



c/o: Michael Clark, Researcher

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10 January 2020

By email: transport.info@capetown.gov.za

To whom it may concern,

RE: NDIFUNA UKWAZI COMMENT ON THE DRAFT REVISED PARKING POLICY FOR THE CITY OF CAPE TOWN (2020)

1. Ndifuna Ukwazi is a non-profit activist organisation and law centre that combines research, organising and litigation in campaigns to advance urban land justice in Cape Town. Our primary mission is to expand and protect access to affordable housing towards building a more just and equal city.
2. In August 2020, the City of Cape Town (“the City”) published its Draft Revised Parking Policy 2020 (“the draft policy”) and invited interested parties to comment on the draft policy. Ndifuna Ukwazi has read and considered the draft policy and makes this submission to the City in accordance with the invitation to submit written comments.
3. We were unable to submit written comments through the City’s online portal as the length of submissions submitted via the online portal is limited to 4000 characters. As a result, we have opted to submit our comments via email.
4. Please see attached our submission on the Draft Revised Parking Policy for the City of Cape Town.

Yours faithfully,

Ndifuna Ukwazi

(Per: Michael Clark, Researcher)

NDIFUNA UKWAZI SUBMISSION ON THE DRAFT REVISED PARKING POLICY OF THE CITY OF CAPE TOWN 2020

A. INTRODUCTION

1. As mentioned in our cover letter, Ndifuna Ukwazi is a non-profit activist organisation and law centre that campaigns to advance urban land justice in Cape Town through research, organising and litigation. Our primary mission is to expand, promote and protect access to affordable housing towards building a more just and equal city.
2. Over the last six years Ndifuna Ukwazi has been involved in legal, research and organising work around evictions, relocations, rental housing, the allocation of state-subsidised houses, and the promotion of social, transitional and inclusionary housing. We have been involved in a series of important court cases dealing with land occupations, evictions, the provision of alternative accommodation, and the state's constitutional and legislative obligation to combat spatial apartheid and promote spatial, economic and racial justice and equality through expanding access to affordable housing.
3. It is from this perspective that Ndifuna Ukwazi has considered the Draft Revised Parking Policy of the City of Cape Town (2020) ("the draft policy"),¹ and makes the following submissions.
4. Our submission is structured as follows:
 - 4.1 We begin by making some general comment on the parking policy and its potential impact on the Cape Town's spatial apartheid legacy and exclusionary housing market;
 - 4.2 We then raise specific concerns with the draft policy; and
 - 4.3 We make some concluding remarks.

¹ City of Cape Town, "Draft Revised Parking Policy for the City of Cape Town" (7 June 2020), available at: http://resource.capetown.gov.za/documentcentre/Documents/Bylaws%20and%20policies/Draft_Revised_Parking_Policy.pdf.

B. GENERAL COMMENT ON THE PARKING POLICY'S POTENTIAL TO AFFECT CAPE TOWN'S APARTHEID SPATIAL LEGACY AND EXCLUSIONARY HOUSING MARKET

5. Decisions about the provision of parking and parking management have an important bearing on cities. Parking policies have the potential to lead to worse traffic, encourage urban sprawl and even negatively affect housing affordability. This has led some commentators to argue that ill-conceived parking policies “poison our cities, increasing traffic congestion, polluting the air, encouraging sprawl, raising housing costs, degrading urban design, preventing walkability, damaging the economy and penalizing everyone that cannot afford a car.”²
6. Cape Town is already experiencing a significant spatial inequality, inverse densification and urban sprawl. In this context, a parking policy has the potential to exacerbate these issues are not carefully considered. Some general comments on Cape Town's apartheid spatial legacy and exclusionary housing market, and the need for affordable housing, warrant mentioning.

Cape Town's Spatial Apartheid Legacy and Exclusionary Housing Market

7. The legacy of colonial and apartheid spatial planning continues to dominate Cape Town's geography. Twenty-six years after apartheid, Cape Town remains one of the most spatially divided cities in the country – with residential settlement patterns still segregated along race and class lines. The City continues to be split in two: The majority of Black and Coloured households continue to live in densely populated, peripheral townships and informal settlements where economic opportunities, access to transport facilities and social amenities are few; while the central and well-located residential areas of Cape Town, where economic opportunities, transport facilities and social amenities are plentiful, are inhabited predominantly by White people and significantly less densely populated.

² Ses D Shoup, “Parking reform will save the city”, *Bloomberg CityLab* (20 September 2019), available at: <https://www.bloomberg.com/news/articles/2019-09-20/how-to-reform-your-city-s-bad-parking-requirements>.

8. While this spatial inequality has its historical origin in the colonial and apartheid eras,³ a contemporary driver is Cape Town's acute housing affordability crisis. The Western Cape Provincial Government and the City of Cape Town's failure to regulate land and property markets has resulted in stubbornly high rents and property prices that have excluded most poor and working-class families. The average sale price for a home in Cape Town is the highest in South Africa and buying a home is unaffordable for the vast majority of residents. In 2019, the City registered the seventeenth highest year-on-year property inflation in the world at 9.1% (higher than any other city in Africa).⁴ The effect of property inflation is even more worrying when broken down by market share as property prices in middle-priced and lower-priced markets continue to increase.⁵ Property prices in lower-priced markets, in particular, indicate year-on-year inflation "in the double digit territory".⁶
9. According to 2011 Census Data, 75% of households in Cape Town earn less than R18 000 a month (the figure rises to 92% for black households), and most people cannot afford to pay more than R3 000 a month in rent or R281 000 to own.⁷ In 2019, Stats SA found that the median income of a South African is R13 546 per annum, or just R1 129 per month.⁸ This puts rent and homeownership in well-located areas close to Cape Town's economic nodes out of reach for most middle-class South Africans, let alone the poor or working class. As a result, most poor and working class households are forced out to peripheral areas where they spend a disproportionate component of their income and time on unreliable transport to and from work, schools and other opportunities.

³ During the colonial era until the end of apartheid, various laws were used to systematically dispossess Black and Coloured people of their land. Millions of Black and Coloured people were forcibly removed from the cities and dumped in peripheral areas far away from any existing social and support networks, hospitals, schools, and jobs. See, for example, M Clark, *Pathways out of Poverty: Improving Farm Dwellers' Tenure Security and Access to Housing and Services*, Association for Rural Advancement (AFRA) Research Report (2017), pp. 8-10; and S Wilson, J Dugard and M Clark, "Conflict Management in an Era of Urbanisation: Twenty Years of Housing Rights in the South African Constitutional Court", *South African Journal on Human Rights* (2025), 31(3), pp. 472-477.

⁴ Frank Knight, "Global Residential Cities Index: Q4 2019" (2019), p. 2:

<https://content.knightfrank.com/research/1026/documents/en/global-residential-cities-index-q4-2019-7111.pdf>.

⁵ First National Bank (FNB), "Cape Town Sub-Regional House Prices" (August 2019), p. 1:

<https://www.fnb.co.za/downloads/economics/reports/2019/CapeTownSub-RegionalHousePricesAug.pdf>.

⁶ FNB, "Cape Town Sub-Regional House Prices" (August 2019), p. 1.

⁷ See Ndifuna Ukwazi, *Inclusionary Housing: Measuring Access to Residential Development by Race and Class* (November 2018): <https://jumpshare.com/v/KRlwYlKmqEQGzFyB1a7>.

⁸ Statistics South Africa (Stats SA), *Inequality Trends in South Africa: A Multidimensional Diagnostic of Inequality* (2019):

<http://www.statssa.gov.za/publications/Report-03-10-19/Report-03-10-192017.pdf>.

10. The provision of state-subsidised housing has also done little to redress Cape Town’s entrenched spatial apartheid, with housing delivery failing to keep pace with the considerable backlog. In 2019, the Western Cape provincial housing backlog stood at over 600 000 families, of which 365 000 are in the City of Cape Town alone.⁹ And these figures only refer to the families that qualify for fully state-subsidised homes, approximately 75% of the population of Cape Town qualify for some form of housing assistance.¹⁰ The provision of housing has failed to satisfy the backlog. In the 2018/2019 financial year, the City provided and upgraded only 5 692 homes.¹¹ The overwhelming scale of the need means that the City itself believes that it will be over 70 years before it can eradicate the housing backlog.¹²
11. In fact, spatial inequality has been exacerbated since the end of apartheid. This is due to post-apartheid housing policy prioritising scaling up of state-subsidised housing by developing larger-scale housing projects in peripheral areas where land is usually more affordable. This approach has had the unintended consequence of reproducing spatial inequality and social exclusion by creating poverty traps on the outskirts of the city far from economic opportunities and social amenities.
12. Where you live in the city matters – it determines a person’s access to opportunities and the quality of services. Many peripheral areas in Cape Town have limited access to basic services, forcing families to share an insufficient number of temporary outdoor toilets and collect water from communal standpipes. The schools in these areas generally perform worse, gang violence is rife, substance abuse is more common, and social amenities such as hospitals and clinics are not easily accessible. Poor and working-class people spend a disproportionate component of their income and time on unreliable transport.¹³ Critically, research shows that there is a direct relationship between where people live in South African cities and the likelihood that they will find

⁹ See Q Qukulu, “About 600,000 Cape residents on housing waiting list, says Human Settlements MEC”, *Cape Talk* (11 July 2020); S Fischer, “City of CT committed to tackling backlog”, *Eye Witness News* (September 2018).

¹⁰ Ndifuna Ukwazi, *Inclusionary Housing: Measuring Access to Residential Development by Race and Class*.

¹¹ City of Cape Town, “2019/2020 Adjusted Budget – May 2020: Annexure 4.1: Corporate Scorecard – Quarter 4 2020 Amendments” (May 2020), p. 1.

¹² See City of Cape Town, “Municipal Spatial Development Framework” (25 April 2018), p. 220.

¹³ In Cape Town, low-income earners spend on average 45% of their earnings on transport compared a global average of 5-10%. See City of Cape Town Transport, *Transport Development Index* (2016).

employment opportunities.¹⁴ Living on the urban periphery in South Africa therefore ends up trapping the poor and working class in a cycle of structural poverty.¹⁵

COVID-19 has exacerbated existing inequalities

13. The economic fall out as a result of the COVID-19 outbreak has exacerbated existing social challenges including spatial inequality, and increased the need for well-located social and affordable housing. In many respects, the economic burden of the virus has, and will continue to be, disproportionately borne by the poor and working class. Data shows that the economic impact of the COVID-19 pandemic, the consequent economic recession and the national lockdown, has led to significantly higher rates of unemployment, diminished incomes and higher rates of hunger.
14. The South African National Income Dynamics Study – Coronavirus Rapid Mobile Survey (NIDS-CRAM), a survey of a representative sample of 7 000 South Africans and the largest survey of this nature to emerge from the Global South, found that between February and April 2020, 3 million South Africans lost their jobs, and a further 1.5 million lost their income (through being furloughed).¹⁶ This represents a 18% decline in employment, with the number of employed persons dropping from 17 million in February to only 14 million in April.¹⁷ The study also found that 1-in-3 (33%) income earners in February did not earn an income in April, representing a massive decline in employment and other income generating activities.¹⁸ The vast majority of these job losses were concentrated among already disadvantaged groups, including those in the informal economy,

¹⁴ In the South African context, see J Budlender and L Royston, *Edged Out: Spatial Mismatch and Spatial Justice in South Africa's Main Urban Areas*, Socio-Economic Rights Institute of South Africa (SERI) Research Report (2016). See also, in relation to cities in the United States, E Badger and Q Bui, "Detailed maps show how neighborhoods shape children for life", *New York Times* (1 October 2018): <https://www.nytimes.com/2018/10/01/upshot/maps-neighborhoods-shape-child-poverty.html>.

¹⁵ See Budlender and Royston, *Edged Out*, p. 2. See also the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (High Level Panel), *Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change* (November 2017), p. 81.

¹⁶ See NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1" (2020), p. 3, which can be found, alongside all the NIDS-CRAM working papers at the NIDS-CRAM website, available: <https://cramsurvey.org>. See also, for a summary of the results, Spaull, "The jobs reckoning is here: 3 million jobs lost".

¹⁷ NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", pp. 3-5.

¹⁸ See NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", p. 4. The NIDS-CRAM data confirms preliminary data from Statistics South Africa ("StatsSA"). See StatsSA, "Results from Wave 2 Survey on the Impact of the COVID-19 Pandemic on Employment and Income in South Africa" (May 2020), available: <http://www.statssa.gov.za/publications/Report-00-80-03/Report-00-80-03May2020.pdf>.

women, the youth and less educated. Women were particularly hard hit, accounting for up to 2 million of the 3 million job losses.¹⁹

15. This economic devastation has profoundly impacted on poor and working class people's ability to pay for and access housing. A recent nationwide survey of 80 000 tenants in South Africa, indicates that the pandemic has negatively affected the tenure security of many poor and working class households.²⁰ The survey found that 78.8% of tenants' income has been negatively affected by COVID-19 and that this has affected tenants' ability to pay their rent. In fact, only 37% could afford to pay their rent in full and a staggering 22% couldn't pay their rent at all.
16. This spatial inequality, inverse densification and urban sprawl costs poor and working-class families more every day and costs the City more in the long term. The present spatial distribution is unsustainable socially, economically and environmentally.

C. CONCERNS WITH THE DRAFT POLICY

The use of well-located public land for off-street parking and particularly single story parking is inefficient and irrational

17. As pointed out above, the City's failure to address the deep and enduring spatial inequalities that have been brought about by its colonial and apartheid history and an exclusionary housing market have, in effect, entrenched and reproduced spatial injustice and social exclusion by creating poverty traps on the outskirts of the city far from economic opportunities and social amenities. This has resulted in the City experiencing an acute housing crisis in terms of which hundreds of thousands of poor and working class families are in desperate need of access to well-located land and/or adequate affordable housing in well-located areas and have effectively been excluded from accessing the city.

¹⁹ NIDS-CRAM, "Overview and Findings: NIDS-CRAM Synthesis Report Wave 1", p. 5; Spaul, "The jobs reckoning is here: 3 million jobs lost".

²⁰ The survey and report were compiled in May 2020 by a residential rental proptech platform - *Flow*. See Flow, "How COVID-19 has affected South African tenants", *Flow Findings Research Report (May 2020)*, available: <https://flow.rent/tenants>.

18. This is a direct result of the City's failure to honour its constitutional and legislative obligations to use its own land to combat spatial apartheid. The City owns vast amounts of well-located public, of which a large proportion is unused or under-utilised given its potential.²¹ In particular, a significant portion of this well-located public land could be used for the development of social and/or affordable housing.²²
19. Last year, Ndifuna Ukwazi published a research report, *City Leases: Cape Town's Failure to Redistribute Land (2019)*,²³ which shed light on the manner in which the City is disposing of many of the strategically important pieces of public land that it owns by leasing this land out for private use often at discounted rents. In a number of instances, this well-located public land is leased out exclusively to be used for the provision of off-street parking, often single story parking. This inefficient and irrational use of prime public land is at stark odds with the potential that this public land holds to promote spatial transformation and meaningfully contribute to a more just and equitable city.
20. In this context, Ndifuna Ukwazi is deeply concerned that the draft policy does not sufficiently express how the City will balance the various competing interests of using well-located public land and where on the priority list on- or off-street parking falls. We believe that it is absurd to use many of the best parcels of City-owned land exclusively for parking, let alone the many parcels of land used for single floor parking sites (for example, the parking lots along Buitengracht Street).
21. By unlocking and releasing some of this well-located state land for the purpose of developing social or affordable housing, the City could deliver on its policy objective of reducing the dependency on private cars while simultaneously making considerable strides in alleviating the housing affordability

²¹ According to the City's own policies it owns 87 000 pieces of land, and while not all of that land is not well-located or suited for the development of affordable housing, much of that land will be well-located and suited for housing development. See City of Cape Town, "Management of Certain of the City of Cape Town's Immovable Property Policy" (26 August 2010), Ref No C54/08/10, cl. 5.2. See also, generally, See N Budlender, J Sendin and J Rossouw, *City Leases: Cape Town's Failure to Redistribute Land*, Ndifuna Ukwazi Research Report (2019), p. 1, available at:

<https://www.dropbox.com/s/c524q5x89yruccc/Ndifuna%20Ukwazi%20%28NU%29%20City-Leases-Cape-Towns-Failure-to-Redistribute-Land.pdf?dl=0>.

²² According to the City's own policy it owns 87 000 pieces of land, and while not all of that land is not well-located or suited for the development of affordable housing, much of that land will be well-located and suited for housing development. See City of Cape Town, "Management of Certain of the City of Cape Town's Immovable Property Policy" (26 August 2010), Ref No C54/08/10, cl. 5.2. See also, generally, Ndifuna Ukwazi, *City Leases*, p. 1.

²³ see, generally, Ndifuna Ukwazi, *City Leases*.

crisis and reversing the City's apartheid legacy.²⁴ We therefore encourage the City to embrace the 'social value' of public land, and adopt a more transparent and socially orientated approach to the portfolio of state assets. This approach would be in line with its constitutional and legislative obligations to combat spatial apartheid and the recommendations to alleviate poverty and inequality in the context of urban land rights issued by the High Level Panel on the Assessment of Key Legislation and Acceleration of Fundamental Change and the Mandela Initiative.²⁵

22. The City must be vigilant that the measures it adopts for parking management or to promote the provision of parking do not further entrench spatial inequality and make it practically and realistically more difficult for poorer households to access the city.
23. We therefore urge the City not to lease out any well-located land for use as on- or off-street parking. Moreover, if the City does plan on leasing out any of the land it owns for use as off-street parking, such land should be used to develop multi-story parking spaces rather than the frequent use of single story parking spaces. This approach would enable the City to maximise alternative uses for other well-located public land.

Minimum parking requirements negatively affect social or inclusionary housing contributions

24. Parking requirements fundamentally impact development decisions - and therefore directly affect how much affordable housing stock developers are willing to contribute. Small apartments generally cost less to build than large, luxury apartments, but their parking spaces cost the same. Because many cities require the same number of spaces for every apartment regardless of its size or quality, the imposition of a minimum parking requirement disproportionately increases the cost of low-income housing.²⁶

²⁴ See Ndifuna Ukwazi, *City Leases*. See also M Clark, "Cape Town's course of injustice: Subsidising the rich to exclude the poor", *Daily Maverick* (28 January 2020).

²⁵ See High Level Panel, *Report of the High Level Panel*; and M Clark and LR Circolia, "Informalisation, Urban Poverty and Spatial Inequality", Mandela Initiative Brief (2018).

²⁶ See, in general, D Shoup (ed), *Parking and the City* (2018). See also D Shoup, "Parking reform will save the city", *Bloomberg CityLab* (20 September 2019), available at:

<https://www.bloomberg.com/news/articles/2019-09-20/how-to-reform-your-city-s-bad-parking-requirements>.

25. While the draft policy vaguely acknowledges this problem,²⁷ it fails to recognise the far-reaching impact that the City's imposition of minimum parking requirements has had in entrenching reproducing spatial apartheid and fails to adequately combat the lasting effect that minimum parking requirements will have on the city.
26. Donald Shoup, a Distinguished Research Professor in the Department of Urban Planning at UCLA, uses the example of a development in Los Angeles to illustrate that minimum parking requirements can and do lead to a reduction on housing development, and particularly affordable housing.²⁸ He refers to a typical Los Angeles housing development on a lot of 15 meters in width and 40 meters deep. According to Los Angeles' R3 zoning regulations, eight residential apartments could be developed on the site and the minimum parking requirement is 2.25 spaces per unit. Eight apartments would therefore require 18 parking spaces (8 x 2.25), but the developer could only fit 16 parking spaces into one level of underground parking. As a result, the developer only built seven apartments on the site rather than excavating another underground parking level for 2 additional parking bays.
27. As Shroup writes: "In this case the parking requirements, not the limitation density, constrained the number of apartments. If the city had allowed the developer to provide only two parking spaces per apartment, the developer would have built eight apartments and sixteen parking spaces. The prohibitively high *marginal* cost of two more parking spaces ... however, reduced the feasible number of dwellings from eight to seven, or by 13 percent. When land is expensive ... the high cost of the required parking per apartment creates an economic incentive to build larger and more expensive apartments than they would without parking requirements."
28. This example isn't an isolated case, there are many examples in the Cape Town context that similarly illustrate that the minimum parking requirements imposed by the City's Municipal Planning By-law have been *directly linked* to private developers abandoning their plans to include inclusionary housing components in their housing developments.²⁹ For instance, luxury property development group, Blok, have blamed the City's minimum parking requirements for their decision

²⁷ See City of Cape Town, "Draft Revised Parking Policy", pp. 9 and 26.

²⁸ See D Shoup, "The High Cost of Parking Requirements", in D Shoup (ed), *Parking and the City* (2018).

²⁹ See A Mackay, "Unfairest Cape? The Hunt for Affordable Housing", *Financial Mail* (16 April 2020), available at: <https://www.businesslive.co.za/fm/features/2020-04-16-unfairest-cape-the-hunt-for-affordable-housing/>.

not to provide 20% inclusionary housing in their Bo-Kaap housing development. The group has indicated that the City has to “relax zoning restrictions around additional bulk and parking” before they would consider including an inclusionary housing contribution in future sites.³⁰

29. This indicates that the cost of housing development - and particularly inclusionary or affordable housing - is negatively affected by the imposition of minimum parking requirements, which, in turn, results in less poor and working class families accessing the advantages of the City’s central economic nodes. As Shoup notes: “More parking for cars means less housing for people.”³¹
30. In this context the City has an obligation to regulate the market and ensure that affordable housing is prioritised over the provision of minimum parking requirements.
31. For this reason, Ndifuna Ukwazi urges the City to amend the Municipal Planning By-law to remove the minimum parking requirements required for residential developments and impose maximum requirements (e.g. 1 parking space per dwelling) or ensure that developers who are willing to provide inclusionary housing contributions are more easily able to qualify for departures to the parking requirements laid out in the By-law. We note, with concern, that the new approach to parking management outlined in the draft policy is currently in direct conflict to the minimum requirements imposed in terms of the By-law. This implies that the City has no choice but to amend the By-law to reflect its new approach to parking requirements or risk the legality and lawfulness of the parking policy being called into question.

Parking is a public good, not a commodity

32. The commodification of parking - an underlying principle of the policy - is deeply problematic. One of the main focus areas of the parking policy is premised on the employing parking fees or the cost of parking as the *primary* mechanism to disincentivise commuters from relying on on-street public parking. The reality is that this would exclude poor and working-class people.

³⁰ See Mackay, “Unfairest Cape”, *Financial Mail*.

³¹ Shoup, “Parking reform will save the city”, *Bloomberg CityLab* (20 September 2019).

33. As the draft policy notes, the majority of poor and working class people are reliant of public transport to access the City's primary economic nodes, in particular the rail network and the informal minibus taxi system. In the context of a failed rail service, many working class families have resorted to the use of private cars or car-shares as a means of commuting to and from work and school.
34. Given Cape Town's divisive spatial geography, it is crucial that the draft policy consider not only different *modes* of transportation when accessing the equity of its parking management system and policy, but also the people that will be affected by such policy or system and particularly who will *de facto* be prevented from being able to access the city.
35. Ndifuna Ukwai believe that treating parking as a commodity as the draft policy intends to do, is likely to further entrench the segregated access that South Africans have to urban economic nodes. Those who are able to afford parking will be able to access these spaces, while those who are not able to afford parking will be excluded. We therefore strongly urge the City to abandon its plans to regulate parking primarily by imposing higher parking fees and encourage the City to investigate alternative ways to disincentivise the reliance on cars that are not based on charging for parking. There is precedence for this. For example, many cities around the world use number plates to regulate congestion in the city by providing that only drivers whose licence plates end in even numbers can come into the City on some days, while only drivers whose licence plates end in odd numbers can come into the City on other days. This indicates that an approach that is not based on the commodification of parking is possible and that such an approach would even allow for ease of enforcement.

“Anti-social behaviour”

36. Ndifuna Ukwazi is deeply concerned about the inclusion of “anti-social behaviour” as a conditional behavioural control in relation to parking in the draft policy. Our concerns in this respect are wide-ranging.
37. Our main worry is that the draft policy contains no definition of “anti-social behaviour” and, as a result, the term is vague and overly broad. This has the effect of granting public officials wide

discretionary powers without the restraint of clear guidelines in terms of which to exercise this discretion and taints all provisions that make reference to “anti-social behaviour”. One of the chief principles of the rule of law is that the exercise of public power must be authorised by clear and unambiguous enabling legislation or policy.³² Ambiguity may render provisions subject to potential abuse or misinterpretation. This is particularly the case where the phrasing of the provision could lead public authorities to exceed or misconstrue the constraints of their powers.

38. In the context of the definition of “anti-social behaviour”, the provision is extremely vague and uncertain. It is unclear what possible types of behaviour could fall under the umbrella of this term.
39. This criteria therefore gives public officials overly-broad discretionary powers to determine whose behaviour is “unacceptable” based on largely subjective criteria. In addition, there are no clear guidelines in the draft policy to act as a restraint on this overly broad discretionary power. The ambiguity inherent in the definition of “anti-social behaviour” therefore brings into question the legality of all of the provisions in the draft policy that make reference to “anti-social behaviour”.³³
40. As a result, we strongly urge the City to remove all provisions relating to “anti-social behaviour” from the draft policy.

D. CONCLUSION

41. Ndifuna Ukwazi welcomes the City’s commitment to reviewing and reworking its parking management policy. However, the draft policy suffers from a number of serious problems that should urgently be addressed by the City. In particular, the provisions dealt with in the submission. Ndifuna Ukwazi urges the City to include the amendments proposed in this submission.

³² See *R v Shapiro* 1935 NPD 155; *S v Meer* 1981 (1) SA 739 (N); C Hoexter, *Administrative Law in South Africa*, 2 ed (2012), pp. 332-333.

³³ See Hoexter, *Administrative Law*, pp. 325-326, who states that vague and uncertain conditions may be unlawful or unconstitutional. Hoexter states that vague and uncertain legislative provisions may be in conflict with section 6(2)(i) of the Promotion of Administrative Justice Act 3 of 2000 or section 1(d) of the Constitution of the Republic of South Africa, 1996 (the Constitution). She also argues that the ambiguity may affect the reasonableness of legislative provisions (Hoexter, *Administrative Law*, pp. 332-333).

Yours faithfully,
Ndifuna Ukwazi

Per: Michael Clark, Researcher