



ZELNA.JANSEN  
CONSULTANCY

Bringing Stakeholders together to find Solutions

City of Cape Town

14 May 2020

Email: [lawenforcement@capetown.gov.za](mailto:lawenforcement@capetown.gov.za)

Dear Sir or Madame

**Re: Comments on the Draft Streets and Public Places and the Prevention of Nuisances Amendment By-law**

## 1. Introduction

My name is Zelna Jansen and I am the Chief Executive of Zelna Jansen Consultancy, a lobbying and advocacy firm, bringing people together to find solutions and assisting people to have more effective conversations with their law and policy-makers. I also advocate for active citizenry through community talks, writing opinion editorials, videos and school pilot projects about how the law and policy making process works, how it can be influenced and how political and public office bearers can be held accountable.

## 2. Comments

Section 14 of the Constitutions provides that “Everyone has the right to privacy, which includes the right not to have— (a) their person or home searched; (b) their property searched; (c) their possessions seized; or (d) the privacy of their communications infringed. Although section 36 of the Constitution allows for this right to be limited, it may only be done, to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

In the constitutional case of the Minister of Justice and Constitutional Development v Prince (2018), Justice O’Regan stated that there is a close link between human dignity and privacy in our constitutional order. The right to privacy, recognises that human beings have a right to a sphere of intimacy and autonomy that should be protected from invasion. This right serves to foster human dignity.

Although the right to privacy generally requires a warrant, the law recognises that there will be **limited circumstances** whereby the need for the State to protect the public interest compels an exception to this rule. It is emphasised, that the purpose of to enter, search and seizure without a warrant must be to prevent crime.



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The right to privacy consists essentially of the right to **live one's own life with a minimum of interference and is closely linked to the right to dignity**, care must be taken that not any official is given the authority to enter, search and seize without a warrant.

My proposal is therefore as follows:

1. The term, **“authorised official”** be defined. In this way, citizens will be in a position to know whether an official has authority to enter, search and seize without a warrant.

**Or, alternatively**

2. The term, “authorised official” is replaced with the term **“peace officer”**. The bylaws already define a “peace officer” as it is defined in the Criminal Procedure Act 51 of 1977. The Criminal Procedure Act, stipulates when a police or peace officer can enter, search and seize without a warrant. This will therefore bring the enter, search and seizure within the boundaries of the Criminal Procedure Act.

### 3. Conclusion

I reiterate that it is important to qualify and define who is authorised to conduct the enter, search and seizure without warrant. The intention being to have a guarantee from an unreasonable search and seizure and protection from an invasion to privacy.

Yours sincerely,

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