



# RIGHT2KNOW

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To: Executive Mayor, Herman Mashaba, City of Johannesburg  
Speaker of Johannesburg City Council, Cllr Vasco de Gama  
Chief of Police David Tembe, Johannesburg Metropolitan Police

## **The unlawful levying of 'Special Event Costing' fees by the JMPD on protest gatherings, and other unlawful practices under The Regulation of Gatherings Act**

This submission by the Right2Know Campaign addresses a range of serious and longstanding grievances relating to unlawful restrictions on the right to protest by officials of the Johannesburg Metropolitan Police Department (JMPD) and City of Johannesburg, and further on the failure of City authorities to meaningfully address these concerns.

This matters because the right to assembly, peacefully and unarmed, is protected in section 17 of the Constitution. It is a crucial form of a freedom of expression and public participation that is exercised predominantly by poor and marginalised communities to make their voices heard and raise grievances on issues that matter to their lives. The practices by the City of Johannesburg detailed here are additional and unfair obstacles placed before people who are seeking to follow the lawful procedures set out in the Regulation of Gatherings Act. A growing body of academic research shows that, despite public perceptions, the vast majority of protests and gatherings in South Africa are peaceful<sup>1</sup>; however, across the country, misapplications of the Regulation of Gatherings Act in local government structures appear to be a key driver of conflict between protest participants and authorities, as communities are being driven to protest outside of the Regulation of Gatherings Act procedures<sup>2</sup>.

Put simply, the City's procedures punish people who are trying to follow the law.

1 See Alexander et al, 'Frequency and turmoil: South Africa's community protests 2005-2017', South African Crime Quarterly, No 63 (2018): March 2018

2 See Duncan, *Protest Nation: The Right to Protest in South Africa*, University of KwaZulu-Natal Press, 2016  
Duncan, *The Rise of the Securocrats: the case of South Africa*, Chapter 2: The regulation of gatherings, Jacana Media, 2014

This submission comes after a number of unsuccessful attempts to engage officials in good faith on these policies and practices, which are out of line with the Regulation of Gatherings Act and section 17 of the Constitution, and which have a negative impact on the lives of many residents of the City of Johannesburg. These policies and practices pre-date the current City administration. However, to our dismay they have continued to the present day.

Following a series of attempted engagements with JMPD officials dating back to 2013, in November 2017, R2K representatives attended a meeting with Mr Tariq Kagee, advisor to Councillor Michael Sun, and various responsible officers from JMPD Events Management regarding the charging of 'Special Event Costing' fees by the JMPD on gatherings under the Regulation of Gatherings Act.

Following this, after JMPD officials indicated that it was a matter for the City of Johannesburg Council, in January 2018 R2K made a submission to the Office of the Speaker of Johannesburg City Council, the contents of which we were informed were referred to the City's legal department. In over ten months, we have received no formal response to this submission.

### **Key grievances**

1. The application of a 'special event costing', under the guise of the Public Open Spaces bylaws, to gatherings convened in terms of the Regulation of Gatherings Act. These fees range from hundreds to thousands of rands. Johannesburg is the only municipality in R2K's knowledge that applies fees to protest gatherings.
2. Additional practices by JMPD Events Management in relation to the administration of gatherings which deviate from the provisions of the Regulation of Gatherings Act, including:
  - i. JMPD officials refusing to adhere to the timelines in s3 of the Act, which provides that a convener of a gathering must notify the municipality within seven days of the planned gathering, or less than seven days if reasons are given. JMPD officials frequently assert that they are entitled to nine days (7 'working days') or more, and/or deny conveners the right to give notice in less than seven days irrespective of s3(2) and s3(3)i of the Act.
  - ii. JMPD officials insisting on convening meetings in terms of s4 of the Act (the pre-protest negotiations between conveners and authorities known as a 'section 4'

meeting) on Wednesdays *only* (whereas the Act suggests they should be called within 24 hours of receiving notice) and also treating the section 4 meeting as a mandatory step before any gathering rather than a process to be followed only when the proposed conditions of the gathering create legitimate concerns for safety. By making the section 4 meetings mandatory, and only convening them on a set day of the week, JMPD officials will often insist that conveners postpone the date of their planned gathering in order to accommodate this unprocedural practice. In doing so, JMPD officials ignore the timeframes established in the Regulation of Gatherings Act and create unreasonable, and unlawful, delays on people's right to organise and participate in protests.

- iii. JMPD officials' request for additional documents which are not required in terms of the Regulation of Gatherings Act, such as a letter of confirmation from any party who is expected to be a recipient of a petition, a letter of permission from the Ward Councillor, and a letter of permission from the 'owner' of the site of the gathering. These letters are *not* requirements of the Regulation of Gatherings Act. By creating the impression that such letters are a precondition for having a gathering 'approved', JMPD creates an unreasonable administrative burden on the convener, and empowers third parties who may be the subject of the protest to endanger the gathering by withholding such letters.
- iv. JMPD officials' insistence that a notice form in terms of the Regulation of Gatherings Act must be submitted in person, rather than electronically. This practice creates an unreasonable extra cost and inconvenience to people who are trying to follow the processes set out in the Regulation of Gatherings Act – especially for those travelling by public transport. Johannesburg is the only metro or major municipality in R2K's knowledge that requires a convener to submit notice in person rather than electronically.

## **Solutions**

### **1. Ending the misuse of special events costings**

In respect of issue '1', the application of the Special Events Costing, we reiterate that the application of fees for protest gatherings is unlawful, and that the Public Open Spaces Bylaws clearly do not apply in respect of gathering. We do not take issue with the City levying Special Event Costing fees for sports events, cultural festivals, photographic shoots and similar special

events as defined in the bylaw. There is no need to change laws or by-laws, or pass resolutions in Council (see Annexure 1: Memo on Special Events Costing). We reiterate our urging that the relevant authority, be it the Mayor, the Council, or any other, provide a clear guideline to JMPD officials to ensure that no fees be charged for gatherings held under the Regulation of Gatherings Act.

## **2. Addressing unlawful gatherings procedures by JMPD**

In respect of issues under '2', all relevant authorities must ensure JMPD Events Management amends its processes urgently to the following effect:

- JMPD must adhere to the timelines spelt out in the Regulation of Gatherings Act: conveners are entitled to give notice to JMPD within seven calendar days of their planned gathering, and where it is not reasonably possible to do so, they are entitled to give less than seven days notice as long as reasons are provided.
- JMPD cannot ask people to produce letters from third parties which are not pursuant to the requirements of the Regulation of Gatherings Act.
- JMPD must accept its lawful responsibility to convene section 4 meetings timeously, and does not have the right to force people to postpone and delay their planned gatherings in order to accommodate a 'once-a-week' practice.
- JMPD Events Management must accept gatherings notice forms electronically or in person.

We urge all relevant authorities in the City of Johannesburg to address these concerns with the utmost urgency. Doing so will bring the JMPD's practices in line with the national law and the Constitution, and end the City of Johannesburg's inglorious tenure as the only major municipality in South Africa applying fees to protest gatherings. Most importantly, doing so will create a pathway to a more productive relationship between City authorities and people seeking to exercise their right to assembly.

#Ends

## **Annexure 1: Special events costing**

### **The laws**

The City of Johannesburg and JMPD apply fees to protest gatherings under the guise of the Public Open Spaces Bylaws.

A reading of the Regulation of Gatherings Act and the Public Open Spaces Bylaws shows that the bylaws do not apply to protest gatherings.

The Regulation of Gatherings Act regulates 'protest' gatherings in public spaces.

In the Act, "Gathering" means any assembly... in or on any public road...(a) At which the principles, policy, actions or failure to act of any government, political party or political organization, whether or not that party or organization is registered in terms of any applicable law, are discussed, attacked, criticized, promoted or propagated; or (b) Held to form pressure groups, to hand over petitions to any person, or to mobilize or demonstrate support for or opposition to the views, principles, policy, actions or omissions of any person or body of persons or institution. Including any government, administration or governmental institution..."

In other words, the Act clearly defines gatherings as gatherings that have an explicit component of protest or political advocacy ('protests').

No permit, only notification, is required to hold a gathering under the Act. No fee is required to be paid to the JMPD or to any other authority.

For 'non-protest' events in Johannesburg, the City's Public Open Spaces By-laws apply.

In the By-laws, "special event" means "a parade, procession, race, concert, show, exhibition, festival, ceremony, film shoot, photographic shoot or similar event, which requires, for that purpose, exclusive use of a part of a public open space".

Section 22 of the By-laws requires that application for a permit to hold a special event in a public open space must be made.

Section 7 requires that any member of the public must pay various fees, including a prescribed fee for the right to undertake a special event and a prescribed fee for processing applications for permits or letters of permission under these By-laws.

Section 4 (1) (c) of the Municipal Systems Act gives a Municipal Council “the right to finance affairs of the Municipality by- (i) charging fees for services; and (ii) imposing surcharges on fees, rates on property, and, to the extent authorised by National Legislation, other taxes, levies and duties.”

### **‘Special Event Costing’ Fees**

Pursuant to the provisions of the Municipal Systems Act and the City’s By-laws, the current guiding document used by JMPD is entitled “Special Event Costing With Effect 1 July 2018-30 June 2019”. This document is a pro forma pricelist of JMPD personnel hourly charge-out rates, vehicle costs, planning costs and the like.

To the extent that these fees are being applied to protest gatherings, this has resulted in a mandatory minimum ‘planning’ cost of R178.69, comprising one hour’s worth of a Sergeant’s time at R178.69 per hour. In addition, JMPD may charge fees to deploy police and vehicles to the march – effectively, the protesters are expected to pay for the officers’ time.

The JMPD continues to use this Special Event Costing document to request payment from R2K and other organisations, for fees that range from hundreds to thousands of rands. R2K has maintained that this fees is not applicable to protests in terms of the Regulation of Gatherings Act and has declined to pay the fee. However, we are aware that JMPD continues to charge the fee to other community organisations and individuals who are convening protests in terms of the Regulation of Gatherings Act, including poor communities who simply cannot afford to pay such a fee.

### **Levying ‘Special Event Costing’ Fees for Gatherings is Unlawful**

We have no issue with the JMPD levying Special Event Costing fees for sports events, cultural

festivals, photographic shoots and similar special events. The JMPD is entitled to levy fees for the use of its personnel and assets for such events.

However, the Special Event Costing only applies to non-'protest'and/or commercial *special events*, as defined in, and regulated by, the By-laws. The Special Event Costing does *not* apply to 'protest' gatherings under the Regulation of Gatherings Act.

The levying of 'Special Event Costing' Fees by the JMPD on gatherings under The Regulation of Gatherings Act is unlawful, for the following reasons:

1. The Gatherings Act and By-laws distinguish between the two concepts of 'gathering' and 'special event' in their respective definitions. The Special Event Costing simply does not apply to gatherings. A 'Special Event' in the Costing document can only refer to a 'special event' in the By-laws, not a 'gathering' in the Gatherings Act. A Special Event is chargeable; a Gathering is not.
2. According to Section 17 of the Constitution "Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions." In the Preamble to the Regulation of Gatherings Act "...every person has the right to assemble with other persons and to express his views on any matter *freely* in public..." The right to political assembly is for free; Government cannot charge people for it.
3. It would render meaningless the concept of a 'right' if the exercise of that right was contingent on possessing the financial means to pay to exercise this right. As with other political rights, such as the right to vote, Government is not permitted to charge a fee for exercising these freedoms.
4. Many of the individuals and community organisations affiliated to R2K, who wish to notify the JMPD of their intended gathering, are in fact too poor to afford to pay fees. Should they refuse or fail to pay fees to JMPD they are in at least some cases refused a copy of the Gatherings Act notification form. This effectively denies them the right to protest, unlawfully so.

5. JMPD is required by law, under the Regulation of Gatherings Act, to receive and process notices for gatherings, and to provide appropriate safety and law enforcement at such gatherings. The application of special events costings amount to JMPD charging fees to discharge its lawful responsibilities under the Act.

Our generous interpretation is that the JMPD is laboring under a bona fide, albeit mistaken, belief that gatherings are the same as special events and the right to charge fees under the By-laws apply to both. This is an incorrect interpretation, one which manifests in the unlawful and unconstitutional denial of the right to protest.

There is no need to change laws or by-laws, or pass resolutions in Council. It would suffice, as we have urged, for the relevant authority, be it the Mayor, the Council, or any other, provide a clear guideline to JMPD officials to ensure that no fees be charged for gatherings held under the Regulation of Gatherings Act.