vires* - Section 156 of the Constitution;
- 6.7.2.2. Lack of rationality;
- 6.7.2.3. Constitutional Infringement: Right to Property (Section 25 of the Constitution);
- 6.7.2.4. Constitutional Infringement: Right to Privacy (Section 14 of the Constitution); and
- 6.7.2.5. Constitutional Infringement: Freedom and security of the person (Section 12 of the Constitution).



**B LOCUS STANDI**

7.

7.1. OUTA derives its standing to bring this application from section 38 of the Constitution.

7.2. OUTA approached the Court in terms of section 38(a) (acting in its own interest) and 38(d) (acting in the public interest).

7.3. Section 38 of the Constitution deals with the enforcement of rights and reads:



"Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and;
- (e) an association acting in the interest of its member."

7.4. OUTA has further been approved as a public benefit organisation in terms of section 30(1) of the Income Tax Act 58 of 1962, with its principal

objective as set out in clause 3.1 of its Memorandum of Incorporation ("MOI") as:

*"...the promotion and advocacy of human rights and democracy in South Africa through the advancement and protection of rights, values and principles enshrined in the Constitution of the Republic of South Africa."*

7.5. OUTA's Memorandum of Incorporation ("**MOR**") continues to define its objectives. In particular, clause 3.2 provides:

*"3.2 In particular the Company shall, through conducting Activities, focus on-*



3.2.1 *promoting Taxpayer's rights by —*

*3.2.1.1 legitimately challenging the unlawful squandering, maladministration and/or Government Funding; and*

*3.2.1.2 legitimately challenging laws, policies of and regulations which are irrational or ineffective for their intended purposes."*

7.6. Not to cause unnecessary prolixity of the papers, I do not attach the complete and voluminous MOI and mission statement of OUTA, but only the relevant excerpt dealing with OUTA's objectives as annexure "**FA3**".

*W*

*[Signature]*

## REVIEW GROUNDS

### C DEFICIENT PUBLIC PARTICIPATION

8.

8.1. Subject to receiving the record, the applicant contends that there was insufficient public participation preceding the adoption of the By-Law.

8.2. The following Constitutional provisions are relevant when it comes to public participation in the sphere of local government:

8.2.1. Objects of local government, section 152(1)(e) of the Constitution determines the objects of local government are to encourage the involvement of communities and community organisations in the matters of local government.

8.2.2. Internal procedures, section 160(4) of the Constitution determines that no By-Law may be passed by a Municipal Council unless all the members of the Council have been given reasonable notice; and the proposed By-Law has been published for public comment.

8.2.3. With reference to public administration generally, section 195(1)(e) of the Constitution, determines public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: People's needs must be responded to, and the public must be encouraged to participate in policy-making.



*[Handwritten signature]*

8.3. The Systems Act, furthermore determines:

8.3.1. A municipality consists of political structures and administration of the municipality; and *the community of the municipality* – section 2(b). The community means *inter alia* residents and ratepayers of the municipality.

8.3.2. The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to encourage the involvement of the local community – section 4(2)(c) and to consult the local community about (i) the level, quality, range and impact of municipal services provided by the municipality, and (ii) the available options for service delivery – section 4(2)(e).



8.3.3. Members of the local community have the right through mechanisms and in accordance with processes and procedures provided for in terms of the Systems Act to contribute to the decision-making processes of the municipality; and submit written or oral recommendations, representations and complaints to the municipal council or to another political structure or a political office bearer or the administration of the municipality – section 5(1).

8.3.4. A municipality's administration is governed by the democratic values and principles embodied in section 195 (1) of the Constitution – section 6(1).

8.3.5. The administration of a municipality must—

- (i) be responsive to the needs of the local community;
- (ii) facilitate a culture of public service and accountability amongst staff;
- (iii) establish clear relationships, and facilitate co-operation and communication, between it and the local community;
- (iv) inform the local community how the municipality is managed, of the *costs involved* and the persons in charge – section 6(2).



8.3.6. No by-law may be passed by a municipal council unless all the members of the council have been given reasonable notice; *and the proposed by-law has been published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law – section 12(3).*

8.3.7. A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose encourage, and create conditions for, the local community to participate in the affairs of the municipality – section 16(1)(a).

8.3.8. A municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this

purpose provide for notification and public comment procedures, when appropriate; and public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate – section 17(2)(b) and (c).

8.3.9. When a municipality establishes appropriate participation mechanisms, processes and procedures, must take into account the special needs of people who cannot read or write; people with disabilities; women; and other disadvantaged groups – section 17(3).



- 8.4. The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and become familiar with the laws as they are made. It enhances the civic dignity of those who participate by enabling their voices to be heard and taken into account. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice. It strengthens the legitimacy of legislation in the eyes of the people.
- 8.5. The public or the residents of a municipality must be afforded a reasonable opportunity to participate in the law-making process.
- 8.6. Reasonableness is an objective standard which is sensitive to the facts and circumstances of a particular case. In dealing with the issue of reasonableness, context is all important. The nature and importance of

the By-Law and the intensity of its impact on the public are especially relevant. Reasonableness also requires that appropriate account be paid to practicalities such as time and expense, which relate to the efficiency of the law-making process. Yet saving money and time does not justify inadequate opportunities for public involvement.

8.7. The applicant is not aware that the COJ conducted and embarked on any meaningful and reasonable public participation process in the adoption of the By-Law.

8.8. For instance, the COJ allegedly published a notice in the Government of the Western Cape Provincial Gazette on 6 November 2024, inviting the community's comments regarding the implementation of the By-Law and notifying that there would be virtual public meetings on 14 November 2024 and 19 November 2024. This notice, after a diligent search, could not be traced. Public opinion in general echoes the applicant's justified concerns that the By-Law was not subjected to sufficient and reasonable public participation.

8.9. OUTA raised these concerns in a letter dated 28 March 2025, appended as annexure "FA4", to which no response was received.

8.10. Given the extent and impact of the By-Law, it appears that limited public participation took place, alternatively, that there was insufficient community participation. The record will demonstrate what process was followed and if it satisfies the constitutional threshold of sufficient community participation in the law-making process.



8.11. As it stands, the applicant does not have access to the full record, but seeks to have the By-Law declared invalid for want of sufficient public participation.

## D LEGALITY REVIEW

### Section 156 of the Constitution

9.

9.1. A municipality has executive authority in respect of and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and any other matter assigned to it by national or provincial legislation – section 156(1).



9.2. The matters over which the COJ has executive authority are limited by the Constitution.

9.3. The original legislative powers vested in municipalities are narrower and are conferred only in relation to, and in aid of, the executive powers of the municipalities. These original legislative powers are conferred by section 156(2) of the Constitution.

9.4. From the schedules referred to under section 156 of the Constitution or any other law, which include Chapter 12 of the South African Police Service Act, 1995, it does not appear that the COJ is authorised to exercise direct executive authority over private property, such as CCTV camera systems, which belongs to private citizens.

- 9.5. Section 11 of the Systems Act, which describes the COJ's executive and legislative authority and how it should be exercised, does not expand the areas or matters over which it has executive and legislative authority.
- 9.6. The COJ may regulate its own CCTV camera systems as it deems fit, but it exceeds its powers by directly interfering with private property rights.
- 9.7. Considering the objectives and purpose of the By-Law as set out under section 3 thereof, it is recorded to *"Promote the lawful and constitutional use of CCTV Camera within the jurisdiction of the City, as a mechanism to deter crime and to prosecute perpetrators of crime by ensuring the safety and security of individuals, communities and property within the City."*
- 9.8. It would appear that the COJ is usurping policing functions by commandeering private CCTV camera systems *aimed at ensuring the safety and security of individuals, communities and property within the City*, which safety and security responsibility is primarily the function of National and Provincial Government.
- 9.9. For this reason, the COJ is overstepping its executive and legislative authority.

#### Rationality

10.

- 10.1. Rationality is a minimum threshold requirement applicable to the exercise of all public power. Legislation that fails to pass this threshold is

inconsistent with the requirements of our Constitution and therefore unlawful.

- 10.2. As stated, the purpose of the By-Law is recorded under section 3 thereof, which is *first* to provide for the regulation and registration CCTV camera systems; *second*, to promote the lawful and constitutional use of CCTV camera within the jurisdiction of the City, as a mechanism to deter crime and to prosecute perpetrators of crime by ensuring the safety and security of individuals, communities and property within the City; *third* to discharge the COJ's obligation of a safer city; in the performance of its functions as required by section 64E of the South African Police Act 68 of 1995 and *fourth*, to ensure that the use of installed CCTV camera within the COJ is in strict compliance with the applicable laws by providing an effective framework within which the City can prescribe, regulate and safeguard Constitutional rights to human dignity, privacy, security of persons, freedom of movement; and general wellbeing of the community.



- 10.3. From the above purpose and objective statement, it is extracted that residents' safety and security are of paramount importance and the main driver for the By-Law.
- 10.4. If the COJ seeks to safeguard its residents from crime, it is not justifiable that the COJ, in achieving the declared purpose and objective, seeks to enforce the following cumulative, cumbersome and irrational provisions:-

- 10.4.1. No person may erect a CCTV camera or use or continue to use a CCTV camera or any structure or device as a CCTV camera without prior written approval from the City – **section 5.1.**
- 10.4.2. No CCTV camera erected and operated with approval may be altered, removed, re-erected or upgraded (except for maintenance work which may be required for upkeep of a CCTV camera) without prior written approval of the COJ – **section 5.2.** What if a CCTV camera owner wants to move and take his camera to his new property? He has to wait for the COJ's permission to remove the camera and then make a new application to have it installed at its new location, pay the application fee and the engineer's fee signing off the installation.
- 10.4.3. Applicants who wish to install a CCTV camera must make an application on a prescribed form, accompanied by such documentation, information, maps, diagrams and plans as set out under Schedule 1 (*which schedule does not exist*) - **section 5.3.**
- 10.4.4. Applications for residential or private property CCTV installations must be submitted under cover of the prescribed application form (Schedule 3), (*which schedule does not exist*) - **section 15.5.**



- 10.4.5. Applications for residential or private property CCTV installations must be motivated by reasons why such CCTV camera must have a view or angle of view to a public space.
- 10.4.6. Any application to install a CCTV camera, shall be preceded by a *pre-evaluation submission* and such submission shall be accompanied by some but not all the documentation, including information, maps, diagrams and plans as set out in schedule 1 – **section 5.4.**
- 10.4.7. If the application does not comply, it will be rejected by the COJ and a resident will not be permitted to install a CCTV camera with a view of a public space, such as a street – **section 5.8.**
- 10.4.8. The COJ may impose conditions, which conditions are not defined and may be arbitrary – **section 6.2.**
- 10.4.9. Any approval in terms of the By-Law will be for a period as determined by the COJ or a period of 12 (twelve) months – **section 6.3.** Approvals will therefore be for a limited period, which would necessitate a renewal application for the same camera system, which was previously approved.
- 10.4.10. All approvals for installation of CCTV camera by *commercial applicants* will endure for a period of one year from the date of installation, whereafter, the approval shall lapse, unless the requisite application for renewal of the approval is filed with the COJ – **section 6.13.**



10.4.11. Any application for renewal by *commercial applicants* shall be submitted to the COJ for consideration, three months prior to expiry of the 1 (one) year period – **section 6.14.**

10.4.12. If an application has been refused, no further application may be lodged by the same applicant in respect of the same exact installation site for a period of one year from the date of such refusal, unless a motivation is submitted in writing for an approval indicating a change of circumstances – **section 6.8.**

That means that if an applicant fails to satisfy the stringent requirement in his first application, he has to wait a year before he may again apply to have a CCTV camera system approved or he must apply for approval in respect of a different installation site. For that year, the property in question will not be covered by CCTV, which infringes on a property owner's or occupier's right to secure and protect their property.

10.4.13. If an application is approved and the CCTV camera is *not completely erected within 3 (three) months from the date of notification of such approval* or within such other time or period specified in the approval or any such further period which the COJ on good cause shown allows in writing, *the approval shall automatically lapse, where after a new application must be submitted* – **section 6.9.** The timeframe is unreasonable and places an unnecessary burden on an applicant to make a new application upon the automatic lapsing of the approval. There is no rational justification why the CCTV camera system should



be operational within three months of its approval. It should be noted that a new application would require a further application fee.

- 10.4.14. After the erection of an approved CCTV camera, the applicant must provide the City with a *completion certificate executed by a registered engineer within 2 (two) days from the date of completion of erection* – **section 6.11**. Again, an unreasonable period is imposed, and unnecessary expenses stand to be incurred by eliciting the services of an engineer, which cannot rationally be connected to the purpose of the By-law.



- 10.4.15. No electricity supply to CCTV camera from the COJ or the COJ's electrical network or infrastructure shall be allowed without the written consent of the COJ – **section 9.2**. A homeowner, seeking to install a simple CCTV camera system at his residence, will be required to obtain the COJ's permission before he may "plug in" the camera system into the electrical wall-mounted socket and thereafter get an engineer to sign off on the "installation". It is peculiar that an owner may connect his washing machine, welder, fridge, power tools and television set to the power supply, but not his CCTV camera. With respect, the irrationality speaks for itself.

- 10.4.16. The COJ shall remove all illegal CCTV camera installations erected within its area and jurisdiction – **section 11.1**. This means CCTV systems, which are not registered, or systems for which no renewal application was lodged and approved, or

installed without an engineer certificate, or connected to an electricity connection without the written approval of the COJ, may be confiscated without a court order.

- 10.4.17. The owner or installer of the CCTV camera or owner of private property where such illegal installation is located shall be liable for removal and storage costs that may be incurred by the COJ – **section 11.2.**

- 10.4.18. All applicants are obliged to label their approved CCTV camera and such labelling to include current CCTV camera owner and their contact details and shall be affixed and displayed prominently on the CCTV camera installation – **section 13.2.** The compulsory public display of private information also infringes on the right to privacy, which is relied on below.



- 10.4.19. Post CCTV camera installation, the CCTV camera owner shall notify the COJ, and cause an inspection to be conducted by an “*Authorized Official*” and submit a certificate of completion issued by the registered engineer in respect of such installation – **section 13.4.**

- 10.4.20. The COJ may conduct regular CCTV camera inspections – **section 13.5.**

- 10.4.21. All related costs to an application, including CCTV camera design costs, *application costs*, costs to setup, installation, maintenance and securing the CCTV camera will be borne by the applicant – **section 14.1.**

10.4.22. Each CCTV camera must record and have data available or stored for a minimum period of "24 *twenty-four* 72 ?? hours" (*sic*) or seventy-two hours or such longer period as may be provided for in any applicable national or provincial legislation – **section 17.2.**

10.4.23. Applications in respect of CCTV camera that are unable to meet the optimal recording time requirement, shall not be approved – **section 17.3.** This means that CCTV systems without hard drives, which only do real-time monitoring, will be illegal.



10.4.24. Data gathered through CCTV camera in public spaces or within private property with a view or an angle of coverage to public space shall only be used for "*law enforcement purported by SAPS and JMPD*" – **section 17.8.** An owner of such CCTV camera may not share the footage of any suspicious or criminal activity with community policing forums or private security companies. All CCTV data is only for use by the SAPS and the JMPD.

10.4.25. There shall be a periodic review and assessment, every six (6) months interval of the CCTV camera to be undertaken by the CCTV camera owner and documented – **section 22.1.**

10.4.26. All copies of the review report must be submitted by the CCTV camera owner on demand, in writing to an authorised official within the period specified in the written request – **section 22.2.**

10.4.27. "*Prescribed Fees*", means the prescribed penalty fees and application fees including renewal fees which must be paid upon submission of an application in terms of the By-Law, as determined by the COJ from time to time. These continuously occurring fees have not been clarified and are unknown. Owning a CCTV camera system will have a financial impact on residents who are already suffering high living costs and taxes.

10.5. The exercise of public power must be rational and logically connected to the intended purpose.



10.6. It is contended that there is no rationality between the purpose and object of the act and the unreasonable burdens imposed on a CCTV owner. Placing an enormous administrative burden on a CCTV owner would discourage residents from installing CCTV camera systems. The net result would be a community increasingly exposed to crime, where the SAPS and JMPD are not equipped to effectively deal with the scourge of pervasive crime.

10.7. It is also evident that there is no rational reason for the COJ to levy prescribed fees during every stage of the CCTV camera life cycle. The By-Law requires residents who wish to install CCTV cameras to make continuous payments to the COJ, for which they will receive no value. The levying of "prescribed fees" is nothing more than a scheme to secure additional revenue for the COJ, which is financially crippled. Paying constant fees to the COJ, will discourage residents from investing in CCTV camera systems.

10.8. The levying of fees also constitutes a form of double taxation, since the CCTV camera owner has already paid VAT and most likely import duties on his installation. "Taxing" CCTV cameras to this extent may render such technologies unaffordable, detracting from their widespread application to prevent and deter crime in a city which is crime-ridden.

10.9. The By-Law will also undermine community safety initiatives, often undertaken by marginalised communities, who perform their own patrols. Similarly, the ability of neighbourhood watches and community policing forums to function effectively is impeded by the restriction of data sharing.



10.10. Objectively viewed, a link is required between the means selected by the COJ and the end it sought to achieve. The disconnect is glaring in this instance. The By-Law will have the opposite effect of what is intended by the COJ.

10.11. It is further contended that the By-Law is irrational, for it is *unimplementable*.

10.12. The COJ is under a duty to pass by-laws that are reasonably clear and precise, enabling residents and municipal officials to understand what is expected of them.

10.13. The document presented as the approved By-Law:

10.13.1. Contains, as a watermark, the wording "*DRAFT*" on every page. Clearly this is not the final intended version.

10.13.2. Refers to "schedule 1" (sections 5.3, 5.4, 5.6, 5.7, 5.8 and 5.9 thereof), "schedule 2" (section 6.1 thereof) and "schedule 3" (section 15.5 thereof), which schedules are not contained in the document.

10.13.3. Contains definitions which appear to be superfluous and never referred to in the body of the document, such as "Community Police Forum", "Contractor", "JRA", "Municipal Owned Entities", "Registered Neighbourhood", "Reinstatement" and "Vetting Committee". These definitions detract from the validity of the document and serve no rational purpose to achieve the objects of the By-Law.



10.13.4. Also contains incomplete or confusing provisions such as:

*"5.9 If any information requested by the City in terms of clause... (sic) of schedule 1 is not provided within 60 (sixty) days..."*

and

*"17.2 Each CCTV Camera must record and have Data available or stored for a minimum period of 24 (twenty-four) 72 ?? (sic) hours or such longer period as may be provided for in any applicable national or provincial legislation."*

10.14. The By-Law, considered as a whole, lacks the standard of reasonably clear, enforceable legislation. With respect, the By-Law resembles a poorly drafted document, which was not well thought through.

Constitutional Infringement: Right to Property (Section 25)

## 11.

11.1. For the reasons set out above, it is also contended that the COJ's interference in the property relationship between an owner and his CCTV camera installation constitutes a form of arbitrary deprivation or a form of expropriation without compensation, where the COJ exercises excessive control over private property.

11.2. A CCTV camera owner cannot treat their CCTV installation on their own property as they deem fit but is obliged to rely on the COJ's approval and regulation on numerous aspects.



11.3. The COJ makes no financial contribution towards a proposed CCTV camera installation on private land but burdens a property owner with cumbersome and excessive regulation, allowing the COJ to benefit in material respects at the expense of the CCTV camera owner.

11.4. Far less intrusive alternatives already exist in legislation, where a party who is in possession of images or video recordings which are useful for crime investigation or prosecution, can be subpoenaed to disclose their contents for purposes of such investigations and prosecutions.

11.5. Also, it may be as simple as asking a CCTV Camera owner if they are prepared to share the data, rather than imposing harsh limitations on the right to property.

11.6. Neither the COJ nor the JMPD is vested with crime investigative or prosecutorial powers; yet the COJ insists on exercising control over

CCTV data and recordings that may be relevant to such processes. The investigation and prosecution of crime is not within the COJ's constitutional mandate, and for that reason, the COJ should not exert any influence over such processes, either directly or indirectly. The Police should obtain such CCTV data in terms of their investigative powers, and not the COJ.

- 11.7. It is also open to the COJ to budget and install its own cameras in high-crime areas and manage those installations for its own benefit, instead of interfering with the private property of residents. It is difficult to appreciate how it is in the public's interest that private residents' CCTV cameras on their private property must be monitored and also at their cost, when there are viable and less costly alternatives available. I appreciate that the Court is not tasked with preferring one option over another and is also not entitled to prescribe to the COJ which is best, but it demonstrates the severity of the infringement and the total lack of rationality.



#### Constitutional Infringement: Right to Privacy (Section 14)

### 12.

The By-Law may infringe on the constitutional right to privacy in several ways, which include the following:

#### 12.1. Mandatory Registration and Central Database of Private CCTV Cameras

- 12.1.1. The By-Law requires all privately owned CCTV cameras with a view of public spaces to be registered and entered into a central database managed by the COJ. If a homeowner installs a CCTV camera that captures footage of the street, they must register this camera with the COJ. This registration exposes the existence and location of the camera to authorities, which could be seen as an invasion of the homeowner's privacy.

## 12.2. Surveillance Beyond Public Spaces



- 12.2.1. The By-Law applies to any surveillance equipment that captures information on individuals, including body-worn cameras and technologies capable of identifying people in both public and adjacent private spaces. A municipal CCTV camera installed on a public street could capture footage of private activities in nearby homes or businesses, where people have a reasonable expectation of privacy.
- 12.2.2. It should be noted that municipal departments are not subject to the same application scrutiny as private citizens since they are only required to register their installations, not seek approval. The municipality can install CCTV cameras in public spaces without the same level of oversight as private citizens, leading to disproportionate surveillance by the state without adequate transparency or public input.

### 12.3. Mass surveillance and data collection

- 12.3.1. The By-Law enables the collection of large volumes of personal data through the surveillance of public spaces. This can be seen as a form of mass surveillance, which is regarded as an infringement on privacy, especially when not justified by clear, specific, and proportional reasons. For instance, a resident walking down a street may be captured by multiple private CCTV cameras, all of which are registered and potentially accessible to law enforcement. This creates a comprehensive record of their movements without their explicit consent.



- 12.3.2. This excessive surveillance also infringes on the constitutional right of freedom of movement, where the public may become reluctant to enter public areas for concern of continuous surveillance.

### 12.4. Lack of informed consent

- 12.4.1. The By-Law does not require individuals to be informed about which cameras are recording them or how their data will be used, which undermines the principle of informed consent - a cornerstone of privacy rights under POPIA.
- 12.4.2. The By-Law (paragraph 25.1) determines that all commercial applicants are obliged to place signage or signs to warn members of the public that they are entering a zone or public space which is monitored by privately owned CCTV

camera. Residential owners who are not commercial applicants, whose CCTV cameras have a view or angle of a public space, are not burdened with the same responsibility.

- 12.4.3. Members of the public would therefore not know that they are under continued surveillance, to which law enforcement agencies will have access. It would be impossible for members of the public to know when they are under surveillance, which means that there can be no consent. It would, in any event, be an overreach to compel private residential owners to place warnings informing that their properties are being monitored.



## 12.5. Potential for data misuse

- 12.5.1. The centralisation of CCTV registration and the mandatory sharing of footage with law enforcement increases the risk of unauthorised access, leaks, or misuse of personal data. Despite confidentiality provisions, large databases can be vulnerable to breaches or abuse.
- 12.5.2. If the COJ's database, where all the collected footage is stored, is hacked, sensitive information about camera locations and footage could be exposed, potentially enabling stalking, blackmail, or other privacy violations. This is not an unlikely contention, as the COJ's data systems were compromised in October 2019, resulting in the unlawful

acquisition of customers' personal information. The COJ responded in a tweet as follows:

*"The incident is currently being investigated by City of Joburg cybersecurity experts, who have taken immediate and appropriate action to reinforce security measures to mitigate any potential impacts. As a result, several customer-facing systems including the City's website, e-services and billing systems, have been shut down."*



## 12.6. Access to CCTV infrastructure

- 12.6.1. Section 13.6 infringes on the right to privacy in that any authorised official shall have access to all CCTV camera infrastructure, including the CCTV camera, which implies that a private or business owner's property can be entered at any time by a COJ official for inspection purposes. Apart from infringing on the right to privacy, it is also an affront on property rights. The right to have blanket access to property at any time is too wide and open to abuse.

## 12.7. Particulars of an owner

- 12.7.1. Applicants are obliged to label their approved CCTV camera, and such labelling must include the current CCTV camera owner and their contact details and shall be affixed and **displayed prominently** on the CCTV camera installation – **section 13.2**. The personal details of the owner may therefore be displayed to the public, which may lead to

intimidation, blackmail, victimisation or other criminal acts, which clearly infringes on the right to privacy.

## 12.8. Personal privacy

12.8.1. The COJ, via an "Authorised Official", "shall have access to all CCTV Camera infrastructure including the CCTV Camera and the Control Room" – **section 13.6**. The By-Law does not specifically define who an "Authorised Official" is, but states that such a person is "any person or official who has been duly authorised by the City". This is not a person necessarily employed in law enforcement who is obliged to obtain the relevant CCTV footage for purposes of criminal investigation through the mechanisms provided for in the Criminal Procedure Act, 1977 – **sections 20, 21, 22 and 179** thereof.



12.8.2. Where footage is obtained by the COJ under section 13.6 from residential owners whose CCTV cameras have a view or angle of a public space, it logically follows that the CCTV camera footage will also include images of the owner's private property.

12.8.3. What a person does within the boundaries of his property is private, and the COJ must not intrude on this privacy. Private property, especially a private residence, represents a substantive right to privacy that allows a person to make

decisions about the conduct of their lives without interference from the state or the COJ.

- 12.8.4. If a private residential owner wishes to set up a CCTV system on their property it is their right to do so, irrespective whether the camera might have a view on a public space. The data captured on the CCTV cameras can also be seen as private as it shows the blind spots of a property, which in the wrong hands can create opportunities for criminals to break into these properties and cause further harm.



- 12.8.5. There is no justifiable reason or legitimate purpose ~~why~~ *private area* footage should also be at the disposal of the COJ and its agencies. An owner's private movements and whereabouts on his/her property do not concern the COJ and constitute a flagrant disregard of privacy rights.
- 12.8.6. COJ intends to control and have access to what a private property owner does on his/her property, which is an infringement of his/her right to privacy and right to property.

### Constitutional Infringement: Freedom and security of the person (Section 12)

## 13.

- 13.1. The By-Law will not promote the security of the person but will leave communities exposed to criminal activity.
- 13.2. The Court is confronted with a municipal authority which is experiencing severe decay and service delivery problems on most fronts. The decay

of infrastructure is a fact in the public domain, so is service delivery problems.

13.3. The inefficiencies, lack of capacity and constrained budget of the COJ will have the effect that an applicant will wait for extended periods to obtain approval for his CCTV camera system. Renewal applications will suffer the same fate and frustration. An applicant will not be able to proceed with the installation unless it has written approval from the COJ to connect to the electricity supply, all while the 3-month installation deadline looms. Any existing CCTV camera installation may not be altered, removed, re-erected or upgraded without prior written approval of the COJ, which is another layer of time-consuming bureaucracy.

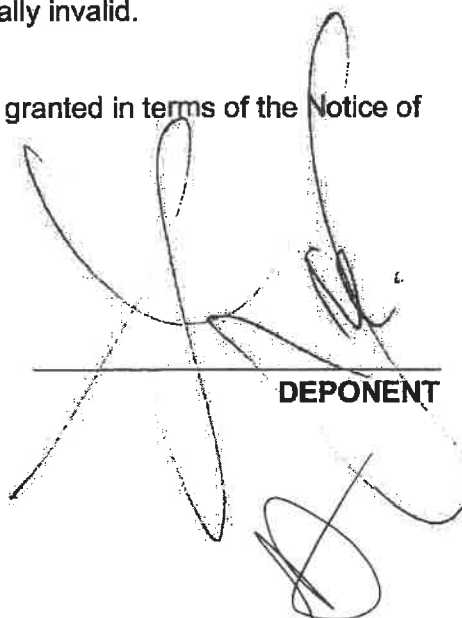


13.4. Whilst an applicant is waiting, he/she will not have the benefit of his/her own procured CCTV camera system, which is intended to keep him/her, his/her family, or business safe from crime and intrusion.

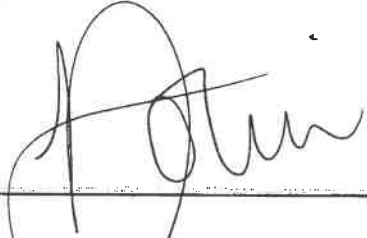
13.5. The irrationality of the By-Law has the unintended consequence of trampling residents' constitutional rights to safety and security.

The By-Law is, for reasons set out above, irrational, *ultra vires* and does not pass the test for legality and should be declared constitutionally invalid.

**THEREFORE**, the applicant prays that an order be granted in terms of the Notice of Motion.

  
DEPONENT

SIGNED AND SWORN to at Johannesburg on this 18 day of June 2025 the deponent having acknowledged that she knows and understands the contents of this affidavit and that it is true and correct and that she considers the oath to be binding on her conscience and that the regulations of R1258 of 21 July 1972 have been complied with.

  
 \_\_\_\_\_  
 COMMISSIONER OF OATHS



Full Names : \_\_\_\_\_

Address : \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Capacity : \_\_\_\_\_

Area : \_\_\_\_\_

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