

CONSTITUTION
OF
THE
BO-KAAP CIVIC
& RATE PAYERS
ASSOCIATION

Adopted 2003 & Amended 2014



1. BACKGROUND

WHEREAS the residents of the area generally known as Bo-Kaap requires an organization to promote the improvement of the area.

AND WHEREAS the aspirations and grievances of residents ought to be voiced collectively.

AND WHEREAS only a properly organized and constituted body can most effectively make representation to the various agencies of Local, Provincial, and National Government on matters affecting the interests of property owners and residents.

AND WHEREAS such an organization, called the Schotsche Kloof Civic Association, has been established, it was resolved at a public meeting held on 21 July 2003, that the Constitution of this organization be amended to facilitate more effective functioning of the organization.

2. NAME

The name of the Association shall be the Bo-Kaap Civic & Rate Payers Association, hereinafter referred to as the "Association".

3. GEOGRAPHIC AREA

The area of operation of the Association shall be the area generally known as Bo-Kaap, as the area existing between Strand and Carrisbrook Streets and situating above Buitengracht Street to Signal Hill.

4. OBJECTS

The Association is a public, non-profit organisation established for the following objects:

- 4.1 To investigate complaints and problems related to community issues of the residents of the area and to attempt to resolve these.
- 4.2 To submit to the local and regional government departments concerned grievances of the residents and seek redress in the following matters :

- 4.2.1 Public nuisances and insanitary conditions defined in the Public Health Act No.36 of 1919 as amended and Municipal regulations framed thereunder.
- 4.2.2 Amenities such as recreation halls, sports fields, parks, etc.
- 4.2.3 The standard of service rendered by local and provincial government public servants.
- 4.2.4 The monitor and regulating of all existing local and regional government properties and conditions to ensure historical imbalances are addressed.
- 4.2.5 Traffic problems in Bo-Kaap.
- 4.2.6 Social and welfare issues confronted by the community.
- 4.2.7 The promotion of a sustainable environmental policy for the area.
- 4.3 To affiliate and co-operate with other organizations and civic bodies having similar aims and objectives.
- 4.4 To act on behalf of the residents in implementation of any resolution or mandate given at a Special or General Meeting.
- 4.5 Given Bo-Kaap's special historical significance, to make every effort at conserving the heritage of the area.
- 4.6 To address the threat posed by gentrification and all its negative consequences on the area.
- 4.7 To work towards the creation of a safe and secure Bo-Kaap environment.
- 4.8 To initiate sustainable projects to give effect to the abovementioned objects.
- 4.9 To ensure the involvement and participation of women and youth in the activities of the Association.

5. LEGAL STATUS

The Association is a body corporate with its own legal identity that is separate from its individual members. The Association shall continue to exist even if the members change. The Association may own property, enter into contracts, and sue or be sued in its own name.

Handwritten initials/signature

6. NON-PROFIT DISTRIBUTING CHARACTER

6.1 The income and property of the Association shall be used solely for the promotion of its stated objectives. The members and the office-bearers shall have no rights to the property or other assets of the Association solely by virtue of them being members or office-bearers. No portion of the income or property of the Association shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of the Association or Management Committee, except as:

- 6.1.1 reasonable compensation for services actually rendered to the Association;
- 6.1.2 reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

6.2 Upon the dissolution of the Association, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organisation which the Management Committee (and failing which any division of the High Court) considers appropriate and which has objectives the same or similar to the objectives of the Association; and should the Association become an approved public benefit organisation:

- 6.2.1 is a similar public benefit organisation which has been approved in terms of section 30 of the Income Tax Act, or
- 6.2.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA), which has as its sole or principal object the carrying on of any public benefit activity, or
- 6.2.3 any department of state or administration in the national, provincial or local sphere of government of the Republic contemplated in section 10(1) (a) or (b).

6.3 The Association intends to apply to the Commissioner for the South African Revenue Service exemption from appropriate taxes and duties. In compliance with the provisions of the Income Tax Act, the provisions set out in the attached Schedule A shall bind the Association and qualify this Constitution.

7. POWERS

The Association, acting through its Management Committee, or at General Meeting, shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the General Investment and Administrative Powers set out in the attached Schedule A.

8. MEMBERS

All persons residing in the area defined as Bo-Kaap whose age is 18 years or older, shall be considered members of the Association.

9. STRUCTURE OF THE ASSOCIATION

9.1 The Management Committee

9.1.1 Powers

9.1.1.1 The affairs of the Association shall be controlled and managed by the Management Committee. Subject to the terms of this constitution and to the resolutions of members in General Meeting, the Management Committee may exercise all the powers of the Association.

9.1.1.2 In General Meeting, the Association may review, approve or amend any decision taken by the Management Committee but no such resolution of the Association shall invalidate any prior action taken by the Management Committee in accordance with the provisions of this Constitution.

9.1.2 Election

9.1.2.1 The members of the first Management Committee shall be elected at the General Meeting at which this Constitution is adopted, and shall hold office until the first Annual General Meeting held after their appointment. At such first Annual General Meeting and at every subsequent Annual General Meeting held thereafter, all the Management Committee members, except the Secretary and Treasurer, shall resign. The Secretary and Treasurer shall serve a second term as assistants to the newly

elected Secretary and Treasurer if not elected into these positions.

- 9.1.2.2 Resigning Management Committee members shall be eligible for re-election or co-option.
- 9.1.2.3 Management Committee members shall be members of the Association.

9.1.3 **Composition**

9.1.3.1 The Management Committee shall comprise at least 7 but not more than 15 members. The membership of the Management Committee shall comprise:

- a) the Chairperson;
- b) the Vice-Chairperson;
- c) the Treasurer;
- d) the Secretary;
- e) at least three (3) other persons.

9.1.3.2 The Management Committee may co-opt additional non-voting members as it may consider appropriate from time to time. The co-opted members shall serve for such period as the Management Committee considers appropriate.

9.1.4 **Management Committee Member Vacating Office**

9.1.4.1 The office of a Management Committee member shall be vacated if a member:

- 9.1.4.1.1 resigns; or
- 9.1.4.1.2 becomes unfit and/or incapable of acting as such; or
- 9.1.4.1.3 would be disqualified, in terms of the Companies Act or equivalent legislation in force from time to time, from acting as a Director of a Company; or
- 9.1.4.1.4 is removed by the Management Committee, by resolution adopted by at least three-quarters (3/4) of its members in office from time to time. The Management Committee shall not be obliged to furnish reasons for its decision/s regarding removal except to the member removed and

to the members of the Association in General Meeting.

9.1.4.2 Should a position on the Management Committee fall vacant, the Management Committee, by resolution adopted by at least two-thirds (2/3) of its members, may (and if the vacancy reduces the number of members to less than seven [7], shall) co-opt a member/s to fill the vacancy/ies. The office of any person so co-opted as member of the Management Committee shall lapse unless confirmed by resolution of members at the next General Meeting.

9.1.4.3 Any member who absents him/herself from three consecutive Management Committee meetings without valid reason and written apology shall forfeit his/her membership to the Management Committee.

9.1.5 **Procedure at Management Committee Meetings**

9.1.5.1 The Management Committee shall conduct its meetings and regulate its proceedings as it finds convenient, provided that:

9.1.5.1.1 The Chairperson, or in his or her absence, the Vice-Chairperson, shall chair all meetings of the Management Committee which he or she attends. In the absence of the Chairperson and the Vice-Chairperson, the remaining members of the Management Committee shall elect a chairperson from those attending.

9.1.5.1.2 The Chairperson shall convene a meeting of the Management Committee, at least once a month and at the written request of any two (2) members of the Management Committee and may convene such a special meeting at any other time.

9.1.5.1.3 The quorum necessary for the transaction of any business by the Management Committee shall be the majority of the Management Committee members serving at any given time.

9.1.5.1.4 At meetings of the Management Committee each member shall have one (1) vote.

9.1.5.1.5 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

9.1.5.1.6 Proper minutes shall be kept of the proceedings of the Management Committee, and a record of the persons present at each meeting. The minutes shall be signed by the member who chairs the meeting, and shall be available at all times for inspection or copying by any member of the Management Committee, and on two (2) days' notice to the Secretary or his or her deputy, by any member of the Association.

9.1.5.1.7 A resolution signed by all members of the Management Committee shall be as valid as if passed at a duly convened meeting of the Management Committee.

9.1.6 The Management Committee may delegate any of its powers to any of its members, or to a special purpose committee. The member, committee, employee or agent to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Management Committee from time to time.

9.1.7 The Management Committee may engage the services of a Chief Executive and other officers as it may consider necessary from time to time upon such terms and conditions as it may consider appropriate.

9.2 General Meetings

9.2.1 Annual General Meeting

9.2.1.1 An Annual General Meeting will be held every three (3) years.

9.2.1.2 Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) days prior written notice to all members entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad

terms the business to be transacted at the meeting.

9.2.1.3 The business of an Annual General Meeting shall include:

9.2.1.3.1 the presentation and adoption of the Annual Report of the Chairperson;

9.2.1.3.2 the consideration of the audited Annual Financial Statements;

9.2.1.3.3 the election of members to serve on the Management Committee for the following year;

9.2.1.3.4 the appointment of Auditors;

9.2.1.3.5 other matters as may be considered appropriate.

9.2.2 Other General Meetings

9.2.2.1 Other General Meetings of the Association shall be convened at any time by the Chairperson or at the written request of:

9.2.2.1.1 the Management Committee;

9.2.2.1.2 at least 50 members of the Association.

9.2.2.2 General meetings shall be convened at least once every quarter.

9.2.2.3 Any General Meeting other than the Annual General Meeting shall be convened on not less than seven (7) days' notice to all members. The notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting, provided that: should the Chairperson, having been requested to give such notice, fail to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and to convene the meeting.

9.2.3 Quorum

9.2.3.1 A quorum constituting a General Meeting of the Association shall be the number of members present at the meeting, provided that notice of the meeting have been given as specified in 9.3 below.

9.2.4 Resolutions and Voting

- 9.2.4.1 At all General Meetings, a resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot shall be held only if demanded by the Chairperson or not less than one third (1/3) of the persons voting in person. The result of the vote shall be the resolution of the meeting.
- 9.2.4.2 Each member present at such meeting shall be entitled to one (1) vote.
- 9.2.4.3 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

9.2.5 **Minutes**

Proper minutes shall be kept of the proceedings of all General Meetings, and a record of the persons present at each meeting. The minutes shall be signed by the chairperson of the meeting, and shall be available for inspection or copying by any member on two (2) days' notice to the Secretary or his or her deputy.

9.2.6 **Powers**

Subject to the provisions of Clause 9.1.1.2 above, a duly convened General Meeting of the Association, at which a quorum is present, is competent to carry out all the objectives and to exercise all the powers of the Association as set out in this Constitution.

9.3 **Notices**

- 9.3.1 Notice of all meetings provided for in this Constitution, shall be given by at least two (2) of the following means :
 - 9.3.1.1 pamphlets dropped at households
 - 9.3.1.2 posters placed at major entry points to the area and at key public places
 - 9.3.1.3 announcements over the radio (at least 4 times)
 - 9.3.1.4 announcements at the local mosques on Fridays (at least 4 mosques)
 - 9.3.1.5 announcement via loudhailer throughout the area
- 9.3.2 The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.

9.4 **Portfolio/Standing Committees**

- 9.4.1 There shall be the following Standing Committees composed of at least 3 members each :
 - a) Land and Housing Development
 - b) Environmental Health and Safety
 - c) Education
 - d) Security
 - e) Heritage
 - f) Tourism
 - g) Social Welfare
 - h) Sports and Recreation
 - i) Publicity/Communication
 - j) Economic Development

- 9.4.2 The terms of reference for these Standing Committees will be as follows :

a) **Land and Housing Development**

To develop and regularly update a spatial development plan in association with the City of Cape Town that reflects the needs & vision of the people of Bo-Kaap.

b) **Environmental Health and Safety**

To identify the health and safety needs of the community and to ensure that these needs are adequately addressed by health authorities and relevant role-players.

c) **Education**

To identify and cater for the formal and informal education needs of the community.

d) **Security**

To work towards a sustainable, crime-free environment.

e) **Heritage**

To research, promote, protect and preserve the rich heritage of the Bo-Kaap.

f) **Tourism**

To co-ordinate tourism and to support the stated social, economic and development objectives in the area.

g) **Social Welfare**

To identify the social problems in the area and use all means by addressing or referring to the relevant social welfare authorities and institutions.

h) **Sports and Recreation**

To identify the needs of sports and recreation in order to maximise existing facilities and prioritise the provision of new facilities.

- i) **Publicity/Communications**
To ensure that the affairs of the association are brought before the members and other interested and affected parties.
- j) **Economic Development**
To explore and develop sustainable projects to realise the economic potential of the area.

and a balance sheet of assets and liabilities.

10.5.2 Within two (2) months after drawing up the Annual Financial Statements, the Management Committee shall ensure that the books of account and financial statements are audited and certified in the customary manner by an independent practising chartered accountant.

10.5.3 A copy of the Annual Financial Statements and annual narrative report shall be made available to all members as soon as possible after the close of the financial year.

10. FINANCIAL MATTERS

10.1 Bank Account

The Management Committee shall open a bank account in the name of the Association with a registered Bank or Building Society. The Management Committee may also open special project related bank accounts with any registered Bank or Building Society. The Management Committee shall ensure that all monies received by the Association are deposited in the abovementioned bank account as soon as possible after receipt.

10.2 Signatures

All cheques, promissory notes and other documents requiring signature on behalf of the Association shall be signed by two (2) designated members of the Management Committee.

10.3 Financial Year End

The Association's financial year end shall be 31 March.

10.4 Financial Records

The Management Committee shall ensure that the Association keeps proper records and books of account which fairly reflect the affairs of the Association.

10.5 Annual Narrative Report and Financial Statements

10.5.1 The Management Committee shall ensure that the Association prepares an annual narrative report describing the Association's activities and an Annual Financial Statement for each financial year. The Annual Financial Statements shall conform with generally accepted accounting principles and shall include a statement of income and expenditure

11. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION

The terms of this Constitution may be amended, the name of the Association may be changed and the Association may be dissolved by resolution of sixty six per cent (66%) of the members present at a General Meeting, provided that proper notice of the meeting is given not less than twenty-eight (28) days prior to the date of the Meeting and such notice states the nature of the resolution to be proposed.

12. INDEMNITY

12.1 Subject to the provisions of any relevant statute, members of the Management Committee and other office bearers shall be indemnified by the Association for all acts done by them in good faith on its behalf. It shall be the duty of the Association to pay all costs and expenses which any such person incurs or becomes liable for as a result of any contract entered into, or act done by him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the Association.

12.2 Subject to the provisions of any relevant statute, no member of the Management Committee and or other office bearer of the Association shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Association, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

13. DISPUTES

- 13.1 In the event of a serious disagreement between the members of the Management Committee and/or the Association regarding the interpretation of this constitution then any two (2) Management Committee members or any five (5) members of the Association shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Management Committee.
- 13.2 The Management Committee shall consider such declaration within two (2) weeks of receiving it. Should the Management Committee not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.
- 13.3 Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Management Committee must agree on a suitable mediator and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.
- 13.4 In the absence of agreement regarding a mediator or should mediation not resolve the dispute, the dispute shall be referred to arbitration. The arbitrator shall be

such suitably qualified person/s as the person(s) declaring the dispute and the Management Committee may mutually agree. Alternatively, each of the parties shall be entitled to nominate one arbitrator, who shall act jointly with a third person to be nominated jointly by the respective nominees of the parties; on the basis that a majority decision of the appointed arbitrators shall be final and binding.

- 13.5 The arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.
- 13.6 The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.
- 13.7 The person(s) declaring the dispute and the Management Committee, beforehand, may agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which parties shall be liable for the costs.
- 13.8 The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.

SCHEDULE A : GENERAL ADMINISTRATIVE AND INVESTMENT POWERS

- 1. To employ staff and hire professional and other services.
- 2. To institute or defend any legal or arbitration proceedings and to settle any claims made by or against the Association.
- 3. To open and operate accounts with registered banks and building societies.
- 4. To make and vary investments and re-invest the proceeds of such investments on condition that any investments made by the Association shall be with Financial Institutions approved at a General Meeting.
- 5. To accept donations made to the Association and retain them in the form in which they are received, or sell them and re-invest the proceeds.
- 6. With regard to movable and immovable property and tangible and intangible assets of whatsoever nature:
 - 6.1 to purchase or acquire property and assets;
 - 6.2 to maintain, manage, develop, exchange, lease, sell, or in any way deal with the property and assets of the Association;

6.3 to donate and transfer the property and assets of the Association to organisations with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.

- 7. To borrow and to use the property or assets of the Association as security for borrowing;
- 8. To guarantee the performance of contracts or obligations of any person on condition that any such person is primarily engaged in activities which further the objectives of the Association.
- 9. To execute any act or deed in any deeds registry or other public office.
- 10. To work in collaboration with other organisations and to amalgamate with any organisation with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.
- 11. To exercise all the management and executive powers normally vested in the Board of Directors of a Company.
- 12. To exercise all the powers and authority of the Association not only in the Republic of South Africa but in any other part of the world.