

# **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. PURPOSE OF THE POLICY

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. The purpose of these Sections is solely to enable safety and security to be enhanced.

1.2 This Policy sets out –

- the Council's powers under Sections 43, 44 and 45 of the Act;
- definitions of words and expressions used in the Policy;
- the making of an application under Section 45;
- the procedure to be followed after an application has been made;
- factors which the Council will take into account when considering an application;
- terms which may be imposed if an application is granted;

- the Council's right to review an authorisation which has been granted under Section 45 and to withdraw it or to alter any term or condition imposed when the authorisation was granted;
- the right to appeal against a decision concerning an application;
- the period of validity of an authority granted under Section 45;
- extensions of validity under Section 46;
- applications which will not be supported.

## 2. THE COUNCIL'S POWERS UNDER SECTIONS 43 TO 48 OF THE ACT

2.1 Sections 43 to 48 of the Act are set out in full in Annexure "A" hereto for the convenience of all interested parties.

2.2 Section 43 empowers the Council to do two things, namely –

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

2.2.2 to 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 subparagraph 2.2.2 above.

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.

2.4 Section 46(1) is important. It provides that 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) pending consideration by the Council of an application for the renewal of the authorisation, provided that the applicant complies with the requirements of Section 46.

2.5 Attention is drawn particularly to the penal provisions contained in Section 47. It is therefore important to stress that no person, body or organisation may restrict access to a public place without a valid authorisation to do so. This must be borne in mind particularly if an authorisation which has been granted lapses in terms of Section 46 and is not renewed, or is withdrawn for any reason. In such an event any right to restrict access would fall away immediately.

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.

### 3. DEFINITIONS

3.1 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 –

**“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;

**“applicant”** includes the applicant’s duly authorised representatives ;

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

**“barrier”** includes a palisade and a fence;

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

**“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);

**“JRA”** means 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;

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

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

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

**“prescribed”** means prescribed by the Council;

**“relevant law”** means any law, including any By-law of the Council, which –

- (i) is applicable to traffic, whether vehicular or pedestrian;
- (ii) 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;
  - prescribes safety measures to be taken in regard to the installation, operation or maintenance thereof;
- (iii) concerns the installation of or the right to operate electronic communications equipment or facilities

and 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;

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

**“the Systems Act”** means the Local Government : Municipal Systems Act, No. 3 of 2000;

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

3.2 The definition of “public place” in the Act reads as follows :

**“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;**

It relates only to public places vested in a municipality. Consequently, neither the Act nor this Policy concern roads or other public places not owned by or vested in the Council.

#### 4. MAKING AN APPLICATION IN TERMS OF SECTION 45

4.1 Every application for an authorisation in terms of Section 45 of the Act must be made on the form set out in Annexure “B” and must be accompanied by payment of the prescribed non-

refundable administrative fee contemplated in Section 45(1)(c) of the Act.

4.2 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 showing –

4.2.1 the boundary of the area in respect of which access is to be restricted;

4.2.2 the location of all surrounding roads, clearly indicating the nearest external through-route on each side of the area;

4.2.3 through-routes to be restricted and their recommended alternative routes;

4.2.4 location of fire hydrants and water points for the connection of fire hoses within and on the perimeter of the area to be restricted;

4.2.5 all internal roads;

4.2.6 the location of proposed access control points;

4.2.7 any land uses which may be affected by the proposed restrictions.

4.3 The Council, on good cause being shown to it by the applicant, may, in its sole discretion, accept a locality plan to a scale other than 1:20 000.

4.4 The application must set out in as much detail as can be provided, the circumstances giving rise to the application. If those circumstances are crime-related, statistics of crimes committed which constitute those circumstances should be

obtained from the South African Police Service for the period of six months preceding the date of the application and be attached to it. If such statistics cannot be obtained, the reasons therefor must be set out in the application.

- 4.5 The application must give as much information as possible relating to the category and estimated number of persons affected by the circumstances giving rise to the application. This information relates to the categories of persons who have been directly affected by the circumstances giving rise to the application, as, for example, 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.
- 4.6 Having regard to the fact that the authorisation to restrict access must be linked to the need for increased safety and security, the seriousness and prevalence of the factors motivating the application should be emphasised in the application.
- 4.7 The application must, at the least, give full particulars of –
  - 4.7.1 the nature and extent of the restriction applied for;
  - 4.7.2 the precise location of each proposed access control point;
  - 4.7.3 the means by which access control is to be regulated;
  - 4.7.4 the buildings, structures, equipment, machinery and barriers which it is proposed to build, erect, install or to use at each access point and whether any municipal services will be required;

- 4.7.5 the hours during which access control is to be implemented;
- 4.7.6 the toilet facilities to be provided for personnel manning each access control point and how such facilities are to be managed and maintained;
- 4.7.7 the precise location of all such toilet facilities;
- 4.7.8 whether vehicles of any type are to be used in conjunction with the regulation of access control and, if so, the type of vehicles to be used and their functions;
- 4.7.9 the provision to be made for the parking of vehicles at each access control point and to enable vehicles to turn;
- 4.7.10 if any building, structure, equipment, machinery or barrier is proposed to be built, erected or installed on a road, or other land or public place owned by or vested in the Council –
  - 4.7.10.1 whether the Council has given its approval in principle to the applicant's occupation thereof, and if so a copy of any proposed agreement governing such occupation between the Council and the applicant must be attached to the application; and
  - 4.7.10.2 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.
- 4.7.11 the total number of personnel who, during each day and night, will man 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;

- 4.7.12 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;
- 4.7.13 any sign or notice which it is proposed to erect to indicate the presence of an access control point, 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.
- 4.7.14 all fixed properties which are served by the road 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;
- 4.7.15 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;

4.7.16 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;

4.7.17 A plan, to the scale of 1:500, must accompany the application and must depict the location of each access control point referred to in sub-paragraph 4.7.2 and the location of each place referred to in sub-paragraph 4.7.15 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;

4.7.18 A plan, to the scale of 1:500, on which the zoning information required under sub-paragraph 4.7.14, accompanied by a schedule containing information about the actual use to which each property to contemplated in that sub-paragraph is put, must be attached to the application.

4.7.19 The Council, on good cause being shown to it by the applicant, may, in its sole discretion, accept a plan to a scale other than those referred to in paragraphs 4.2, 4.3 and sub-paragraphs 4.7.17, 4.7.18 and 4.7.21.1;

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

- 4.7.20.1 an estimate of the number of persons residing in premises served by any road in respect of which the application is made;
  - 4.7.20.2 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;
  - 4.7.20.3 an estimate of the number of vehicles of all types which use any such road on a normal working day;
  - 4.7.20.4 the basis on which the estimates referred to in sub-paragraphs 4.7.20.1 to 4.7.20.3 above were made.
- 4.7.21 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 so that traffic wishing to use that road will only be able to gain access to it through an access control point, then the application must contain the following further information –
- 4.7.21.1 A plan, to the scale of 1:500 or such other scale as the Council may in its sole discretion accept, showing each road on which a barrier is to be erected;
  - 4.7.21.2 the precise point in such road where the barrier is to be erected;
  - 4.7.21.3 the material to be used for the barrier;

- 4.7.21.4 full particulars as to how the barrier is to be erected and maintained;
  - 4.7.21.5 sub-paragraph 4.7.10 above must be complied with in regard to the proposed barrier;
  - 4.7.21.6 if such road serves or provides access to any of the places specified in paragraph 4.7.15, the nature and location of each such place must be shown on the plan referred to in sub-paragraph 4.7.21.1;
  - 4.7.21.7 full particulars of any sign or notice to be erected on such 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 to be contained in such sign or notice.
  - 4.7.21.8 whether the views of the persons who live or work in premises situated on that road have been solicited in relation to the proposed erection of such barrier and the responses received.
- 4.7.22 Section 45(1)(b) of the Act requires the applicant to furnish proof to the Council that at least two-thirds of the persons affected by the circumstances which have given rise to the application, as referred to in paragraphs 4.4 and 4.5 above, support the restriction on access which is being sought. This requirement can be complied with by annexing to the application one or more documents in which the persons concerned -

- 4.7.22.1 acknowledge that they have read and understood the application;
  - 4.7.22.2 state their support for it;
  - 4.7.22.3 state their reasons for supporting it and how they were affected by the circumstances giving rise to the application ;
  - 4.7.22.4 state their full names and addresses;
  - 4.7.22.5 sign the document and give the date of signature.
- 4.7.23 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 name and address of the service provider concerned must be provided, together with written proof that such service provider is duly registered as such in terms of Section 21 of that Act. A copy of the service provider's current registration certificate must be attached to the application. The Council will not approve of a security service provider that is not so registered or whose certificate of registration has been withdrawn or suspended.
- 4.7.24 The Council will not favourably consider an application which does not provide for –
- 4.7.24.1 at least one access control point to be manned and operated at all times;
  - 4.7.24.2 every access control point that requires to be manned and operated, to be manned and operated only

by a security service provider registered in accordance with Act No. 56 of 2001.

- 4.7.25 The application, together with copies thereof, must be submitted, together with all supporting documents and proof of payment of the prescribed non-refundable administrative fee referred to in paragraph 4.1, to the Council, care of JRA, at the address reflected in Annexure “B” hereto.
- 4.7.26 The Council 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. 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.
- 4.7.27 In particular, the Council may require the applicant to submit, at the applicant’s cost, a traffic impact report prepared by a professional engineer specialising in matters pertaining to road traffic, which report must, at the least, 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 –
- 4.7.27.1 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 access control point;

- 4.7.27.2 the suitability of the type of access control to be implemented;
- 4.7.27.3 the concentration of vehicular traffic at access control points;
- 4.7.27.4 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;
- 4.7.27.5 any office, facility, or business or place referred to in paragraph 4.7.15;
- 4.7.27.6 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, where applicable;
  - turning bays;
  - entrance layout.
- 4.7.27.7 the accessibility which would be available to –
- (i) official vehicles of the central and provincial governments, the Council, any municipal entity or other organ of state, Telkom, Eskom and any electronic communications provider;
  - (ii) emergency vehicles (including fire, ambulance and civil defence vehicles) and vehicles of medical or nursing practitioners;

- (iii) service vehicles, such as buses and vehicles used for refuse removal, road repairs, water services, electricity services, maintenance of any form of infrastructure;
- (iv) vehicles of private contractors used for the purpose of providing services to persons residing or working in the area affected by the granting of the application, and
- (v) vehicles of persons patronising any business establishment or professional practice;

4.7.28 If the applicant is a juristic person (i.e. a company or other corporate body) the application must be accompanied by –

4.7.28.1 a certified copy of the resolution authorising the application, and

4.7.28.2 a power of attorney authorising the person or persons who sign the application to act on behalf of the applicant.

4.7.29 An application must contain full particulars as to how the implementation of the authorisation to restrict access applied for will be funded, including the funding of –

4.7.29.1 the provision of every proposed access control point and all proposed buildings, structures, equipment, machinery, barriers, signs and notices;

4.7.29.2 the maintenance of such buildings, structures, equipment, machinery, barriers, signs and notices;

- 4.7.29.3 the provision of any barrier to be erected across any road not having an access control point, and the maintenance of such barrier;
  - 4.7.29.4 the payment of the fees and charges of every security service provider engaged by the applicant;
  - 4.7.29.5 the cost of providing any municipal service required by the applicant for purpose of implementing the authorisation and the payment of charges for any such service;
  - 4.7.29.6 the cost of taking out such insurance cover and providing such indemnities as the Council may require;
  - 4.7.29.7 the funding of such fees and deposits as the Council may require;
  - 4.7.29.8 the provision to be made for removing all buildings, structures, equipment, machinery, barriers, signs, notices and municipal services, and the reinstatement of all roads and other property of the Council to JRA's satisfaction, in the event of an authorisation lapsing through effluxion of time or being terminated by the Council.
- 4.8 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. The cost of publishing any notice or other document in terms of any law must be paid by the applicant to the Council before the Council issues an order for such publication.

5. PROCEDURE FOLLOWING THE SUBMISSION OF THE APPLICATION
  - 5.1 The application will in the first instance be processed by JRA on behalf of the Council.
  - 5.2 On receipt of the application JRA will –
    - 5.2.1 acknowledge receipt in writing of the application within seven (7) business days after payment by the applicant of the application fee and in that acknowledgment provide the applicant with a reference number for the application;
    - 5.2.2 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.
  - 5.3 JRA must, as soon as reasonably possible, compile a report on the application for the Council's consideration. The report must contain such comments and recommendations as JRA considers appropriate.
  - 5.4 For purposes of compiling its report JRA shall carry out such inspections as it considers necessary.
  - 5.5 JRA may for purposes of its report 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.
  - 5.6 On completion of its report JRA shall forthwith submit it to the Council's Executive Director : Development Planning and Urban Development.

- 5.7 The Executive Director referred to above shall, if necessary, request JRA to clarify in writing any aspect of its report.
- 5.8 The Council shall, within ten (10) business days after receiving the report or the communication clarifying aspects of the report, as the case may be, provide the applicant with a copy of such report and, where applicable, a copy of the communication concerned.
- 5.9 The Council must, within ninety (90) days after receipt of JRA's report or, where applicable, after receipt of a communication from JRA clarifying that report, make arrangements with the South African Police Service for a meeting to be held, as required by Section 45(2) of the Act, to discuss with Police representatives, the applicant and the Council's representatives the application lodged by the applicant and to 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.
- 5.10 The Council must finalise arrangements for such meeting after consultation with the applicant or its representatives and must thereafter as soon as reasonably possible advise the applicant and the South African Police Service in writing of the date, time and place at which the meeting will be held.
- 5.11 The applicant must advise the Council of the name or names and contact details of the person or persons (which shall not exceed three in number unless both the South African Police Service and the Council agree to an increased number) who will represent it at the meeting.
- 5.12 The Council shall as soon as reasonably possible prepare and provide the applicant and the South African Police Service with minutes of the meeting.

- 5.13 After the conclusion of such meeting the Council must, within a reasonable time, determine whether or not it intends to grant the application and terms and conditions which should be imposed, should authorisation applied for be granted and must record its decision in writing. The necessary reports and documentation to enable consideration to be given to the application must be submitted to the relevant committee of the Council which will consider the application in the first instance within forty five (45) business days after the conclusion of the meeting referred to in sub-paragraph 5.9 above.
- 5.14 If the Council considers that the application should not be granted, it must as soon as reasonably possible advise the applicant in writing accordingly, giving its reasons, and invite the applicant to submit, within a stated time, any further representatives it may wish to make, in accordance with the provisions of the Promotion of Administrative Justice Act, No. 3 of 2000. The Council must consider any representations so made and thereafter make a final decision on the application, which decision, together with the Council's reasons for it, must be communicated to the applicant in writing. If the applicant fails to respond to the invitation to submit further representations within a period of ten (10) business days, which period must be stated in the invitation, the Council may assume that it does not intend to submit any further representations.
- 5.15 If the Council determines that the application should be granted it must –
- 5.15.1 advise the applicant in writing within fourteen (14) business days thereafter of its determination and the proposed terms which will apply to the authorisation to restrict access, and further advise it of the date on which it proposes to publish for public comment its

determination and the draft terms and conditions of the restriction in accordance with the provisions of the Act;

5.15.2 as soon as reasonably possible –

5.15.2.1 comply with Section 44(1)(c)(i) and (ii), read with Section 45(3) of the Act.

5.15.2.2 consider all comments received from the public;

5.15.2.3 advise the applicant in writing of all such comments received and invite it to submit to the Council within a stated time, any written representations it may wish to make on the proposed terms of the authority to restrict and the comments received from the public, provided that if the applicant fails to make such written representations by the stated time, the Council may assume that the applicant does not intend to do so;

5.15.2.4 submit all comments or representations received from the public and the applicant to the JRA for its consideration, comments and recommendations;

5.15.2.5 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 should be held, it must act in accordance with the relevant provisions of the Promotion of Administrative Justice Act, No. 3 of 2000 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 Council agrees to a higher number;

5.15.2.6 if it decides that an enquiry should be held, have regard to the provisions of the Promotion of Administrative Justice Act, No. 3 of 2000, including Section 4(2) thereof;

5.15.2.7 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;

5.15.2.8 thereafter advise the applicant in writing within ten (10) business days of the final determination made in respect of its application;

5.15.2.9 publish the final determination in the Provincial Gazette as required by Section 44(4) of the Act.

## 6. FACTORS TO BE TAKEN INTO ACCOUNT REGARDING AN APPLICATION

6.1 When considering the merits of an application and in coming to a decision in regard to it, the Council must take into account –

6.1.1 the objects of Chapter 7 of the Act;

6.1.2 the comments and recommendations (if any) of –

- 6.1.2.1 the South African Police Service;
  - 6.1.2.2 JRA.
  - 6.1.3 the information and representations submitted by the applicant in support of its application ;
  - 6.1.4 the comments and representations received from the general public in relation to the application ;
  - 6.1.5 the evidence submitted to and the findings of any enquiry ;
  - 6.1.6 the likely effect of granting or refusing the application;
  - 6.1.7 the applicant's ability to fund the implementation and operation of the authorisation as contemplated in paragraph 4.7.29.
7. TERMS AND CONDITIONS OF AN AUTHORISATION TO RESTRICT ACCESS
- 7.1 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 paragraph 6 above. Without limiting its power in any way, the Council may impose any term or condition in order to provide for all or any of the following :
- 7.1.1 All buildings, structures, equipment and machinery required for each access control point must be erected or installed, as the case may be, to the satisfaction of the Council and JRA.
  - 7.1.2 All materials used for such buildings, structures equipment and machinery must be to the satisfaction of Council and JRA.

- 7.1.3 The applicant 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.
- 7.1.4 The applicant must at all times maintain all such buildings, structures, equipment, machinery, barriers, signs and notices at its cost to the satisfaction of the Council and JRA.
- 7.1.5 All buildings, structures, equipment, machinery, barriers, signs and notices must be constructed, erected and provided at a location or in a position approved by the Council.
- 7.1.6 The applicant must provide, at its cost and to the satisfaction of JRA, such vehicle turning facilities as the Council may require;
- 7.1.7 Any barrier to be erected must be made of material which is to the satisfaction of JRA ;
- 7.1.8 A metal barrier must be painted with rust resistant paint of a quality approved by the South African Bureau of Standards and be maintained by the applicant to the satisfaction of JRA ;
- 7.1.9 The applicant must not move, damage or interfere in any way with any water or electricity supply, stormwater 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;
- 7.1.10 All access control points must allow unrestricted access at all times to 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 to the vehicles they use in connection with their employment;
- 7.1.11 All access control points must allow unrestricted access at all times to doctors on call, all ambulances and any other emergency service;
- 7.1.12 The applicant must, at its own expense, erect and maintain to the satisfaction of JRA at places designated by it, such signs, including road traffic signs as contemplated in the National Road Traffic Act, 1996, as may be required by it. Such signs must be of a quality approved by JRA and, in regard to signs giving information, contain such information as JRA may require;
- 7.1.13 If the applicant is not a company duly incorporated according to law, the Council may require the applicant, at its cost, to establish either a non-profit company in terms of the Companies Act, No. 71 of 2008, or another type of juristic person, in which event the Council may grant an authorisation to the applicant 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 Council's satisfaction, prior to the implementation of the authorisation.

- 7.1.14 The applicant, at the applicant's cost and to the Council's satisfaction, must provide the Council, prior to the implementation of an authorisation granted, with the following –
- 7.1.14.1 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;
  - 7.1.14.2 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;
  - 7.1.14.3 an indemnity in terms whereof the applicant 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;

- 7.1.14.4 a public liability insurance policy, to be kept in full force and effect by the applicant throughout the duration of the authorisation, with an insurer approved by the Council, in terms whereof the Council and the applicant are fully covered in regard to their respective rights and interests, and in terms whereof cover of at least R7 million or such higher amount as the Council may from time to time require, is provided per incident, the number of incidents to be unlimited;
- 7.1.14.5 a deposit in such amount as the Council may determine, to be paid to the Council and retained in an interest-bearing account, to be used by the Council in the event of an access point and its related buildings, structures, equipment, machinery, barriers, signs and notices having to be removed and any road re-instated in good order in the event that the authorisation lapses through the effluxion of time or is terminated by the Council or the applicant for any reason;
- 7.1.14.6 an undertaking in writing that in the event of the authorisation lapsing or being terminated for any reason, the applicant 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 Council the cost of removing any municipal service provided in connection with such authorisations;

- 7.1.14.7 the payment of the cost of any municipal services rendered or service connections required for or in relation to any access control point ;
- 7.1.15 The manner in which and the extent to which an authorisation may be implemented.
- 7.2. In the event that not all of the deposit, with accrued interest, referred to in sub-paragraph 7.1.14.5 is used by the Council, the remaining balance will be refunded to the applicant;
- 7.3 The applicant must on demand produce written proof to the Council that the premiums payable in respect of the policy envisaged in sub-paragraph 7.1.14.4 were paid on or before due date and that the policy is of full force and effect.

## 8. THE COUNCIL'S RIGHT TO REVIEW

- 8.1 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 –
- 8.1.1 the applicant breaches any term or condition attaching to the authorisation;
- 8.1.2 the applicant fails to enter into or contravenes the terms or conditions of any agreement between itself and the Council in terms whereof the applicant 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;

- 8.1.3 the applicant 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;
  - 8.1.4 the South African Police Service, the Johannesburg Metropolitan Police Department, any organ or department of State, any municipal entity, department in the City of Johannesburg's administration 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;
  - 8.1.5 the applicant is unable or fails or neglects to fund the implementation or operation of the authorisation.
- 8.2 If the Council withdraws an authorisation granted, the applicant 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 and notices and anything else used by it in respect of access control.

## 9. THE RIGHT OF APPEAL

- 9.1 Section 62 of the Systems Act deals with appeal procedures.
- 9.2 A copy of Section 62 is annexed hereto marked ANNEXURE "C", for the convenience of all interested parties.
- 9.3 Significant aspects of Section 62 are –
  - 9.3.1 any person whose rights are affected by a decision taken by a political structure or person referred to in Section 62(1), in terms of powers delegated or sub-delegated in terms of

Section 59 of the Systems Act, has a right of appeal against that decision.

9.3.2 the right of appeal therefore extends not only to an applicant who may be dissatisfied with a decision to refuse an application for an authorisation, or to impose certain terms and conditions when an application is granted, or to the withdrawal or amendment of an authorisation granted, but also to any person who has objected to or made representations concerning the granting of an authorisation to restrict access and whose rights are affected by the Council's decision.

9.3.3 a person, including an applicant, desiring to appeal must comply strictly with the time limits stipulated in Section 62.

9.3.4 a notice of appeal must be in writing, must set out fully the reasons why an appeal is being lodged, giving details of the decision being appealed against, and must be addressed and delivered to the City Manager of the City of Johannesburg Metropolitan Municipality, who must then ensure that the appeal is properly dealt with by the appropriate appeal authority.

## 10. THE PERIOD OF VALIDITY OF AN AUTHORISATION

10.1 In terms of Section 46(1) of the Act, the period of validity of an authorisation granted is two years from the date on which it is published in the Provincial Gazette by the Council in terms of Section 45(4) of the Act, unless another date is specified in that Gazette.

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

10.3 The Council 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.

## 11. EXTENSION OF AN AUTHORISATION

11.1 The extension of an authorisation to restrict is dealt with in Section 46 of the Act.

11.2 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. That application (“the fresh application”) would have to comply in all respects with Section 45(1).

11.3 If such fresh application is lodged within that time period, then the initial authorisation is automatically extended until such as the fresh application is dealt with and disposed of.

11.4 If the fresh application for authority to restrict is lodged out of time (for example, fourteen days before the initial restriction would automatically lapse), the consequences are –

- that 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;
- an authority which has lapsed under Section 46(1) cannot be extended.

11.5 Section 46 enables an applicant who wishes the initial authority to remain in place while the fresh application is being dealt with to achieve that by lodging the fresh application timeously.

11.6 The Council will not extend the time limit provided for the lodging of the fresh application. It must be lodged at least one month before the expiry of the existing authorisation to restrict, failing which it would be out of order.

11.7 A fresh application which is timeous must be dealt with in accordance with Section 45 read with Section 44 of the Act. In other words, all the procedures applicable to a first application under Section 45 must be followed.

## 12. APPLICATIONS WHICH WILL NOT BE SUPPORTED

12.1 The Council will not generally support an application for an authorisation which would restrict or have the effect of restricting access to –

12.1.1 a freeway, toll road, dual carriageway road or single carriageway main road;

12.1.2 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.

## 13. AVAILABILITY OF DOCUMENTS

- 13.1 If the Council determines that an application for an authorisation to restrict access should be granted it must, as soon as reasonably possible and in addition to complying with Section 44(1)(c) of the Act –
- 13.1.1 place on its official website the application received, together with all the supporting documents submitted with it, and all written reports received by the Council and relied upon by it;
  - 13.1.2 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;
  - 13.1.3 state on the website the place where and the times when the originals of the documents referred to in sub-paragraph 13.1.1 and 13.1.2 may be inspected and the prescribed fee (if any) to be paid for such inspection;
  - 13.1.4 make the original documents available for public inspection at the place and times so stated against payment of the prescribed fee (if any);
  - 13.1.5 ensure that the requirements of Section 21A of the Systems Act are promptly complied with in regard to the making of the relevant documents available to the public.