

Project Summary Report

Regulatory and Administrative Challenges in the City of Johannesburg

September 2009



a world class African city



Motivation for the Project

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 has an interest in the extent to which the municipal regulatory regime – the content of the City's by-laws, and their implementation and enforcement – influences the business environment.

In order to understand the extent to which particular regulatory and process reforms might be needed to boost economic activity and investment in the city, the Department commissioned a study to assess the city's by-laws and administrative processes, to identify potentially negative impacts on business activities and investment.

The project included the following activities:

- In-depth legal review of selected by-laws with a potentially significant impact on business activity
- Desk review of a range of provincial and Metro policy and strategy documents
- A review of business satisfaction surveys and other recent research on the impact of municipal regulations on businesses
- In-depth consultations with senior management in relevant CoJ departments and municipal entities
- Discussions with selected business to identify priority challenges and areas for regulatory and process reform.

On this basis, a detailed report identifying specific regulatory issues which CoJ needs to review was developed, together with an in-depth assessment of two administrative processes identified by business as being particularly problematic, namely development approvals and procurement processes.

A detailed action agenda was developed, to be taken forward by DED to facilitate the implementation of project recommendations.

This report provides a summary of the key issues and recommendations identified by the project.

Key issues emerging from the Regulatory Review

At the time of the review, CoJ administered 18 by-laws, covering a broad array of issues. 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 on the business environment were likely to be minimal, or restricted to very specific industries

or sectors. By-laws under consideration or in draft format were also excluded from further study, as these proposals were still subject to review and further development.

Six by-laws were identified as having a very substantial impact on the business environment and/or raising significant legal or administrative concerns:

- 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

These were subjected to a detailed, desk-based legal review. Each 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.

The assessment highlighted a number of 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 full project report. The review will be taken forward by the Department of Economic Development in consultation with Legal and Compliance Department, in conjunction with the relevant CoJ Departments.

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

- Improve clarity in the definition of particular terms, activities and environments
- 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
- 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
- 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
- Ensure that enforcement is undertaken effectively and consistently
 - 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
 - Recognise 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
 - Make relevant information and official forms available online as far as possible
 - Improve communication at departmental level with the public and raise the profile of activities, including communication regarding regulatory requirements and sources of information and advice
 - Provide a grace period, where appropriate, for businesses that have been operating outside regulatory requirements to make required changes (including structural changes to business premises) without necessarily ceasing operations
 - Develop 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
 - Recognise 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, 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
 - Explain the reasons for 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).

Key issues arising from the Administrative Review

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

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 selected for a more detailed administrative review because of their considerable impact on the operating environment for businesses:

- planning and building approvals, and
- procurement processes.

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.

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 applicants. Improved coordination across departments could potentially reduce these problems.

In each case, the administrative review demonstrated that, when all the time spent on completing the relevant processes is taken into account, the cumulative cost to business can be significant – considerably more so when processes are subject to delays.

It is imperative that the application of regulations must be sufficiently resourced – supported by appropriately skilled staff, easily accessible information, and effective communication to inform applicants about procedural requirements and progress through the system.

Key challenges and recommendations arising from the administrative review are detailed in the main report.

Recommended Action Agenda for DED

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. With this mandate in mind, it is important to assess the challenges and recommendations identified in this report, and to identify specific roles for DED in taking the process forward.

It is envisaged that the Action Agenda will help to inform departmental planning, and will be incorporated into performance management frameworks.

Short Term Priority Actions	
Key Issue	DED Role
<i>Regulatory review</i>	
The study has identified specific by-law provisions that would benefit from review and amendment	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 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	DED SMME Directorate to actively engage with service providers such as Business Place and the Metro Trading Company 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. DED SMME Directorate to facilitate improved access to information about progress of applications through the system, in consultation with the relevant departments.
Securing investment requires effective coordination across government to enable quick responses to potential investors’ enquiries and speedy action to facilitate pre-requisites for investment	DED Trade and Investment Promotion Directorate is in the process of developing ways to improve the City’s ability to provide a ‘one stop’ contact point for potential investors. Efforts should include closer integration with key departments such as Development Planning and infrastructure providers. It will be important to consider the needs of foreign <i>and</i> domestic investors
The efficiency, consistency and openness of CoJ procurement processes should be improved	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. DED should lead by example: <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>	<p>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</p> <ul style="list-style-type: none"> · Which regulations apply to a particular type of business · Which departments one needs to interact with · Who the appropriate contact people are · Processes involved in obtaining necessary authorisations · Approximately how much each process will cost <p>The SMME Directorate's planned database for SMME's (providing tender information and support) could be expanded to include information of this sort.</p> <p>Such information should be easy to locate on the CoJ website, as well as being available in electronic and hard copy.</p>
<p>Mechanisms for communication are a critical concern. The CoJ website currently states that information will not be provided by telephone and that individuals must visit Council offices in person— a serious inconvenience for business</p>	<p>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>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

	<p>includes a broad range of businesses, and the results of interactions are effectively disseminated to a broad business audience, including small businesses.</p> <ul style="list-style-type: none"> • <i>DED needs to liaise with other departments and infrastructure providers to raise awareness and facilitate appropriate allocation of resources</i> 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 that make up the municipality</p>	<ul style="list-style-type: none"> • <i>DED Trade and Investment Promotion Directorate</i> has a critical role in facilitating access to information for larger businesses requiring approvals from the Council. • <i>DED SMME Directorate</i> should play a similar role in assisting smaller businesses to obtain the necessary information and approvals. • <i>DED needs to facilitate the flow of information between COJ and applicants, in consultation with relevant departments.</i> Working with the relevant departments to explore and support electronic tracking and SMS update options are possible examples.
<p>Efficient customer service from frontline staff is a critical factor in a competitive business environment</p>	<p>As a facilitator of economic growth, <i>DED needs to interact with the City Manager’s office to develop and implement measures to improve customer service</i> 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.</p> <p>Performance management arrangements need to ensure that individual employees, from management to the frontline, are held accountable for service delivery.</p>

<i>Administrative efficiency</i>	
<p>Development Planning has expressed frustration at poor quality inputs received from government entities re development applications – communication and coordination must be improved</p>	<p><i>DED should request Development Planning to inform DED exactly where the problems are at MOE/agency level.</i> In cases where the identified MOEs report to <i>DED</i>, <i>DED</i> should liaise with those MOEs to ensure that coordination and communication is improved.</p>
<p>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</p>	<p><i>DED should play an active role in lobbying CoJ</i> 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 <i>requires liaison with Development Planning.</i></p>