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The Role of Municipal By-laws in Good Local Government in South Africa



Municipal by-laws as an instrument towards sustainable – some perspectives from the City of Johannesburg

04 June 2015

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COJ Theme 2015/2016 – Tomorrow will be better than today

At the City of Johannesburg State of the City Address, 6 May 2015, the Executive Mayor, Councillor Parks Tau quoted former state president Thabo Mbeki providing:

“We must ensure that today is better than yesterday and that tomorrow will be better than today.”

And provided that the City accepts this responsibility and mandate and provided that the:

- City knows it must turn challenges into opportunities.
- City understands its destiny is determined by its capacity to innovate in order to transform.

This resonates with the definition of sustainability as captured by the 1987 UN World Commission on Environment and Development defined sustainability as

“forms of progress that meet the needs of the present without compromising the ability of future generations to meet their needs.”

Joburg 2040 Growth and Development Strategy (GDS)

- **Is an aspirational strategy that defines the type of society the city aspires to achieve, by 2014.** The strategy restates the City's resolve in confronting the past injustices while simultaneously confronting present and future challenges as they emerge.
- Approved a vision for the City:
 - ***'Johannesburg-a World Class African City of the future a vibrant, equitable African city, strengthened through its diversity; a city that provides real quality of life; a city that provides sustainability for all its citizens; a resilient and adaptive society.***
- *Joburg 2040 strategy is about resilience, sustainability and liveability:*
 - ***Resilience:*** is about our ability to work together and support each other in times of need. It is about our ability to adapt to difficult situations by recognizing the strength and assets and by having the capacity to mobilize them in times of need and still deliver on our promises
 - ***Sustainability:*** is about getting rid of inequality and poverty as well as the creation of a better life for all. It is about striving for a healthy and good lifestyle. It is also about acknowledging that the City must continue , therefore we must harness natural resources that can be sustained in to the future.
 - ***Liveability:*** is about an environment that promotes civic engagements and a sense of place through safety, sustainable choices of socio-economic opportunities. It is about having access to an adequate , affordable and environmentally sustainable and coordinated transportation system , as well as housing and economic opportunities.

Joburg 2040 (GDS) - Outcomes

- **Four Major outcomes define the Joburg 2040 GDS**

Outcome 1: Improved quality of life and development-driven resilience for all

The City envisages a future that presents significantly improved human and social development realities, through targeted focus on poverty reduction, food security, development initiatives that enable self-sustainability, improved health and life expectancy, and real social inclusivity. By 2040, the City aims to achieve substantially enhanced quality of life for all, with this outcome supported by the establishment of development-driven resilience.

Outcome 2: Provide a resilient, liveable, sustainable urban environment – underpinned by infrastructure supportive of a low-carbon economy.

The City plans to lead in the establishment of sustainable and eco-efficient infrastructure solutions (e.g. housing, eco-mobility, energy, water, waste, sanitation and information and communications technology), to create a landscape that is liveable, environmentally resilient, sustainable, and supportive of low-carbon economy initiatives.

Outcome 3: An inclusive, job-intensive, resilient and competitive economy that harnesses the potential of citizens.

The City of Johannesburg will focus on supporting the creation an even more competitive, 'smart' and resilient city economy, when measured in relation to national, continent and global performance. The City will promote economic growth and sustainability through the meaningful mobilisation of all who work and live here, and through collaborating with others to build job-intensive long-term growth and prosperity, from which all can benefit.

Outcome 4: A high performing metropolitan government that pro-actively contributes to and builds a sustainable, socially inclusive, locally integrated and globally competitive Gauteng City Region.

The City envisages a future where it will focus on driving a caring, responsive, efficient and progressive service delivery and developmental approach within the GCR and within its own metropolitan space, to enable both to reach their full potential as integrated and vibrant spaces.

Joburg 2040 GDS – Outcome 2

Outcome 2: Provide a resilient, liveable, sustainable urban environment – underpinned by infrastructure supportive of a low-carbon economy.

Outcome 2 related outputs

• Sustainable and integrated delivery of water, sanitation, energy and waste

Management of water catchments and sources

Alternative energy adopted and in use

Waste minimisation and optimisation systems in operation

• Eco-mobility

Eco-mobility refers to environmentally sustainable and socially inclusive ways of local mobility, combining the use of non-motorised transport means such as; walking, cycling and wheeling with the use of public transport and light electric vehicles from renewable energy

• Sustainable human settlements

Johannesburg's settlements will be sustainable and liveable. The City will have established greater capacity to absorb new entrants and existing residents into a functioning housing system, where all can find a place to live (irrespective of their incomes), that offers good quality of life and is connected to the requisite social amenities. By 2040, Johannesburg will have significantly changed its Apartheid city landscape, by targeting spatial investment in new areas of growth that provide for better integration of land-use functions and space. Inclusivity will be supported through the implementation of careful planning that allows for flow, interaction, and greater densification in parts.

• Climate change resilience and environmental protection

The City will focus on building its resilience to climate change. Interventions that address both climate change adaptation and mitigation will be necessary, and will be implemented.

By-laws

In order to achieve the outcomes and outputs the City uses various instruments including municipal by-laws:

- **Municipal by-laws:** are laws made by local government.
- A by-law is a law that is passed by the Council of a municipality to regulate the affairs and the services it provides within its area of jurisdiction. They must be passed by a majority vote of a municipal council.
- In terms of the Constitution the executive and legislative authority of a municipality is exercised by the municipal council', and one of the methods by which this is done is by passing by-laws. A municipality may only make by-laws on matters that it has the right to administer. These matters are set out in Schedules 4B and SB of the Constitution.
- The COJ Municipal Code consists of 24 promulgated by-laws, ranging from Air Pollution Control, Cemeteries and Crematoria, Culture and Recreation to Electricity, Street Trading, Tariff Determination, Water Services and Waste Management. The complete list of the City's by-laws can be seen on the City of Johannesburg's website at - www.Joburg.org.za.
- However, passing by-laws without enforcing it, serves no purpose. Failure by a municipality to enforce its by-laws amounts to a failure to give effect to the obligations imposed upon a municipality by section 152 of the Constitution.

By-laws reform

- The mandate to the by-law writers, when the by-laws of the former local authorities comprising the City were consolidated in 2004, and today, is to make the by-laws of the City as accessible to the residents of the City as far as possible – the theory is that when people know the law, it makes it simpler to achieve compliance.
- This was done by–
 - plain language – avoiding Latin phrases or complicated formulation;
 - reducing the number of by-laws by combining them under simple headings such as Culture and Recreation By-laws consisting of provisions relating to libraries, arts and culture facilities, community centres, sport facilities and caravan parks;
 - Making the by-laws accessible by putting all the by-laws on the City’s website and availing them in libraries and regional centres;
 - drafting by-law guides in which some of the by-laws were reduced into even simpler English and translated into the official languages of Gauteng at a level which 12 year old children could understand; and
 - Ensuring public comment, public participation and regular review of the by-laws

By-law enforcement

- The City's by-laws are enforced through –
 - the issue by peace officers of compliance notices, fines as prescribed under the provisions of the Criminal Procedure Act and/or under the national or provincial legislation or by-laws,
 - the magistrate and municipal courts which can issue orders of imprisonment, fines and community service when notices are not complied with or fines issued by peace officers are not paid;
 - interdicts to enforce compliance when the above mechanisms do not achieve compliance.
- The City's by-law enforcement officers who are peace officers are located in the City's municipal police, environmental health, emergency services, and planning and building inspectorate departments. The City's metropolitan police department has a by-law enforcement unit that oversees and co-ordinates the law enforcement activities of the various departments.

The “silo” approach of the various departments – each one doing its own thing without taking other departments into account – often presents a challenge. The City in 2011/12 embarked on a new initiative known as the “Joburg 10 plus” approach that seeks to achieve better co-ordination between the law enforcement departments of the City.

By-laws and sustainable Cities - Water

Management of water catchments and sources

- Johannesburg is one of the few major cities not located on a major water source, with water scarcity and the increasing cost of water presenting a significant challenge. On the delivery of the State of the City Address, on 6 May 2015, the Executive Mayor provided
“we live in a water-scarce country and unless we change our behaviour, we will experience pressure on the supply side. We have, over recent years, invested extensively in maintenance to prevent unaccounted for water in the City. This has enabled us to maintain reliability of supply. We have maintained the same water reserve margin for several years, despite our increasing population. This notwithstanding, with the same supply, we have met increasing household demand. However, we have reached an equilibrium point between demand and supply and unless we change our behaviour, demand will outstrip supply. To confront this, the city will incentivise and regulate...”
- The City aims to be water secure by 2040 through implementing the following measures:
 - effective demand-side management process
 - investments in smart infrastructure
 - investing in alternative schemes such as water reclamation, rainwater harvesting and appropriate grey water use, to ensure alternative supplies.
- In order to implement the above measures the City’s **Water by-laws** have been reviewed to encourage consumer behaviour towards efficient use of potable water for example:
 - Permission, Limitation and Scheduling of times when consumers can water gardens, sports-fields and parks;
 - Where a hosepipe is used to irrigate a garden, park or sports-field from a potable water source a controlling device such as sprayer shall be attached to the hose-end;
 - A hosepipe used for washing vehicles, boats and caravans must be fitted with an automatic closing device

By-laws and sustainability

- Investment in smart infrastructure for example:
 - Hosepipe to be fitted with automatic self closing devices;
 - Wash-hand basins and showers in public facilities to be with fitted demand type valves
 - installation of low-flush toilets and water-saving urinals as a standard feature in Joburg homes, offices and commercial sites.
- investing in alternative schemes such as water reclamation, rainwater harvesting and appropriate grey water use, to ensure alternative supplies.
 - Draft Treated Effluent By-laws that have been approved by the Council for public comment
The purpose of these by-laws is to control and regulate treated effluent within the city to ensure cost recovery and the protection of human health.

By-laws and sustainability - Energy

Alternative energy adopted and in use

By 2040, more than half of the energy used by Johannesburg will come from alternative renewable energy sources – such as methane gas mining from landfills, energy from waste solutions, and a number of renewable energy sources (e.g. solar). Optimal energy management solutions, including those that incorporate alternative energy, will be used when undertaking activities such as ‘retrofitting buildings’.

The **Electricity by-laws** are being amended to cater for (these are already resolutions of Council):

- Block or step tariffs = charge high consumers at higher rates and low consumers at lower rates. The more you purchase in a calendar month, the more you will have to pay per unit. This system tends to favour and reward low consumers and energy savvies.
- “Time of use” tariff system. The system will allow City to price electricity at different rates during the day to encourage consumption during off peak hours. It will come into effect from the 1st of July. In terms of this regulated pricing model, City Power says it will charge less during off peak periods - that's between 10am and 6pm on weekdays.

The Executive Mayor recently announced “Given the energy constraints we face, we will be harnessing energy from the water flowing through our pipe system citywide using in-pipe turbines. Taking advantage of the opportunities presented by our investments in waste separation, we will be diverting organic waste to bio-digesters in order to harvest gas for fuel and energy, adding material from the sewerage system.”

By-laws and sustainability - Waste

Waste minimisation and optimisation systems in operation

- The City has adopted a new approach to waste collection and management. It believes that by 2020 zero waste to landfill can be achieved by adopting a strategic approach – 2 elements in this regard are job creation and turning waste into an economic resource.
- The **Waste Management by-laws** display the City's new approach towards waste management
- Apart from the normal provisions pertaining to illegal dumping and littering, the By-laws contain provisions pertaining to waste minimisation, recycling and the separation of waste between recyclables and non-recyclables.
- The Penalty for an offence in terms of the by-laws is a maximum fine of R10 000 or imprisonment for a period of 6 months.
- In instances where enforcement of the by-laws does not achieve compliance, the enforcement mechanisms in terms of the National Environmental Management Act, 1998, can be utilised.
- Apart from the enforcement the by-laws, the City has also embarked on a project to utilise illegal building rubble dumping sites as a source of job creation as “stone paper” can be manufactured from some of the materials. The project is in its design stage; it must therefore still be seen, not only whether the project is successful with regard to job creation but also whether it will assist in reducing rather than encouraging the illegal dumping of building rubble.

By-laws and sustainability - Transport

Eco-mobility

- Eco-mobility refers to environmentally sustainable and socially inclusive ways of local mobility, combining the use of non-motorised transport means such as; walking, cycling and wheeling with the use of public transport and light electric vehicles from renewable energy resources.
- The City will make continued investments in mass public transport and non-motorised transport, prioritising the pedestrian over the car.
- The corridors programme, uses public transport as the backbone of new kind of mixed-use, mixed-class development, and focuses on location and affordability of housing as an enabler to embrace economic vitality and diversity of Joburg.
- **The City's Roads and Miscellaneous by-laws, Parking Ground by-laws and Metered Taxi, Minibus and Bus by-laws** are also being reviewed to cater for environmentally sustainable and socially inclusive ways of local mobility.

By-laws and sustainability – climate change

Climate change resilience and environmental protection

- The City will focus on building its resilience to climate change. Interventions that address both climate change adaptation and mitigation will be necessary, and will be implemented
- Emphasis will be placed on building resilience to commodity price shocks, and working to create economic opportunities, savings and potential investments from a move towards a low-carbon economy.
- Interventions will be based on mix of mitigation and adaptation interventions. Mitigation and adaptation should not be seen in isolation, but must rather be planned for in an integrated manner, with the intention of:
 - Making the built environment more energy efficient;
 - Investing in more ‘green infrastructure’;
 - Making the transport sector more green, by addressing congestion, ensuring a greater public transport modal share – with commuters choosing to move to public transport (through both positive and negative incentives, and public transport system that works), and ensuring improved fuel efficiency and compliance with emissions standards;
 - Improving the City’s capacity to manage the threat of urban flooding and urban heat island effects, and building community resilience to and readiness for climate change;
 - Ensuring food security at a citywide scale; and Working towards bio-diversity and ecological protection, by building a more compact form.

By-laws and sustainability – settlements, densification, ToD

Sustainable human settlements

Johannesburg's settlements will be sustainable and liveable. The City will have established greater capacity to absorb new entrants and existing residents into a functioning housing system, where all can find a place to live (irrespective of their incomes), that offers good quality of life and is connected to the requisite social amenities. By 2040, Johannesburg will have significantly changed its Apartheid city landscape, by targeting spatial investment in new areas of growth that provide for better integration of land-use functions and space. Inclusivity will be supported through the implementation of careful planning that allows for flow, interaction, and greater **densification** in parts.

Corridors of Freedom

The corridors programme and our wider public transport overhaul, is the leading edge of an approach that will alter the spatial destiny of the City. The corridors programme, uses public transport as the backbone of new kind of mixed-use, mixed-class development, and focuses on location and affordability of housing as an enabler to embrace economic vitality and diversity of Joburg.

Municipal Planning By-laws have been drafted and going to for public comment to give effect to the provisions of the Spatial Planning and Land Use Management Act, 2013, and the Regulations made in terms thereof. In conjunction with the City's Spatial Development Frameworks the Municipal Planning By-law will herald a new era as far as land development and land use management is concerned and all future land development applications will have to comply with the land development principles as set out in SPLUMA, read with the City's Municipal Planning By-law.

The COJ has a clear regulatory agenda as instrument towards a sustainable cities. The CoJ uses regulation (by-laws)and incentives as form of attaining sustainability.



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DISCUSSIONS /
THANK YOU