

Johannesburg, South Africa

## Formation of Johannesburg Investment and Tourism as a Service Utily

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# Formation of Johannesburg Investment and Tourism as a Service Utility

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# Johannesburg South Africa

## Formation of Johannesburg Investment and Tourism as a Service Utility By-law, 2016

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The City of Johannesburg Metropolitan Municipality ("the City") hereby publishes the By-laws for the Formation of Johannesburg Investment and Tourism as a Service Utility as promulgated by the City in terms of Section 156(2) of the [Constitution of the Republic of South Africa, 1996](#) and in accordance with Section 13(a) of the Local Government: Municipal Systems Act, 2000 ([Act 32 of 2000](#)), as amended.

### 1. Preamble

A. Whereas the City of Johannesburg Metropolitan Municipality ("the City"), in terms of the [Constitution of the Republic of South Africa](#) and other applicable legislations, charged with the responsibility of ensuring the sustainable provision of municipal services within its area of jurisdiction;

B. Whereas the City has approved alternative service delivery mechanisms for the provision of municipal services;

C. Whereas with a view to deriving maximum benefit from the principles of performance-based contracting, the City has elected to deliver the services through a wholly owned municipal entity under its sole control and ownership;

D. Whereas acknowledging the complexity and challenges associated with the current service delivery model;

E. Whereas realising the need to migrate or transfer the functions from the current service delivery mechanism to a service utility;

F. Whereas recognising the advantages of cost effectiveness obtained through a service utility as opposed to a company and an ordinary internal department;

G. And whereas Section 156(2) of the [Constitution](#) empowers the City with legislative authority to enact, administer and pass By-laws;

H. And whereas the Local Government: Municipal Systems [Act 32 of 2000](#), affirms the constitutional power in the Municipal Council by stating that Council exercises legislative and executive authority of a Municipality by passing By-laws; and

I. And whereas these By-laws are integral part of the applicable legal framework or regulations that give effect to the establishment of Johannesburg Investment and Tourism as a service utility.

Be it therefore enacted by the Municipal Council of the City of Johannesburg Metropolitan Municipality, as follows-

## Chapter 1

### Interpretation application

#### 2. Definitions and interpretation

In these By-laws, unless context indicates otherwise-

- (a) **"approval"** means approval by the Council of the City;
- (b) **"authorised official"** means an official of the Council who has been authorised by it to administer, implement and enforce the provisions of these By-laws;
- (c) **"the Board"** means the Board of Directors;
- (d) **"business day"** means a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- (e) **"the Chairperson"** means the Chairperson of the Board appointed from time to time;
- (f) **"CEO"** means the chief executive officer of JIT appointed in terms of [Section 22](#) of these By-laws, who is also an accounting officer of JIT as contemplated in Section 93 of the MFMA;
- (g) **"CFO"** means the Chief Financial Officer of JIT;
- (h) **"the City"** means the City of Johannesburg Metropolitan Municipality or its successor-in-title from time to time, being the sole parent Municipality of the JIT;
- (i) **"City Manager"** means the Municipal Manager appointed by the Council in terms of Section 82(1) (a) or (b) of Local Government: Municipal Structures Act, 1998 and who is the accounting officer in terms of the Local Government: Municipal Finance Management [Act 53 of 2003](#);
- (j) **"the Constitution"** means the [Constitution of the Republic of South Africa Act, 108 of 1996](#), as amended from time to time;
- (k) **"committee"** means the Investment Promotion Advisory Committee, Tourism Advisory Committee, Audit Risk Committee, Social and Ethics Committee, Remuneration Committee and any other committee that may be established by the Board from time to time;
- (l) **"committee members"** means members of JIT as appointed in terms of the Terms of Reference;
- (m) **"Council"** means the Municipal Council of the City as defined in Section 1 of the Municipal Structures Act;
- (n) **"councillor"** means a member of the Council;
- (o) **"Directors"** mean the Directors of Johannesburg Investment and Tourism appointed in terms of [Clause 13\(2\)](#);
- (p) **"ED"** means the Executive Director for Economic Development responsible for oversight of the Johannesburg Investment and Tourism;
- (q) **"Executive Manager: Investment"** means the Head of the Investment Promotion division;
- (r) **"Executive Manager: Tourism"** means the Head of the Tourism division;
- (s) **"force majeure"** means an act omission or circumstance over which either party could not have reasonably foreseen nor exercised control;
- (t) **"JIT"** means Johannesburg Investment and Tourism as a service utility established in terms of these By-laws;
- (u) **"MFMA"** means the Local Government; Municipal Finance Management [Act 56 of 2003](#);

- (v) **"MMC"** means a Member of the Mayoral Committee as contemplated in Section 60 of the Municipal Structures Act;
- (w) **"municipal entity"** means a person or institution or body established in terms of the Systems Act;
- (x) **"municipal services"** means municipal services as defined in the Systems Act;
- (y) **"SDA"** means the Service Delivery Agreement entered into between the City as a parent Municipality and JIT as a municipal entity, as amended from time to time;
- (z) **"SDBIP"** means the Service Delivery Budget Implementation Plan of the City as formulated from time to time;
- (aa) **"service area"** means the geographical area in respect of which Johannesburg Investment and Tourism is appointed (and where applicable, licensed in terms of applicable regulatory provisions) to render the services as set out in these By-laws;
- (bb) **"Structures Act"** means Municipal Structures [Act 117 of 1998](#);
- (cc) **"Service Utility"** means Johannesburg Investment and Tourism Service Utility, a municipal entity created in terms of these By-laws; and
- (dd) **"Systems Act"** means the Local Government: Municipal Systems [Act 32 of 2000](#), as amended.

### 3. Legal framework governing the Service Utility

- (1) The legal framework governing this Service Utility shall be these By-laws, including the following-
  - (a) the [Constitution of the Republic of South Africa, Act 108 of 1996](#) ("the [Constitution](#)");
  - (b) the Municipal Finance Management [Act 56 of 2003](#) ("MFMA");
  - (c) the Municipal Systems [Act 32 of 2000](#), as amended ("Systems Act");
  - (d) the Municipal Structures Act, 1998 ("the Structures Act");
  - (e) the Labour Relations [Act 66 of 1995](#) ("the LRA"); and
  - (f) the City Group Governance Framework.
- (2) These By-laws are accordingly in line with the legal framework listed in (a) to (f) above.
- (3) If the provisions of these By-laws are in any way inconsistent with the provisions of any applicable legislative framework, the legislative framework in (1) above shall prevail.

### 4. Application of the MFMA and the Systems Act

- (1) JIT is a municipal entity as defined in Section 1 of the MFMA and as set out in Section 1 of the Systems Act.
- (2) For the purpose of the MFMA-
  - (a) the Chief Executive Officer ("CEO") of JIT is the accounting officer as contemplated in Section 93 of the MFMA; and
  - (b) the Board is ultimately accountable and responsible for the performance, service delivery and affairs of JIT as contemplated in Section 93H of the Systems Act.

## Chapter 2

### Establishment of the Service Utility

#### 5. Establishment of the Service Utility

- (1) JIT is hereby established as a juristic person and a municipal entity under the sole control and ownership of the City.
- (2) Save to the extent specifically provided to the contrary in these By-laws, JIT shall at all times operate as a separate legal person and shall at all times act as a service delivery mechanism to provide municipal services on behalf of the City.
- (3) JIT shall ensure that all of its activities are directed to the furtherance of its sole or principal object as set out in these By-laws and must operate within the powers and functions assigned to it by the City in terms of these By-laws.
- (4) The establishment of JIT as Service Utility must be done in compliance with Section 84 of the MFMA and any applicable provisions of the Systems. Act

#### 6. Objectives of the Service Utility

- (1) The main purpose and objective of the JIT is to *inter alia*-
  - (a) promote economic growth and transformation within the City;
  - (b) serve as a platform for partnerships between the City and private sector to collaborate and co-invest in projects that will attract inward investment and/or tourists into the City;
  - (c) implement projects within the investment and tourism-related policy framework of the Department of Economic Development ("DED") and in line with the City's Growth and Development Strategy 2040 ("GDS");
  - (d) attract investment and related growth-focused activities into the City sectors, including tourism and priority zones using targeted marketing, management, development, promotion and facilitation on behalf of the City;
  - (e) act as a project facilitator and execution-support for strategic investment projects into the City;
  - (f) act as a single point of contact for investing and tourism activities in the City;
  - (g) assist investors in fast-tracking decision-making and execution related to significant investment strategies and projects in the City;
  - (h) position the City as an overall tourism destination for events, leisure activities and other segments that may be identified;
  - (i) promote tourism entrepreneurship and provide tourism initiatives and related organised tourism events within the jurisdiction of the City; and
  - (j) ensure sustainability of its core programmes including promoting adequate city-wide delivery infrastructure.
- (2) JIT shall also provide any other municipal services related to investment, exports and tourism activities as assigned to it by the City in terms of the Service Delivery Agreement ("SDA") entered into between JIT and the City, as contemplated in section 80 of the Systems Act.



## 7. Powers of the City of Johannesburg as parent municipality

- (1) The [Constitution](#) grants the City the right to govern on its own initiative, the affairs of the community within its area of jurisdiction. The City must therefore exercise its constitutional rights over JIT subject to national, provincial and municipal legislations.
- (2) The City shall fulfil its legal obligations of monitoring and regulating the performance of JIT in terms of these By-laws.
- (3) The City shall provide assistance through funding and policy advocacy.
- (4) The City shall through its structures evaluate or assess the performance of the JIT on an annual basis against agreed performance standards.
- (5) JIT shall at all times maintain a full and accurate set of records of the services performed under the By-laws.
- (6) JIT shall render such reasonable assistance as may be necessary to allow the City to exercise its powers in terms of these By-laws.
- (7) In order to exercise its monitoring and oversight roles in terms of these By-laws, the City and its authorised representatives shall have a right of access to all information belonging to JIT.

## Chapter 3 Relationship between the City and the Service Utility

## 8. Service delivery agreement

- (1) The City and the Service Utility shall in terms of Section 81(2) of the Systems Act enter into an SDA.
- (2) The City and JIT must enter into the SDA within ninety (90) days of the appointment of the Board of the JIT.
- (3) The relationship between the City and the Service Utility shall be regulated by the SDA, which shall set out the framework within which JIT will operate.
- (4) The SDA must set out the annual performance objectives and indicators for JIT, including the following-
  - (a) outline the parameters within which JIT operates in compliance with these By-laws;
  - (b) it must specify the minimum levels of service delivery required from JIT as a service utility;
  - (c) it must set out service level agreed upon between the City and JIT, which will be subject to annual review; and
  - (d) it must provide a framework within which detailed service delivery plan can be developed and implemented by JIT.
- (5) The City may through the SDA assign JIT with, amongst others, the following responsibilities-
  - (a) to develop and implement detailed service delivery plans within the framework of the City's integrated development plan ("IDP");
  - (b) the operational planning, management and provision of the municipal service;
  - (c) management of its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the City, subject to the provisions of the MFMA; and
  - (d) collection of service fees or revenue for its own account from users of the services.

- (6) The SDA may in accordance with applicable legal framework provide for the transfer or secondment of any of the City's employees to the Service Utility.
- (7) The scope of the services to be rendered by the Service Utility may be changed by agreement between the City and the Service Utility pursuant to the business planning and budgeting process.
- (8) The SDA must be consistent with the MFMA and any applicable law or regulations.
- (9) The SDA must comply with the City's long term strategy, GDS 2040.
- (10) In the event that the SDA cannot be concluded within the period specified in subsection (1) above, the City Manager or an authorised official may issue a directive in terms of [Section 9](#) of these By-laws dealing with matters set out in subsection (3) above.

## 9. Service levels and standards

- (1) The City shall establish a performance management system in line with the priorities, objectives, indicators and targets contained in its IDP.
- (2) The performance objectives, targets and service standards that must be met by the Service Utility must be negotiated and agreed to by the parties in terms of the SDA.
- (3) Notwithstanding 9(1) and 9(2) above, the Board must ensure that the Service Utility performance contracts for the CEO and senior management emphasize the need to secure private sector co-funding for JIT projects.
- (4) The Board of the Service Utility is ultimately responsible for the performance management of the Service Utility and all employees of the entity.
- (5) The Board shall develop internal performance management tools and protocol and ensure that the management of the Service Utility implements such internal performance management tools and protocols as are deemed to be in the best interests of the Service Utility.

## 10. Directives by the City

- (1) The City Manager or any duly authorised official from the City may issue a written directive to JIT if he or she is of a view that such action is necessary to ensure that JIT performs its functions in accordance with the By-laws.
- (2) Particulars of any directives given during the financial year must be included in the annual report of JIT.

# Chapter 4

## Functions and governance of the Service Utility

## 11. Functions of the Service Utility

- (1) Without derogating from generality, JIT shall provide investment support and tourism destination promotion initiatives, including (but not limited to) the following-
  - (a) promotion of economic empowerment and transformation through implementation of economic development strategies, investment attraction and tourism promotion that will contribute to the City's growth and Development Plan Strategy 2040;
  - (b) promotion of the interests of the City in a pro-active and positive manner;
  - (c) promotion of the economic growth and job creation through public, private multi-sector collaboration for a range of promotion and facilitation activities;
  - (d) taking cognisance of the objectives of the City and the associated mayoral priorities;

- (e) securing of national and international conventions and events;
  - (f) to provide bench-marked and competitive products and services to the private sector and other targeted customers;
  - (g) to use investment and tourism as a catalyst to address transformation; and
  - (h) to provide quality tourism services to both local and international tourists.
- (2) In executing its functions, JIT must ensure that it conforms and complies with all applicable laws, regulations and policies of the City.
- (3) JIT shall, in addition to the above functions, establish the following-
- (a) operational guidelines and best practice models relating to governance, organisational efficiency, and use of technology;
  - (b) funding guidelines, taking in to consideration the imperative for JIT to raise sufficient co-funding from third parties and the necessary approvals to be obtained from the City;
  - (c) sound financial management systems and delegations of authority; and
  - (d) an effective, efficient and transparent system of risk management and internal controls to ensure clean and efficient administration. Particular consideration must be given to ensuring transparency of processes and application of decision-making criteria, appropriate incentives and disincentives for officials, regular rotation of officials in client-facing or supply chain functions, and penalties for unethical behaviour; and
- (4) JIT must act in good faith and use its best endeavours to assist the City to ensure proper provision of the municipal services.

## 12. Powers of the Service Utility

- (1) Unless specifically restricted by these By-laws, JIT has all of the legal powers and capacity contemplated in the MFMA and Systems Act and may do all that is necessary to perform its functions, including to-
- (a) purchase, hire or otherwise acquire and hold or let or deal with asset for purposes of these By-laws, provided that such assets cannot be acquired or alienated without the approval of the City;
  - (b) enter into sound partnerships with the private sector in the execution of its functions;
  - (c) procure and/or raise funding, apart from any funding that may be provided by the City, from any third party for the furtherance of its objectives, subject to Clause 12(2)(c) below and the provisions of the MFMA;
  - (d) adopt (including the amendment thereof) any framework or policy of the City, with the proviso that such adoption ensures that the entity remains consistent with the provisions and minimum requirements of the MFMA, and other applicable legal framework;
  - (e) ensure that JIT is sufficiently insured against any risk, loss or damage connected with the exercise of its powers or performance of its functions or duties;
  - (f) exercise any power or perform any other function conferred or imposed on it by or in terms of this By-law or any other applicable law;
  - (g) do anything else which is reasonable ancillary to any of its objects in terms of [Section 5](#), its functions in terms of [Section 6](#) and its powers in terms of this Section.
- (2) JIT shall not without the prior written approval of the City-
- (a) permit any of its assets to become subject to any form of security, lien or hypothecation;

- (b) alienate or dispose any of its assets; and
- (c) become liable, whether as surety, co-principal debtor, guarantor or indemnifier for the liabilities of any third party.
- (3) JIT shall not, directly or indirectly, distribute any of its funds or assets to any person other than in the furtherance of its objectives.
- (4) JIT shall have the power to bid and pay for international and local events and provide sponsorships, subject to the applicable legal framework and the City's policies.

## **Chapter 5**

### **Board of Directors of JIT**

#### **13. Establishment of the Board of JIT**

- (1) The Board shall comprise of a minimum number of five (5) and a maximum number of eight (8) Directors.
- (2) The Directors shall be appointed in accordance with the City Group Policy or any other policy determined by the City from time to time.
- (3) The Board must consist of at least a third of non-executive directors and have a non-executive Chairperson.
- (4) The Board of Directors shall comprise of the following-
  - (a) the Chairperson, who shall be non-executive appointed in terms of the City Group Policy;
  - (b) the Chief Executive Officer ("CEO") of JIT;
  - (c) the Chairperson of the respective Expert Advisory Committees, each Expert Advisory Committee may have one additional Board member where the City deems that such membership will serve to strengthen JIT sector partnerships and impact of the service utility; and
  - (d) a duly authorised official or a nominee of the City Manager and at least one (1) representative from the Group Governance Department who shall serve in an ex officio capacity.
- (5) The Board is a focal point for good corporate governance. Therefore, it must have the requisite range of expertise to effectively manage and guide the activities of JIT.
- (6) The Chairperson of the Board must be appointed in terms of the City's Group Policy.
- (7) It is recorded that on the commencement of this By-laws, there might be a need for the appointment of an interim Board and interim CEO to enable JIT to commence operations immediately.

#### **14. Disqualification for appointment**

- (1) A person shall not be appointed as a member of the Board, if that person-
  - (a) holds office as a councillor of any Municipality;
  - (b) is a member of the National Assembly or a provincial legislature;
  - (c) is a permanent delegate to the National Council of Provinces;
  - (d) has a material business relationship with any JIT transaction, production or service, or any relationship whatsoever that could reasonably be considered to be a material conflict of interest. For purposes of this subsection, "material" means significant in the circumstances

of a particular matter, to a degree of consequence in determining the matter or might reasonably affect a person's judgement or decision-making in the matter;

- (e) was convicted of any offence and sentenced to imprisonment without option of a fine, and a period of five years since completion of the sentence has not lapsed;
  - (f) has been removed from any position of trust due to dishonesty;
  - (g) has been declared by a court to be of unsound mind as defined in Section 93F(f) of the Systems Act;
  - (h) is an unrehabilitated insolvent;
  - (i) has been declared delinquent in terms of Section 162 of the Companies Act or if a Court has prohibited that person to be a director; and/or
  - (j) is prohibited in terms of any public regulation to be a director of the Company.
- (2) A member of the Board must vacate office if that member becomes disqualified in terms of [Clause 14\(1\)](#).

## 15. Term of office and removal of Directors

- (1) The term of office of each Director shall be determined by the City Group Policy or any policy determined by the City from time to time.
- (2) The term of office of the Chairperson of the Board or any other Board member shall be subject to the City Group Policy and the applicable legal framework.
- (3) A director shall not serve for more than two terms of office.
- (4) The Chairperson of the Board and the Chairperson of an Expert Advisory Committee may not serve for more than one term in such a position.
- (5) A member may resign by giving three (3) months' notice to the City or such notice as determined by the City from time to time.
- (6) The City shall have sole and absolute discretion to remove or recall one or more Directors of JIT without giving reason thereof.
- (7) The City may remove one or more directors of JIT in the following circumstances-
  - (a) non-attendance of the Board's meetings for at least 3 (three) consecutive meetings;
  - (b) if the performance of the director is unsatisfactory;
  - (c) if a director, either through illness or for any other reason, is unable to perform the functions of office effectively;
  - (d) if a director is convicted of fraud or theft or any offence relating to fraudulent conduct; and
  - (e) as a consequence of the Director-
    - (i) acting without the necessary authority;
    - (ii) acquiescing to JIT carrying on business recklessly;
    - (iii) being present or participating in a decision or failing to vote against certain specified decisions which contravene the provisions of these By-laws or any other applicable legislations;
    - (iv) having a material conflict of interest with the Director's role as a member of the JIT Board, which conflict the Director fails to resolve sufficiently to the satisfaction of the City;
    - (v) being party to any act or omission intended to defraud JIT; and

- (vi) signing or authorising the publication of any false or misleading financial statements.

## 16. Roles and responsibilities of the Board

- (1) The Board is ultimately accountable and responsible for the performance, service delivery and affairs of JIT.
- (2) Subject to accountability and effective oversight by the City, the Board has power to direct and control the business of JIT.
- (3) Subject to accountability to the City, the Board must provide leadership and retain full and effective control over the direction and performance of JIT.
- (4) The Board must provide transparent, accountable and coherent corporate governance.
- (5) The Board must ensure that JIT acts and is seen as a responsible Utility that protects and advances the sustainability of destination marketing, the community and the environment.
- (6) The Board must communicate openly and promptly with the City and ensure that JIT complies with all applicable legislation and agreements.
- (7) The Board is accountable to the City and therefore it must deal with the City in good faith.
- (8) A Director must disclose to the Board and to the City, any direct or indirect personal or business interest that the Director or his or her spouse or partner may have in any matter before the Board and must withdraw from the proceedings of the Board when the matter is considered. The Board is required to inform the City in writing on a quarterly basis of any such disclosures.
- (9) A Director must at all-time act in accordance with the Code of Conduct for directors referred to in Section 93L of the Systems Act.
- (10) The Board may from time to time by resolution delegate any power that the Board has to the Executive Directors, CEO, or any prescribed officer, provided that such powers so delegated may be similarly withdrawn.
- (11) The Board shall ensure that in each Financial Year, a budget of JIT is prepared in accordance with the provisions of Section 87 of the MFMA and submitted to the City.
- (12) The Board must exercise the fiduciary duties and responsibilities as contemplated in the MFMA.
- (13) The Board must ensure that the service utility is fully aware of and complies with all applicable laws and regulations.
- (14) The Board must ensure that the City's performance objectives are achieved and that they can be measured in terms of the performance of JIT.
- (15) The Board must ensure that the Board Charter is adopted and the role and responsibilities of the Board must be fully set out in the Board Charter.
- (16) The Board must ensure that the guidelines set out are based in best governance practice on corporate governance in the public sector and are included in the Board Charter and that all Board Members are conversant with the contents thereof.
- (17) The Board may establish Board Committees for the need and purpose determined by the Board in consultation with the City. Over and above the Audit Risk Committee, the Investment Promotion Advisory Committee and the Tourism Advisory Committee, the Board may establish any other Committee deemed necessary, including Social and Ethics Committee, Remuneration Committee. The Board may in consultation with the City determine the qualification requirements of the Board Committee members.
- (18) The Board must create a corporate culture in which ethical actions are encouraged and developed.

- (19) The Board must implement an effective internal control system that ensures that the rules, the codes of practice and the ethical standards of JIT are adhered to.

## **17. Investment Advisory Committee**

- (1) JIT Investment Promotion Division shall be advised by an advisory panel of no more than eight (8) experts that form the Investment Advisory Committee.
- (2) The experts shall be selected based on their proven industry expertise and integrity in the fields of economic development, investment strategy and project finance.
- (3) The Investment Advisory Committee shall be led by a Board member elected by the Board.
- (4) The term of office of the Investment Advisory Committee members shall be for a continuous period of not less than 2 (two) years, subject to the City Group Policy adopted from time to time.
- (5) The CEO shall have a seat at all Investment Advisory Committee meetings in order to direct value from the committee and provide direct access to insights into and from the operations.
- (6) The Investment Advisory Committee will establish sound partnerships with significant sectors in the City with a view to optimising the impact of the service utility.
- (7) The Investment Advisory Committee shall be adjusted, before the end of a three-year member term, by the Board Chairperson in consultation with the City Manager should it be found that a particular member fails to meet the expectation of value required from their participation.

## **18. Tourism Advisory Committee**

- (1) JIT Tourism division shall be advised by a trade-relevant advisory panel of not more than eight (8) experts that form the Tourism Advisory Committee.
- (2) The eight (8) experts shall be selected based on industry influence and proven expertise in the area of tourism and tourism promotion.
- (3) One expert forming part of the panel may be an international expert who shall participate at one meeting a year to provide international benchmarks.
- (4) The Tourism Advisory Committee shall be led by a Board member elected by the Board.
- (5) The term of office of the Tourism Advisory Committee members shall be for a continuous period of not less than 2 (two) years, subject to the City Group Policy adopted from time to time.
- (6) The CEO shall have a seat at all Tourism Advisory Committee's meetings in order to direct value from the committee and provide direct access to insights into and from the operations.
- (7) The Tourism Advisory Committee will establish sound partnerships with the tourism sector and related sub-sectors in the City with a view to optimising the impact of the service utility.
- (8) The Tourism Advisory Committee shall be adjusted, before the end of a three-year member term, by the Board Chairperson in consultation with the City Manager should it be found that a particular member fails to meet the expectation of value required from their participation.

## **Chapter 6**

### **Management of JIT**

#### **19. Board Charter**

- (1) The Board must, not later than sixty (60) days after its appointment, formulate a Charter for the Board of JIT, which must at least, subject to these By-laws-
  - (a) outline the roles and responsibilities of the Board of JIT, its committees and individual members;
  - (b) set out the purpose and vision of the Board of JIT;
  - (c) set out the roles and responsibilities of the Chairperson of the Board, including the chairpersons of various committees;
  - (d) confirm the Board of JIT's responsibility to-
    - (i) adopt the strategic objectives and plans;
    - (ii) monitor operational performance and management;
    - (iii) develop policy on risk management and internal controls;
  - (e) provide guidelines on the distinction between the roles of the Board and management;
  - (f) contain a code of conduct for Board of JIT and staff members;
  - (g) identify functions intended to be delegated to management; and
  - (h) provide a framework for the appointment of senior staff for JIT.
- (2) The Board Charter must regulate the parameters within which the Board will operate.
- (3) The Board aims to ensure that all Board members of JIT are aware of various legislations, principles of good Corporate Governance and other Codes which may affect their conduct.
- (4) The Board Charter must be submitted to the City before it is adopted in order to allow the City to comment on its contents.

#### **20. Roles and responsibilities of the Board Chairperson**

- (1) JIT's Board must be led by a Chairperson duly appointed in terms of the City's Group Policy.
- (2) The Chairperson's responsibilities must be separate from those of management, led by the CEO.
- (3) The Chairperson is the head of the Board and his responsibilities include, amongst others, the following-
  - (a) ensuring that all Board Members are fully involved and informed of any business issue on which a decision has to be taken;
  - (b) ensuring that the CEO and executive managers play an effective management role and participate fully in the operation and governance of JIT;
  - (c) ensuring that the CEO and executive managers monitor the business and contribute sufficiently to the business decisions of JIT; and
  - (d) exercising independent judgment, acting objectively and ensuring that all relevant matters are placed on the agenda and prioritised properly.
- (4) The Chairperson (including other non-executive board members) is prohibited from being involved in the day-to-day operational management of the JIT.



**21. Roles and responsibilities of the management of JIT**

- (1) The CEO and executive managers of JIT are responsible for the day to day management of JIT and to provide the Board with accurate and relevant information timeously.
- (2) JIT Management must ensure that all Board members have unrestricted access to accurate, relevant and timeously information of JIT, for the purposes of enabling the Board to give the necessary strategic direction.
- (3) The Management must manage the business of JIT in accordance with the directives from the City and the Board.

**22. Chief Executive Officer**

- (1) The Board shall in consultation with the City procure the appointment of the CEO.
- (2) The CEO shall be appointed for a fixed term contract which shall not be more than five (5) years, subject to renewal by the Board.
- (3) The CEO shall be a member of the Board.
- (4) The CEO is accountable to the Board for the management of JIT.

**23. Human capital**

- (1) The CEO with the concurrence of the Board of JIT may-
  - (a) appoint employees with appropriate expertise to assist JIT in carrying out its functions;
  - (b) arrange with the City or other municipal entities owned by the City or any other body to be seconded to JIT; or
  - (c) arrange with the City to have employees of JIT seconded to the City or any other municipal entity owned by the City.
- (2) The CEO must ensure high-entrance requirements for any staff appointments, transfers or secondments, to ensure JIT has the experience, skills, and qualifications that enable it to be competitive.
- (3) Persons seconded to JIT perform their duties subject to the control and direction of the CEO.
- (4) Any appointment, transfer or secondment of personnel must be done in compliance with the applicable legal framework or labour laws.
- (5) The Board of JIT must determine the remuneration, allowances, benefits and other terms and conditions of appointment of members of staff.
- (6) A dedicated Human Resource function shall be established which will be responsible for operationally efficient and effective management of all aspects of internal human resources within JIT.
- (7) Any collective agreements in the Local Government sphere and/or labour agreements in the City will not automatically extend to JIT unless approved by the Board.

## **Chapter 7**

### **Budget, reporting and accounting**

**24. Assets and funding arrangements**

- (1) JIT's funding shall be derived from the City.

- (2) JIT shall have a right to generate additional funding from its operations to augment the budget received from the City.
- (3) In accordance with the MFMA, the City may transfer assets of the City or of any other municipal entity owned by the City to JIT to enable it to fulfil its functions.
- (4) The City will make a determination of the staffing, assets and funding to be transferred to JIT.
- (5) Where immediately before a transfer under subsection (1)-
  - (a) the City had a right arising from a debt, liability or obligation of another person in respect of the assets transferred; or
  - (b) the City had a debt, liability or obligation, the debt, liability or obligation is transferred from the City to JIT.
- (6) The assets of JIT include, amongst others, the following-
  - (a) assets transferred to it by the City or under this By-law;
  - (b) capital asset needed to provide the minimum level of basis municipal services;
  - (c) money appropriated by the City for the purpose of funding;
  - (d) assets acquired by JIT in the course of its operations;
  - (e) money received by grant or donation from local and foreign aid agencies; and
  - (f) money acquired by JIT from any source approved by the City.
- (7) As contemplated in Section 96 of the MFMA, the CEO is responsible for the management of the assets, including the safeguarding and maintenance of those assets.

## 25. Opening of the bank account

- (1) JIT must open and maintain at least one bank account in its name and in accordance with the provisions of the Banks [Act 94 of 1990](#).
- (2) In line with Section 85 of the MFMA, the CEO shall administer JIT's bank account.
- (3) All money received by JIT must be deposited into its bank account and this must be done promptly in accordance with any requirements that may be prescribed by the City.
- (4) In accordance with [Section 8\(2\)](#) and Section 97 of the MFMA, all money collected, funds or income received by JIT must be transferred to the City in accordance with the SDA or any other agreement entered into between the City and JIT. In order to promote high performance and to attain a sufficient degree of financial sustainability, JIT will enter into an agreement with the City regarding the ring fencing of revenue, or a portion thereof, generated by JIT in the performance of its functions.

## 26. Budgetary, monthly and quarterly reports

- (1) The Board shall ensure for each financial year of JIT, a budget is prepared and submitted to the city and finalised in accordance with the requirements of Section 87 of the MFMA and the municipal budget and reporting regulations.
- (2) JIT shall adhere to the requirements of the Municipal Budget and Reporting Regulations as prescribed by the City from time to time.

**27. Annual reports and annual financial statements**

The CEO shall ensure the preparation and submission of the annual financial statements within two months of JIT financial year end in accordance with the provisions of any legislation governing municipal entities.

**28. The business plan**

JIT shall develop an annual Business Plan and Budget which shall be approved within the time limits provided for in terms of Section 87 of the MFMA as read with the Municipal Budget and Reporting Regulations.

**29. Procurement**

JIT shall develop a Supply Chain Management Policy to regulate procurement of goods and services in line with the applicable legal framework and cognisant with the City Supply Chain Management Framework.

**30. Accounting**

- (1) JIT must keep such accounting and related records according to generally recognised accounting practice and in the format prescribed by the MFMA.
- (2) The books of accounts shall be kept at the registered office of JIT or at such other place as the Directors may deem fit.
- (3) Directors shall have a right of access at all times to the accounting records and all books and documents of JIT.

**31. Auditing**

- (1) In accordance with Section 92 of the MFMA, the Auditor General shall be an external Auditor of JIT.
- (2) JIT must have an audit committee, which must implement financial and risk management systems and internal control.
- (3) As set out in Section 166(5) of the MFMA, the members of an Audit Committee shall be appointed by the Municipal Council of City from time to time.
- (4) The members of an audit committee must be appointed by the Council of the Municipality or, in the case of a municipal entity, by the Council of the parent Municipality. One of the members who is not in the employ of the Municipality or municipal entity, must be appointed as the chairperson of the committee. No councillor may be a member of an audit committee.
- (5) The Audit Committee is required to perform the responsibilities assigned to it in terms of Section 165 and 166 of the MFMA.

**32. Short title**

These By-laws are referred to as Formation of JIT as Service Utility By-laws.

**33. Commencement**

These By-laws shall come into force and effect on date of publication in the *Provincial Government Gazette*.