

City of Johannesburg Council 2005-04-21

COJ : MAYORAL COMMITTEE 2005-04-14

COJ : DEVELOPMENT PLANNING TRANSPORTATION AND  
ENVIRONMENT COMMITTEE 2005-04-08

COJ : HEALTH COMMITTEE 2005-03-08

## HEALTH

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### 38 POLICY, LEGISLATIVE PROCESS GUIDELINES AND PROTOCOL FOR THE IMPLEMENTATION AND ENFORCEMENT OF THE BUSINESSES ACT, 71 OF 1991

#### 1 STRATEGIC THRUST

Public Safety, Service Delivery Excellence and Good Governance.

#### 2 OBJECTIVE

The purpose of the report is to submit for the adoption and approval by Council, the following:

- (1) Policy for the Implementation and Enforcement of the Businesses Act, 71 of 1991);
- (2) Legislative Process Guidelines for the Issuing, Refusal, Withdrawal and Suspension of Business Licenses and Amendment or Revoking of Conditions pertaining thereto; and
- (3) Protocol that has to be followed by Business License Officers when implementing and enforcing the Businesses Act, 71 of 1991 and the Council's Policy for the implementation of the said Act.

#### 3 SUMMARY

##### (1) Background

The Business Licensing function that has to be performed in terms of the Businesses Act, 71 of 1991, was placed with Environmental Health Services following the Egoli 2002 process for the following reasons:

- (a) The Johannesburg Metropolitan Police Department should not be burdened with cumbersome administrative processes such as those brought about by the implementation and enforcement of the Businesses Act.
- (b) Environmental Health Officers and Business License Officers work hand in hand and complement one another's services to a great extent. Approximately 95% of the activities brought about by the business licensing process is Environmental Health related which supports the placement of this function with Environmental Health Services from an organisational perspective.

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- (c) Environmental Health and Business License Officers are involved in compliance monitoring of premises such as those requiring licensing in terms of the Businesses Act. It has to be pointed out that the following services are regarded as Municipal Health Services in terms of the new National Health Act, 61 of 2003:
- (i) Food control.
  - (ii) Waste management.
  - (iii) Health surveillance of premises.
  - (iv) Surveillance and prevention of communicable diseases.
  - (v) Vector control.
  - (vi) Environmental pollution control (these services form an integral part of business licensing and have to be evaluated before a license is issued.)
- (d) To avoid fragmentation and duplication of service delivery.

### (2) Current Staffing Establishments and Staffing Needs

The current staffing establishment and staffing needs are depicted as follows:

Regions	Current Staffing Establishment		Future Staffing Needs		Staff Shortages	
	Business License Officers	Administrative Support	Business License Officers	Administrative Support	Business License Officers	Administrative Support
1 & 2	1	0	2	1	1	1
3	1	0	2	1	1	1
4	1	0	2	1	1	1
5	1	0	2	1	1	1
6	1	0	2	1	1	1
7	1	0	3	1	2	1
8	1	1	5	1	4	0
9	1	1	2	1	1	0
10	1	1	2	1	1	0
11	0	0	2	1	2	1
Total	9	3	24	10	15	7

Region 11 is in the process of making arrangements for the appointment of a Business License Officer. This Region is currently utilising the services of one of their Pest Control Operators as Business License Officer to fill this gap. The person has been trained to render this service.

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The obligation, which is placed upon the Council to implement and enforce the Businesses Act, 71 of 1991, is complied with concerning the availability of staff to enforce the Act. Regions are now also able to ensure that income is generated in the form of tariffs and fines.

All the Regions have made provision on their organograms for the Business Licensing function.

It has become evident that the Business License Offices will only be able to visit the known business premises once in two years and longer. It is critical that all businesses be visited at least once a year as a change of ownership, which requires a new license, takes place on average within nine (9) to twelve (12) months.

It is therefore critical that the staffing needs as depicted in the aforementioned table be satisfied without delay in order to ensure that the policy guidelines and protocol are implemented and enforced efficiently and effectively. The appointment of the additional Business License Officers and support staff as indicated above should not necessarily place additional financial burdens upon the Council due to the fact that income is generated by means of tariffs and fines which should redeem the additional expenditures to a large extent.

(3) Need for a Policy, Guidelines and Protocol.

It has now transpired that no uniform approach is being followed by the Regions with the implementation and enforcement of the Businesses Act. The main reasons being that:

- (a) The Businesses Act is difficult to interpret.
- (b) No policy, guidelines and protocol existed for the uniform implementation and enforcement of the Businesses Act City-wide.
- (c) No proper forms, notices, registers and databases existed for the effective and efficient performance of duties and responsibilities.

The adoption of the proposed policy, guidelines and protocol will ensure that uniformity in approach in the implementation and enforcement of the Businesses Act is achieved City-wide.

It will also ensure that the safety and health of the public which is the main purpose of the Businesses Act, receives priority attention, especially with regard to requirements relating to town planning or the safety or health of the public of any law which applies to business premises, for which business licenses are required in terms of the provisions of the Act.

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It will also ensure that a culture of obedience and respect for the laws of our Country are established.

(4) Annexures to the report

The following Annexures are attached to this report:

- ... (a) *“Policy for the implementation and enforcement of the Businesses Act, 71 of 1991” as Annexure A.*
- ... (b) *“Legislative Process Guidelines for the issuing, refusal, withdrawal and suspension of business licenses and amendment or revoking of conditions pertaining thereto” as Annexure B.*
- ... (c) *“Protocol that has to be followed by Business License Officers when implementing and enforcing the Businesses Act, 71 of 1991 and the Council’s Policy for the implementation of the said Act” as Annexure C.*

An electronic Business Licensing System is being devised with the assistance of IBM/Masana for implementation. The system will be aligned with the contents of the policy, guidelines and protocol once approved by the Council.

## 4 POLICY IMPLICATIONS

No policy for the implementation and enforcement of the Businesses Act, 71 of 1991, existed. This report is in line with the National and Provincial Government Policies on the safety and health of the public.

This report has no policy implications except that a new policy is introduced for implementation City-wide by Environmental Health Services.

## 5 LEGAL AND CONSTITUTIONAL IMPLICATIONS

The Council is, in terms of the Constitution of the Republic of South Africa, 108 of 1996, the Local Government : Municipal Systems Act, 32 of 2000 and the Businesses Act, 71 of 1991, 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.

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Failure to implement and enforce the Act may lead to incidents or occurrences, which may have a detrimental effect on the safety or health of any person. This in turn may expose the Council to litigation and civil claims which should be avoided at all cost. Civil action against authorities, who fail to carry out their legal obligations, have become a common practice in our courts of law which are 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 businesses without valid licenses having being issued in the first instance.

It is therefore of vital importance that the Businesses Act be implemented and enforced with the aforementioned in mind. A strict approach has to be adopted.

### 6 FINANCIAL IMPLICATIONS

Expenditures relating to the implementation and enforcement of the Businesses Act are funded from the Regional Operational Budgets for which provision already exist.

The proper implementation and enforcement of the Act, as well as the policy, guidelines and protocol in this regard, will ensure an increased income due to tariffs being charged and fines being issued.

A shortage of fifteen (15) Business License Officers and seven (7) Administrative Support Staff has been identified. The filling of these posts will have financial implications towards the Council.

### 7 COMMUNICATIONS IMPLICATIONS

It will be necessary for the Council's Communication Department to communicate this policy, guidelines and protocol to the media in order to create a better understanding and awareness of the Businesses Act.

Copies of this report, as well as the attachments thereto, will be made available to the responsible officials at the Regional offices.

### 8 OTHER DEPARTMENTS/BODIES CONSULTED

- (1) Legal Services Department.  
(Verbatim)

*"Previously the four local Councils in Johannesburg and Midrand Local Council were designated as licensing authorities. Application should now be made to the Premier, for the designation of CoJ as a licensing authority for the whole Johannesburg Municipal area. The City must also apply for authorisation for the appointment of an Appeal Committee.*

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*Once the Council is appointed as a licensing authority, the Council will have to comply with the provisions of the Businesses Act 1991 and its regulations thereunder regarding the appointment of a Licensing Officer to consider license applications. [The Council might also have to amend its delegations of power if necessary to accommodate this trade licensing functions]. The Council also need to apply to the Premier for the appointment of an appeal Committee to deal with appeals in terms of Section 3 including referral of appeals to appeal committee, the constitution, functions and procedures and the legal effect of findings of such a committee.*

*In terms of the Council's Delegations of Powers approved in April 2001, certain powers have been delegated to Regional Directors. However since that date the Chief Operations Officer has been appointed to whom the Regional Directors now report. A revised set of delegations has been drafted whereby the powers that used to reside with the Regional Directors will now be placed with the Chief Operations Officer who may sub-delegate these powers to, inter alia, Regional Directors. The Council has not yet approved the revised delegations, but it may be prudent to make reference in the Policy to the Chief Operations Officer where appropriate."*

(2) Finance Department.

*"The contents of the report is supported. Expenditure in terms of the report can only be incurred in terms of the Council's approved Operating Budget. Revenue should be dealt with in terms of the report."*

(3) Development Planning, Transportation and Environment Department.

(a) Executive Director : Development Planning, Transportation and Environment

Note comments as in Paragraphs 8(3)(b) and 8(3)(c) hereunder.

(b) Deputy Director: Land Use Management  
(Verbatim)

*"The basic comment from this department is that no business license may be granted contrary to the zoning rights of the property, which rights confer to it by means of the applicable Town Planning Schemes. This department forwards comments to Environmental Health Sections of all regions on all business license applications that are received by it through Land Use Management and Building Control.*

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*An essential part of the submitted application must be the clear identification of the property description i.e. stand number, township, street address and zoning. Development Planning, Transportation and Environment does not verify property descriptions and neither does it keep the zoning information. The above is the responsibility of Corporate GIS. Applicants should verify their applications with Corporate GIS before the submission of applications to the various regions to avoid delays. Development Planning, Transportation and Environment has not and will not be able to forward comments within a 7 day limitation. The applications are dealt with by three different Directorates within the department as well as relying on a weekly delivery service initiated by this department to help with the process. It is obvious that such time constraint is not possible."*

- (c) Assistant Director: Environmental Quality Control  
(Verbatim)

*"We are in support of the proposed policy, guidelines and protocol as outlined in the report and welcome the reinstatement of a regulatory enforcement system to manage issues relating to the licensing and operation of businesses in terms of the Act. Improved management and control will have positive spin-offs for environmental factors associated with such businesses, particularly in relation to hawking. Uncontrolled hawking currently results in pollution impacts such as littering and dumping, contamination of storm water runoff, and smoke from cooking, which contribute to poor environmental conditions."*

- (d) Land Use Management Sub-directorate

No comments have been received.

- (e) Building Control Sub-directorate

No comments have been received

- (f) Regional Directors

No comments have been received directly from any Regional Director. Comments were, however, received from Environmental Health Services Units based at Regions 1 and 2, 4, 5, 8, 10 and 11 which resulted in a workshop being held on the proposed policy, guidelines and protocol. The proposed policy, guidelines and protocol were thereafter amended accordingly.

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- (5) Johannesburg Emergency Management Services: Divisional Chief: Code Enforcement

(Verbatim as received by E- mail dated 6 April 2005)

*“Emergency Management Services is in support of the proposed policy, guidelines and protocol as outlines in the report and welcome the reinstatement of a regulatory enforcement system, to manage issues relating to the licensing and operation of businesses in terms of the Act.*

*The comment from this Department is that no business license may be granted contrary to the:*

- (a) Fire clearance of the building being obtained if it is a new construction.*
- (b) Fire inspection report of the building being obtained if it is an old building.*
- (c) Objection comments from Emergency Management Services of any business license to be issued.*

*After receiving a request from Environmental Health sections on all business license applications, EMS will then do the inspections and forward comments back to Environmental Health.*

*The problems that EMS confronted are sometimes the elimination of the stand numbers, township and street names/ numbers from the application forms.”*

- (6) Johannesburg Metropolitan Police Department

No comments have been received.

IT IS RECOMMENDED

**[1 That the following be adopted and approved by the Council:**

- (1) Policy for the Implementation and Enforcement of the Businesses Act, 71 of 1991, which is attached to the report as Annexure A.**
- (2) Legislative Process Guidelines for the Issuing, Refusal, Withdrawal and Suspension of Business Licenses and Amendment or Revoking of Conditions pertaining thereto which is attached to the report as Annexure B.**

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- (3) Protocol that has to be followed by Business Licence Officers when implementing and enforcing the Businesses Act, 71 of 1991 and the Council's Policy for the implementation of the said Act, which is attached to the report as Annexure C.**
- 2 That Regional Directors ensure that the contents of the documents referred to in Paragraph 1 above, be adhered to.**
- 3 That the following Departments/Units ensure that the contents of the documents, referred to in Paragraphs 1(1) and 1(2) above, where applicable to their departments/units, be adhered to:**

  - (1) District Environmental Health Services Unit and the Noise and Air Pollution Control Unit.**
  - (2) Land Use Management Sub-directorate.**
  - (3) Building Control Sub-directorate.**
  - (4) Johannesburg Emergency Management Services.**
  - (5) Johannesburg Metropolitan Police Department.**
- 4 That the electronic Business Licensing System be aligned with the documents referred to in Paragraph 1 above.**
- 5 That the Premier of Gauteng be requested to designate the City of Johannesburg as a Licensing Authority in terms of Section 2 (1) of the Businesses Act, 71 of 1991, with a seat in each of the Administrative Regions to authorise the city to appoint an Appeal Committee.**
- 6 That in terms of Regulation 4 of the Regulations for the Licensing of Businesses promulgated under Administrator's Notice 121 dated 13 April 1994, the powers and duties of the City of Johannesburg as Licensing Authority be delegated and assigned to the individual Business License Officers so designated by the relevant Regional Director in each Administrative Region.]**

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(C/1927/2005)  
(tk)

THE NEXT ITEM FOLLOWS THE ANNEXURES TO THIS ITEM