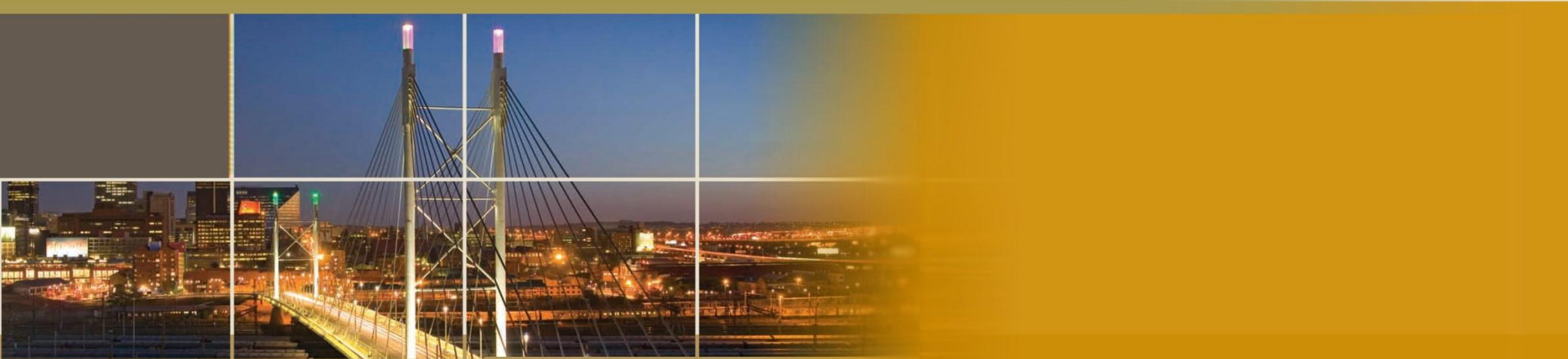


**JMPD**



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## **By-Law Enforcement & the Public – The Value of Informed Citizens**

**Presented to: North West University (NWU) – Potchefstroom Campus**

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- 1. Introduction
- 2. What are By Laws, Their Role and Promulgation
- 3. List of Example of Promulgated By Laws of City of JHB
- 4. Enforcement of By Laws
- 5. How the Courts (Justice System) View Enforcement of the By Laws
- 6. Society's Perception of the Enforcement of the By Laws.
- 7. Value of Informed Citizens
- 8. Conclusion



# 1. INTRODUCTION

The topic of today is a very interesting one as it seeks to look at the perception of the general population and our Justice System (from the Police to the Courts) with regard to the Enforcement of By Laws and having the citizens informed of them.

The approach that should be taken into consideration in this regard is that of the former mayor of New York – Mayor Giuliani. This approach, referred to as ‘The Broken Window Syndrome’, was that law enforcement should crack down on minor crimes to help to prevent major ones (E.B. in The Economist of the Jan 27<sup>th</sup>, 2015).

On the other hand, cracking down on By Laws should be preceded by Citizens being informed of them so that they should be aware of behaviour expected of them.

## 2. WHAT ARE BY LAWS, THEIR ROLE AND PROMULGATION

By-Laws are a type of law, and specifically a type of Legislations enacted and passed by Municipalities rather than Provincial or National Government (By Law Tool Box Document, Local Government Resource Centre).

As Legislation, By Laws are intended to comprehensively regulate issues such as Informal Trading, Dumping, Parking Meters, Nuisance, Noise, Parks and Swimming Pools, Dogs, Parks etc.

They are local in that:

- They relate to issues in the local community;
- Apply only in the area of jurisdiction of the Municipality that has enacted them



# 3. List of Example of Promulgated By Laws of City of Johannesburg (CoJ)

## BY-LAWS OF CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

1	NAME OF BY-LAWS	PROMULGATION PROVINCIAL GAZETTE
2	2010 Fifa World Cup South Africa Including Ch. 9 Schedules	LAN 224 PG No. 36 16 February 2009, Ch 9: Notice 1336 PG No 79 11 May 2010
3	Air Pollution Control	LAN 624 PG No. 96 25 May 2011
4	Cemeteries and Crematoria	LAN 824 PG No. 179 21 May 2004
5	Credit Control and Debt Collection	GN 1857 PG No. 213 23 May 2005
6	Culture and Recreation	LAN 825 PG No. 179 21 May 2004
7	Dogs and Cats	GN 1334 PG No. 135 10 April 2006
8	Electricity	LAN 1610 PG No. 16 17 March 1999;
9	Emergency Services	LAN 826 PG No. 179 21 May 2004
10	Encroachment on Property	LAN 827 PG No. 179 21 May 2004
11	Formation of Johannesburg Investment and Tourism as a Service Utility	LAN 1447 PG No. 278 31 August 2016
12	Gas Licence	LAN 3326 PG No. 57 31 May 2000
13	Gas Supply	LAN 3997 PG No. 79 28 June 2000
14	Informal Trading By-laws (Not in operation)	LAN 328 PG No. 66 14 March 2012
15	Market By-laws	AN 520, 12 April 1978
16	Metered Taxi, Minibus, Midibus and Bus	LAN 828 PG No. 179 21 May 2004
17	Municipal Planning	LAN 1240 PG No. 255 3 August 2016
18	Ombudsman	LAN 438 PG No 80 28 March 2014
19	Outdoor Advertising	LAN 2007 PG No. 277 18 December 2009
20	Parking Grounds	LAN 829 PG No. 179 21 May 2004
21	Problem Property	GN 839 PG No. 167 20 June 2014
22	Property Rates	LAN 1452 PG No. 159 18 June 2008
23	Protection Wild Animals and Birds	LAN 1335 PG No. 135 10 April 2006
24	Public Health	LAN 830 PG No. 179 21 May 2004
25	Public Open spaces	LAN 831 PG No. 179 21 May 2004
26	Public Road and Miscellaneous	LAN 832 PG No. 179 21 May 2004
27	Stormwater Management	LAN 1380 PG No. 181 25 October 2010
28	Street Trading	LAN 833 PG No. 179 21 May 2004
29	Treated Effluent	PN 365 PG No 365 26 April 2017
30	Tariff Determination	LAN 1633 PG No. 228 21 August 2008
31	Waste Management	LAN 1012 PG No. 216 30 July 2013
32	Water Services	LAN 835 PG No. 179 21 May 2004



## 4. ENFORCEMENT OF BY LAWS

A study was undertaken under the Centre for the Study of Violence and Reconciliation (CSVr) with regard to the developments in By Law Enforcement in the four major cities in South Africa. The aim of such a study was threefold, being:

1. Examining the Rationale behind By-Law Enforcement, considering the enabling legislation for such enforcement;
2. Such examination being carried out with reference to renewed attempts aimed at reviving Metropolitan Centres in South Africa; and
3. Finally spelling out the importance of the relationship between effective By-Law Enforcement and Safety and Security. (Mzi Memeza, By-Law Enforcement in South Africa, Undated, CSVr).

The third aim of the study refers clearly to the “Broken Window Syndrome” of Former Mayor Giuliano.

Whilst the study looked at three issues which were i) The Legislative Power of Local Government in Enacting By-Laws, ii) The Procedure for Making By Laws and iii) The Enforceability of a By Law (Ibid), in our context, we will confine this presentation to the last issue.

## 4. ENFORCEMENT OF BY LAWS (Cont.)

As any other law, By Laws exists to ensure that certain behaviour or/and acts are prohibited and punished if contravened. Therefore a By Law has the same effect as any other Provincial Ordinances or National Legislation thus can be enforced by courts of law.

Having said the above, Memeza continues to refer to Donges and Van Winsen (1953) who in my view, correctly so, said that the courts, including Magistrate Courts, can enquire into the validity of By Laws.

In enforcing By Laws, over and above being able to be criminally prosecuted by the courts, Municipalities are NOT prevented from obtaining an interdict to prevent an infringement of a By Law.

At the time of the CSVR study referred to, a Magistrate Court could hear a By Law infringement provided the By Law does not impose a sentence of imprisonment of more than One Year or a fine of R20 000.

## 5. How the Courts (Justice System) View Enforcement of the By Laws

7

In this respect, one will focus on the experience one has with regard to being the Director of By Law Management Unit (BMU) in the CoJ's Johannesburg Metropolitan Police Department (JMPD).

Our courts view By Law infringements as really not anything serious to worry about in their administration of justice responsibility. Consistent and effective by-law enforcement is a serious challenge in the CoJ's enforcement units because of the South African Police Service (SAPS) and the courts attitude.

This resulted in the CoJ establishing a Municipal Court to assist with the challenge, the aim of which is to provide a forum that would specifically focus on CoJ's By Law issues in administering justice and thus giving support to the enforcement units. It is presently unfortunately after its existence since ....., it is not as yet functioning optimally as it should.

There are numerous reasons for this and some of which are:

- Court Roll is not sufficiently populated;
- Too many cases are dismissed by the court;
- Communication being non existent between the court and the enforcement units;
- Magisterial boundaries not aligned with Municipal boundaries; etc.



## 6. Society's Perception of the Enforcement of the By Laws.

The low level of enforcement of By Laws has resulted over the years, in the public not taking By Law infringements seriously. To the general public the enforcement of By Laws is perceived as just an intrusion on their privacy and an unnecessary waste of resources exacerbated by the attitude of the courts and the police in dealing with By Law infringers. When operations of By Laws are undertaken, society has mixed feelings with regard to how infringers should be dealt. If society feels that the By Law infringement is infringing on their right, they are quick to report it to us and demand action to be taken but if it does not, they on the other hand, are sympathetic to the infringer to an extent of even believing that there is nothing wrong being done.



## 7. Value of Informed Citizens

There is a saying that “Ignorance of the Law is no Excuse”. On the other hand, it is imperative that citizens are informed of the By Laws for them to know what is expected of them. Knowledge as power increases compliance.

The CoJ and in particular Public Safety, through various means, attempts to ensure that the citizens are informed of the City’s By Laws. The latest example is the production of pamphlets via the Office of the Member of the Mayoral Committee (MMC) and the Communications Dept, of the various By Laws (As indicated in the example in the following slide of some of the By Laws enforced by JMPD). These are intended to intensify the sharing of these with the Community at various Councillors’ meetings with the Communities.

Members of Public Safety Community Outreach also independently hold sessions sharing information on these. They also go to shopping centres and where there are events to inform communities.

Another process that the City embarks on is the one that happened recently during April to June this year of consulting with communities during road shows on intended amendments to legislation which in that case it was with regard to Outdoor Advertising By Laws. During this process, communities are able to be aware of the By Laws and input on them.



## City of Johannesburg By-Laws

### ILLEGAL CONNECTIONS OF ELECTRICITY

- Report illegal electricity connections
- Do not supply your neighbor with electricity without approval from the council
- Do not bypass the electricity meter boxes
- Do not overload plugs with lots of appliances
- Report faulty meters to City Power
- Keep electricity appliances away from water and children
- Don't tamper with electricity supply cables
- Do not touch exposed electricity wires
- Do not bridge electricity meters boxes

### ILLEGAL ADVERTISING

- Do not paste fly posters on any street furniture (eg lamp poles, traffic signal poles and bus stop)
- Do not advertise on any unauthorized walls
- Do not advertise any obscene messages
- Always get permission from the council before putting up any advert
- Do not place any pointer boards before 12h00 on a Sunday
- Do not place any mobile sign within 100 meters of any intersections
- Never remove wheels of any mobile sign
- Do not leave any mobile sign on an island

### LAND INVASION

- Do not occupy council land or private land
- No vagrants in the pavements parks, open spaces and water bodies

### STREET TRADING

- Traders are not allowed to sleep overnight at the place of business
- Do not make fire on a public road or place
- No one is allowed to cause nuisance
- Keep the business clean
- Traders must keep the site of business clean
- No one is allowed to sell counterfeit goods/ poison staff
- Do not trade within 5 metres from the intersection
- Do not trade next or opposite the park or open space
- Do not trade next an ATM machine or Bank
- Trading out demarcated spaces
- Do not trade without permit
- Do not trade on a restricted or prohibited zone
- Do not trade in a sidewalk less than 4 metres width
- Do not trade in front of an entrance or exit of a building
- Street trading may not take obstruct vehicle or business entrances
- Do not trade in front of church, school or any government / council building
- Do not trade on a hired stand contrary with terms conditions of such lease
- Traders must ensure that no smoke or other substance odours from business causing pollution
- Do not trade on pavement which prohibits trading by means of road sign

**Even if you have a stand of permit, it does not give a right to sell:**

- Counterfeit good
- Poison staff i.e. sell, arphirma etc.

### City of Johannesburg Public Safety

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## 8. CONCLUSION

It is with the aforesaid in mind that the following stakeholders should be more informed regarding by-laws from a prosecutorial perspective. That in the event of contraventions of by-laws borders on civil disobedience in extreme cases court interdicts should be obtained, when all this has failed – by educating members of the public regarding their civic duties and sense of Patriotism.

One of the most contravened by-laws, is public road and Miscellaneous by-law regarding by law – by Government authorities amongst others.



**THANK YOU**

