

SECURITY ACCESS RESTRICTIONS P O L I C Y

PERTAINING TO APPLICATIONS MADE IN TERMS OF SECTION 45 OF THE RATIONALISATION OF LOCAL GOVERNMENT AFFAIRS ACT, NO. 10 OF 1998

1. SCOPE AND PURPOSE

- 1.1 This Policy concerns applications which may be made by any person, body or organisation to the City of Johannesburg Metropolitan Municipality in terms of Section 45, read with Sections 43 and 44 of the (Gauteng) Rationalisation of Local Government Affairs Act, No 10 of 1998, for authority to restrict access to a public place.
- 1.2 The purpose of these Sections of the Act is to enhance safety and security and thus the purpose of this policy is to give effect to these Sections.
- 1.3 This Policy sets out –
- 1.3.1. The legal framework;
 - 1.3.2. The making of an application;
 - 1.3.2. The procedure to be followed after an application has been made;
 - 1.3.3. Factors which the Council will take into account when considering an application;
 - 1.3.4. Terms and conditions which may be imposed if an application is granted;
 - 1.3.5. Implementation of a security access restriction;
 - 1.3.6. Reviewing, withdrawing or altering a term and condition of an authorisation
 - 1.3.7. The right to appeal against a decision concerning an application;
 - 1.3.8. The period of validity of an authority and extensions of the validity period; and
 - 1.3.9. Other related matters.

2. DEFINITIONS

In this Policy a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and, unless the content otherwise indicates –

“Administering Department” means the Department in the City of Joburg responsible for the administration of this policy;

“Access Control Point” means a place at which access to a public place can be restricted in terms of an authorisation granted in terms of Section 45 read with Section 44 of the Act, or any extension of such authorisation;

“Affected Person” means a persons living, owning or working within an area where access has been restricted or where restrictions are proposed;

“Applicant” is a person, body or organisation applying for a security access restriction and includes the applicant’s duly authorised representatives;

“Application” means an application for authorisation in terms of Section 45 of the Act;

“Authorisation” means an authorisation to restrict access to a public place as contemplated in Section 45 read with Section 44 of the Act;

“Authorised Body” means an Applicant who has successfully applied for authorisation for a Security Access Restriction;

“Automation” means the use of automatic equipment or devices in the operations of a security access point, where automatic means working by itself with no direct human control

“Barrier” includes a palisade and a fence;

“Business Day” means any day of the week, excluding Saturdays, Sundays and public holidays;

“City Manager” means the accounting officer of the City of Johannesburg Metropolitan Municipality as defined in the Municipal Systems Act,

Council” means –

- (a) the City of Johannesburg Metropolitan Municipality established by Provincial Notice No. 6766 of 2000 dated 1 October 2000, as amended, exercising its legislative and executive authority through its municipal Council; or
- (b) its successor in title; or
- (c) any structure or person exercising a delegated power or carrying out an instruction, where any power in terms of Chapter 7 of the Act has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000);

“Discrimination” means any act or omission, including a rule, practice, condition or situation which directly or indirectly—

(a) imposes burdens, obligations or disadvantage on; or

(b) withholds benefits, opportunities or advantages from,

any person on one or more of the prohibited grounds;

“Executive Director” means Executive Director of the Administering Department or his/ her duly authorised representative;

“JRA” means the Johannesburg Roads Agency (Soc) Ltd, a company which is a municipal entity, wholly owned by the City of Johannesburg Metropolitan Municipality and responsible for, inter alia, the construction and maintenance of municipal roads in the City's area of jurisdiction;

“JMPD” means the Johannesburg Metropolitan Police Department, a department of the City of Johannesburg and part of its Public Safety Department;

“Municipal Entity” means a municipal entity as defined in the Municipal Systems Act or to which that Act applies;

“Municipal Service” means a municipal service as defined in Section 1 of the Municipal Systems Act;

“Official Website” means the website established by the Council in compliance with Section 21B of the Systems Act;

“Periphery” means centre line of adjacent roads;

“Prescribed” means prescribed by the Council;

“Prohibited grounds” are—

(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status; or

(b) any other ground where discrimination based on that other ground—

(i) causes or perpetuates systemic disadvantage;

(ii) undermines human dignity; or

(iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on a ground in [paragraph \(a\)](#);

“Public Place” means any road, street, thoroughfare, bridge, overhead bridge, subway, foot pavement, footpath, sidewalk, lane, square, open space, garden, park, path, bus or taxi rank, servitude or enclosed space vested in the municipality and includes any road, place or thoroughfare which is in the undisturbed use of the public or which the public have the right to use;

“Public Safety” means the Department of the City of Johannesburg under which the JMPD and the Emergency Management Services (EMS) falls;

“Relevant Law” means any law, including any By-law of the Council, which –

- (a) is applicable to traffic, whether vehicular or pedestrian;
- (b) in relation any building, structure, equipment, machinery or barrier as contemplated in this Policy regulates the construction, erection, operation or maintenance thereof, or the materials to be used in connection therewith and prescribes safety measures to be taken in regard to the installation, operation or maintenance thereof;
- (c) concerns the installation of or the right to operate electronic communications equipment or facilities; and
- (d) includes the Act;

“Restrict” means, in relation to an authorisation, the right to restrict access to a public place in terms of an authorisation granted in terms of Section 45, read with Section 44 of the Act, but does not include the right to prohibit access to such public place by all traffic, whether vehicular or pedestrian, or to all vehicular traffic or all pedestrian traffic;

“Road” means any road, street or thoroughfare as contemplated in the definition of “public place” in the Act, and includes the verge;

“SAPS” means the South African Police Services;

“Security Access Restriction” means an authorised restriction to a public place in terms of Section 45 of the Act

“**the Act**” means the Gauteng Rationalisation of Local Government Affairs Act, No. 10 of 1998;

“**the Systems Act**” means the Municipal Systems Act, No. 3 of 2000 and regulations thereof;

“**Verge**” means that portion of a road, street or thoroughfare which is not made, constructed or intended for use by vehicular traffic;

3. LEGAL FRAMEWORK

3.1 Sections 43 to 48 of the Act are set out in full in ANNEXURE “A” hereto for convenience.

3.2 Section 43 empowers the Council to:

3.2.1 on its own initiative impose a restriction on access to any public place, but in order to do so it must comply with Section 44; and

3.2.2. authorise any person, body or organisation to restrict access to any public place in terms of Section 45, read with Section 44;

This Policy is concerned with the power referred to in sub-paragraph 3.2.2. above.

3.2.3. Section 45 sets out requirements which must be complied with before an authority to restrict access may be granted to any person, body or organisation. It provides that if the Council is disposed to grant such an authority, then certain provisions of Section 44 become applicable. Those provisions are contained mainly in Section 44(1) (b) and (c) and will be referred to later herein.

3.2.4. Section 46(1) provides that **unless otherwise stated in the Provincial Gazette, with the authorisation of the Council,** an authority granted under Section 45 is valid for not more than two years. However, the validity of an authorisation may be extended under Section 46(2) **if the process of extension is initiated at least one month before the expiry of the restriction.**

3.2.5. Section 47 prohibits any person, body or organisation from restricting access to a public place without a valid authorisation to do so. If an authorisation which has been granted lapses in terms of Section 46 and is not renewed, or is withdrawn for any reason, any right to restrict access falls away.

3.2.6. The Constitution of the Republic of South Africa Act, 1996 (“the Constitution”) is the supreme law of South Africa and all other laws as well as the implementation and enforcement thereof, including the Act and this Policy, are subject to it.

4. MAKING AN APPLICATION IN TERMS OF SECTION 45 OF THE ACT

4.1 An application must be made in terms of Section 45 of the Act on the form set out in Annexure “B” and must be accompanied by proof of payment of the prescribed non-refundable administrative fee contemplated in Section 45(1) (c) of the Act.

4.2. Every application must contain:

4.2.1. The name and contact details of the Applicant;

- 4.2.2. A description of the public place and locality plan;
- 4.2.3. A motivation for the application;
- 4.2.4. A plan to manage the security access restriction;
- 4.2.5. Details as to the Affected Persons;
- 4.2.6. Details of consultation and the views of the Affected Persons;
- 4.2.7. A traffic impact study or a motivation as to why one is not required;
- 4.2.8. The written comments of Pikitup and Joburg Water; and
- 4.2.8. Other requirements as set out in the policy.

The detailed requirements are set out below.

4.3. Description of the public place and locality plan

The application must contain a full and accurate description of the public place which is the subject of the application and must be accompanied by a locality plan to a scale of 1:20 000 (or on good cause shown a locality plan to a scale other than 1:20 000) showing:

- 4.3.1. the boundary of the area in respect of which access is to be restricted;
- 4.3.2. existing and proposed measures to secure property boundaries located on the periphery of the proposed access control area;
- 4.3.3. the location of all surrounding roads, clearly indicating the nearest external through-route on each side of the area;
- 4.3.4. through-routes to be restricted and their recommended alternative routes;
- 4.3.5. location of fire hydrants and water points for the connection of fire hoses within and on the perimeter of the area to be restricted;
- 4.3.6. all internal roads;
- 4.3.7. the location of proposed access control points;
- 4.3.8. all fixed properties which are served by the area in respect of which the application is made, specifying the zoning of each such property in terms of the applicable town planning scheme and the actual use to which each such property is put, the stand number or farm portion (as the case may be) of each property and the name of the registered owner; and
- 4.3.9. whether any road in respect of which the application is made serves or provides access to any central government, provincial government or municipal offices or facilities; courts; hospitals; police stations; fire stations; ambulance stations; medical facilities, including medical and dental surgeons and consulting rooms; universities, colleges, schools or other educational facilities or establishments; landfill sites; refuse or garden waste tip or disposal sites; libraries; parks; sports facilities; airports; public recreation grounds or recreational facilities; public transport facilities; parking grounds or parking garages available for use by the general public; hotels; restaurants; shopping centres; shops or private offices.

4.4. Motivation for application

Since the purpose of the application is to enhance safety and security the Applicant must provide as much information as possible for the period of six months preceding the date of application relating to:

- 4.4.1. the seriousness and prevalence of crimes in the area;
- 4.4.2. crime related statistics and if such statistics cannot be obtained, the reasons therefore must be set out in the application;
- 4.4.3. the category and estimated number of persons affected by the circumstances giving rise to the application such as businesses which have been the victims of criminal activity, householders who have been the victims of burglary or an assault and persons who have suffered vehicle theft or hi-jacking; and
- 4.4.4. measures presently in place to enhance safety and security in any road or area in respect of which the application is made, and if any measures have been tried but discontinued, the nature of the measures and the reasons for discontinuing them.

4.5 Proposed security access restriction

The application must give full particulars of the proposal to manage the access restriction including:

- 4.5.1 the nature and extent of the restriction applied for;
- 4.5.2 the precise location of each proposed access control point;
- 4.5.3 the means by which access control is to be regulated, clearly stipulating the type of proposed physical structure (e.g. fence, boom, gate) and the type of access control (e.g. manned, open, locked or automated);
- 4.5.4 how the buildings, structures, equipment, machinery and barriers which are proposed will be built, erected, installed or used at each access point and whether any municipal services will be required;
- 4.5.5 the hours during which each access control point is to be open, manned or locked as the case may be;
- 4.5.6 the toilet facilities to be provided for personnel manning each access control point, their precise location and how such facilities are to be managed and maintained;
- 4.5.7 the provision to be made for the parking of vehicles at each access control point and to enable vehicles to turn;
- 4.5.8 whether the holder of any servitude or the owner of any service over or in such road (including the verge) supports the application and, if so, proof of such support must be submitted;
- 4.5.9 the total number of personnel who, during each day and night, will staff each access control point, and the total number of such personnel who will be on duty at each such access control point at any given time;

- 4.5.10 the arrangements made or to be made to ensure that all buildings, structures, equipment, machinery, barriers, signs and notices to be built, erected or installed at an access control point will be regularly inspected and maintained by a suitably qualified and experienced person;
- 4.5.11 any sign or notice which it is proposed to erect to indicate the presence of an access control point or barrier, including a drawing of each such sign or notice, giving its dimensions, specifying whether it will be made of reflective material, and setting out any wording or symbol which it will contain; and
- 4.5.12 how the implementation of the authorisation to restrict access applied for will be funded, including the funding of the maintenance of such buildings, structures, equipment, machinery, barriers, signs and notices and the cost of taking out such insurance cover and providing such indemnities as the Council may require.

4.6. Proposed Security Access Restriction plan

The application must include a 1:500 plan (or on good cause shown a plan to a scale other than 1:500 that:

- 4.6.1. depicts the location of each Access Control Point;
- 4.6.2. if the application includes a request for an authority to restrict access to a road not having an access control point in it, by erecting a barrier at a particular point in that road the precise point in such road where the barrier is to be erected;
- 4.6.3. depicts the location of each place referred to in sub-paragraph 4.3.9. which is served by a road or is within the area in respect of which the application is made, or is on the periphery of such area.

4.7. Details as to the Affected Persons

As required by Section 45(1)(a)(vi) of the Act, in regard to the category and estimated number of persons who may be affected by the restriction in respect of which application is made, the following should be furnished:

- 4.7.1 an estimate of the number of persons owning and/or residing in premises served by any road in respect of which the application is made;
- 4.7.2 an estimate of the number of persons who work but do not reside in premises served by any road in respect of which the application is made; and
- 4.7.3 the basis on which the estimates referred to in the sub-paragraphs above was made.

4.8. Details of consultation of and the views of Affected Persons

Section 45(1)(b) of the Act requires the Applicant to furnish proof to the Council that at least two-thirds (67%) of the Affected Persons support the restriction on access which is being sought.

This requirement must be complied with by annexing to the application a document of sufficient detail including proposed road closure points and proposed conditions of operation which the Affected Persons in writing must-

- 4.8.1. acknowledge that they have read and understood the application;
- 4.8.2 state their support for it;
- 4.8.3 state their reasons for supporting it and how they were affected by the circumstances giving rise to the application;
- 4.8.4 state their full names and addresses; and
- 4.8.5 sign the document and give the date of signature.

4.9. Traffic Impact Study

- 4.9.1. The Applicant must submit, at the Applicant's cost a traffic impact study evaluating the impact on traffic of the Security Access Restriction applied for, or a motivation setting out why a traffic impact study is not required, prepared by a professional traffic engineer.
- 4.9.2. The traffic impact report must set out the results of a study undertaken by that professional engineer on the probable impact which the granting of the application would have on:
 - 4.9.2.1. traffic patterns, the re-routing and redistribution of both vehicular and pedestrian traffic, including an estimate of through traffic and a capacity analysis at each proposed access control point;
 - 4.9.2.2. the suitability of the type of access control to be implemented;
 - 4.9.2.3 the concentration of vehicular traffic at access control points;
 - 4.9.2.4 the re-distribution of vehicular traffic on other roads wherever situated, including freeways, toll roads and arterial roads and whether vested in the Council or not and the likely effect on the level of service of other roads;
 - 4.9.2.5 any office, facility, or business or place referred to in paragraph 4.3.9;
 - 4.9.2.6 an explanation of the recommended storage space for vehicles and recommendations in regard to the following the number and length of storage lanes, visitors' parking facilities, turning bays and entrance layout where applicable; and
 - 4.9.2.7 the impact on pedestrian and cyclist routes if relevant including in respect of learners.
- 4.9.3. It is recommended that the report on the traffic impact study include the following:
 - 4.9.3.1. Background with locality map, borders of application, number of properties affected, planned access control measures;
 - 4.9.3.2. Affected current and future road network and hierarchy with analysis of current traffic situation;
 - 4.9.3.3. Land use rights contained in the access control area;

- 4.9.3.4. Traffic data collected (the study area should include all elements of the road infrastructure included in the enclosed area – all the intersections located and intersecting on the outer border of the area, all road elements where 75 additional redistributed trips are added to the critical lane traffic volume).
- 4.9.3.5. Redistribution of traffic;
- 4.9.3.6. Capacity analysis and design requirements of intersections and accesses;
- 4.9.3.7. Operational aspects of the access control points;
- 4.9.3.8. Geometric design of access control points;
- 4.9.3.9. Impact on pedestrians, cyclists and public transport access;
- 4.9.3.10 Impact on emergency services and refuse removal;
- 4.9.3.11. Road signage at access points; and
- 4.9.3.12. Conclusion and recommendations.

4.10 Other requirements

The following additional requirements may be required to be submitted by the Applicant

- 4.10.1. If an access control point is to be operated and manned by a security service provider as contemplated in the Private Security Industry Regulation Act, 2001, (Act No. 56 of 2001), the following must be provided:
 - 4.10.1.1. the name and address of the service provider,
 - 4.10.1.2. written proof that such service provider is duly registered in terms of Section 21 of that Act; and
 - 4.10.1.3. a copy of the service provider's current registration certificate.
- 4.10.2. If the Applicant is a juristic person (i.e. a company or other corporate body) the application must be accompanied by:
 - 4.10.2.1 a certified copy of the resolution authorising the application, and
 - 4.10.2.2. a power of attorney authorising the person or persons who sign the application to act on behalf of the Applicant.
- 4.10.3. All costs of or in any way associated with the preparation, submission, advertising and processing of the application until the final end and determination thereof shall be borne by the Applicant.
- 4.10.4. The publication of any notice or other document in terms of any law including any cost associated with such publication will be the responsibility of the Applicant.

- 4.10.5. One copy of the application, all supporting documents and proof of payment of the prescribed non-refundable administrative fee referred to in paragraph 4.1 must be submitted to the Administering Department at the address reflected in Annexure “B” hereto.

5. PROCEDURES FOLLOWING THE SUBMISSION OF THE APPLICATION

5.1 Receipt of application and request for further information

5.1.1. On receipt of the application, the Administering Department must:

5.1.1.1. acknowledge receipt in writing of the application within seven (7) business days after payment of the application fee and in that acknowledgment provide the Applicant with a reference number for the application; and

5.1.1.2. notify the Applicant within fourteen (14) business days after payment of the application fee whether the application contains all the information and documentation required in terms of the Act and this Policy, and stating that such notification is not to be construed as signifying that the application will or will not be approved.

5.1.3. The Administering Department may at any time prior to a final decision being taken on an application, require the Applicant, at the Applicant's cost, to submit such further information or documentation as it may reasonably require in order to reach a decision on the application and will defer consideration of the application until such time as the further information required is submitted to its satisfaction.

5.1.4. If such further information is not submitted in accordance and within a time period stated in a written request addressed to the Applicant, the Council may return the application and all supporting documentation to the Applicant without considering it.

5.2. Compilation of report

5.2.1. The Administering Department must compile a report on the application for the Executive Director's consideration.

5.2.2. For purposes of compiling its report, the Administering Department shall carry out such inspections as it considers necessary.

5.2.3. The Administering Department must refer the application to the Development Planning Department, the JRA and Public Safety (JMPD and EMS) and may refer the application to any department of, or any Municipal Entity under the control of, the Council for the purpose of obtaining its observations and comments on the application.

5.2.4. On completion of its report, the Executive Director or a person duly delegated by him/her of the Administering Department shall make a decision.

5.2.5. The Executive Director may if necessary, request JRA, JMPD or any other Department or Municipal Entity to clarify in writing any aspect of its report.

5.3. Holding of meeting as required by Section 45(2) of Act

- 5.3.1. The Executive Director must within ninety (90) business days after receipt of the application make arrangements with the SAPS , JRA and Public Safety for a meeting to be held, as required by Section 45(2) of the Act.
- 5.3.2. The purpose of the meeting which must include SAPS representatives, the Applicant and the Administering Department is to discuss the application and ascertain the views of the South African Police Service regarding the application and to consider possible terms and conditions to be imposed if the Council should decide to grant the application.
- 5.3.3. The Administering Department must finalise arrangements for such meeting after consultation with the Applicant and must thereafter as soon as reasonably possible advise the Applicant and the SAPS in writing of the date, time and place at which the meeting will be held.
- 5.3.4. The Applicant must advise the Administering Department of the name or names and contact details of the person or persons (which shall not exceed three in number unless the Administering Department agrees to an increased number) who will represent it at the meeting.
- 5.3.5. The Administering Department shall as soon as reasonably possible and not more than thirty (30) Business Days after the meeting prepare and provide the Applicant and the SAPS with minutes of the meeting which is to be regarded as the official record of the meeting.

5.4. Granting authorisation

- 5.4.1. After the conclusion of the meeting referred to in 5.3. above the Executive Director must determine whether or not the Council intends to grant the application and the terms and conditions it intends to impose, should authorisation applied for be granted and must record its decision in writing.
- 5.4.2. The Administering Department must inform the Applicant in writing within forty five (45) Business Days of the meeting referred to in 5.3. of the decision of the Executive Director and invite the Applicant to submit, within thirty (30) Business Days, any further representatives it may wish to make, in accordance with the provisions of the Promotion of Administrative Justice Act, No. 3 of 2000.
- 5.4.3. If the Applicant fails to respond to the invitation to submit further representation within thirty (30) Business Days, it will be presumed that the Applicant does not intend to submit any further representations.
- 5.4.4. The Executive Director must consider any representations so made and thereafter make a determination that the application should be refused or supported and approved for public comment within thirty (30) Business Days.
- 5.4.5. If the Executive Director determines that the application should be refused or supported and approved for public comment, the Administering Department must advise the Applicant in writing within thirty (30) Business Days thereafter of the determination and, if the application is supported, the proposed terms and conditions which will apply to the authorisation to restrict access, and further advise on the process for obtaining public comment on its determination.
- 5.4.6. On request of the Applicant, the Executive Director must provide reasons.

5.5. Advertising for public comment

- 5.5.1. If the Executive Director determines that the Council intends to grant the application then simultaneously with the notice contemplated in 5.4.2. above, the Administering Department must:
- 5.5.1.1. place on its official website a draft of the authorisation to be granted, together with the proposed terms and conditions to be attached to the authorisation;
 - 5.5.1.2. state on the website the place where and the times when the full application and originals of the documents may be inspected;
 - 5.5.1.3. make the original documents available for public inspection at the place and times so stated; and
 - 5.5.1.4. instruct the Applicant at its own expense to put an advert in at least one local newspaper, the Provincial Gazette and at the places where the proposed access control points are to be implemented, within thirty (30) Business Days of the notice
- 5.5.2. The advert referred to in 5.5.1.4. must comply with Section 44(1)(c)(ii) of the Act and state that the application is available for inspection, include the proposed terms and conditions of the authorisation and proposed access control points and invite comment on the application and proposed authorisation.
- 5.5.3. The comments should be directed to the Administering Department within thirty (30) Business Days from date of publication.
- 5.5.4. Proof of any required publication must be provided to the Administering Department by the Applicant within thirty (30) Business Days of the notice contemplated in 5.4.2. If such proof is not submitted within this time period, the Administering Department may return the application and all supporting documentation to the Applicant without further considering it.
- 5.5.5. The Executive Director must as soon as reasonably possible **and not later than 60 days from the closing date for comments:**
- 5.5.5.1. Consider all comments received from the public;
 - 5.5.5.2. Advise the Applicant in writing of all such comments received and invite it to submit to the Administering Department within a stated time, any written representations it may wish to make on the comments received from the public; provided that if the Applicant fails to make such written representations by the stated time, the Administering Department may assume that the Applicant does not intend to do so;
 - 5.5.5.3. Where applicable, submit all comments or representations received from the public and the Applicant to the JRA, JMPD and other relevant Departments for their comments and recommendations;
 - 5.5.5.4. Decide whether consultations with any relevant interest group or enquiry as contemplated in Section 44(1)(c)(iii) should be held; and if it decides that any consultation or enquiry should be held, it must act in accordance with the relevant provisions of the Promotion of Administrative Justice Act, No. 3 of 2000 including Section 4(2) thereof and in particular must advise the Applicant in writing of that decision and invite it to be present at and participate in any such

consultations, provided that not more than three representatives of the Applicant may be present at and participate in any consultation, unless the Executive Director agrees to a higher number; and

5.5.5.5. After taking all representations and recommendations made to it into account, make a final determination on the terms and conditions which will apply to the restriction.

5.5.6. Thereafter the Executive Director:

5.5.6.1. must forthwith advise the Applicant in writing of the final determination made in respect of its application; and

5.5.6.2. must advise the Applicant to publish the final determination in the Provincial Gazette as required by Section 44(4) of the Act.

5.5.7. If no comments or objections are received, the restriction will come into force and effect on the date when the final decision is published in the Provincial Gazette.

6. FACTORS TO BE TAKEN INTO ACCOUNT REGARDING AN APPLICATION

6.1 When considering the merits of an application the Executive Director must take into account the following:

6.1.1 The requirements of the Bill of Rights in the Constitution of the Republic of South Africa, in particular to the right to freedom of movement;

6.1.2. The objectives of the Act;

6.1.3. The following considerations:

(a) the need for the additional safety and security as requested by the applicant;

(b) the impact on vehicular movement such as the displacing of traffic to neighbouring areas and the creation of an imbalance in distribution patterns;

(c) the impact on pedestrian movement especially to work and income generating opportunities;

(d) the impact on community cohesion and potential conflict if certain direct vehicular and pedestrian access was restricted;

(e) the impact on the functionality of the particular urban area as determined by the Spatial Development Framework of the City;

(f) the impact on businesses and properties both within the proposed restricted area and those situated in the surrounding area and roads;

(f) the impact on provision of services such as maintenance of city utilities and the response times of emergency vehicles; and

(g) the impact on access to public and private amenities such as crèches, recreation centres, schools and sport grounds; and

(h) the desire not to have the appearance of private rather than public areas of the City as signified by closed and locked vehicular or pedestrian gates.

- 6.1.4 The views of the JRA, JMPD, other City Departments and Municipal Owned Entities, the Applicant and members of public.
- 6.2. An application for an authorisation which would restrict or have the effect of restricting access to Class 1, 2 and 3 road such as a freeway, toll road, dual carriageway road or single carriageway and main road or any public transport routes will not be supported.
- 6.3. Access restrictions to central, provincial or local government offices; installations for the provision of essential services such as water and electricity supply, sewage and refuse removal and disposal; telephone and electronic communications; courts; hospitals, clinics and other medical facilities such as medical and dental surgeries and consulting rooms; schools, colleges and universities; refuse or garden waste tip or disposal sites; landfill sites; public libraries and public parking grounds, public parking garages and airports will only considered subject to consent and conditions imposed by the organization or owner of the facility of service, unless the Executive Director is of the view that the withholding of consent or the conditions are unreasonable.
- 6.4. Automation and other forms of technological innovation can enhance the security aspects of Security Access Restrictions but, to protect the factors mentioned in 6.1.3. above these must be actively managed by persons and/or supported by human intervention.
- 6.5. If a security service provider is not duly registered or whose certificate of registration has been withdrawn or suspended, the application will not be authorised.

7. TERMS AND CONDITIONS OF AN AUTHORISATION TO RESTRICT ACCESS

Security Access Restrictions must comply with the following terms and conditions:

7.1. Access control

- 7.1.1. Access control may be in the form of:
- (i) 24 hour manned access point;
 - (ii) 24 hour closed access point but with the ability to be opened;
 - (iii) other gates or booms which can have limited hours of operation.
- 7.1.2. At least one access control point must be manned 24 hours with full vehicular and pedestrian access at all times to any person.
- 7.1.3. The further additional gates or booms may have limited hours of operations as determined in the authorisation and this can include hours where the gates or booms are left open to manage traffic during peak period or closed for increased security.
- 7.1.4. Any accesses that are closed for 24 hours must be capable of being open immediately in the event of an emergency and/or as determined in the authorisations.
- 7.1.5. No fee may be charged for access to the area.
- 7.1.6. No form of discrimination can be applied when granting access to the security access restriction area.

- 7.1.7. Personnel manning the access control point may only monitor activity. They may not search vehicles or people, may not require the filling in of a register or supplying personal information nor delay traffic other than the absolute minimum required to open any gate or boom.
- 7.1.8. Every access control point that requires to be manned and operated must be manned and operated only by a security service provider registered in accordance with Act No. 56 of 2001.
- 7.1.9. Unrestricted access must be allowed at all times to:
- 7.1.9.1. Employees of the State, the Council and any municipal entity, organ of state, Telkom, Eskom and any telecommunications provider acting within the course and scope of their employment and the vehicles they use in connection with their employment;
 - 7.1.9.2. Doctors on call, ambulances and any other emergency service.

7.2. Pedestrian access and pedestrian gates

- 7.2.1. Pedestrian gates should allow for 24 hour unhindered access.
- 7.2.2. Pedestrian gates must have a gate width of 750mm and a vertical clearance of at least 2.1m.
- 7.2.3. Gates must be unlocked at all times except where the Council has relaxed this requirement at a particular pedestrian gate to allow it to be used for limited periods.
- 7.2.4. Approval for limited hours of operation may be considered when the gate is within a 300m walking distance of an alternative unhindered pedestrian access point or, at night time hours determined by the Council if the gate is adjacent to an environment that is not conducive to the safety and security of residents. These environments include neighbouring open velds, parks and green open spaces, highways or major arterials, hiking trails, rivers/spruits and informal settlements.
- 7.2.5. The gates should be self-closing, and no complex latch will be permitted.

7.3. Maintenance

- 7.3.1. The Authorised Body must at all times maintain all such buildings, structures, equipment, machinery, barriers, signs and notices at its cost to the satisfaction of the Administering Department.

7.4. Other terms and conditions

When granting an authority to restrict access the Council may impose any term or condition which it considers to be appropriate, having regard to the factors set out in section 6 above and without limiting its power in any way, can include:

- 7.4.1. That Authorised Bodies are members of the local SAPS community policing or similar forum; and
- 7.4.4. Additional requirements for information to the members of the public.

8. IMPLEMENTATION OF A SECURITY ACCESS RESTRICTION

8.1. Date of authorisation and period of authorisation

8.1.1. In terms of Section 46(1) of the Act, the period of validity of an authorisation granted is two (2) years from the date on which it is published in the Provincial Gazette in terms of Section 44(4) of the Act, unless another date is specified in that Gazette.

8.1.2. An initial application for access restriction will generally be granted for a period of two 2 years.

8.1.3. If an Applicant applies for an extension of an existing authorisation in accordance with Section 46(2), the City may at its sole discretion and on written request by the Applicant, extent such authorisation for period of more than 2 years but not exceeding six (6) years.

8.1.4. An authorisation has no effect until it is so published.

8.1.5. The Executive Director may determine that the authorisation shall take effect on a date later than the date of the publication of the Provincial Gazette in which the authorisation is published. This may be to give the Authorised Body time to prepare for the implementation of the security access restriction.

8.2. Installation of buildings, structures, equipment and machinery

8.2.1. The materials used for the buildings, structures, equipment and machinery required for each access control point as well as their erection or installation, as the case may be, must be to the satisfaction of the Administering Department.

8.2.2. The Authorised Body must submit all plans, drawings or diagrams required by law or by the Council for purposes of implementing this Policy in relation to any building, structure, equipment, machinery, barrier, sign or notice and obtain any necessary approval thereof before commencing the building or installation work involved.

8.2.3. All buildings, structures, equipment, machinery, barriers, signs and notices must be constructed, erected and provided at a location and/or in a position as authorised.

8.2.4. The Authorised Body must provide, at its cost and to the satisfaction of JRA, such vehicle turning facilities as is set out in the authorisation.

8.2.5. The Authorised Body must not move, damage or interfere in any way with any water or electricity supply, storm water drains or installations, sewer or related installation or any pipes, wires or cables used for or in connection with any municipal, central government, provincial government, municipal entity, Telkom, Eskom, organ of state or electronic communications service.

8.3. Signage

8.3.1. Signage must be erected at the expense of the Authorised Body:

8.3.1.1. around and within the area to warn traffic of road closures and to direct emergency, vehicular and pedestrian traffic to alternative access points;

8.3.1.2. at positions not permanently open or closed specifying the hours of operation and contact details of key holder; and

8.3.1.3. must indicate the period of validity of the Security Access Restriction.

8.3.2. Signs must be in accordance with the South African Road Traffic Signs Manual.

8.3.3. The information contained on the signs and the quality of the signage must be approved by the JRA.

8.4. Governance

8.4.1. If the Authorised Body is not a company duly incorporated according to law, the Administering Department may require the Authorised Body, at its cost, to establish either a non-profit company in terms of the Companies Act or another type of juristic person, in which event the Executive Director may grant an authorisation to the Authorised Body on behalf of the non-profit company or other juristic person to be formed, and require such company or juristic person to be formed, to ratify the application made and to confirm its acceptance of the authorisation, including the terms and conditions attaching to it, to the Executive Director's satisfaction, prior to the implementation of the authorisation.

8.4.2. The Authorised Body, at the Authorised Body's cost and to the Administering Department's satisfaction, must provide the Council, prior to the implementation of an authorisation granted, with the following –

8.4.2.1. an indemnity in terms whereof the Council is fully indemnified and held harmless against all claims, losses, demands, proceedings, damages, costs, charges and all legal expenses of whatsoever nature, whether arising out of or in any way connected with the granting of an authorisation or at law, in respect of injury to or the death of any person or loss of or damage to any person or property, damage to any property of the Council, or damages sustained by any person whatsoever, including claims based on loss of income, loss of profits or both;

8.4.2.2. an indemnity in terms whereof the Council is fully indemnified against any damage caused to any of its property whatsoever, arising from or in any way connected with the granting or termination of an authorisation to restrict access;

8.4.2.3. an indemnity in terms whereof the Authorised Body acknowledges that it has no claim against the Council arising from or in any way connected with the lapsing, withdrawal or amendment of the terms and conditions of an authorisation to restrict access and indemnifies the Council against all claims, losses, demands, proceedings, damages, costs, charges and all legal expenses of whatsoever nature arising from or in any way connected with the lapsing, withdrawal or amendment of the terms and conditions of an authority to restrict access;

8.4.2.4. an undertaking in writing that in the event of the authorisation lapsing or being terminated for any reason, the Authorised Body will remove forthwith, at its cost, all buildings, structures, equipment, machinery, barriers, signs and notices and reinstate at its cost any road or other

property of the Council to the satisfaction of JRA within ten (10) business days after the authorisation lapses or is terminated, and will pay on demand to the relevant Municipal Entity the cost of removing any Municipal Service provided in connection with such authorisations;

- 8.4.2.5. the payment of the cost of any Municipal Services rendered or service connections required for or in relation to any access control point; and
- 8.4.2.6. evidence of an agreement reached with Pikitup in respect of waste collection.

9. REVIEWING, WITHDRAWING OR ALTERING A TERM AND A CONDITION OF AUTHORISATION

- 9.1. The Council may impose as a term or condition of an authorisation that, subject to the provisions of the Promotion of Administrative Justice Act, 2000, it may at any time withdraw the authorisation granted or amend the terms and conditions on which it has been granted, if:
 - 9.1.1 the Authorised Body breaches any term or condition attaching to the authorisation;
 - 9.1.2 the Authorised Body fails to enter into or contravenes the terms or conditions of any agreement between itself and the Council in terms whereof the Authorised Body occupies or is given the right to use any portion of a road or public place, or any other property of the Council, for purposes of the authorisation granted;
 - 9.1.3 the Authorised Body fails, refuses or neglects to pay by due date any amount payable to the Council or a municipal entity in respect of any service provided or to be provided to any access control point or any other work or service whatsoever in connection with the authorisation granted;
 - 9.1.4 the SAPS, the Johannesburg Metropolitan Police Department, any organ or department of State, any municipal entity, department of the Council or any other person, body or organisation advises the Council in writing that the implementation of the authorisation is having unforeseen and adverse on traffic flows or is proving ineffective in enhancing safety and security; and
 - 9.1.5 the Authorised Body is unable or fails or neglects to fund the implementation or operation of the authorisation.
- 9.2. If any of the above breach happens the Administering Department shall inform the Authorised Body in writing and give them thirty (30) Business Days to rectify the breach before the authorisation granted is withdrawn or the terms and conditions thereof are amended by the Executive Director. **Notice of such withdrawal/ amendment will be given to the Authorised Body in writing.**
- 9.3. If the Council withdraws an authorisation granted, the Authorised Body shall immediately cease to exercise all forms of access control in the road or public place concerned and shall forthwith remove all buildings, structures, equipment, machinery, barriers, signs, notices and anything else used by it in respect of access control.
- 9.4. If the Authorised Body fails, refuses and or neglects to remove all buildings, structures, equipment, machinery, barriers, signs, notices and anything else used by

it for purposes of the access control, then these shall be deemed to be illegal structures.

- 9.5. The Executive Director shall then inform JMPD to remove illegal structures located in the road reserve in terms of the Roads and Miscellaneous By-law.
- 9.6. For any decision that the Council takes in terms of this policy, the Authorised Body or any Person whose rights are affected, shall be entitled to appeal in terms of section 62 of the Municipal Systems Act.
- 9.7. An appeal under Section 62 of the Systems Act will not suspend the effectiveness of any decision taken or delay the running of any time frames under this policy.
- 9.8. A copy of Section 62 of the Systems Act is annexed hereto marked ANNEXURE "C"

10. THE EXTENSION OF AN AUTHORISATION

- 10.1. Section 46(2) provides that the Council can extend the duration of the initial authority if the Applicant submits an Application in terms of Section 45 at least one month before the initial authorisation to restrict lapses through the effluxion of time.
- 10.2. If such new Application is lodged within that time period, then the initial authorisation is automatically extended until such time as the fresh Application is dealt with and disposed of.
- 10.3. If the new Application for authority to restrict is lodged out of time then:
 - 10.3.1. the automatic extension of the initial authorisation will not come into effect, so that on the lapsing of the initial authorisation granted in terms of Section 43(b) all rights to restrict access will fall away and all buildings, structures, equipment, machinery, barriers, signs and notices must be removed forthwith; and
 - 10.3.2. an authority which has lapsed under Section 46(1) cannot be extended.

11. SUBSEQUENT APPLICATIONS

- 11.1. A subsequent application which is timeous must be dealt with in accordance with Section 45 read with Section 44 of the Act.
- 11.2. On motivation by the Applicant, the Executive Director may agree to a simplified procedure in respect of the traffic impact study.
- 11.3. Subsequent applications will have a reduced fee, as determined annually through the budget process of Council.

12. FEES

- 12.1. The non-returnable administration fee for new applications and subsequent applications shall be set by the Council during its annual budget process.
- 12.2. Fees for subsequent applications can be set at approximately 30% of the initial application fee.

12.1.3. The Executive Director on good cause shown in writing can agree to exempt an Applicant from paying all or some of the application or renewal fees.

13. EXPLANATORY NOTES

13.1. The Administering Department will issue explanatory notes from time to time to respond to changes in technology or circumstances and which can assist applicants in preparing their applications.

ANNEXURE A: SECTIONS 44 to 48 of the Rationalisation of Local Government affairs Act, No 10 of 1998

ANNEXURE B: SECURITY ACCCESS RESTRICTION APPLICATION FORM

ANNEXURE C: PROVISIONS OF SECTION 62 OF THE MUNICIPAL SYSTEMS ACT