

Final Project Report

Regulatory and Administrative Challenges in the City of Johannesburg

September 2009



Contents

1. Project rationale and background.....	3
1.1. Rationale	3
1.2. Overview of the project	3
2. Comparative strengths and weaknesses.....	5
2.1. Johannesburg as a global city.....	5
2.2. Comparative performance against other emerging markets	5
2.3. Businesses' perceptions of CoJ	6
3. Local government and economic development	8
3.1. A mandate for local economic development.....	8
3.2. Regulatory good practice, economic growth and job creation	9
4. By-Law Review	11
4.1. Toward better regulation: generic issues and recommendations.....	12
5. Impact of administrative efficiency on business activity	14
5.1. Coordination across tiers of government.....	14
5.2. Coordination within CoJ	15
5.2.1. Impact of coordination problems: Business licences case study.....	16
5.3. Communication between government and business	18
5.3.1. Slow response times	18
5.3.2. Single point of contact for large-scale investors	19
5.3.3. Access to information.....	20
5.4. Perceptions of government efficiency	23
5.4.1. Interactions with the call centre	23
5.4.2. Efficiency of municipal billing.....	23
5.4.3. Capacity of government staff.....	25
5.5. Impact of resource constraints	26
5.5.1. The need to update systems and technology	26
6. Enforcement of by-laws.....	28
7. Key recommendations arising from Administrative Review	29
7.1. Development Approvals.....	29
7.1.1. Challenges and recommendations	29
7.2. Procurement Processes.....	34
8. Conclusions and recommendations.....	38
8.1. By-law review.....	38
8.1.1. Access to information.....	38
8.2. Improving administrative efficiency	39
8.2.1. Frontline capacity	39
8.2.2. Communication	39
8.2.3. A need for proactive engagement	39
9. Action Agenda for the DED	41
10. Annex: CoJ By-laws: potential areas for review	45
10.1. Public Health By-Laws	45

10.1.1.	Areas for possible review	45
10.2.	Waste Management By-Law	48
10.2.1.	Areas for possible review	48
10.3.	Advertising Signs and Hoarding By-Laws	49
10.3.1.	Areas for possible review	49
10.3.2.	Process concerns.....	50
10.4.	Emergency Services By-Law	51
10.4.1.	Areas for possible review	51
10.5.	Encroachment on Property By-Law.....	52
10.5.1.	Areas for possible review	52
10.6.	Metered Taxi, Minibus, Midibus and Bus By-Law.....	54
10.6.1.	Areas for possible review	54
10.7.	Water Services By-Law.....	55
10.8.	Credit control and debt collection	55
10.9.	Property rates policy	56
10.10.	Constraints on development of government land	57

1. Project rationale and background

1.1. Rationale

The City of Johannesburg's Department of Economic Development (DED) is mandated to influence, guide and direct economic development activities in the City.¹ Given this mandate, the Department is interested in the extent to which regulatory problems – from inappropriate by-laws to weak implementation and inadequate enforcement – influence the business environment.

Key regulatory and process reforms might be needed to boost economic activity and investment in the city. The Department commissioned SBP to assess the city's by-laws and administrative processes, to identify potentially negative impacts on business activities and investment.

SBP is an independent company specialising in business environment research and process review. SBP has extensive expertise in projects that aim to simplify and improve the administrative and regulatory environment for business, including regulatory compliance cost studies, regulatory impact assessment and cost benefit analysis.

The project included extensive desk review, together with in-depth, qualitative engagement with key stakeholders in government and the private sector. On this basis, the project identified specific municipal regulatory requirements and administrative processes with potentially negative impacts. This report provides a summary of the key issues, with recommendations for priority reforms.

1.2. Overview of the project

This Final Report provides a succinct review of the key project findings, and recommends specific administrative reforms to improve the ease of doing business in the city. It also sets out an action agenda, to be taken forward by the CoJ DED in order to facilitate the implementation of these recommendations.

The Final Report draws together a review of relevant by-laws, policy documents and selected administrative processes, and consultations with officials and business people. The three reports compiled during Phase 2 of the project (a project report and two companion reports) may be consulted for more detailed analysis and in-depth review.

¹ Directorates include Spatial Economic Development, Sector Support and Development, Trade and Investment Promotion, SMME Development, Special Projects, Policy and Programme Integration and Economic Research

Phase 1 of the project comprised a desk-based policy and regulatory review. The desk review included:

- In-depth legal review of selected by-laws with a potentially significant impact on business activity
- A selection of provincial legislation and strategy documents with an impact on businesses' investment decisions at local level and/or an impact on CoJ's abilities to encourage investment and economic growth
- Recent surveys assessing business' perspectives on investing in Johannesburg
- Current research on the impact of municipal regulations on businesses.

In Phase 2 SBP undertook in-depth consultation with senior management in relevant CoJ departments and municipal entities, to further explore the issues identified in Phase 1 and identify areas for possible regulatory and process reform. SBP also undertook discussions with selected business people to identify their views on priority challenges and areas for regulatory and process reform. On this basis, SBP developed a detailed Phase 2 report which identified specific regulatory issues which CoJ needs to review. In addition, two companion reports provided a detailed review of selected administrative processes associated with 1) development approvals and 2) procurement processes – issues identified by business as being particularly problematic. The main findings of the by-laws review conducted in Phase 2 are included as an Annex to this report.

2. Comparative strengths and weaknesses

2.1. Johannesburg as a global city

In recent decades, the role of cities has changed profoundly. Cities now function in a global rather than national economic context, with highly interconnected economic links that include multinational corporations and international financial mechanisms. A city's significance in the global economy is partly determined by its level of connectivity with the rest of the world and its capacity in secondary and tertiary sectors such as accounting, advertising, banking, law and management services.

The Globalisation and World Cities Study Group (GAWC) has identified Johannesburg as Africa's only world city and a regional motor in the global economy.² The Johannesburg Securities Exchange (JSE) makes up approximately 90 percent of the entire capital market of Africa. Johannesburg is the main financial city on the continent and accounts for 10 percent of the GDP of the Southern African Development Community (SADC). The city ranks as a major global accountancy and banking services centre, and a minor global advertising centre.

Johannesburg's current and future growth is dependent on its ability to compete internationally to attract investment, to provide an attractive location for the head offices or regional offices of international companies, to retain skilled workers and grow its high value-add activities. The City's plans for economic growth and development need to be based on its competitive and comparative advantages.

The City of Johannesburg Economic Development Policy and Strategy Framework (JEDPS) identifies seven key sectors as economic drivers, namely ICT, business process outsourcing (BPO), freight and logistics, tourism, creative industries, mining and beneficiation, and manufacturing. In addition, the Framework also states that the City will endeavour to provide a supportive environment for financial and business services, trade services, agriculture and agro-processing and community services.³

2.2. Comparative performance against other emerging markets

The 2008 MasterCard *Worldwide Centres of Commerce Emerging Markets Index* identifies and ranks the 65 most important cities in emerging market countries. It selects these centres of commerce based on their contribution to the evolution of their national economies and their global significance.

² Globalisation and World Cities Study Group – GAWC, University of Loughborough, UK

³ City of Johannesburg Economic Development Policy and Strategy Framework, Third Draft, 9 October 2008, Grant Thornton, MCA

In 2008, South Africa was represented by three cities in the top 40 ranked markets, namely Johannesburg, Cape Town and Durban. Johannesburg ranked number eleven overall, followed by Cape Town at 33 and Durban at 37. The Index shows the three South African cities performing well against other emerging markets on various country-level regulatory measures. However, performance on economic growth and development indicators is comparatively poor – as summarised in the table below.

Johannesburg	
Comparative strengths	Comparative weaknesses
Ease of starting and closing a business	Economic growth and development, incl. GDP growth, FDI, export activity
Access to credit	
Contract enforcement & investor protection	Commercial connectivity incl. air-passenger traffic & business travel
Corporate tax level	
Ease of dealing with licences	Education and IT connectivity incl. performance in higher education, & limited connectivity with global economy through telephone & internet
Ease of registering property	
Trading across borders	
Perceptions of corruption	
Financial services environment, incl. bonds & equities trading, forex regulation, banking services	

2.3. Businesses' perceptions of CoJ

The CoJ Business Satisfaction Survey, which is conducted on an annual basis, provides a snapshot of key challenges in the City's efforts to promote itself as an attractive place for doing business.⁴

In 2008, only 41 percent of businesses described Johannesburg as a **good investment environment**, down from 52 percent in 2007. About a third of businesses claimed to be 'not sure' while 28 percent indicated that they lacked confidence in Johannesburg as a business investment environment.

Businesses were asked to rank **the importance of various challenges**. The top ranked challenges identified were unemployment, crime, small business development, HIV/AIDS, and health care.

Businesses were also asked to indicate their level of satisfaction with the **service delivery performance** of the CoJ. The majority of businesses rated sanitation, storm-

⁴ Household and Business Satisfaction Surveys, 2008, Study commissioned by Central Strategy Unit, City of Johannesburg, Compiled by DH Tustin, AA Ligthelm, Bureau of Market Research, University of South Africa, August 2008, Sample = 500 formal sector businesses

water, street lights, water provision and refuse collection as good. Neighbourhood streets were rated as adequate, and electricity provision as poor. While service delivery is not a core focus of this study, it is a critical component of the business environment. The City's regulatory and administrative efficiency is likely to have significant bearing on effective service delivery – as evidenced in challenges around accurate utilities billing and debt collection, for example, discussed below.

3. Local government and economic development

3.1. A mandate for local economic development

Municipalities exercise a range of powers and functions with a direct impact on the business environment and business activity. The viability of business start-up and investment is closely linked to the availability of adequate and appropriate business premises and/or land for development, as well as basic service infrastructure including power and utilities, road networks and quality, and transport logistics. Other key areas that impact on business include business licencing, rates and utility charges, procurement policies and systems and supply chain management, land-use, planning and zoning, and the design and implementation of by-laws. For smaller and emerging businesses, the provision of effective information portals and business support services can be critical factors in determining their success or failure.

The South African Constitution and the national legislative framework define the regulatory and developmental roles of local government. Municipalities typically create and administer their own regulations within parameters determined by national or provincial government, or enforce regulations on behalf of other spheres. The implementation of a plethora of new national legislation has created a considerable challenge for municipalities.

Key national government Acts with an impact on municipal functions include the National Land Transportation Transition Act, the Development Facilitation Act, the Municipal Systems Act, the National Building Regulations, the Property Rates Act and the Municipal Finance Management Act. In addition, municipalities must assist in the implementation of various provincial laws and regulations, including the Development and Planning Act and municipal ordinances, as well as traffic regulations.

The 1998 White Paper on Local Government provides a framework within which municipalities must develop their own strategies for promoting the social and economic development of communities. Developmental outcomes of local government identified in the White Paper include “the provision of household infrastructure and services; creation of liveable, integrated cities, towns and rural areas; local economic development; and community empowerment and redistribution.” The Municipal Systems Act of 2000 (MSA) and the Municipal Planning and Performance Management Regulations of 2001 take this further by providing a basis for integrated development planning, which has seen municipalities develop Local Economic Development Strategies and establish dedicated LED functions. Under Project Consolidate, some municipalities have also developed Service Charters, committing them to continuous improvements in service delivery and to maintaining specific service standards.

The Intergovernmental Relations Framework Act (2005) provides a series of forums designed to harmonise the efforts of the three tiers of government in relation to local economic development (LED) and business promotion. LED encompasses a range of local government functions including planning, infrastructure provision, real estate, finance and support for new enterprise and small business. Ideally, this requires a holistic approach with effective coordination across municipal departments and functions, and integration of LED objectives in a broad range of strategies and policies.

3.2. Regulatory good practice, economic growth and job creation

Appropriate regulation is important for development and job creation. Good regulation encourages trade and investment – it makes an economy more competitive and helps the private sector to grow and thus create jobs. It is also an essential component of good governance.

In order for business to function within the law, legal requirements must be clear and accessible: the law must be understandable and it must be evident what is required for compliance with the law. Compliance requirements must be reasonable and achievable, and the balance of compliance costs against anticipated benefits must be carefully considered. Regulatory requirements that are overly onerous on business and/or are not adequately justified in terms of achieving anticipated outcomes only increase the red tape with which business must comply and render it more difficult for business to operate.

Good regulation is especially important for small business. Although regulations affect the private sector as a whole, they weigh most heavily on smaller firms owing to the more limited resources of the latter. It is important to consider whether certain regulations place a disproportionate burden on smaller businesses, making it more difficult and/or costly to comply.

While regulatory reform is sometimes equated with de-regulation, under-regulation can be just as problematic. A failure to regulate adequately may create hazards for businesses in a variety of ways. Without a safe operating environment, for example, a business may be exposed to risks or environmental hazards that ultimately prevent it from operating. Over-broad provisions may also prevent businesses from conducting legitimate activities and may create uncertainty. Deregulation is too simplistic - the objective must be smart, appropriate and better regulation.

Key principles of good regulation

- Focus on the objective to be achieved;
- Regulate only when necessary and only after considering non-regulatory alternatives;
- Allow enough time for adequate consultation, notification and phasing in;
- Regulate with a light touch and keep requirements as short, simple and clear as possible;

- Do not place unnecessary burdens on business, especially small firms;
- Balance risk, cost and practical benefit - benefits must outweigh costs, and be in proportion to the risk being addressed;
- Make sure you can enforce the regulation at a reasonable cost;
- Integrate with previous regulation;
- Monitor whether the regulation is working

4. By-Law Review

SBP undertook a desk review of selected CoJ by-laws, with a view to identifying potentially negative or unintended impacts on business activity and investment.

At the time of the review, CoJ administered 18 by-laws, covering a broad array of issues. These by-laws have varying degrees of impact on the general business environment. A number of draft and proposed by-laws were also under consideration.

The desk review involved an initial review of the full list of by-laws, to establish their likely significance in relation to the environment for doing business in the City.

A number of by-laws were then excluded from further analysis, on the basis that their impacts were likely to be very minimal, or restricted to very specific industries or sectors. Similarly, by-laws under consideration or in draft format were excluded from further study, as these proposals were still subject to review and further development. Street trading by-laws were also excluded given the formal sector focus of the study, as well as ongoing CoJ work in this particular area.⁵

In consultation with the CoJ, the project team therefore selected the six by-laws which were deemed to have a *very substantial impact on the business environment and/or to raise significant legal or administrative concerns*, for a further more detailed, desk-based legal review. They were:

- Encroachment on Property By-laws 2004
- Emergency Services By-Laws 2004
- Advertising Sign and Hoarding By-laws 2008
- Metered Taxi, Minibus, Midibus and Bus By-Laws
- Waste Management By-Laws
- Public Health By-Laws 2004

Each selected by-law was assessed against the following criteria:

1. Clarity of provisions
2. Reasonableness of provisions including the purpose of provisions
3. Breadth of provisions
4. Discriminatory impact of provisions on small/large businesses
5. Conflicts or contradictions between provisions
6. Onerous nature of provisions and possibility of compliance.

⁵ By-laws excluded from more detailed analysis included: Protection of wild animals and birds; Dogs and cats; Cemeteries and Crematoria; Culture and Recreation; Parktown Ridge; Public Open Spaces; Street Trading and all proposed/ draft by-laws.

The findings of the desk review were compiled in the form of a draft report, which was shared with the relevant CoJ departments and municipal entities for their comment and input. SBP researchers, together with the CoJ DED project manager, met with a range of relevant government and MOE officials to discuss the draft findings in detail and make necessary refinements based on insights emerging from these discussions.

In several instances, discussions with relevant departmental officials clarified specific reasons behind particular provisions, which had been identified as potential areas for review. In some cases, such provisions are directly informed by national legislation. In others, they have been developed following engagement and negotiation with particular industries or sectors at the local level. It should also be noted that in some cases, where provisions appear at first reading to be vague or to allow for subjective action on the part of officials, it was explained that this is the deliberate result of efforts to create a level of flexibility based on particular circumstances, including for example the size of a business or the level of risk.

Nonetheless there are **specific by-law provisions which may benefit from review**, with a view to improving the regulatory environment for doing business in Johannesburg. These are **discussed in detail in the Phase 2 report**, and will be taken forward by the Department of Economic Development, in conjunction with the relevant CoJ Departments.

4.1. Toward better regulation: generic issues and recommendations

The review also highlighted a number of generic issues, which have implications for the policy making process as a whole. These include:

- The need for improved clarity in the definition of particular terms, activities and environments
- The need to ensure that, where public consultation is required, there should be clear specifications about how consultation will occur, timeframes for consultation, and responsibility for ensuring that consultation takes place, in order to avoid unnecessary delays
- The need to ensure that, where appropriate, provisions incorporate a degree of flexibility to allow for differences in scale across different businesses. Thus, for example, in the case of accommodation establishments, where public health provisions refer to “a store-room for the storage of furniture and equipment and a *separate linen room*”, provisions could be amended to allow for a separate room “or facility” to take into account appropriate scale in recognition that a linen cupboard, rather than “a separate linen room” may suffice
- The need to ensure that, where requirements are potentially onerous, particularly for smaller businesses, departmental officials communicate effectively with

business to ensure that compliance requirements are clearly understood and that businesses have access to advice and information as required

- The need to ensure that enforcement is undertaken effectively and consistently
- The need to ensure that regulations are user-friendly – thus, if a by-law refers to another regulation or Act, it should include a schedule that advises readers where to access related legislation/regulations, particularly those referred to in the by-law
- Recognition that if regulations are applied without adequate engagement with and support for small businesses, there may be a risk of pushing some small enterprises toward the informal sector, where regulations will be more difficult to enforce
- The need to make relevant information and official forms available online as far as possible
- The need, at departmental level, to improve communication with the public and raise the profile of activities, including communication regarding regulatory requirements and sources of information and advice
- The need to provide a grace period, if appropriate, for businesses that have been operating outside regulatory requirements to make required changes (including structural changes to business premises) without necessarily ceasing operations
- The value of developing short, user friendly summary guides detailing compliance requirements, to provide information in an accessible way – the Emergency Services Department’s “*Emergency Management Services By laws – a simple guide*” provides an example of good practice in this regard
- Recognition that where provisions are made for the Council to rescind permission (e.g. for encroachments on public roads or outdoor advertising) after permission has been granted, that provisions should specify a limited set of circumstances in which such an order for removal can be ordered, together with a procedure through which to challenge any such order given its impact upon private owners
- The need to explain certain provisions so that they do not appear arbitrary (an example is the provision that metered taxis are prevented from parking on a public road other than in a bay specifically reserved for such a vehicle, except in specific circumstances).

5. Impact of administrative efficiency on business activity

In addition to the detailed legal review of selected by-laws, SBP also undertook a broader review of the possible impact of particular CoJ policies and administrative processes on specific sectors or groups of business.

The review highlighted a number of areas of concern, specifically:

- Poor coordination across tiers of government
- Inadequate communication and coordination within and between departments and municipal entities
- Inadequate capacity within particular departments and municipal entities
- Resource constraints that impede administrative efficiency.

Two specific administrative processes were the subject of a more detailed administrative review – namely planning and building approvals, and procurement processes. Key challenges and recommendations arising from this review are provided in Section 7.

5.1. Coordination across tiers of government

Nationally the DPLG⁶ has found that joint priority setting, resource allocation and implementation have been hampered by lack of shared focus on key developmental priorities, perpetuation of hierarchical relations between tiers of government, lack of focus on cross cutting issues and lack of shared spatial area of focus. The 2007/8 IDP hearings emphasised the need for increased cooperation between Gauteng's three Metros, especially in areas needing joint planning, strategising and implementation, and recommended that GPG drive and incentivise the strengthening of these relationships through joint programme development.

SBP's discussions with representatives of both provincial and local government have highlighted problems of limited interaction between the GPG and municipalities, and across municipalities. Initiatives such as the Premier's Coordinating Forum and the Gauteng Inter-governmental Forum aim to improve inter-governmental relations. However, the realisation of Gauteng as a Global City Region appears to be some way off if measured in terms of effective working relationships across provincial and local government.

Disputed authority across provincial and local government

The implementation of the Development Facilitation Act at provincial level, and the overlapping authority this has created in terms of town planning approvals, is a stark example of poor

⁶ Now the Department of Cooperative Governance

coordination and its negative impacts. The result has been a protracted legal wrangle between the City and the province, which has seen millions of Rands worth of development approvals placed in limbo for an extended period.

In specific cases, the interpretation of national regulations into municipal by-laws and regulatory processes appears to be problematic. Examples include the application of procurement procedures under the MFMA and related National Treasury guidance (discussed in Section 7), and the impact of specific MFMA regulations on the operations of CoJ municipal agents, as discussed in the box below.

Regulatory limbo as a result of regulatory changes at national level

The impact of National Treasury's Municipal Public Finance Management Act on CoJ's Johannesburg Property Company (JPC) provides an illustration of the negative impact of poor intergovernmental coordination and communication on the ability of different spheres of government to function effectively. The JPC reports that it has been placed in a state of regulatory limbo as a result of the Municipal Public Finance Management Act Asset Transfer Regulations (September 2008). The regulations effectively invalidate the JPC's service delivery agreement with the CoJ. The new regulations require the JPC to be reconstituted as a municipal owned entity (not an agent). They also prohibit the delegation of certain powers. Since all property currently managed by the JPC is owned by CoJ, the regulations effectively require that every specification committee, adjudication committee and bid evaluation committee should be constituted by the CoJ and not the JPC – a situation that the JPC argues is not operationally practical.

5.2. Coordination within CoJ

Businesses' interactions with the City very often require input and approval from a number of different departments and municipal entities. Examples include approvals for planning and construction of new developments, zoning applications, applications for business licences, and requests for infrastructural upgrades.

The extent to which different departments and agencies are able to communicate effectively, efficiently, and within a reasonable timeframe, has a large influence on the success of the administrative process.

A number of factors may inhibit this communication, however. They include:

- A reliance on paper-based documentation, which must be manually delivered between different entities
- Limited capacity within certain entities in providing adequate information and feedback in response to applications
- A tendency to work in silos. According to one city official, the City tends to be obsessed with score-cards, to the detriment of different departments sitting down and mapping a joint strategy to deal with big issues.

5.2.1. Impact of coordination problems: Business licences case study

Schedule 1 in Section 2 of the Business Act specifies that businesses requiring a trade licence are those engaged in the sale or supply of meals, take-aways or perishable foodstuffs; the provision of certain types of health and entertainment facilities⁷; and hawking in meals or perishable foodstuffs. Environmental Health and Business Licence Officers monitor compliance of premises licensed in terms of the Businesses Act.

An application for a trade licence must be made from the City's Trade Licence Unit within Environmental Health. A once-off application fee is payable. The application must include clear identification of the property description i.e. stand number, township, street address and zoning, which should be verified by Corporate GIS prior to submission of applications.

Each application must be forwarded to five authorities to check that the City requirements are met, namely:

- Environmental health
- Public safety and emergency service (fire safety)
- Noise and air pollution control unit (Development Management)
- Urban planning unit (Development Management)
- Building control unit (Development Management).

Each authority must carry out an inspection of the premises. Each must send a report, including their assessment of whether approval should be granted, back to the Department of Environmental Health. Only when all departments have recommended approval can the trade licence be issued.

If reports received from the various authorities indicate that other requirements need to be satisfied, the Trade Licence Unit will send a notice to the applicant. The applicant must comply with the requirements and then arrange a re-inspection with the officer concerned.

An application may also need to be forwarded to the National Liquor Board and/or SAPS, if the business plans to provide entertainment and/or alcohol.

According to guidance on the CoJ website, the average time taken from application to final approval of the business licence could range from two days (if the zoning is correct

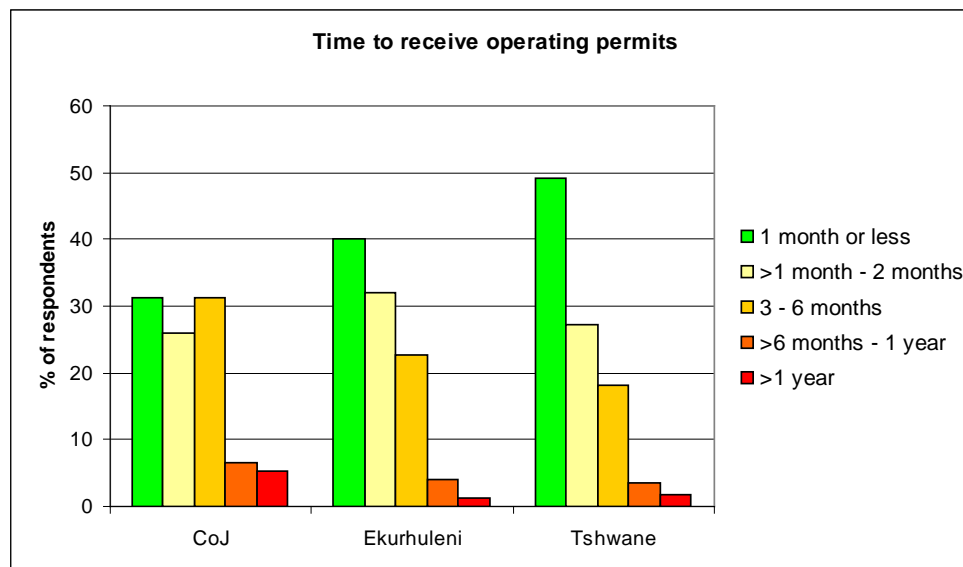
⁷ Turkish baths, saunas and health baths; massage or infra-red treatments; male and female escorts; three or more slot machines and electronic games; three or more snooker or billiard tables; nightclubs and discotheques, where live or loud music is played; cinemas and theatres; and adult premises

and the business complies) to 18 months, depending on legal processes such as appeals.

However, CoJ departments report that delays in approvals from Development Management can result in extremely lengthy delays in the issuing of business licences. Guidance on the CoJ website suggests that the processing of application for establishment of a B&B, for example, takes six to 12 months, or longer if any objections are lodged against the application.

CoJ departments also recognise that the variety of approvals required may be confusing for businesses. SBP's interviews with businesses indicated that they do not necessarily have a clear understanding of the number and type of different inspections that may be required before the licence can be issued, and are unclear about the sequencing of the inspection and approval process.

A 2009 business survey by SBP asked businesses to report on the **time required to receive municipal permits** to operate. Johannesburg scored relatively poorly compared to Ekurhuleni and Tshwane, with a lower proportion of respondents processed within one month, and a significantly higher proportion waiting six months or more.⁸



Key Point: Given that approvals are required from several departments, it is critical that CoJ ensures a well coordinated process across these departments, backed up with effective communication to the applicant, to prevent unnecessary uncertainty and

⁸ *Doing Business in Gauteng: Opportunities and Constraints*, a study conducted by SBP on behalf of the Gauteng Department of Economic Development, July 2009 [N = CoJ 75, Ekurhuleni 76, Tshwane 55]

confusion. **DED could potentially assist in facilitating discussions to achieve better coordination.**

5.3. Communication between government and business

Securing investment in the local economy requires effective coordination between and within levels of government, to enable quick responses to potential investors' enquiries and speedy action to facilitate the necessary pre-requisites for investment. Similarly, it should be recognised that businesses operate in a context of non-negotiable deadlines and quick turnaround times, and as such are unwilling to wait long periods for a response from government.

5.3.1. Slow response times

Businesses note that the speed at which business needs to work compared to the speed at which the City works often means that the businesses end up taking the initiative themselves rather than waiting to get permission or support from the City. According to businesses interviewed by SBP, this extends to issues such as road maintenance, painting of road markings and fixing of potholes in some business districts. Businesses report that if they do not come together and take the initiative in such cases, they risk the decline of the public space in their local operating environments – with negative impacts for business viability and investment.

The Sandton City Improvement District is a case in point. According to businesses operating in the area, there is “a very closed door feeling from the City toward business.” Businesses suggested that the City views Sandton as a “rich” area that should use its own resources to upgrade local infrastructure, rather than look to the City for help. They also noted that business has little incentive to try to involve the City, given the City's slowness in taking action and the tendency to transfer the financial burden to business.

Sandton-based businesses also reported frustration caused by consultation processes that seem to lead nowhere and the lack of continuity in planning. In 2005, for example, Sandton businesses worked extensively with the JDC to co-fund the Urban Development Framework. Not long thereafter, however, the City undertook a separate planning framework process for all development nodes, including Sandton, without taking any account of the document that had been jointly developed by business and the JDC. This caused a great deal of frustration among local property owners. Business actively lobbied for the preceding plan to be incorporated into the new process, and a lot of time was spent on marrying these processes. The plan was finally approved in June 2008 by the mayoral committee.

Key Point: CoJ's role in facilitating economic development in the city is significantly compromised by the perception that the Council presents a 'closed door' to business. This is compounded by perceptions of the slow pace at which the City responds to business. **DED could potentially play an important role in facilitating communication and interaction between organised business and city departments and service providers.** Effective communication is important to minimise the risk of economic growth potential being undermined by poor service delivery.

5.3.2. Single point of contact for large-scale investors

Poor coordination sees investors go elsewhere

In the past year, two Gauteng municipalities have lost out on a major investment opportunity because they were too slow in bringing together the necessary departments and agencies to respond effectively to enquiries. A smaller local municipality secured the investment, by acting quickly to bring together the necessary partners at local, district and provincial level and securing agreements with infrastructural providers to develop the necessary access roads and bulk infrastructure provision.⁹

CoJ established a Trade and Investment Promotion Directorate in 2007. The Directorate works with Johannesburg based Business Chambers and foreign investors, to try to tackle challenges to investment and economic growth. Assistance provided by the Directorate includes finding space to operate, establishing contacts with other government bodies, establishing links to businesses, providing information on incentives available and dealing with questions on zoning, planning and so on.

The Directorate acknowledges that they are in a relatively early stage of operation, and have not yet really tested the extent to which they are able to effectively fast track procedures for significant investors through networks with other departments. They identify re-zoning permissions as a critical challenge, which will require working more closely with the Development Management Department and JPC to facilitate investment opportunities.

Key Point: **Cities operate in a competitive environment. Potential investors assess their options and weigh up the pros and cons of possible investment destinations.**

A municipality's capacity to pull together the necessary partners and respond to enquiries – from availability of required infrastructural to information on particular regulatory requirements - is critical in closing the deal. The DED's Trade and Investment Promotion Unit has a critical facilitative and coordinating role in this regard.

⁹ In March 2008 Heineken NV announced that it would build its new South African brewery in Midvaal. The site, on the R59, covers 80 hectares and is expected to create 225 new permanent jobs.

Investment Promotion: A comparative example

The eThekweni Municipality Investment Promotion Agency was established as a Section 21 company in 2001, with private sector members comprising the majority of the Board. The Agency was incorporated as a unit within the City in 2004. In 2009 the Agency will again be spun out of the City, following World Bank best practice recommendations.

The Agency grew out of a Best Practice City Commission (BPCC) Report, aimed at improving the ability of the eThekweni Metro to attract investment to the region. It aims to provide proactive promotion and marketing, to gather and disseminate relevant investor information, to deal with investor enquiries and provide first level advice, deal with needs of existing investors, undertake a deal-making function, and facilitate effective interaction between investors and officials. The BPCC Report identified the following key factors for success:

- Buy-in and participation and support from the public and private sectors
- Provision of high quality and efficient service levels
- Multi-skilled personnel, measured against key performance indicators
- Private-public partnership.

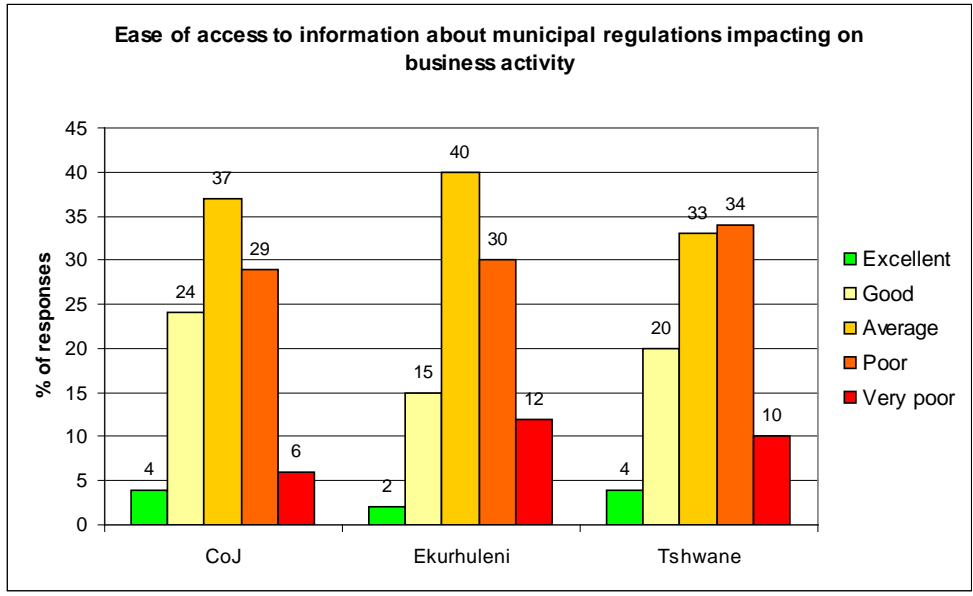
Establishment of the Agency was underpinned by a Corporate Plan which includes specific programme activities, objectives for each programme and strategies to achieve objectives, baseline, current and targeted performance measurements for each programme, multi-sector teams with responsibility for implementation of each programme, and allocated and prioritised budgets for each programme.

The Agency aims to provide a single point through which all development applications can be processed, including the provision of salient and appropriate information (statutory, regulatory, policy and process). Approvals are managed through a multi-disciplinary team and appropriate champion.

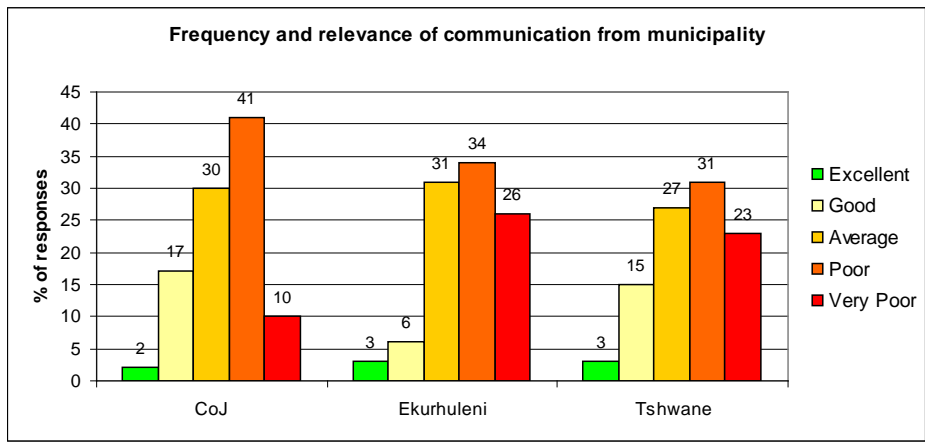
5.3.3. Access to information

SBP's recent Gauteng business survey asked businesses in the three Metros to rank the extent to which lack of information about local regulations applicable to business constitutes an obstacle to doing business. In CoJ, 28 percent of respondents ranked the municipality's performance as good or excellent, but a larger proportion, 35 percent, said performance was poor or very poor. CoJ scored somewhat better than Ekurhuleni and Tshwane, as seen in the figure below.¹⁰

¹⁰ N = CoJ 144, Ekurhuleni 149, Tshwane 88



Respondents were generally less than impressed with their municipalities' efforts to communicate with them. Asked to rank their municipalities according to the frequency and relevance of communication received, only 19 percent of Johannesburg-based businesses rated the municipality's communication as excellent or good. In all three Metros, the number of dissatisfied respondents rating communication as poor or very poor accounted for over half the respondents.¹¹



Access to information is particularly problematic for small businesses, which tend to lack both the time and resources to search through websites or visit Council offices to access relevant information. For new and emerging businesses in particular, finding out what information one needs to look for in the first place can be a daunting challenge, given the variety of regulatory authorities with which a business may need to interact.

¹¹ N = CoJ 138, Ekurhuleni 141, Tshwane 86

The JEDPS acknowledges that the needs of the city's SMMEs are currently not well understood, and that support services are provided through different institutions in a fragmented and uncoordinated manner. Small businesses may well encounter considerable difficulties finding their way to sources of advice and support.

The JEDPS commits the City to expanding the mandate and capacity of The Business Place and/or the Metro Trading Company to provide business support services to business in various key sectors.¹² These proposals are a positive step toward providing small and micro businesses with the types of 'first stop shops' and integrated support mechanisms they need to facilitate their access to information and to clarify process requirements – but may not go far enough.

SBP's interviews with Business Place staff suggested that CoJ needs to be more proactive in publicising sources of support for small businesses. They noted that relationships between Business Place and City Departments are not as good as they could be, and that the City doesn't necessarily use the resource effectively. Business Place staff said that Metro officials rarely if ever visit the facilities or interact with staff. It was also noted that the lack of continuity in management staff in departments and agencies disrupts the establishment of relationships and hinders effective communication and sharing of experience.

Business Place staff also noted that the City has not established any mechanism to communicate with service providers such as the Business Place about changes to regulatory requirements. Staff reported that they have to 'scramble about' trying to gather what information they can from the CoJ website so that they can provide appropriate advice to their clients – whereas a regular communication update from the City to relevant service providers could be an effective mechanism to publicise regulatory compliance requirements. They further noted that the website is not always up to date, making information about regulatory requirements more difficult to access.

Key Point: While it may not be practical or efficient to try to provide all services and transactions in **a single point of delivery, it should be possible to provide a single information portal which is able to provide clear and comprehensive information to potential and existing businesses, together with effective sign-posting to fulfil further requirements.** Such a service could include advice and assistance regarding requirements in respect of business licences, land use applications and zoning approvals. It could also play a key role in facilitating interactions between the various departments required to participate in a particular process – rather than leaving it to the

¹² City of Johannesburg Economic Development Policy and Strategy Framework, Third Draft, 9 October 2008, Grant Thornton, MCA

business owner to try to manage and track the process.¹³ Institutions such as Business Place and the Metro Trading Company have the potential to be much more effective in this role, but only if coordination and communication between the CoJ and these agencies is improved. DED's SMME Directorate could play a critical role in facilitating interaction and communication in this regard.

5.4. Perceptions of government efficiency

5.4.1. Interactions with the call centre

Businesses need to interact with the City on a variety of levels, including matters such as the provision and administration of infrastructural services, and queries and complaints regarding the local operating environment.

Many of these interactions take place via the Jo'burg Connect call centre. The 2008 Satisfaction Survey¹⁴ asked businesses to indicate their frequency of contact with the CoJ **Customer Call Centre** as well as their satisfaction with the handling of their enquiries. About half the large businesses surveyed had used the call centre in the last six months, as had 34 percent of small and medium businesses. Businesses that made contact with the Call Centre reported an average satisfaction rating of 4.6 out of 10, down from 5.4 in 2007. This is not very impressive. The major reason for dissatisfaction was the call centre's failure to address/solve problems, followed by calls taking too long to be answered. Most enquiries via the Call Centre related to power/electricity, followed by water and billing.

Businesses were also asked to rate how effectively the CoJ **communicates** its policies and activities to the business community. The mean satisfaction level was 4.6 out of 10, down from 5 in 2007, and suggesting considerable room for improvement.

5.4.2. Efficiency of municipal billing

There are a number of regulatory provisions that place the onus for ensuring the accuracy of municipal billing processes on the consumer/business, rather than on the municipality itself, which are very problematic in light of the large impact that an incorrect municipal bill can have on a business' cash flow (especially in the case of smaller business), and the time and effort required from the individual to follow up with the municipality – particularly given the patchy track record of the CoJ call centre in following up on customer complaints.

¹³ Specifically Environmental Health, Emergency Services, Development Management and DED

¹⁴ Household and Business Satisfaction Surveys, 2008, Study commissioned by Central Strategy Unit, City of Johannesburg, Compiled by DH Tustin, AA Ligthelm, Bureau of Market Research, University of South Africa, August 2008

The customer must pay, whether he's been billed or not

The CoJ *Credit Control and Debt Collection By-Law* (2005), states that the Council may have an estimate made of the consumption of water or electricity for any relevant period if no meter reading could be obtained in respect of the period concerned, or no meter has been installed to measure the consumption on the premises concerned, and that the customer is liable for payment of the prescribed fee in respect of such estimated consumption. This places the burden of ensuring an accurate meter reading on the business, rather than the Council, and requires the business to pay whatever fee is determined by the Council until such time as the accuracy of the estimate can be established. Such fees can potentially run into very large sums of money, and the process of rectifying the situation (particularly where a meter has yet to be installed) may well take some time and significant follow-up efforts on the part of the business.

The provision in the *CoJ Rates Policy* (2007) that the ratepayer remains liable for the payment of the rates whether or not an account has been received is also cause for concern. The policy states that, if an account has not been received, the onus is on the ratepayer to establish the amount due for the rates and to pay that amount to the Council. Thus, if CoJ's billing system proves ineffective in an individual case, the onus is on the business person to spend what can be a significant amount of time following up, through the CoJ call centre – a potentially time-consuming and frustrating process.

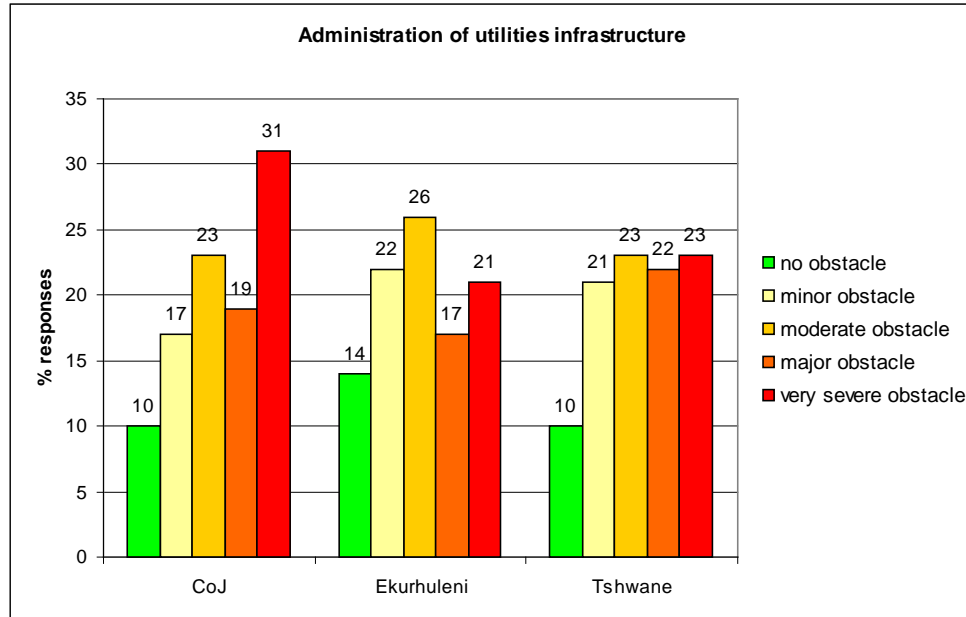
The 2008 CoJ Business Satisfaction Survey¹⁵ also asked **businesses receiving accounts** from the CoJ to rate clarity and correctness of accounts. The mean satisfaction rating for clarity was 7.8 out of 10 (down from 8 in 2007), and correctness scored 7.3.

Businesses who had received incorrect accounts were asked to rate the efficiency of the CoJ when dealing with such accounts. While the mean satisfaction score among large businesses was 5 out of 10, among small and medium businesses it was as low as 3.

The recent business survey undertaken by SBP asked businesses in Gauteng's three Metros to rank the extent to which administration of utilities infrastructure constitutes an obstacle to doing business – including for example responses to queries, processing of applications and efficiency of the billing process. Over a third of businesses in Ekurhuleni rated this as no obstacle or a minor obstacle. In contrast, half of businesses in CoJ rated inefficient administration of utilities as a major or very severe obstacle (as did 45 percent of businesses in Tshwane).¹⁶

¹⁵ Household and Business Satisfaction Surveys, 2008, Study commissioned by Central Strategy Unit, City of Johannesburg, Compiled by DH Tustin, AA Ligthelm, Bureau of Market Research, University of South Africa, August 2008

¹⁶ N= CoJ 140, Ekurhuleni 140, Tshwane 86



Incorrect and inaccurate account billing constitutes a potentially considerable administrative burden for businesses, in addition to increasing the risk of businesses incurring high costs for services that they have not in fact used. Improved efficiency and prompt handling of complaints would help relieve the administrative burden of following up billing and service delivery queries.

5.4.3. Capacity of government staff

Businesses interviewed by SBP expressed frustration at a perceived lack of capacity among Metro staff. There is a sense that front-line staff are not particularly helpful, and lack professionalism and a commitment to customer service.

Businesses noted the communication and continuity problems created by high staff turnover and poor succession planning. According to businesses, “the problem in dealing with the City is that people move around so much and the transfer of information is shockingly bad. Succession planning doesn’t exist. There are no clear systems, and when someone leaves, everything collapses and you have to start all over again.”¹⁷ The Johannesburg Tourism Association, for example, has had four CEOs in the past few years. This makes it very difficult for business to build relationships and implement initiatives designed to improve the local business environment.

Taking action to eradicate poor performance

eThekweni Metro has recognised that the customer service in respect of business is wholly inadequate. The Council recently commissioned an internal perception study, which ‘raised big

¹⁷ March 2009 interview with large scale property development company

red flags.¹ Response times to queries and complaints, and follow-up by staff, have been identified as areas requiring urgent attention.

The Council is taking action to improve accountability and performance management. A Performance Management Unit has been established, and the objective is to hold officials individually accountable for the performance of their units. The Metro is in the process of implementing a strategy in this regard based on comprehensive research and benchmarking. They are however still at the foundation stage – full implementation has yet to happen and it is too soon to assess impact.¹⁸

Key Point: Perceptions of government inefficiency are a significant source of frustration for business. Over-stretched staff, limited technical capacity in key areas, and the erosion of institutional memory as a result of high staff turnover, undermine government's capacity to deliver services efficiently. Failure of frontline staff to answer telephones promptly, and to follow up on enquiries and complaints, translates into direct costs for businesses. While the problem is by no means a simple one to solve, it is possible to implement measures to improve customer service, and to hold individual staff, from management to the frontline, accountable for service delivery. **Given the impact of administrative efficiency on the business environment, DED could usefully liaise with the City Manager regarding interventions to enhance customer service performance across city departments and agencies.**

5.5. Impact of resource constraints

5.5.1. The need to update systems and technology

The CoJ website notes that one of the factors contributing to delays in the processing of applications and approvals is the need for different municipal offices and licensing authorities to work with original documentation, often requiring processes to be undertaken sequentially rather than in parallel. There appears to be **a strong case for a move away from hard copy**, original documents, toward certified copies or, ideally, electronic documentation, to speed up processes and substantially reduce the opportunities for files/documents to go astray.

Cash only please

In the last financial year, the CoJ Development Planning Department had R800 000 worth of customer cheques returned by the Bank. The solution from the Finance Department has been to insist that customers pay cash, or provide a bank guaranteed cheque. Fees associated with development approvals run into very high numbers – making cash transactions unfeasible in many cases. Existing systems cannot support electronic transfers, and the Finance Department won't consider credit cards owing to the transaction costs. The upshot is that the applicant must first visit the Development Approvals Department, for his specific fees to be calculated, must then

¹⁸ Information based on March 2009 telephone interview with eThekweni Metro official

visit the bank and make a specific request for a bank guaranteed cheque, and then come back to the Department to deliver the cheque – a process that can quite easily take a better part of a day.

The City provides an extremely convenient and efficient electronic transfer facility for the payment of municipal services accounts (rates, electricity, water and so on) – one can only hope that Development Planning's Finance Department will follow in its footsteps in the near future.

6. Enforcement of by-laws

SBP's discussions with businesses revealed a number of areas where **poor enforcement of by-laws creates considerable dissatisfaction**, and may undermine the competitiveness of businesses that have spent the time and money required to be legally compliant.

Examples include poor enforcement of:

- Advertising by-law, where patchy enforcement is perceived as penalising those businesses that spend the time and money to comply with regulatory processes, while others proceed without the necessary permissions and appear to suffer no negative consequences
- Planning and building regulations – the City acknowledges that it is very expensive to pursue developers who have contravened regulatory requirements. A variety of developers told SBP that it is 'easier to ask for forgiveness than permission' and that there is a tendency to proceed with construction without waiting for the necessary approvals from the City, on the assumption that sanctions for non-compliance will not be very severe
- Trade licences – a focus group with B&B owners operating in Sandton and Rosebank, for example, noted the considerable costs involved in ensuring regulatory compliance, with no visible benefits given the large proportion of accommodation establishments that are not compliant. A representative of a Soweto-based B&B association reported that she did not have any information about licence requirements, had been operating for several years without a licence, and has no intention of getting a licence.

7. Key recommendations arising from Administrative Review

As noted, one of the project objectives was the identification of administrative processes with a potentially negative impact on business activity and investment.

In line with this, SBP undertook detailed administrative reviews of two CoJ processes:

- 1) Development approvals
- 2) Procurement processes.

These particular processes were selected owing to their considerable impact on the operating environment for businesses. The efficiency and consistency of processes associated with development approvals has a direct impact on the ease of establishing and expanding business operations. The transparency and openness of the procurement process is a critical determinant of access to tendering opportunities and the attractiveness of engaging with the City as a service provider.

The reviews were based on desk review of relevant legislation, regulations and procedures; discussions with senior officials in the relevant departments; and consultation with business representatives.

7.1. Development Approvals

While the processes associated with development approvals are based on important imperatives of cross-departmental consultation and coordination, the inputs received from different departments, agencies and tiers of government are not always adequate, and turnaround times require improvement in many cases. There also appears to be a considerable amount of legwork involved for the applicant. Improved coordination across departments could potentially reduce these problems.

When all the time spent on completing the relevant processes is taken into account, the cumulative cost to business can be significant – and considerably more so when processes are subject to delays. It is thus imperative that the application of regulation is sufficiently resourced – supported by appropriately skilled staff, easily accessible information, and effective communication to inform applicants about procedural requirements and progress through the system.

7.1.1. Challenges and recommendations

Fragmented legal framework

Challenge: While the importance of legislative reform is widely recognised across the levels of government, delays at the national and provincial level have impeded implementation of enabling legislation for town planning at local government level. This

creates confusion for property owners and developers, and has a negative impact on the City's ability to enforce regulations.

Recommendation: CoJ is in the latter stages of formulating an integrated land use management system to create a single development planning scheme for the whole of Johannesburg, enabling the definition of common and simplified use zones and a single enforcement system. This should be implemented as soon as possible.

Parallel approvals

Challenge: The Development Facilitation Act (DFA) creates a parallel approval process which enables provincial tribunals to approve development applications and override municipal decisions. A number of development applications that were refused by CoJ have been approved by the DFA. Disputed approvals have resulted in many developments being stalled for a lengthy period, resulting in escalating costs for developers and unrealised rates income for the Council.

Recommendation: There is an urgent case for national legislation to clarify which institutions and levels of government have control over what levels of development, to remove the paralysis created by the overlapping mandates.

Staff skills and capacity

Challenge: The Development Planning Department has a severe shortage of town planners and engineers, and is currently operating at 62 percent of its HR capacity, with negative implications for turn-around times. Factors affecting recruitment and retention include issues around pay grades and remuneration levels, and lack of opportunities for advancement.

Recommendation: HR strategies to develop and retain experienced planning professionals are needed at local government level. This is true for municipalities across the country and presents a high level challenge that requires involvement from all tiers of government and the private sector.

Inadequate input from MOEs

Challenge: Standard application processes for consent use, sub-division, zoning and township establishment approvals all require circulation of applications to internal departments and municipal entities¹⁹ and external departments and entities.²⁰ These authorities need to check the applications and comment on feasibility and requirements in light of infrastructure availability, traffic impact, environmental impacts and so on. According to Development Planning, feedback from government entities is often

¹⁹ Such as City Parks, Joburg Water, City Power

²⁰ Such as Eskom, Telkom, Rand Water, SANRAL, Gautrans, neighbouring municipalities

incomplete or lacking in adequate consideration, and is subject to long delays – significantly slowing down the process.

Recommendation: It is critical that management and staff in the relevant government entities have the requisite capacity to respond appropriately, and recognise the importance of timely and comprehensive feedback. Measures of quality and efficiency of responses to development applications should be reflected in performance management frameworks for relevant staff.

Coordination across decision-making bodies

Challenge: Development applications often require engagement with a number of different municipal authorities, as well as provincial authorities when an EIA is required. The process of interacting with a range of different departments and entities is time-consuming and requires significant leg-work from the applicant to gather the information required to support the application. The applicant is responsible for going from authority to authority to collect the necessary documentation and approvals. Communication across authorities appears to be poor. Businesses report that the process is effectively circular - infrastructure providers say that they won't comment on a proposal until the developer has the rights from CoJ, whereas the developer is unable to get the rights from CoJ until the relevant entities have given their approval.

Recommendation: CoJ needs to clarify decision-making responsibility and sequencing of approvals across the Development Planning Department and government entities. Arrangements need to be absolutely clear to the entities themselves and to the businesses interacting with them.

Interaction with provincial government

Challenge: Development applications requiring approval at the provincial level risk long delays. CoJ officials and developers report considerable delays associated with EIA approvals, which are the responsibility of GDACE, and with Heritage approvals, which must be obtained from the Provincial Heritage Resources Authority (PHRA). Developers and City officials report that both GDACE and PHRA are slow and under-capacitated. In respect of EIAs, developers and officials say that GDACE appears to be stretching its mandate beyond environmental management, making rulings on the urban environment and land use issues more generally, which are more properly dealt with by the City under its mandate for land use management in the Metro. PHRA, on the other hand, appears to be unwilling or unable to make decisions in certain cases - several decisions have been outstanding for a year or more.

Recommendations: Closer integration between the provincial and local level, and between environmental and land use approval processes, is required to improve process efficiency.

- CoJ and GDACE need to work together to develop a proactive approach to environmental assessments, and to take advantage of NEMA's provision for environmental management frameworks (EMFs), which allow for pre-assessment of a geographical area and pre-approval of certain activities within defined areas.
- CoJ needs to proactively identify Johannesburg's most important heritage resources, and develop a register to be used to inform physical planning and development processes. CoJ and PHRA need to agree a system whereby the City is empowered to assess whether a building should be preserved for its heritage value, enabling the City to inform a potential developer whether a particular building requires an assessment from PHRA.

Access to information

Challenge: The Department for the most part insists on in-person interactions, and shows a strong reluctance to engage with its citizens by telephone or email. Repeated visits to Council offices and depots are however a big inconvenience to business and individuals. Parking at Council offices is often a major challenge, further lengthening the time required for the interaction.

Recommendation: Information should be available electronically as far as possible. Dedicated resources to deal with queries by telephone and by email are also important for improved administrative efficiency. Public parking facilities at Council offices need to be improved.

Uncertain timeframes

Challenge: The impact of administrative delays in the processing of development and land use applications can create huge costs for businesses of all sizes. Planning difficulties created as a result of uncertain timeframes compound these problems.

Recommendation: The CoJ website currently provides summary information about different approval processes and contact details for more information. This should be extended to include target time-frames for each approval process. In order to ensure that CoJ target timeframes are not prejudiced by delays on the applicant's side, it can be made clear that applications, once submitted, are pending while the applicant follows up on any missing information – and that this time is excluded from application processing time. Performance against timeframes should be included as part of staff and departmental performance monitoring processes, and externally audited and reported upon by the Auditor General.

Progress through the system

Challenge: Given that applications may take several months for processing, the lack of progress updates can create significant frustration for applicants. Businesses also note

that if there is a problem with an application or information is missing they need to be informed of this as soon as possible so that they can take action.

Recommendation: A *proactive* response is required from the municipality to inform businesses about progress through the system, and to alert applications to missing information or other problems - rather than waiting for the business to enquire about reasons for delay.

Digitisation of documents

Challenge: A factor contributing to delays in the processing of applications and approvals is the requirement for different municipal offices and licensing authorities to work with original documentation. Use of paper copies requires that the applicant has to physically go from department to department for the necessary approvals. The risk of papers getting lost is considerable. The current system also requires a huge amount of physical space to be set aside for storage of the paper building plans.

Recommendation: There appears to be a strong case for a move away from hard copy, original documents, toward certified copies or, ideally, electronic documentation, to speed up processes and substantially reduce the opportunities for files/documents to go astray. Digitisation of documentation relating to planning approvals would allow assessment of documents by different departments to happen in parallel, rather than sequentially, and enable applicants to track the progress of their applications remotely. It could also help to cut down the legwork for applicants if some of the information required for completion of applications could be obtained through online interactions, rather than a physical visit to the relevant government office.

Engineering contributions

Challenge: Business owners and property developers express concerns about how engineering contributions are calculated, and where the money is actually spent. Developers argue that their conditions of approval require that they take responsibility for upgrading of existing infrastructure, including the provision of access roads and new water connections, at considerable expense, and are required to pay an engineering contribution over and above this. They argue that they are thus effectively paying twice.

Recommendation: Developers report that they would like access to a CoJ policy or set of guidelines that provides clear information about how engineering service contributions are calculated, and what upgrades take place in the area being developed on the basis of those contributions.

Challenge: Developers note that they would benefit from being informed about the cost of engineering contributions payable earlier in the approval process. At present, the Development Planning department's town planner advises the applicant on *conditions of*

approval for the particular application, including whether there are contributions for engineering services to be paid, but does not quantify the cost of engineering services at this stage. Following approval, the applicant enters a services agreement with the Council, which quantifies the engineering contributions – but developers report that there is often a delay of several months between these stages.

Recommendation: Given that engineering contributions are often very substantial in relation to the scale of the application, it would benefit property owners and developers to include quantification of contributions in the initial conditions for approval.

7.2. Procurement Processes

A detailed review of the City's procurement processes highlighted a number of areas where CoJ's interpretation and application of National Treasury regulations and guidelines creates significant obstacles to doing business with the City. Key areas are outlined below.

Standardised documentation

Challenge: National Treasury's Supply Chain Management Guidelines encourage application of a uniform system of SCM, including standardised documentation, in all institutions. The SCM Office in the National Treasury issues pro forma standardised bid documentation that municipalities should follow as far as possible. Businesses interviewed by SBP report however that different departments and agencies have their own documentation and the CoJ procurement policy does not appear to be uniformly followed.

Recommendation: Registration processes and documentation should be standardised across departments and municipal entities to minimise time spent on form-filling. The SCMU should take a proactive role in ensuring that all departments and MOEs are using appropriate documentation.

Supplier database

Challenge: National Treasury Supply Chain Management Guidelines recommend that, in order to stimulate the promotion of BBBEE and the development of HDIs and SMMEs, institutions keep a register of potential suppliers for goods and services to be obtained by means of quotations, which should be updated at least once a quarter. CoJ appears to be interpreting the provision for a supplier database in a very restrictive manner. The website and registration application documents state that CoJ will use *only accredited suppliers registered on the database* when acquiring and procuring different goods and services. The provision for government departments to establish supplier databases is *not* intended to *preclude* companies from tendering for government business. Furthermore, the MFMA requires that local government departments open all quotations

valued above R200 000 to *public tender*. This specifically means that anyone can apply to provide the service – whether registered on a database or not. Registration should *never* be a requirement for responses to open tenders.

Recommendation: The CoJ website and registration documentation is currently misleading and should be amended, to clarify that non-registration does not preclude anyone from submitting a tender in response to an open request for proposals. It must be clear that registration is allowed in parallel with submission of proposals. The frequency of supplier database updates should also be clearly communicated on the website and on registration application forms.

Database of approved suppliers/Panel

Challenge: National Treasury Guidelines state that where goods, services or works of a technical or specialised nature are required on a recurring basis, a list of approved suppliers for the supply of goods, services or works may be established, through a competitive bidding process. Once the list of suppliers has been approved, only listed suppliers (panellists) are approached, and quotations are obtained on a rotating basis or according to the bid procedure. The list must be updated regularly, *at least once a year*. The CoJ SCM policy states that the City will keep a list of accredited prospective service providers of goods and services, will invite prospective service providers of goods or services to apply for accreditation and registration *at least once a year*, and will update the list *at least quarterly* to make provision for new registrations. However, CoJ current practice appears to be to update the panel of approved suppliers only *once every three years*. Any business not on the list is excluded for the full three year period from providing any services deemed to fall under the specifications under which the list has been established. Furthermore, CoJ DED has confirmed that if none of its approved suppliers are able to present an appropriate proposal for a service required, the department would require one of its panellists to sub-contract an external provider to do the work. According to National Treasury, the existence of a panel does *not* prevent the department from advertising an open tender for the goods or services required – which would enable anyone to respond, whether on the list or not. Furthermore, the pre-approved panel should be subject to the same value thresholds as the supplier database. Any project valued above R200 000 must in fact be advertised by *public tender*. Current practice appears to be at variance with Treasury guidelines.

Recommendation: The use of pre-approved supplier panels should be restricted to instances where goods, services or works of a technical or specialised nature are required on a recurring basis, and should be applicable only for quotations below R200,000, as per Treasury guidelines. Departments should be clear that, where Panel members are not necessarily the most appropriate providers of a particular service, they may contract outside the Panel. For any project valued above R200 000, open tender is

required. It is critical that, in terms of MFMA regulations, panels are updated at least *once a year*.

Information regarding tender awards

Challenge: Businesses across the board report frustration at the lack of feedback from the City on unsuccessful tenders. They also report that it would be helpful to know on what grounds a particular tender was judged as preferable, in order to better understand how to improve their own applications in the future.

Recommendation: CoJ could improve the openness of the procurement process by improving provision of publicly available information about tender awards. The SCMU already collates this information for internal reporting purposes – it should be made publicly available. The CoJ website does in fact provide some information about tenders awarded (nature of the tender, company awarded to, and value of project). However, at the time of writing (June 2009) this had not been updated since mid-2007.

Payment cycles

Challenge: Small businesses in particular are at risk of experiencing cash flow constraints, and late payment from clients can seriously impact on their viability. National SCM regulations require municipalities to pay for goods and services within a month of being invoiced. A further proviso states that if the Accounting Officer in consultation with the CFO believes financial hardship will ensue, earlier payments can be made to the supplier. The CoJ SCM policy does not make any specific provision in regard to payment cycles, for small business or otherwise, but SCM officials note that there are plans to incorporate National Treasury Guidelines in City policies, in due course. Among interviewed businesses who had provided services to CoJ in the past year, a number had experienced significant delays in payment. Businesses confirmed that when delays occurred it was usually due inefficiency of particular officials rather than problems with the system.

Recommendation: CoJ should ensure detailed monitoring of payment times across departments and municipal entities, to ensure that all suppliers/providers are being paid within a month of submission of documentation, as per Treasury Guidelines. Requirements to this effect should be included in the CoJ SCMU policy. CoJ should also consider introducing a requirement for shortened payment timeframes for small businesses, as per good practice in other municipalities. This should be specified within the CoJ SCM Policy, and monitored and reported upon across departments.

A lot of red tape for limited chance of reward

The Supplier Registration Application Form lists 15 supporting documents that the applicant must supply. The form itself is 19 pages long and requires detailed technical information. All costs associated with registration on the preferred supplier database rest with the vendor, who has to furnish extensive paperwork in order to qualify. It is highly likely that a large proportion of

potential suppliers will be unwilling to spend the time necessary to submit a completed application, in the absence of a specific tender which they feel their company stands a good chance of winning.

The City provides a single registration form for all providers from catering companies and IT services through to research organisations and financial services – rendering various parts of the form inapplicable to at least some potential providers. Businesses interviewed by SBP who have registered on the CoJ database raised concerns about unclear processes and overly-complicated documentation. A number of companies noted that some aspects of the documentation were irrelevant to their business and that generic registration forms made it very difficult to comply.

Businesses also noted that the time between the submission of their application and being registered on the database ranged between two to three months – but that they received no communication from the City in the interim period.

8. Conclusions and recommendations

8.1. By-law review

SBP's review of CoJ by-laws and subsequent engagement with relevant CoJ departments has identified a limited number of regulatory provisions that it may be useful to review, in order to improve clarity and remove certain overly broad provisions. In particular cases, the relevant departments have indicated their willingness to address these issues, in consultation with the CoJ DED. **The DED's *Policy and Programme Integration Directorate* will interact with CoJ's Legal Compliance Department to take this process forward.**

For the most part, however, the provisions of the City's by-laws are largely derived from national and provincial regulatory requirements, and have in many cases been subject to consultation and engagement with affected industries.

8.1.1. Access to information

It appears that businesses concerns are more likely to stem from difficulties in understanding exactly what is required of them to meet their various regulatory compliance requirements, as a range of national, provincial and local government laws and regulations are likely to apply in any given case.

In order to address this difficulty effectively, the City requires clear, easily accessible points of contact/information. Such sources of support need to be well publicised to reach a broad range of businesses – but should also be well publicised *within* municipal structures, so that staff can direct callers effectively.

These contact points must be able to handle directly, or effectively channel, all business queries - from large-scale potential investors to small-scale and inexperienced entrepreneurs. While the *Trade and Investment Directorate* within the DED currently caters for the former, and the DED's *SMME Directorate* and service providers such as Business Place for the latter, there are a great many businesses at both ends of this scale, and many more in between, who are unaware of these sources of support. If unfortunate enough to call the wrong official and/or the wrong department, they may well be passed from pillar to post before they stumble across the appropriate contact point. **DED needs to play an *active role* in ensuring that appropriate information is readily available according to the needs of a wide variety of businesses**, and that contact points and sources of support are well advertised, easily accessible, and efficient.

Discussions with business suggested that one of the most useful things the Metro can do is to develop clear visual presentations, specific to a type of business activity (e.g. provision of accommodation), that clearly demonstrate which by-laws and regulations apply to a particular type of business, which departments one needs to interact with and who the appropriate contact person is in each, what the different stages involve in terms of obtaining the necessary permissions/ authorisations/ licences, and an estimate of how much each process will cost. Such information should be **easy to locate on the CoJ website**, as well as being available in electronic and hard copy, for individuals making enquires to the municipality in person or by telephone or email. **The DED Policy and Programme Integration Directorate could play a critical role in facilitating and supporting this process**, through engagement with and coordination across relevant CoJ departments.

8.2. Improving administrative efficiency

8.2.1. Frontline capacity

Perceptions of inadequate capacity of front-office staff regarding the provision of accurate and appropriate information are a key area of concern. A perceived lack of access to information and communication from government is a big disincentive for business. Inefficiently staffed call centres, and lack of follow up after initial contact with the call centre, compound the problem.

8.2.2. Communication

There is **clearly a need to greatly improve the effectiveness of two-way communication between government and business** at a range of different levels, from initial enquiries by potential investors assessing the feasibility of a particular site or asking about regulatory requirements, to following up with a business whose utilities have been interrupted and who needs to know why there is a problem and what it will take to fix it.

Mechanisms for communication are a critical concern. Businesses often find it extremely inconvenient to visit Metro offices in person – yet advice on the CoJ website explicitly states that departments will not provide information by telephone and that queries require individuals to come in person to the offices. It is not clear why officials cannot provide advice via telephone and email, at least in the initial stages of a query/application.

8.2.3. A need for proactive engagement

The frustration caused by process delays could be alleviated at least partially by the provision of regular (and meaningful) information updates to applicants – without them

having to chase after such information. Planning and development approvals are a priority area in this regard. Possible options include SMS or email updates, and/or an electronic tracking system through the City website.

Mechanisms for businesses to engage with government, from policy discussions to complaints to procurement opportunities, must be **effectively communicated to reach as broad an audience as possible**. Initiatives such as the **Johannesburg Business Forum** need to include a broad range of businesses, and the results of these interactions should be effectively disseminated to a broader business audience, including small businesses. **The DED should take a lead in this regard.**

9. Action Agenda for the DED

The City of Johannesburg’s Department of Economic Development (DED) is mandated to influence, guide and direct economic development activities in the city. The department sees itself as “the command centre for economic growth, engaging with all role players to create an enabling environment for accelerated, shared and sustainable growth.”²¹

Given this mandate, the DED has a critical role to play in *facilitating* more efficient interactions between the City and the businesses that invest in it. It is also a central player in Johannesburg’s efforts to attract and secure new investors. , It is important to assess the challenges and recommendations identified in this report with this mandate in mind, and to identify specific roles for DED in taking the process forward.

This Action Agenda is presented for the DED’s consideration and input. It is envisaged that, once finalised, it will inform departmental planning and be incorporated into performance management frameworks.

Key Issue	DED Role
Short Term Priority Actions	
<i>Regulatory review</i>	
The study has identified specific by-law provisions that would benefit from review and amendment	<ul style="list-style-type: none"> • DED Policy and Programme Integration Directorate to interact with CoJ Legal and Compliance Directorate to initiate review and amendment of specific provisions as identified in Phase 2 Project Report (attached as Annex to this Final Report), in consultation with the relevant Departments.
<i>A City “open for business”</i>	
Small businesses require access to a single, easily accessible information portal which is able to provide clear and comprehensive information to potential and existing businesses, together with sign-posting to further information and support	<ul style="list-style-type: none"> • Given its mandate to facilitate economic development, DED’s SMME Directorate needs to actively engage with service providers such as Business Place and the Metro Trading Company. • DED SMME Directorate needs to work with these and other relevant service providers to ensure that SMMEs have easy access to advice and assistance in respect of requirements such as business licences, land use applications and zoning approvals. • The SMME Directorate could also play a role in facilitating improved access to information about progress of applications through the system, in consultation with the relevant departments.
Securing investment requires	<ul style="list-style-type: none"> • DED Trade and Investment Promotion Directorate is in

²¹ www.joburg.org.za DED Homepage

<p>effective coordination across government to enable quick responses to potential investors' enquiries and speedy action to facilitate pre-requisites for investment</p>	<p>the process of developing ways to improve the City's ability to provide a 'one stop' contact point for potential investors. Efforts in this regard should include closer integration with key departments such as Development Planning and infrastructure providers. It will be important to bear in mind the needs of both foreign and domestic investors</p>
<p>The efficiency, consistency and openness of CoJ procurement processes should be improved</p>	<ul style="list-style-type: none"> • DED should actively engage with the SCMU toward amending the CoJ website and registration documentation, to clarify that non-registration as a vendor does not preclude submission of responses to invitations to tender. <p>DED should lead by example:</p> <ul style="list-style-type: none"> • Ensuring that it uses <i>standardised procurement documentation</i> as provided by National Treasury • <i>Restricting</i> the use of pre-approved supplier panels to quotations below R200 000 for goods/services of a technical/specialised nature that are required on a recurring basis, as per Treasury guidelines • Ensuring its panels are updated <i>at least once a year</i> • Providing up to date information regarding tender awards in the public domain, including the CoJ website • Ensuring prompt payment for services/goods delivered • Ensuring detailed monitoring and reporting of payment times • Implementing shortened payment timeframes for small business on a formal and consistent basis.

Medium to Long Term Priority Actions	
<p>A number of the issues and challenges discussed in this report fall outside the responsibility and influence of the DED, but nonetheless have a direct impact on the business operating environment, opportunities for business expansion, and the City's potential as an investment destination.</p>	
<p>It is recommended that, in the medium to longer term, the DED should explore mechanisms to engage more closely with particular municipal departments and infrastructure providers, in order to facilitate constructive responses to these broader challenges. Such a facilitative role fits within the DED's mandate for supporting economic growth in the City of Johannesburg.</p>	
<i>Access to information</i>	
<p>Information should be available electronically as far as possible</p>	<ul style="list-style-type: none"> • DED should work with other departments to facilitate and support the development of clear visual presentations, specific to a type of business activity (e.g. provision of accommodation), that clearly demonstrate <ul style="list-style-type: none"> - which by-laws and regulations apply to a particular type of business - which departments one needs to interact with - who the appropriate contact people are

	<ul style="list-style-type: none"> - what processes are involved in obtaining the necessary permissions/ authorisations/ licences - approximately how much each process will cost · The SMME Directorate’s planned database for SMME’s (providing tender information and support) could be expanded to include information of this sort. · Such information should be easy to locate on the CoJ website, as well as being available in electronic and hard copy.
<p>Mechanisms for communication are a critical concern. The CoJ website currently states that information with not be provided by telephone and that individuals must visit Council offices in person– a serious inconvenience for business</p>	<ul style="list-style-type: none"> · Dedicated resources to deal with queries by telephone and by email are important for improved administrative efficiency. DED should engage with the City Manager and relevant departments to facilitate greater use of remote customer interface options.
<p><i>A City “open for business”</i></p>	
<p>The perception that the City presents a closed door to business must be changed. DED needs to facilitate engagement between CoJ and business, to demonstrate to business that CoJ is listening and reacting to businesses’ inputs</p>	<ul style="list-style-type: none"> · DED needs to facilitate communication and interaction between organised business and city departments and service providers. · Mechanisms for businesses to engage with government, from policy discussions to complaints to procurement opportunities, must be effectively communicated to reach as broad an audience as possible. · The DED’s Johannesburg Business Forum is a useful mechanism for engagement. It is important to ensure that it includes a broad range of businesses, and the results of interactions are effectively disseminated to a broad business audience, including small businesses. · DED needs to liaise with other departments and infrastructure providers to raise awareness and facilitate appropriate allocation of resources in areas of economic importance - to minimise the risk of economic potential being undermined by poor service delivery.
<p>Businesses requiring approvals from the City, from trading licences to development applications, need to be able to interact with the City as a single entity – rather than engaging individually with all the directorates and entities</p>	<ul style="list-style-type: none"> · DED Trade and Investment Promotion Directorate has a critical role in facilitating access to information for larger businesses requiring approvals from the Council. · DED SMME Directorate should play a similar role in assisting smaller businesses to obtain the necessary information and approvals. · DED needs to facilitate the flow of information between COJ and applicants, in consultation with relevant departments. Working with the relevant departments to

that make up the municipality	explore and support electronic tracking and SMS update options are possible examples.
Efficient customer service from frontline staff is a critical factor in a competitive business environment	<ul style="list-style-type: none"> · As a facilitator of economic growth, DED needs to interact with the City Manager’s office to develop and implement measures to improve customer service at the business-CoJ interface. While the Finance Department is currently developing a Customer Relations Directorate, it is understood that this directorate will focus on revenue-generating relations. It is recommended that the effort to improve customer service needs to be extended to incorporate all employees who interact with business and potential investors in the course of their duties. · Performance management arrangements need to ensure that individual employees, from management to the frontline, are held accountable for service delivery.
<i>Administrative efficiency</i>	
Development Planning has expressed frustration at poor quality inputs received from government entities re development applications – communication and coordination must be improved	<ul style="list-style-type: none"> · DED should request Development Planning to inform DED exactly where the problems are at MOE/agency level. In cases where the identified MOEs report to DED, DED should liaise with those MOEs to ensure that coordination and communication is improved.
CoJ needs to move away from hard copy, original documents, toward certified copies or, ideally, electronic documentation , to speed up processes and reduce opportunities for documents to go astray	<ul style="list-style-type: none"> · DED should play an active role in lobbying CoJ to make funding available to facilitate digitisation of certain application processes to assist in improving administrative efficiency. Building plan approvals and advertising applications are cases in point. This requires liaison with Development Planning.

10. Annex: CoJ By-laws: potential areas for review

10.1. Public Health By-Laws

The Public Health By-Laws are clearly designed to protect individuals and the public in general against threats to their health that may arise through the conduct of various business activities. The laws create a general prohibition against creating public hazards and health nuisances and then specifically regulate particular fields such as hair-dressing salons, dry-cleaning establishments and the like. The laws are likely to affect various sectors in which substantial numbers of small businesses operate.

The CoJ Department of Health engaged positively and constructively with SBP and DED during the review process. The Department has clarified a number of issues raised by the Phase 1 desk review, and has also indicated its willingness to review particular provisions, as detailed below.

10.1.1. Areas for possible review

Section 5 is designed to create an overall prohibition on creating public health hazards. The Department of Health acknowledges that Section 5(3) requires review. The section states:

“The owner or occupier of a premises creates a public health hazard if –

- (a) the premises are infested with pests or pests are breeding in large numbers on the premises;
- (b) there are conditions on the premises which are conducive to the spread of a communicable disease or which may cause a non-communicable disease;
- (c) there is any unsanitary condition in any part of the premises; or
- (d) any water supply for domestic consumption on the premises is unsafe for human consumption.”

This section should be removed as the definition of a public health hazard is adequate.

Given that (c) and (d) are very broad in that any premises are likely to have certain sections that are not very sanitary (for example a toilet or dish-washing area may be unsanitary at a particular time and water in these areas may not be safe for human consumption) a new definition should be developed to describe an unsanitary condition.

Section 13 describes the application procedure for a permit or exemption permit to conduct activities that require one. Section 13 (3) requires that, “Before deciding whether or not to approve an application... (a) the Council must ensure that any persons in the vicinity of the premises whose health or well-being may be affected if the premises

are used for the scheduled use concerned, have been consulted and had an opportunity to make representations...”.

The by-law does not specify how this consultation is to occur and what the delay will be in creating this opportunity for consultation. It is not per se an unreasonable requirement but may lead to considerable delays in businesses being able to get permits if no adequate process is set up to ensure that this occurs.

The Department of Health has indicated that it is willing to remove this provision since it is not applied in practice in the City of Johannesburg.

Provisions specific to hair salons

Section 55(a) and (b) require that any person operating or employed in a salon must “adequately disinfect” specified instruments after each use, and must “adequately sterilise” specified instruments after each use. However these terms are not currently defined. Appropriate definitions for “disinfect” and “sterilise” should be developed for inclusion in the by-law.

Section 56 (1) states that “Any person operating a salon must ensure that the premises are used exclusively for that purpose.” Smaller businesses may operate a salon from a residential home or use their premises for multiple purposes. The provision could render it impossible for some salons to operate. The provision should be amended to allow the sale of other commodities which will not pose a health risk.

Provisions specific to second hand goods

Section 58 provides a list of specific requirements in respect of premises with which any person operating a second hand goods business must comply. It is unclear why businesses selling second-hand goods are liable for greater regulation than businesses selling first-hand goods. Much of the regulation, which includes specifications such as minimum height of structures and types of gate, seems to have little justification and appears excessive.

Section 58 should be reviewed in order to align it with the provisions of the Second Hand Goods Act as enforced by the SAPS.

Provisions specific to accommodation establishments

Section 62 (d) states that an “accommodation establishment must be provided with (i) an area for the preparation and cooking of food, adequate for the use of and easily accessible to any occupier residing in the accommodation establishment” – this

provision seems unrealistic given that very few hotels, motels or B&B establishments would reasonably expect to make their kitchen areas available to guests, and would certainly not wish to provide such facilities in individual rooms.

The provision (e)(iii) requiring that bathing facilities should be “designated for the different sexes” is problematic, given that en-suite bathrooms are specific to a room which may be shared by members of the same or different gender. Provision (f) which requires that “sanitary fixtures” are “designated for the different sexes” raises similar problems.

Section 62(k) requires “a store-room for the storage of furniture and equipment and a separate linen room with cupboards or shelves for the storage of clean bed and other linen, towels, blankets, pillows and other articles used in connection with an accommodation establishment...” This requirement fails to account for the scale of the enterprise. It is recommended that “or facility” be inserted (as per provisions in 65(d), for example), to take into account questions of appropriate scale and to recognise that a linen cupboard, rather than “a separate linen room” may suffice.

Provisions specific to dry-cleaning and laundry establishments

Section 65 (g) states that a “a tea kitchen with a single-basin stainless steel sink, with a supply of running hot and cold potable water, must be provided.” In view of scale, it would be more reasonable to refer to a tea “area”, which could be a screened area as per the requirements for hairdressing salons (Section 56(2)).

Provisions specific to child-care services

Section 110 states that no person providing child-care services may keep animals or birds on the premises. However, many child-care areas do have animals, for example rabbits in a hutch, and these may in some cases be used to encourage nurturing behaviour in children. The by law should be amended to allow for such practices, provided that such animals or birds are kept in terms of the provisions of the keeping of animals (contained in the same by-law) and are not able to walk freely in areas of play.

Section 111(g) requires that, “if transport to or from a child-care service is provided... the children are supervised by at least one adult apart from the driver during transport.” This provision may be problematic for small businesses. The Department of Health acknowledges that this provision is only applied on merit for example where babies are transported or children are transported in a vehicle where they are not under the direct supervision of the driver.

Provisions specific to keeping of animals

Section 118(5) contains an error. It refers to a decision in terms of subsection (1), but that subsection provides that the Chapter does not apply to specific types of situations where animals are kept. The provision should refer to sub-section (4) and needs to be corrected.

10.2. Waste Management By-Law

The Waste Management By-Law is designed to regulate the disposal of waste within the city of Johannesburg. Since most businesses have to deal with waste, the by-law is likely to impact on business activity. The by-law is however largely defined by the National Waste Act 2008, which incorporates the “polluter pays” principle.

Given the potentially onerous requirements of certain provisions, particularly for smaller businesses, it is critical that the CoJ Department of Environmental Management work closely with business to ensure that compliance requirements are clearly understood, the businesses have access to advice and information as required, and that enforcement is undertaken effectively and consistently.

10.2.1. Areas for possible review

Section 40 of the by-law states that the “provisions of section 27 of the Gauteng Rationalisation Act, read with the necessary changes, apply to the exercise by an authorised official of any of the powers contemplated in sections 38 and 39.” This reference to another Act, without any explanation of that Act, undermines the extent to which the by-laws can be considered user-friendly for persons wishing to understand the ambit of the powers of officials. It is recommended that the by-law be amended to include a schedule that advises readers where to access other waste related legislation and regulations, particularly those referred to in the by-law.

Chapter 4, Part 5 of the Waste Management By-Law deals with special industrial, hazardous or health care risk waste. While the proper management of such waste is clearly of critical importance from both a public health and environmental perspective, it is nonetheless necessary to recognise that small businesses in particular may well require support, at least initially, to ensure that they are fully conversant with documentation requirements and are able to comply. If the by-law is applied without adequate engagement with and support for small businesses, there may be a risk of pushing some small enterprises toward the informal sector, where environmental controls will be even more difficult to enforce.

The Environmental Management Department acknowledges the importance of such support, and notes that the forms to be completed by business may be accessed on-line, or in person at the Council office. The Department also recognises the need to improve its communication with the broader public and raise the profile of its activities, and that this should include improved communication regarding regulatory requirements and sources of information and advice.

10.3. Advertising Signs and Hoarding By-Laws

Advertising is clearly of great importance to business activity in the city. Outdoor advertising also has a major impact on the aesthetic appeal of the urban environment, with implications for tourism.

The Advertising Signs and Hoarding By-Laws (June 2008) are designed to regulate advertising and the visual environment within the municipal area. These regulations are the result of a major review of the 2001 advertising and hoarding by-laws. Certain aspects of the 2001 by-law were recognised as being overly bureaucratic and in need of streamlining. A significant change introduced by the 2008 by-law is the introduction of discretionary provisions to enable the exemption of certain applications from certain procedures.

While the revised by-law appears to be a great deal less onerous for business, effective and consistent enforcement remains a challenge.

10.3.1. Areas for possible review

Chapter 2 Section 3 provides the procedure for applying for advertising. The procedure is fairly cumbersome and requires considerable supporting documentation. Section 3.4 however provides that the “Council may at its discretion exempt an applicant from complying with any of the above requirements.”

If the applicant is not exempted under section 3.4, the applicant is required to provide:

- k) Proof of compliance with any other law, including but not limited to, the National Road Traffic Act, the National Building Regulations and Building Standards Act, and the National Environmental Management Act, to the extent that such law is applicable in respect of the application concerned. *The town planning department notes that this provision is due to be removed as it is deemed repetitious.*

Chapter 2 Section 4(2)(b) states that any approval by the Council may be for a period not exceeding “nine years and eleven months if the advertising sign concerned is to be located on any property other than a public place; or five years if the advertising sign concerned is to be located on any public place.”

The latter provision in respect of signage located on public property may be affected by new asset management regulations under the Municipal Public Finance Management Act. The JPC has indicated that the new regulations, promulgated in September 2008, would require all leases longer than 3 years to be subject to consultation with MOEs and Council approval. The town planning department has noted that this requires further investigation.

While the categorisation of areas of maximum, partial and minimum control appears to be a reasonable and beneficial approach toward management of outdoor advertising, Schedule 1 does not provide clarity about the potential size of such areas.

Thus, while Chapter 4 Section 20 (relating to advertisements on banners, flags and similar objects) states that “Not more than two advertisements in respect of the same matter are permitted in an urban or rural area of maximum control or four banners or flags in respect of the same matter in an urban area of partial and minimum control as contemplated in Schedule 1,” it is unclear how limiting the provision is in the absence of a sense of the size of the area.

Section 23, relating to advertising for or the sale and letting of property, appears to prohibit the common practice of placing a ‘sold’ sticker over a ‘for sale’ board. This section also states provides that a ‘for sale’ or ‘to let’ sign or a ‘sold’ sign may be displayed “for a period not exceeding 90 days.” It is unclear whether the 90 days runs from the initial display of the ‘for sale’/‘to let’ sign to the removal of the sale sign. It is also unclear why a ‘for sale’/‘to let’ sign should be removed after 90 days if the property has not yet been disposed of.

10.3.2. Process concerns

The Department of Environmental Management notes a process problem in relation to signage on council owned land. A business wishing to erect an advertising sign on municipal property, such as a park, must as a first step secure a lease from the JPC. The business must then approach outdoor advertising to make arrangements for putting the sign in place. At this point the application is referred to the Department of Environmental Management for approval. While the Department may object to the erection of the sign on environmental grounds, the business already has a lease and tends to operate from the assumption that he already has approval. The Department notes that in any other application for development on city-owned land the JPC circulates the application to all departments for comments – and that it would be useful to follow the same procedure in respect of signage applications, to prevent misconceptions.

10.4. Emergency Services By-Law

The Emergency Services By-law largely relates to regulating fire prevention and protection, the handling of flammable substances and dangerous goods. The law impacts upon businesses to the extent that it requires certain precautions to be taken to avoid emergencies. The by-law is largely determined by national legislation and regulations, including national building regulations.

10.4.1. Areas for possible review

The by-law includes several requirements in relation to building specifications, including for example arrangements for effective drainage of water resulting from fire-extinguishing activities, and specifications for escape doors. While such provisions are certainly valuable in respect of the prevention of and management of fire hazards, they may nonetheless create onerous requirements for businesses converting premises from a dwelling house to a business property. In the case of B&B operators, for example, or small businesses with very few staff and operating from converted houses, such requirements may well be very costly to implement, and represent initial capital expenses that the business may find difficult to cover.

It is however noted that the October 2008 amendments to the National Building Regulations includes a new hospitality section which recognises and differentiates between hotels and B&Bs, and defines less onerous provisions for accommodation providers with up to 16 people in a dwelling house. The codes that fall under the national regulations are currently being reviewed as a result of these changes, and revised codes will be issued in due course. The by-law may need to be revised to take account of these revisions.

Where businesses have been in operation for a substantial period of time without being fully aware of and/or compliant with the requirements of the by-law, an inspection may result in the business having to make the necessary structural changes within a short space of time in order to become compliant.

The CoJ Emergency Services Department notes that, if a building is deemed to present immediate risk to life, a fire inspector would require that it close business immediately until the problems have been addressed. If however there is no immediate life risk, the business will be given a set period of time in which they must address the problems identified by the fire inspector. This flexibility is important to ensure that the necessary structural changes can be made without necessarily having to cease operations (in cases where businesses are already in operation).

Section 77(2) provides that “no person may deliver or supply or allow to be delivered or supplied any dangerous goods to any premises in contravention of any conditions of the

certificate of registration applicable to those premises.” This seems over-broad. It is unclear how the person receiving such goods would know whether they are in contravention of such conditions.

The Emergency Services Department notes that it will be revising the provision pertaining to transport of dangerous goods to improve its fit with national legislation.

Easy access to information: a good practice example

The Emergency Services Department has produced a short booklet that aims to provide businesses with concise and easily accessible information about their obligations under the by-law. The booklet, “Emergency Management Services By laws – a simple guide” provides a synopsis of the by law provisions, in easily accessible format, together with contact information for divisional chiefs, senior inspectors and inspectors. The booklet provides an example of good practice and could usefully be replicated for other areas of regulatory compliance at the municipal level.

10.5. Encroachment on Property By-Law

The encroachment of property by-law is designed to regulate the extent to which a physical object may intrude on or over municipal property. The laws do at times appear to be over-broad in their scope. They impose difficult obligations upon private persons and are not a model of clarity. It is envisaged that the laws may impact upon businesses such as coffee shops and restaurants which can use sidewalks and construct decks or verandas over public ways.

10.5.1. Areas for possible review

The definition of encroachment appears to be very wide and would seem to encompass too much within its ambit. It refers to ‘any physical object which intrudes on or over municipal property.’

Section 2 (1) states that “No person may, without prior written permission of the Council, make or construct any colonnade, veranda, balcony, bay window, pavement light, showcase or other encroachment on or over any part of a public road, and pavement opening in or under any public road.”

The focus of the Act is on encroachment on public roads and pavements, and does not in fact appear to extend to any other type of Council property. The intention would seem to be to regulate the construction of certain immovable property (or property that is difficult to move) that extends over public roads. As it stands, however, the current definition – given the inclusion of the words ‘make or construct’ would seem to exclude objects temporarily placed on a public pavement (such as tables and chairs outside a restaurant). It is also not clear whether the by-law would apply to street traders

operating from pavements, if they limit themselves to a moveable table or a blanket on the pavement, for example. The clarity of this definition needs to be enhanced.

Section 2 sets up a system of council approvals for encroachments. Clearly, it is important that this system is efficient and that the fee is not so high that it deters business activity that involves certain encroachments (particularly in the restaurant industry).

Section 2(5) states that, "Until the Council is notified of the horizontal dimension of the encroachment in terms of subsection (4)(b), every encroachment relating to a building is deemed to have an aggregate horizontal dimension equal to the total road frontage on or over which the encroachment exists, of the property on which the building concerned is situated." This provision seems strange, since it effectively envisages the largest possible encroachment, and from a prima facie reading, appears to be unjustifiable.

Section 3(1) states that "the design, arrangement and construction of a veranda, balcony, bay window or other encroachment on or over a public road, as well as the paving, kerb and gutter thereof must be to the satisfaction of and to the levels approved by the Council." This appears to be vague in relation to the nature of the encroachment concerned. How are businesses to understand what the levels approved by the Council are or what will be to the satisfaction of the Council? It is necessary that such standards are more determinate and can be easily accessible to businesses.

Section 10 states that "If any encroachment has been erected or constructed in front of any building, the owner must at his, her or its own expense (a) pave the whole of the footway or pavement under the encroachment or in front of the building in which the pavement opening is fixed; and (b) lay the road kerbing and guttering and paving in front of the building for the full width of the footway or pavement." This provision appears to be overly onerous on owners of buildings in that it imposes a considerable cost and administrative burden on the owner. This provision imposes an obligation upon private owners relating to public sidewalks, which would appear to be more reasonably the responsibility of the Council. The cost of fulfilling this provision is likely to be high.

Section 11(2) states that the owner of an encroachment or fixture, constructed with the necessary permission from the Council, may nonetheless be required by the Council "under the hand of the Building Control Officer to remove any such encroachment or fixture..." Whilst the power to remove an encroachment is necessary, it seems that this could seriously affect the property rights of the person who legally obtained permission to erect such an encroachment, particularly that erection of an encroachment in full compliance with the by-law is likely to be very costly. There should be a limited set of circumstances outlined in which such an order for removal can be ordered, together with a procedure through which to challenge any such order given its impact upon private owners.

10.6. Metered Taxi, Minibus, Midibus and Bus By-Law

This by-law is designed to regulate the provision of services in the road passenger transport industry. This is clearly an area of importance particularly given the influx of tourists envisaged for the FIFA World Cup. The laws generally appear to be reasonable apart from a few areas of concern that are listed below.

10.6.1. Areas for possible review

Section 3(2) regulates the situation where a driver of a metered taxi is unable to convey a passenger to their destination. The obligation is placed upon a driver to take reasonable steps to arrange another taxi or 'let the passenger arrange for transport to get to his or her destination.' The latter part of the law appears to be unclear as to the nature of the obligation placed upon the driver. For example, is the driver required to allow the person to use his/her phone, or to convey the person to a point at which alternative transport will be available? This provision requires greater clarity.

Section 8 prohibits a metered taxi, minibus, midibus or bus from parking on a public road other than in a bay specifically reserved for such a vehicle. It is unclear why, at least a metered taxi, may not park in a general bay that can be used by members of the public. This may render the job of providing the taxi service more difficult and thus contribute to impeding business activity for no good reason where no such exclusive bays exist.

Section 9 limits the scope of section 8 and allows parking in general parking bays where there is a party or private entertainment in progress or for purposes of a funeral or wedding procession. It is unclear as to why parking in general bays should be allowed only for these particular purposes and gives the sense of arbitrariness in this provision.

Section 11 prohibits a hirer or passenger from failing to pay a fare where they engage a 'public passenger road transport service.' The latter term is not defined in the definition's section and this should be remedied to provide clarity.

Section 14(1) states that "The owner, driver, conductor or any other person in charge of a vehicle engaged in a public passenger road transport service must take immediate steps as soon as it comes to his or her knowledge that -

- (a) any person suffering from a contagious disease; or
- (b) the body of any person who has died of such disease; or
- (c) anything which has been exposed to or contaminated with such disease,

has been conveyed in or upon such vehicle engaged in a public passenger road transport service to report the matter to the Medical Officer of Health."

The provision, while not unreasonable, is poorly drafted and lacks clarity, so could lead individuals to be unclear as to what their responsibilities are. It may be useful to change the beginning of the clause to read “The owner, driver, conductor or any other person in charge of a vehicle engaged in a public passenger road transport service must take immediate steps to *report the matter to the Medical Officer of Health* as soon as it comes to his or her knowledge that... (conditions a to c).

Section 24 states that “The City may charge a cab licence to operators of all modes of road-based public transport on an annual basis as a once-off payment. The cab licence may also be reviewed annually.” It would be useful to add the word ‘fee’ after license, in both cases, so as to increase clarity.

10.7. Water Services By-Law

The Water Services By-Law (May 2004 amended June 2008) states that after environmental approval has been granted for provision of water services, and such provision has been approved by the Council, it is the responsibility of the proposed consumer or any entity established under any law to represent the property interests of any consumer/group of consumers to ensure that all laws and conditions affected by the provisions of water services and relating to environmental management and control are complied with.

This assumes that the ‘proposed consumer’ of the development has already been identified, and blurs the responsibilities of the site developer in respect of regulatory compliance. It also puts the onus on the ‘proposed consumer’ to know and understand the full range of regulatory compliance requirements – without providing for any explicit support from the Council in this regard.

10.8. Credit control and debt collection

The Municipal Systems Act (Act No.32, 2000) requires the CoJ to adopt, maintain and implement a credit control and debt collection policy, consistent with its rates and tariff policies. The implementation of debt collection policies is at the discretion of the municipality and its council.

The CoJ Credit Control Policy requires that, on registration for municipal services, new account holders must pay a cash deposit and lodge additional security ‘commensurate with risk as determined.’ The lack of specifics in this regard is potentially problematic – it is not clear how risk will be determined nor what extent of additional security will be required.

Section 28 of the PRA allows municipalities to recover property rates in arrears from tenants, occupiers and estate agents. The amount recoverable is limited to the amount of rent or other money receivable by the owner. As per the Municipal Systems Act (Section 102) and PRA, the CoJ policy states that the municipality may consolidate any separate accounts of persons liable for payments to the municipality, and credit a payment by such a person against any account of that person. It should however be noted that this could result in user charges on water and electricity incurred by tenants being added to the property owner's rate account. Small businesses renting from properties used for multiple purposes could also be at risk when other tenants (residential or non-residential) run arrears, as this could result in discontinuation of municipal services.

The policy states that any existing customer, or the trustee, liquidator, judicial manager or curator of such a customer, may be required by the Council to enter into a new service agreement or replace an existing agreement of the customer concerned, and to pay a deposit or furnish security, notwithstanding the fact that a service agreement was previously entered into in respect of the municipal service concerned. The policy provides no explanation of why such a requirement should be necessary, and appears to provide an opt-out option for the Council without adequate justification.

10.9. Property rates policy

The Local Government: Municipal Property Rates Act (PRA) 2004 introduces a uniform, national approach to rating property at municipal level. It aims to introduce uniformity across the country concerning the assessment, charging, and collection of property rates. The PRA determines that differential rates can be applied to certain properties, including agricultural and other business and commercial properties.

The CoJ Rates Policy (2007) states that it is designed to ensure equitable treatment by the Council in the levying of rates on property owners, including owners under sectional title, and others who may become liable for the payment of rates, and that all owners of rateable property should be informed about their liability in respect of rates.

Certain clauses within the policy are however likely to be onerous for businesses, and particularly for smaller businesses. These include the following:

- In cases of joint ownership of property, all the property owners are jointly and severally liable for the payment of rates and any interest incurred.
- In the case of property let by a ratepayer, the Council may recover unpaid rates from the tenant from any unpaid rental due to the ratepayer. Taken together with the provision of shared liability in cases of joint ownership, this may conceivably result in one of the property owners being deprived of rental owing to rate defaults by another property owner.

- If a ratepayer wishes to dispose of a property, he or she must make an advance payment to cover the rates due before a rates clearance certificate is issued, with payment calculated to cover a lead time of at least 150 days. An advance payment of five months' worth of rates payments amounts to a very substantial amount of money. This is likely to put a considerable financial burden on any business, and in the case of smaller businesses may well create considerable strains on cash flow. While the seller may in theory claim the money back from the Council post transfer, businesses describe the process as being fraught with red tape and administrative delays.

The CoJ Revenue Department is currently developing a system to share data with the Deeds Office, to try to address difficulties associated with closing utilities accounts and tracking new addresses when individuals/businesses move properties.

10.10. Constraints on development of government land

The CoJ Integrated Environmental Management Policy (June 2005) states that environmental management in Johannesburg has to advance macro-economic development to promote investment in the city. The Policy notes that CoJ has a low level of waste recycling, and commits the City to work toward developing an integrated waste management strategy and achieving zero waste disposal by landfill in due course.

At present, much of the city's waste goes to landfill sites – making it difficult to recycle. The Environmental Management Department is part of a Recycling Forum, with business, which includes a focus on difficult to dispose of waste, such as technological waste. The city aims to work with business to enable separation of waste at source. However, it acknowledges that, at present, recycling facilities are scattered around the city and are not always accessible for business. The Environmental Management Department aims to make more space available for industry to operate recycling activities. Regulatory constraints on leasing of government-owned land create a critical obstacle, however.

The Johannesburg Property Company currently makes land available on a lease of no more than 10 years (longer leases require Council approval). The lease however includes a restriction on establishment of permanent structures – making the arrangement unsuitable for recycling activities. The current situation suggests that, in order for the Environmental Management Department to procure publicly owned land to facilitate recycling activities, the regulations governing establishment of permanent structures on such land need to be reviewed.