

**POLICY FOR THE IMPLEMENTATION AND ENFORCEMENT OF THE
BUSINESSES ACT, 1991 (ACT NO. 71 OF 1991)**

1. **INTRODUCTION.**

1.1 Section 2(3) of the Businesses Act, 1991 (Act No. 71 of 1991) provides that no person may carry on any business in the area of jurisdiction of the Council -

1.1.1 unless, in the case of a business referred to in item 1(1) or 2 of Schedule 1 he/she is the holder of an apposite licence issued to him/her by the Council in respect of the business premises concerned.

1.1.2 unless, in the case of a business referred to in item 3(1) of Schedule 1, he/she is the holder of a hawker’s licence issued to him/her by the Council.

1.1.3 contrary to a condition.

(A copy of Schedule 1 is attached hereto as Annexure “A1” for ease of reference).

1.2 A need now exists for a policy on the implementation and enforcement of the Businesses Act, 1991 (Act No. 71 of 1991) for a number of reasons. The reasons are as follows:

1.2.1 The Businesses Act is not user friendly and difficult to interpret, implement and enforce.

1.2.2 The Business Act are interpreted, implemented and enforced without any uniformity in approach by the various Regional Environmental Health Units.

1.2.3 A need exists for an uniform approach to be adopted for the interpretation, implementation and enforcement of the Businesses Act which will ensure that confusion is minimized and that people enjoy equal rights, services and treatment.

1.2.4 No formal basis has been laid down to ensure:

1.2.4.1 compliance with requirements relating to town planning or the safety or health of the public of any law which applies to business premises for which a licence has been applied for; or

1.2.4.2 compliance with those matters specified in the Act under section 2(4)(aA) with a requirement of a law relating to the health of the public; or

1.2.4.3 suitability of a person to carry on the business referred to in item 2 of Schedule 1 of the Businesses Act.

1.2.5 No formal basis has been laid down to ensure co-operative governance between the Business Licence Officer employed at the Regional Environmental Health Units and the relevant Departments/Units of Council who are required to submit requirements in terms of the Businesses Act – it has been reported that it is difficult to obtain requirements from certain Departments/Units and that certain departments do not respond at all when requested to submit requirements. This untenable situation renders the businesses licensing process unmanageable to the detriment of the licence applicants and the public who is exposed to safety and health risks/hazards.

1.2.6 A situation has evolved where a number of persons carry on businesses without having any regard to the laws of our Country especially with regard to the Businesses Act, which has been enacted to regulate and control the carrying on of businesses and businesses premises with the main purpose of safeguarding the safety and health of the public. Such businesses are carried on without the requirements relating to town planning or the safety or health of the public of applicable laws being complied with in the first instance.

Whilst the Businesses Act places the onus and responsibility on persons to apply for the business licences as specified in the Act this responsibility has now shifted to the Council to ensure that persons apply for the business licences as specified in the Act. The Council does not have the staff or other resources to carry this responsibility, which leaves the Council with no other alternative but to ensure that the onus and responsibility to ensure that businesses comply with legislative provisions and requirements are shifted back to those persons who desire to carry on such businesses. A person or an applicant has to ensure that the requirements of laws are complied with before he/she carry on a business requiring a licence as specified in the Act. Whereas a climate and culture of disrespect for the laws of our Country is at the order of the day it has now become necessary to ensure that people respect the laws of our Country without any preconditions. The ideal is that people should apply for licences on their own accord and ensure that requirements of law are complied with before they carry on businesses. This ideal can only be achieved if strict law enforcement is carried out and/or the public is made aware of the provisions of the Businesses Act by means of regular communication campaigns..

1.2.7 An untenable situation has evolved where persons, who carry on businesses without valid licences apply for licences, and time is then given to them to comply with requirements of laws whilst the public is exposed to safety or health risks/hazards during the period of application and the requirements being complied with. This untenable situation is aggravated when applicants fail to comply with the requirements of laws and in so doing exploit the lack of clear policy in this regard and also defeat the objectives of law. It also makes the implementation and enforcement of the Businesses Act difficult and unmanageable. The Council has an obligation in terms of the Businesses Act to ensure the safety and health of the public. Any incident or occurrence at an unlicensed premises which may have a detrimental effect on the safety or health of any person may expose the Council to litigation and civil claims which should be avoided at all cost. Civil actions against authorities, who fail to carry out their legal obligations, have become a common practice in our courts of law which are more and more becoming a reality as people become aware of their rights and understanding of law. The Businesses Act is not excluded from this reality, especially when bodily harm and loss of life is possible if people are allowed to carry on business without valid licences having been issued in the first instance, and of which the issuing of licences require compliance to requirements of applicable and relevant legislation.

The granting of a licence application on the condition that requirements are complied with before the licence is issued; or the issuing of a licence subject to requirements being complied with also places the Council at risk, especially when officials have to apply discretion and in so doing may condone a safety or health risk due to an error of judgement whilst the application could have been refused in the first instance. This practice should also be ceased especially when requirements stipulated by departments/units, other than the Development Planning, Transportation and Environment Department and its relevant units, are complied with, and such compliance are then construed by the applicants as condonation of land use rights which may not be applicable to the business premises concerned. The Council may be held at ransom for the expenditures that have been incurred due to a lack of clear-cut policy in this regard. It may also lead to the granting of forced land use rights contrary to the Council's land use rights policies if contested in a court of law or if an application for amended land use rights is lodged with the Council to rectify the oversights of its officials.

1.2.8 No formal basis exists for dealing with the refusal of a licence application or for the withdrawal or suspension of a business licence or for the amendment, revoking or imposition of a condition or for the taking of remedial measures or for the hearing of an applicant or licence holder.

1.2.9 No formal basis exists to ensure that the recommended tariffs for Environmental Health Services, as adopted and approved by the Council annually, are implemented by the Regional Environmental Health Units.

No uniform system for the recording of income generated exists. This applies to income generated by means of tariffs and fines.

1.2.10 Law enforcement does not always receive the priority attention as required by the Council. Some officials tend to be very lenient to such an extent that considerable time is lost by issuing statutory notices and by continuously giving extension of time for compliance whilst the safety and health of people are placed at risk. It is therefore necessary to determine tolerance levels especially in view of the fact that people carry on businesses contrary to the requirements and provisions of laws.

1.2.11 Businesses are carried out at premises or from premises that do not comply with the requirements and provisions of law and which pose serious safety and health risks/hazards to the public.

1.2.12 Tendency of licence holders to fail to adhere to the requirements of law due to negligence or disregard of law, and then being allowed to carry on business at premises that are not maintained and kept in good order due to lack of proper legislative control.

1.2.13 It is increasingly reported that certain businesses are being used for criminal activities such as prostitution and drug and substance abuse. The suitability of persons who apply for certain business licences referred to in item 2 of Schedule 1 of the Act has to be determined for the reason that it will ensure the suitability of persons to carry on such businesses and also ensure that the Council contribute to the prevention of criminal activities by strictly enforcing the provisions of the Act.

1.3 The aforementioned reasons may not necessarily be the only reasons for formulating a policy on the implementation and enforcement of the Businesses Act, 1991 (Act No. 71 of 1991).

2. LEGAL FRAMEWORK AND OBLIGATIONS

2.1 **The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)** provides as follows:

2.1.1 “Environment

24. Everyone has the right –

(a) to an environment that is not harmful to their health or well-being,”

2.1.2 “Principles of co-operative government and intergovernmental relations

41.(1) All spheres of government and all organs of state within each sphere must -

(a) ...

(b) secure the well – being of the people of the Republic;

(c) – (h) ...”

2.1.3 “Objects of local government

152.(1) The objects of local government are -

- (a) ...
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) ...
- (d) to promote a safe and healthy environment; and”

2.1.4 “Powers and functions of municipalities

156.(1) A municipality has executive authority in respect of and has the right to administer –

- (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
 - (b) any other matter assigned to it by national or provincial legislation
- (2) ...
- (3) ...
- (4) The national government and provincial government must assign to a municipality, by agreement and subject to any condition, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if -
- (a) that matter would most effectively be administered locally; and
 - (b) the municipality has the capacity to administer it.
- (5) ...”

2.1.5 “Schedule 4: Functional Areas of Concurrence

National and Provincial Legislative Competence

Part A

Trade (Not clearly defined)

Part B

Trading regulations (Not clearly defined)

Schedule 5: Functional Areas of Exclusive Provincial Legislative Competence

Part A

(No provision in relation to business licensing)

Part B

Licensing and control of undertakings that sell food to the public. (The Constitution is silent on the other businesses as defined in Schedule I of the Businesses Act)

Street trading”

2.2 The Businesses Act, 1991 (Act No. 71 of 1991)

The Businesses Act provides as follows:

- 2.2.1 “1. Definitions
“licensing authority” means any local authority, or person or body, designated or appointed under section 2 as a licensing authority;”
- 2.2.2 “2. Licensing authorities and licensing of businesses. – Section (1)(a) provides that an administrator may by notice in the Official Gazette designate a local authority, or appoint any person or body, as a licensing authority for an area which the Administrator specifies or defines in the notice, to undertake from a date specified in the notice the licensing of businesses in the area concerned.”

2.3 The Licensing of Businesses Regulations, 1993

(Administrator’s Notice 121 dated 13 April 1994)

- 2.3.1 “Definitions
“licensing authority” means a local authority designated as a licensing authority under section 2 of the Act;”
- 2.3.2 “Seats of licensing authorities
3. (1) The seat of a licensing authority shall be the office of the local authority designated as that licensing authority”

2.4 The Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000)

provides as follows:

- 2.4.1 “1. Definitions
“basic municipal services” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment;”
- “environmentally sustainable”, in relation to the provisions of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that –
- (a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
 - (b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and
 - (c) legislation intended to protect the environment and human health and safety is complied with;”

- 2.4.2 4. Rights and duties of municipal councils –
- (1) The council of a municipality has the right to –
- (a) – (c) ...
- (2) The council of a municipality, within the municipality’s financial and administrative capacity and having regard to practical considerations, has the duty to –
- (a) – (h) ...
- (i) promote a safe and healthy environment in the municipality; and
- (j) ...
- (3) A municipality must in the exercise of its executive and legislative authority respect the rights of citizens and those of other persons protected by the Bill of Rights.”
- 2.4.3 “11. Executive and legislative authority –
- (1) – (2) ...
- (3) A municipality exercises its legislative or executive authority by –
- (a) – (d) ...
- (e) implementing applicable national and provincial legislation and its by-laws;
- (f) – (k) ...
- (l) promoting a safe and healthy environment;
- (m) – (n) ...
- (4) ...”
- 2.4.4 “55. Municipal manager – (1) As head of administration the municipal manager of a municipality is, subject to the policy directions of the municipal council, responsible and accountable for –
- (a) – (k) ...
- (l) the administration and implementation of the municipality’s by-laws and other legislation;
- (m) – (o) ...
- (p) the implementation of national and provincial legislation applicable to the municipality; and
- (q) ...
- (2) ...
- 2.4.5 “62. Appeals. – (1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.
- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation of revocation of a decision may detract from any right that may have accrued as a result of the decision.
- (4) When the appeal is against a decision taken by –
 - (a) a staff member other than the municipal manager, the municipal manager is the appeal authority;
 - (b) – (c) ...
- (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- (6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.”

2.5 The Council is, in terms of the Constitution of South Africa, the Businesses Act, and the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000) obligated to ensure that the safety and health of the public is safeguarded. The Council is responsible to ensure that the Businesses Act is implemented and enforced.

3. **POLICY**

3.1 Whereas a need has been identified for a policy, the following be adopted by the Council as policy for the implementation and enforcement of the Businesses Act, 1991 (Act No. 71 of 1991):

3.1.1 Accountability and Responsibility

3.1.1.1 The Regional Directors are responsible and accountable for:

- 3.1.1.1.1 ensuring that the provisions of the Businesses Act, 1991 (Act No. 71 of 1991) are implemented, executed and enforced.
- 3.1.1.1.2 ensuring that the Policy for the implementation and enforcement of the Businesses Act, 1991 (Act No. 71 of 1991) are implemented, executed and adhered to.
- 3.1.1.1.3 ensuring that the tariffs in respect of business licensing, as determined by the Council in terms of its tariff structure for each Financial Year, are levied effective as from the date as determined by the Council.
- 3.1.1.1.4 ensuring that income generated in terms of tariffs and fines are recorded and that proper records are kept of any transaction and fine issued.
- 3.1.1.1.5 ensuring that the powers, functions and duties that are delegated to them in terms of the Council’s “Delegations of Power, Functions and Duties”

document by resolution of the Council, are further sub-delegated in the manner as prescribed in the document.

3.1.2 Designation of Officials, Support Staff and Business Licence Assistants

3.1.2.1 The Regional Directors shall, when it is not possible for the Business Licence Officer to perform and execute his/her duties efficiently and effectively due to workloads and work pressure, if deemed necessary, designate any official or other staff member to assist the Business Licence Officer in the execution of his/her duties and/or to render support to the Business Licence Officer.

3.1.3 Appointment of Additional Permanent Staff

3.1.3.1 The Regional Directors shall, when it has become evident that the Business Licence Officer is not able to perform and execute his/her duties efficiently and effectively due to workloads and work pressure, during the annual budget process motivate for funds for the appointment of additional permanent staff members (additional staff includes Business Licence Officer, Administrative Officers and/or Business Licence Assistants).

3.1.3.2 The appointment of additional staff members shall be subject to the availability of funds and Council policy.

3.1.3.3 The appointment of additional staff members may take place by means of transfer of excess or redundant staff, subject to such staff members being transferred with their salary and allowances budgets and in terms of Council policy.

3.1.4 Availability of The Businesses Act, 1991 (Act No. 71 of 1991) and its Regulations.

3.1.4.1 Regional Directors shall ensure that a copy of the Businesses Act, 1991 (Act No. 71 of 1991) and its Regulations are acquired and perused by those staff members who are responsible for and concerned with the implementation, execution and enforcement of the Act and its Regulations.

3.1.4.2 Regional Directors shall ensure that any amendments to the Act and its Regulations are acquired and that the Act and its Regulations are updated accordingly.

3.1.4.3 Regional Directors shall ensure that those staff members who are responsible for and concerned with the implementation, execution and enforcement of the Act and its Regulations are fully conversant with the contents thereof.

3.1.5 Peace Officers

3.1.5.1 Regional Directors shall ensure that those staff members who are responsible for and concerned with the implementation, execution and enforcement of the Act and its Regulations (including Business Licence Assistants) undergo Peace Officers training and be appointed as Peace Officers if they have been successful in their training.

3.1.5.2 Regional Directors shall ensure that Business Licence Officers (including Business Licence Assistants) are furnished with the certificates as required in terms of Regulation 11(3) whereby they have been appointed by the City Manager as Inspector of Businesses.

3.1.6 Legislative Process for the Issuing, Refusal, Withdrawal and Suspension of business licences and Amendment or Revoking of Conditions pertaining thereto.

3.1.6.1 Regional Directors shall ensure that those members of staff who are responsible for and concerned with the implementation, execution and enforcement of the Act and its Regulations adhere to the Legislative Process Guidelines for the issuing, refusal, withdrawal and suspension of business licences and amendment or revoking of condition pertaining thereto, and that these guidelines which have been hereby adopted by the Council and are attached hereto as Annexure “B”, shall be read in conjunction with the requirements and provisions of the Businesses Act and its Regulations.

3.1.7 Forms As Prescribed And Notices

3.1.7.1 Regional Directors shall ensure that those forms which are prescribed in terms of Regulations 5, 6 and 8 of the Licensing of Businesses Regulations, 1993 are issued by those staff members who are responsible for and concerned with the implementation, execution and enforcement of the Act and its Regulations.

3.1.7.2 Regional Directors shall ensure that the notices, that are prescribed in the Legislative Process Guidelines that are attached hereto as Annexure “B” and its relevant Annexures, are used for the purposes intended.

3.1.7.3 Regional Directors shall ensure that a duplication of a licence is only issued to a licence holder under the conditions as prescribed in terms of Regulation 9 of the Licensing of Businesses Regulations, 1993 and only if the licence holder has paid the

prescribed fee in terms of the Council's tariff structure and submitted the original receipt as proof of payment.

3.1.8 Non transferability of licence

3.1.8.1 Regional Directors shall ensure that Regulation 10 of the Licensing of Businesses Regulations, 1993 which provides for the non-transferability of a licence, is adhered to.

3.1.9 Granting of an Application for a Business Licence or Allowing Time to comply with a Requirement

3.1.9.1 Whereas the Council is not obliged in terms of section 2(6)(a) of the Act, to grant an application for a business licence on condition that a requirement is complied with before the licence is issued, or to, in terms of sections 2(6)(b)(ii) and 2(7)(b) issue a licence subject to any condition therein specified in terms of which the licence holder shall within a specified period comply with such a requirement; the granting of an application or the specifying of a period not be allowed for the reasons mentioned against paragraph 1.2.7 of this Annexure.

3.1.10 Law Enforcement

3.1.10.1 Regional Directors shall ensure that admission of guilt fines are determined and approved by the Magistrates of the Magisterial Districts serving their areas of jurisdiction, if admission of guilt fines have not yet been determined for their areas of jurisdiction or for the different parts of Magisterial Districts that are situated within their areas of jurisdiction, and that such determinations be adhered to.

3.1.10.2 Regional Directors shall ensure that existing admission of guilt fines are adhered to.

3.1.10.3 Regional Directors shall facilitate that warrants of arrest are executed by the Johannesburg Metropolitan Police Department within fourteen (14) days from the date on which same were issued by the Courts.

3.1.10.4 Regional Directors shall facilitate that the zero tolerance rule shall apply if a person carry on a business without a licence which is required in terms of the Businesses Act, 1991 (Act No. 71 of 1991).

3.1.10.5 No "Notice to appear in Court" (Fine/Summons) shall be cancelled by any official once it has been issued – it is the function of the Public Prosecutor.

3.1.10.6 If an unintentional mistake has been made on a “Notice to appear in Court” (Fines/Summons) **whilst it is being made out** it shall be cancelled and the original documents kept in the fine book for auditing purposes – a new notice shall be made out to the offender.

3.1.11 Databases

3.1.11.1 Regional Directors shall ensure that databases are kept of the following businesses on the electronic Business Licensing System or on the prescribed format where applicable:

3.1.11.1.1 Active Item 1(1) of Schedule 1 businesses
Inactive Item 1(1) of Schedule 1 businesses

3.1.11.1.2 Active Item 2 of Schedule 1 businesses
Inactive Item 2 of Schedule 1 businesses

3.1.11.1.3 Active Item 3(1) of Schedule 1 businesses

Specimens of the required databases are attached hereto as Annexure “A2” for utilization.

3.1.11.1.4 Regional Directors shall ensure that the databases are updated as and when business licences are issued or become inactive.

3.1.11.2 Regional Directors shall ensure that a database is kept of all refused, withdrawn and suspended business licences.

The database has to be updated as and when businesses licences are refused, withdrawn or suspended.

A specimen is attached hereto as Annexure “A3” for utilization.

3.1.12 Keeping of a Register for Income Generated

3.1.12.1 Regional Directors shall ensure that a register is kept for the recording of income generated in terms of the Council’s tariffs structure. The register has to be updated when a transaction has taken place.

A specimen is attached hereto as Annexure “A4” for utilization.

3.1.13 Keeping of a Register for Fines/Summonses Issued

3.1.13.1 Regional Directors shall ensure that a proper register is kept for the recording of all fines/summonses that have been issued.

The register has to be updated when a fine/summons has been issued. All relevant information pertaining to the fine/summons, including execution of a warrant of arrest, has to be included in the database.

A specimen is attached hereto as Annexure “A5” for utilization.

3.1.14 Maintenance, Safekeeping and Availability of Databases and Registers.

3.1.14.1 The databases and registers that have to be kept and maintained in terms of this Policy must be made available for inspection and auditing by the Regional Environmental Health Unit.

3.1.15 Interdepartmental Co-operative Governance

3.1.15.1 The following departments/units:

- District Environmental Health Services Unit and Noise and Air Pollution Control Unit
 - Land Use Management Sub- directorate
 - Building Control Sub- directorate
 - Johannesburg Emergency Management Services
 - Johannesburg Metropolitan Police Department (hawkers only)
- shall render their fullest co-operation with regards to the implementation and enforcement of the Businesses Act, 1991 (Act No. 71 of 1991) and in terms of the Policy for the Implementation and Enforcement of the Businesses Act, 1991 (Act No. 71 of 1991).
- shall supply the Business Licence Officer with all information, requirements and conditions required in terms of the said Act and the said Policy.
- shall report to the Business Licence Officer a changed circumstance in relation to a business or

the business premises, a changed condition, requirement of law that is not complied with and any offence that impacts on the safety and health of the public, without delay.

- shall adhere to the time frames as laid down in the said policy which includes the timeous submission of reports to the Business Licence Officer .

3.1.16 Businesses excluded from Businesses referred to in Schedule 1.

3.1.16.1 It shall be noted by all officials concerned that the businesses referred to in Schedule 2 of the Act are excluded from businesses referred to in Schedule 1 of the Act, and that same does not require licensing in terms of the Act.

A copy of Schedule 2 of the Act is also included in Annexure “A1” for ease of reference.

3.1.17 Daily Activity Reports

3.1.17.1 Managers: Environmental Health shall ensure that Business Licence Officers and Business Licence Assistants record their daily activities in the “Daily Activity Report” of which a copy is attached hereto as Annexure “A6” and that their reports are submitted to the Managers: Environmental Health on a daily basis for control purposes.

3.1.18 Business Licence Officer

3.1.18.1 “Business Licence Officer”, “Trade Licence Inspector”, “Licence Inspector” and “Inspector of Businesses” will have the same meaning for the purpose of the Act.

3.1.18.2 Regional Directors shall ensure that the job title “Business Licence Officer” is used in future and that the job titles of current staff responsible for implementing and enforcing the Businesses Act and that the job title “Business Licence Assistant” is used when appointing Assistants.