

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

DRAFT BY-LAWS REGARDING RIGHTS OF WAY FOR ELECTRONIC COMMUNICATIONS FACILITIES

1 DEFINITIONS

The following acronyms or words will bear the following meanings:

- 1.1 "Applicant" – means a person applying for a Permit in terms of these by-laws;
- 1.2 "the City" – the City of Johannesburg;
- 1.3 "City Property" – municipal property that, for the purposes of this Policy, can be used or is required for the roll out of electronic communications networks or the installation of electronic communications facilities including roads and road reserves, pavements and curbs, drainage facilities, bike paths, ducts poles, pavements, high sites (such as water towers) municipal water and sewer lines or other municipal utility facilities, as well as municipal traffic signal, street lighting and communications facilities, street trees, land and buildings or structure owned by the City; including any property or public places which have been or shall be at any time be set apart and appropriated by proper authority and vested in the City, *ex lege* of which the Council shall have control and management over.
- 1.4 "ECA" – Electronic Communications Act, 2005;
- 1.5 "electronic communications" – bears the meaning in the ECA, namely the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electro-magnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service;

- 1.6 "electronic communications facility" bears the meaning contained in the ECA, namely, any wire, cable (including undersea and land-based fibre optic cables); antenna, mast, satellite transponder, circuit, cable landing station, international gateway, earth station, and radio apparatus or other thing, which can be used for, or in connection with, electronic communications, including where applicable,
- 1.6.1 collocation space;
 - 1.6.2 monitoring equipment;
 - 1.6.3 space on or within poles,
 - 1.6.4 ducts,
 - 1.6.5 cable trays,
 - 1.6.6 manholes,
 - 1.6.7 hand holds and conduits: and
 - 1.6.8 associated support systems, sub-systems and services, ancillary to such electronic communications facilities or otherwise necessary for controlling connectivity of the various electronic communications facilities for proper functionality, control, integration and utilisation of such electronic communications facilities;
- 1.7 "electronic communications operator" – any person who operates a electronic communications network, provides electronic communications services or network services and is either licensed or exempted in terms of the ECA including that person's agents and contractors;
- 1.8 "electronic communications network" - bears the meaning contained in the ECA, namely any system of electronic communications facilities (excluding subscriber equipment), including without limitation -
- 1.8.1 satellite systems;
 - 1.8.2 fixed systems (circuit- and packet-switched);
 - 1.8.3 mobile systems;

- 1.8.4 fibre optic cables (undersea and land-based)
- 1.8.5 electricity cable systems (to the extent used for electronic communications services); and
- 1.8.6 other transmission systems, used for conveyance of electronic communications;
- 1.9 "ICASA" – Independent Communications Authority of South Africa;
- 1.10 "Permit" – means a right of way permit granted in terms of these by-laws authorising the Permit Holder to locate electronic communications facilities or network on City Property;
- 1.11 "Permit Holder" – means a person granted a permit in terms of these by-laws.

2 APPLICATION FOR PERMITS

- 2.1 All electronic communications operators and or person, whether licensed or exempted under the Electronic Communications Act, must obtain a permit from the City to enter onto City Property and to install, construct and operate electronic communications equipment, facilities and/or networks.
- 2.2 Electronic communications operators or persons previously licensed under the Telecommunications Act, 1996, shall be required to obtain permits within 60 days of publication for enactment of these by-laws for existing electronic communications facilities and networks located on City Property.
- 2.3 Permits may only be granted upon receipt of proof by the City that the electronic communications operator is duly authorized, to the extent necessary, to install the facilities or network.
- 2.4 An electronic communications operator, may apply in writing to the local authority (or City) and shall at the same time provide such information as may be required by the City from time to time to assess the said application, and such an application shall be accompanied by such fees as may be prescribed. An application and administration fee

for the permit, which may be reviewed by the City from time to time, shall be payable.

- 2.5 The City shall be entitled to receive reasonable payments for the use of City Property.
- 2.6 Permit holders shall pay a reasonable monthly fee, to be determined by the City, in advance for the installation, construction and operation of electronic communications facilities and networks on City Property alternatively, the City and the Permit Holder may agree that capacity on the electronic communications facility or network be made available to the City in lieu of payment of the monthly fee.
- 2.7 On submission of an application in terms of section 2.4, the Applicant shall supply the following information-
 - 2.7.1 full name and address and, if the applicant is a corporate person, the names and addresses of all shareholders holding more than 10% directly or indirectly;
 - 2.7.2 a demonstration of the applicant's technical, legal and financial ability to install, construct and operate the proposed communications facility;
 - 2.7.3 proof that all the equipment being used has been type approved by ICASA to the extent necessary;
 - 2.7.4 a description of the physical facility proposed, the area to be served, a description of technical characteristics, and a map of the proposed system service area and distribution scheme;
 - 2.7.5 a description of how any installation, construction and operation will be implemented, identification of areas having aboveground or below ground facilities;
 - 2.7.6 the proposed construction schedule which construction schedule shall be coordinated with the City water, sewer, roads, and other improvement plans and municipal infrastructure needs as may be further required by the City;
 - 2.7.7 a description of the services to be provided over the system;

- 2.7.8 the proposed rates to be charged, including rates for each service offered to the public, as appropriate, and charges for installation, equipment, and other services, and whether such rates are subject to regulatory or informational tariff or other rate regulation requirements from any other jurisdictional agency.
- 2.8 On receipt of the application and after the provisions of section 2.7 have been complied with, the City shall consider the application for a permit, and for that purpose may request any person to furnish such information as it may deem expedient.
- 2.9 Having considered the application in terms of section 2.7 the City may approve or refuse the application, subject to any conditions they may deem expedient.
- 2.10 The period of the permit may not exceed the period of the electronic communication operator's licence under which the facilities or network are installed and the permit holder shall not be entitled to an automatic renewal of the permit. The permit is not transferrable in any way and attaches to the applicant.
- 2.11 The City may require the removal or relocation of the facilities or network if it is reasonable to do so including circumstances where –
- 2.11.1 the Permit Holder is no longer be legally entitled to under the ECA to operate a network or provide electronic communications services;
- 2.11.2 the facilities or network pose a risk to public health and safety;
- 2.11.3 the facilities or network, in the City's opinion, unreasonably detract from the aesthetics of the City Property.
- 2.12 In circumstances where demand by electronic communications operators for access to City Property exceeds availability, the City may require the service providers share facilities.

- 2.13 The permit holder must preserve, insofar as is possible, the aesthetics of the City Property and may not endanger any person in exercising its rights under the permit.
- 2.14 The permit holder shall maintain the facilities or network installed.
- 2.15 The permit holder will acquire no proprietary or exclusive rights in respect of the City Property.
- 2.16 The Permit Holder shall indemnify the City against any and all claims howsoever arising out of access to City Property and the location of electronic communications facilities or networks on City Property.
- 2.17 The Permit Holder shall be responsible for the cost of repair of the City's engineering services should any damage occur to it.
- 2.18 Should the Permit Holder fail to pay the fees associated with the location of the facilities or network or should the Permit Holder breach the terms of the Permit, the City shall be entitled to disconnect or remove the facilities or network, all costs shall be borne by the Permit Holder and the City shall not be liable for any damages that may have been caused as a result of such removal.
- 2.19 Any facilities or networks located on City Property without a permit or any facilities or networks which remain on City Property after expiry of the Permit, may be removed by the City or disconnected at the cost of the person who installed the facilities or networks and the City shall not be liable for any damages that may have been caused as a result of such removal.
- 2.20 Upon expiry of the permit, the permit holder shall rehabilitate the property to the satisfaction of the City.
- 2.21 The City may require that a permit holder constructing, relocating, or placing ducts, conduits or fibre optic cables on City Property provide the City with additional duct or conduit or fibre optic cable at a rate equal to the incremental cost to the permit holder of the additional facility.
- 2.22 Upon expiry of the permit the facilities or networks must be removed within 30 days unless the City directs otherwise. Facilities or networks

not removed within the requisite time period will become the property of the City.

- 2.23 The City will determine the monthly fee at which the City Property will be made available having regard for the value of the City Property and prevailing market rates.
- 2.24 The City may impose such additional requirements on the permit holder as may be reasonable in the circumstances including the requirement that the permit holder give security for the discharge of its obligations in terms of the permit.
- 2.25 A permit granted in terms of these by-laws does not exempt the applicant or any other person to comply with any other law, by law or zoning provisions of the City's Property or in any manner deal with the property for any other purpose other than that specified in the permit.
- 2.26 No person may place any rope, wire or pole on, under or across any public road, or hang, or place anything whatsoever thereon without the prior written permission of the Council.
- 2.27 Chapter 4 of the By-Laws provides that any person who contravenes or fails to comply with the provisions of the By-laws or fails to comply with any notice issued in terms of the By-Laws is guilty of an offence and liable on conviction to a fine or, in event of default, to imprisonment for a period not exceeding six months. In the case of a continuing offence a further fine, not exceeding R1000 may be imposed for every day during the continuance of the offence.

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