

Johannesburg, South Africa

Public Road, Electronic Communications Networks and Miscellaneous

Legislation as at 30 September 2009

FRBR URI: /akn/za-jhb/act/by-law/2009/public-road-electronic-communications-networks-and-miscellaneous/
eng@2009-09-30

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PDF created on 28 June 2024 at 12:38.

Collection last checked for updates: 28 June 2024.

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Johannesburg South Africa

Public Road, Electronic Communications Networks and Miscellaneous By-law, 2009

Published in Gauteng Provincial Gazette 214 on 30 September 2009

Commenced on 30 September 2009

*[This is the version of this document from 30 September 2009
and includes any amendments published up to 28 June 2024.]*

Under the powers conferred by section 156(2) of the Constitution of the Republic of South Africa, 1996, the City of Johannesburg Metropolitan Municipality adopts the following by-law-

[Please note: Schedule 2 - Code of practice for work in the road reserve was omitted in the original, but can be found in Public Road and Miscellaneous By-law, 2004]

Chapter 1 Introductory provisions

1. Definitions and interpretation

In these By-laws, any word or expression that has been defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996) has that meaning and, unless the context otherwise indicates -

"authorised official" means --

- (a) a member of the Johannesburg Metropolitan Police established in terms of section 64A of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
- (b) any person or official authorised as such, in writing, by the Council;

"backfill" means to replace the structural layers, including the base, sub-base, subgrade and subgrade but excluding the surfacing, in a trench dug in, or other excavation of, a road reserve, and "backfilling" is construed accordingly;

"these By-Laws" includes the schedules;

"City" means the City of Johannesburg Metropolitan Municipality or any mechanism, as contemplated in section 76 of the Municipal Systems Act, which is engaged in the provision of a municipal service;

"class licence" has the meaning given in the Electronic Communications Act;

"Code of Practice" means the Code of Practice for Work in the Road Reserve contained in Schedule 2;

"Council" means

- (a) the council of the City, as provided for in section 157 of the Constitution of the Republic of South Africa, 1996, in exercising the executive authority of the City, as provided for in section 11(1) of the Municipal Systems Act; or
- (b) where applicable, any person or body to whom a power of the council as provided for in paragraph (a) has been delegated in terms of section 59 of the Municipal Systems Act or any mechanism, as contemplated in section 76 of the Municipal Systems Act, which is engaged in the provision of a municipal service;

"demarcated space" means a space so laid out and marked on the roadway as a place within which a vehicle is to be parked;

"Electronic Communications Act" means the Electronic Communications Act, 2005, (Act No. 36 of 2005);

"electronic communications network service" has the meaning given in the Electronic Communications Act;

"emergency works" means any works in the road reserve, which are necessary to prevent, end or avert a dangerous situation or unplanned interruption in the provision of services by a service provider;

"individual licence" has the meaning given in the Electronic Communications Act;

"JRA" means the Johannesburg Roads Agency (Pty) Ltd, a municipal entity as defined in the Municipal Systems Act, in which the City is the sole shareholder, or such other mechanism, as provided for in section 76 of the Municipal Systems Act, through which the road network of the City is from time to time provided and maintained;

"licensee" means the holder of an individual licence or a class licence in terms of the Electronic Communications Act to provide electronic communications network services;

"municipal area" means the area falling within the boundaries of the City as provided for in Notice No. 6766 published in *Provincial Gazette* No. 141 dated 1 October 2000 or any subsequent notice published in terms of section 16 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

"municipal store" means the municipal store of the Council;

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"official website" means the website of the City as provided for in section 21B of the Municipal Systems Act;

"parking meter" means a device for registering and visibly recording of a parking period in accordance with the insertion of a coin or other prescribed object therein and includes a post or fixture to which it is attached;

"parking period" means that period of parking in a demarcated space which is permitted by the insertion into the parking meter allocated to such space of a coin or other object as prescribed;

"prescribed" means determined by resolution of the Council from time to time;

"prescribed fee" means a fee determined by the Council by resolution in terms of section 10G(7){a}{ii} of the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable legislation;

"public road" means a road including a street, footpath, pavement, sidewalk, square, road island, subway, bridge, public passageway or other thoroughfare, which the public has the right to use, in the municipal area, for which the Council is responsible, and does not include a provincial road or national road within the municipal area;

"public service provider" means a service provider, other than a licensee, which is --

- (a) an organ of state, as defined in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); or
- (b) engaged in the provision of a municipal service as defined in the Municipal Systems Act;

"reinstate" means to replace the surfacing, including the bituminous surfacing, paving blocks, paving slabs, earth or grass, as the case may be, of a road reserve, and "reinstatement" is construed accordingly;

"restore" means to place a public road in the state in which it was found prior to the performance of any works in the road reserve, including to backfill and reinstate the road reserve, and "restoration" is construed accordingly;

"road reserve" means the full width of a public road, and includes the verge and roadway;

"service" means a utility or other service provided to the public or a section of the public over a network including, but not limited to, electricity, water, gas and electronic communications network services and any other system for supplying a public need;

"service provider" means the provider of a service;

"storekeeper" means the person in the service of the Council who holds the position of storekeeper or a person acting in that capacity;

"token" in respect of a trolley, means a sign on which the name or trade name and the address of the owner appears;

"trolley" means a push trolley, push cart or any table, stand or basket on wheels;

"watercourse" means a watercourse as defined in section 1 of the National Water Act, 1998 (Act No. 36 of 1998);

"works in the road reserve" means any work that may affect motorists, cyclists, pedestrians, the public road, footways, kerbing, traffic signs, traffic signals, street lighting, underground or overground services or any other structure or service that is contained in the road reserve and includes the digging of trenches, tunneling, erection of signboards, hoardings and other structures, shaping and landscaping in the road reserve;.

2. Application

- (1) Chapter 4 of these By-laws applies to persons other than licensees.
- (2) Chapter 5 of these By-laws applies to licensees installing electronic communications facilities in the municipal.

Chapter 2 General requirements in respect of public roads

3. Damage to trees

- (1) No person may climb upon, or break or damage or in any way mark or paint on any tree on any public road within the municipal area.
- (2) No person may, without the prior written permission of the Council, lop, top, trim, cut down or remove any tree on any public road: provided that a licensee may exercise its rights in terms of Chapter 4 of the Electronic Communications Act in accordance with the procedure specified in Chapter 5 of these By-laws.

4. Barbed wire, dangerous and electrical fencing

- (1) No owner or occupier of land --
 - (a) other than an owner or occupier of an agricultural holding or farm land, may, along any public road, erect or cause, or permit to be erected, any barbed-wire fence or any railing, paling, wall or other barrier which, by reason of spikes or other sharp or pointed protrusions or otherwise by reason of the nature of its construction or design, is or may become a danger to any member of the public using such public road;

- (b) including an owner or occupier of an agricultural holding or farm land, may, along any public road, erect or cause, or permit to be erected, or have any electrified fence, railing or other electrified barrier unless -
 - (i) the fence, railing or other barrier is erected on top of a wall built of brick, cement, concrete or similar material, which wall may not be less than 1,8 metres high;
 - (ii) the fence, railing, or other barrier is designed and installed in accordance with any relevant specifications determined by the Council and any standard issued in terms of the Standards Act, 2008 (Act No. 8 of 2008); and
 - (iii) the prior written permission of the Council, in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) has been obtained.
- (2) The full technical details of the proposed electrified fence, railing, wall or other electrified barrier must accompany any application for permission submitted to the Council in terms of subsection (1)(b)(iii).

5. Protection of public roads

No person may place upon or off-load on a public road any material or goods that are likely to cause damage to that public road unless the person has taken reasonable precautions to protect the surface of the public road against damage.

6. Cleanliness of public roads

- (1) Any person who spills, drops or places or permits to be spilled, dropped or placed, on a public road, any matter or substance that may interfere with the cleanliness of the public road, or cause or be likely to cause annoyance, danger or accident to any person, animal, vehicle or other traffic using the public road, must remove the matter or substance in question or cause it to be removed from the public road immediately.
- (2) If a person referred to in subsection (1), fails to remove the matter or substance in question, the City may remove such matter or substance and recover the costs of removal from that person.

7. Article placed in building facing public road

No person may place any article likely to cause injury or damage to any person or property if it were to fall on a public road, in any building near a public road without taking all reasonable steps necessary to prevent the article falling onto the public road.

8. Damaging of Council's property

Subject to section 10, no person may deface, tamper, damage, remove, or in any way interfere with any of the city's property or work on or along any public road.

9. Cleaning and repairing on public roads

No person may clean or repair any part of a vehicle or wash, dry or paint any article or object on any public road except in the case of an emergency breakdown of a vehicle when emergency repairs may be done.

10. Defacing, marking or painting public roads

No person may in any way deface, mark or paint any public road or part of a public road or any structure related to such road, without the prior written permission of the Council.

11. Races and sports events

- (1) An application for consent to hold a race or sports event on any public road in terms of regulation 317(2) of the National Road Traffic Regulations, 2000, under the National Road Traffic Act, 1996 (Act No. 93 of 1996), must be submitted in writing to the Council on the prescribed form at least 60 days prior to the envisaged event.
- (2) The applicant must pay the prescribed deposit for the costs to be incurred by the Council during and after the race or sports event, to the Council, prior to commencement of the race or sports event and an adjustment must be made after the conclusion of the race or sports event as soon as the Council has determined actual costs incurred by it.

12. Loitering on public roads

- (1) No person may --
 - (a) lie, sit stand, congregate, loiter or walk, or otherwise act, on any public road in any manner that may obstruct traffic;
 - (b) jostle or loiter at or within twenty (20) metres of the entrance of any place of public worship during the time of divine service or during an assembly at the place of worship or departure from such place of the congregation so as to obstruct or annoy any person going to, attending at, or leaving such place of worship.

13. Loitering and touting at places of public entertainment

- (1) No person may loiter or, except when forming part of a queue, congregate on any public road within twenty (20) metres of the entrance to any place of public entertainment so as to obstruct traffic or persons proceeding to, attending at, or departing from such place of entertainment.
- (2) No person may, without the prior written permission of the Council tout or solicit a driver of any motor vehicle who parks a motor vehicle at a place of entertainment for the purpose of or under pretext of looking after or watching over the motor vehicle.

14. Public decency

- (1) No person may appear unclothed or indecently clothed on any public road.
- (2) No person may on or in view of any public road urinate, excrete, behave in any indecent manner by exposing his or her person or otherwise, make use of any indecent gesture, or commit, solicit or provoke any person to commit any riotous, disorderly or indecent act.
- (3) No person may on any public road sing any obscene or profane song, or use any profane, foul, indecent or obscene language.
- (4) No person may on any public road in any way loiter or solicit or inconvenience or harass any other person for the purpose of begging.
- (5) No person may on a public road use any threatening, abusive or insulting words or gestures or behaviour with intent to cause a breach of the peace or whereby a breach of the peace is likely to be occasioned.

15. Trolleys

- (1) The owner of a trolley must affix a prescribed token in a conspicuous position on the trolley.
- (2) The owner or the person who controls or has the supervision over a trolley or who offers it to be used by any person, or who uses it for any purpose whatsoever, may not leave or abandon it or permit it to be left or abandoned on any public road.

- (3) Any trolley which has been left or abandoned on any public road, may be removed, or caused to be removed, by an authorised official and placed under the care of the storekeeper.
- (4) The storekeeper must store any trolley which has been placed under his or her care in terms of subsection (3), at the municipal store and the City must publish once a month in respect of eleven months of a year calculated from the first day of January, a notice in two newspapers circulating within the municipal area, which states -
 - (a) the name of the owner of every trolley being stored, if known;
 - (b) the number of trolleys being so stored;
 - (c) that the trolley may be claimed by the owner from the Council on payment of the prescribed storage charge;
 - (d) that any trolley which has not been claimed after a period of three months from the date of publication of the said notice, may be sold by the City by public auction; and
 - (e) that the proceeds of the public auction will accrue to the City.

16. Public road collections

- (1) No collection on a public road may be organised or held without the prior written permission of the Council.
- (2) Application for such permission must be made on a form provided for this purpose by the Council.
- (3) Every application must be accompanied by proof that the organisation or person intending to hold the public road collection is authorised to collect a contribution in terms of the Non-Profit Organisations Act, 1997 (Act No. 71 of 1997), or the Fund-Raising Act, 1978 (Act No. 107 of 1978), as the case may be.
- (4) The Council may grant permission referred to in subsection (1) to an organisation or person to hold a collection on a specified public road, date and at a specified time and reserves the right to determine the number of collections which may be held on anyone day on the public road so specified.
- (5) Every organisation or person, holding a public road collection is entitled to use his, her or its own identifiable collection boxes and if any organisation or person does not possess any boxes, the Council's collection boxes may be used upon payment of the prescribed fee.

17. Control of stormwater and watercourses on public road

- (1) No person may, without prior written permission of the Council, to which conditions may be attached -
 - (a) lead or discharge any water on or over or across a public road; or
 - (b) by any means whatever, raise the level of water in any river, dam or watercourse so as to cause interference with or endanger any public road.
- (2) The Council may, subject to any other applicable laws and after obtaining consent of the owner and the occupier, if any, of any land which is affected -
 - (a) deviate any watercourse, stream or river if the deviation is necessary for the protection of a public road or structure related to a public road or for the construction of a structure connected with or belonging to a public road;
 - (b) divert stormwater from or under any public road onto private property other than land occupied by building, other structures or improvements; and

- (c) pay reasonable compensation as agreed between the owner or occupier and the Council, for any damage caused as a result of any action taken in terms of subsection (2)(a) or (b) or failing such agreement, compensation determined by arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

18. Obstruction on public roads

No person may deposit or cause to be deposited or leave or cause to be left any sand, stone, earth, bricks, timber, lime, cement or other building or excavated material of whatever nature on any portion of any road reserve unless it is deposited within an enclosure in respect of which the prior written permission of the Council has been obtained.

19. Planting on sidewalks

No person may plant or cause to be planted, any tree, shrub or other plant on any road reserve, which obstructs or interferes with pedestrian traffic on such road reserve or allow any such tree, shrub or plant to remain on that road reserve.

Chapter 3 Traffic matters

20. Control of traffic

An authorised official may direct any form of traffic by means of any visible or audible signal and every person must obey such signal.

21. Clinging to moving vehicles

No person travelling upon any pedal cycle, motor cycle, coaster, sled, roller-skates, or any other similar device may cling to or attach himself or herself or such cycle, coaster, sled, roller-skates or device to any other moving vehicle, upon a public road.

22. Removal of obstructions

- (1) Subject to chapter 4 and 5, if any person causes an obstruction on a public road, an authorised official may order such person to, refrain from causing, or remove, the obstruction.
- (2) If a person causing an obstruction cannot be found, or fails or neglects to remove, or to cease causing, such obstruction, an authorised official may take such steps as may be necessary to remove the obstruction, or to prevent its continuance and the Council may if the person concerned fails or neglects to remove or cease causing the obstruction, recover the cost of the removal of the obstruction from that person.
- (3) Any activity which is authorised to be conducted on a public road in terms of these By-laws or any other law shall be deemed for the purposes of this section not to cause an obstruction.

23. Games, throwing stones, on public roads

- (1) No person may roll a hoop or fly a kite or throw stones or use a bow and arrow, or by any means discharge any missile upon, over or across any public road, or play cricket, football or any other game on a public road.
- (2) No person may erect a tent or place chairs or any article on a public road for the purpose of a funeral, party or any other event without the prior written permission of the Council.

24. Shoeing and cleaning of animals on public roads

No person may shoe any animal, or clean, dress, train or break-in livestock on any public road.

25. Animals on public roads

- (1) No person may turn any livestock loose on a public road.
- (2) No person may leave any injured, feeble, emaciated, diseased or dying animal on a public road except for the purpose of seeking assistance for the removal of such animal.
- (3) Any livestock at large on a public road may be taken to a place designated by the Council, by any authorised official.
- (4) Any person contravening subsection (1) is liable, in addition to any penalty which may be imposed by a Court, to pay to the Council the costs incurred by it in acting in terms of subsection (3).
- (5) No person may walk a dog on a public road unless it is on a leash and under control of that person.
- (6) Any excretion left by a dog on a public road, must immediately be removed by the person in charge of the dog and be deposited in a waste receptacle provided by the Council or removed from the road.

26. Parking meters

- (1) No person shall park a vehicle or cause a vehicle to be parked in a demarcated space unless a coin or other prescribed object is forthwith inserted --
 - (a) into the meter allocated to such space; or
 - (b) if the meter controls more than one demarcated space, into the meter controlling such spaces as indicated by markings or signs on the roadway or sidewalk, and the meter is put into operation in accordance with the instructions appearing thereon so that the meter registers and visibly indicates the parking period appropriate to the coin or other prescribed object inserted.

Provided that --

- (i) such coin or prescribed object need only be inserted during such hours indicated on the meter as prescribed;
 - (ii) a vehicle may be parked in a demarcated space without the insertion of a coin or other prescribed object in the parking meter allocated to such space for such part only of any parking period as such meter may indicate to be unexpired;
 - (iii) where such parking meter is out of operation or not operating properly, the driver of a vehicle may leave his or her vehicle in the demarcated space appropriate to such meter for so long as the parking meter continues to be out of order but not for longer than the parking period determined for that space and the vehicle may not be returned to such space within 15 minutes of removing it therefrom.
- (2) No person may, with or without the insertion of an additional coin or other prescribed object into a parking meter, leave a vehicle in a demarcated space after the expiry of the parking period as indicated by the parking meter allocated to such space or return his or her vehicle to that space within 15 minutes after the expiry of the parking period or prevent the use of that space by any other vehicle.
- (3) The insertion of a coin or other prescribed object into a parking meter and the putting into operation of such meter where necessary in accordance with the instructions appearing on such meter entitles the person inserting it to park a vehicle in the demarcated space for the period corresponding with the payment so made, provided that, notwithstanding the making of a payment

as aforesaid, nothing in this section contained shall entitle any person to contravene a notice or road traffic sign exhibited by the Council in terms of these by-laws prohibiting the parking.

- (4) The period during which a vehicle may be parked in any demarcated space and the coin or other prescribed object to be inserted in respect of that period into the parking meter allocated to such space shall be as prescribed and the said period and the coin or other prescribed object to be inserted in respect thereof must at all times be clearly indicated on the parking meter itself.
- (5) No person may -
 - (a) insert or attempt to insert into a parking meter a coin or object except --
 - (i) a coin of South African currency of a denomination as prescribed;
 - (ii) an object which is prescribed as another method of payment;
 - (b) damage or deface, or write or draw on, or affix any handbill, poster, placard or other document, whether or not of an advertising nature, to a parking meter, unless the Council determines otherwise;
 - (c) in any way whatsoever cause or attempt to cause a parking meter to record the passage of time other than by the insertion of a coin or other prescribed object;
 - (d) jerk, knock, shake or interfere with a parking meter which is not working properly or at all in order to make it do so or for any other purpose;
 - (e) deface, soil, obliterate or otherwise render less visible or interfere with any mark painted on the roadway, or any sign or notice erected for the purpose of this section; or
 - (f) remove or attempt to remove a parking meter or any part thereof from the post of other fixture to which it is attached.
- (6) Every vehicle must be so placed in a demarcated space, other than one which is at an angle to the kerb line, that its near side wheels are not more than 450 mm from the kerb line and that it is laterally within that space and that the driver's seat, or in the case of a motor vehicle with left-hand drive, the front passenger's seat, is opposite and close to the mark known as the driver's marker, painted on the surface of the road or in the case of a one-way street in which parking on the right-hand side thereof is permitted, on the roadway.
- (7) No person may place or cause or permit to be placed or to stand any vehicle not specially designed or constructed for the carriage of goods in any loading space in any portion of a public road in which parking meters have been erected, otherwise than for the shortest possible time necessary for the loading or unloading of passengers.
- (8) Where a vehicle parked in a demarcated space occupies by reason of its length so much of an adjoining space that another vehicle cannot be parked in such space in the manner referred to in subsection (6), the person parking the first mentioned vehicle must immediately after parking it insert an appropriate coin or other prescribed object into the parking meters of both the said spaces.
- (9) No person may park a two-wheeled vehicle without a side-car in any demarcated space unless such space is designed for the use of such vehicle by means of a road traffic sign or notice.

27. Medical practitioner exempt

A medical practitioner is exempt from paying the prescribed fees, while the vehicle used by that practitioner is parked in a demarcated space, to enable him or her to perform professional duties at any place other than a consulting room or similar place, subject to a form or token issued by the Health Professions Council of South Africa for that purpose being displayed on the windscreen of the vehicle concerned in such manner that it is readily legible from outside the vehicle.

Chapter 4

Works on, across or under any public road

28. Ropes, wires or poles across public road

- (1) No person may place or hang any rope, wire, pole or cable on, under, along or across any public road, without the prior written permission of the council and on payment of the prescribed fee, unless that person is authorised to do so in terms of any other law.
- (2) Prior to performing any work in the road reserve, the person referred to in subsection (1) must, once written permission has been obtained, follow the procedures contained in the Code of Practice.

29. Excavations in public roads

- (1) No person may make or cause to be made any hole, trench, pit or tunnel on or under any road reserve or remove any soil, metal or macadam from the road reserve without the prior written permission of the Council and on payment of the prescribed fee, unless that person is authorised to do so in terms of any other law.
- (2) Prior to performing any work in the road reserve, the person referred to in subsection (1) must, once written permission has been obtained, follow the procedures contained in the Code of Practice.

30. Permission to hoard in footway

- (1) No person may erect, remove, alter, repair or paint any part of a building or structure or carry out any excavation, on any part of any land which is within two metres of the road reserve of a public road without, prior to commencing the work in question, enclosing or causing to be enclosed a space in front of such part of the building, structure or land by means of a hoarding, fence, planked shed or other enclosure.
- (2) If the hoarding, fence or other enclosure contemplated in subsection (1), will occupy or project over any portion of a public road, the person concerned may not erect the hoarding, fence, planked shed or other enclosure without the prior written permission of the Council and on payment of the prescribed fee, and, where the person making application for such permission is not the owner of the building or land on which the work is to be done, the owner of that building or land must countersign the application.
- (3) Where a permit referred to in subsection (2) is granted, the Council shall specify in the permit-
 - (a) that portion of the public road which may be used for the purpose of carrying out the works;
 - (b) the conditions, if any, under which such permit is granted;
 - (c) the area and precise position of that part of the public road where hoarding, fence, planked shed or other enclosure may be erected and the period for which the permit is granted.
- (4) The Council may withhold the issue of a permit required in terms of subsection (2) until all prescribed fees have been paid.
- (5) The acceptance of any permit provided for in subsection (2) by the applicant without objection, will be taken as confirming that all kerbs, gutters and other works in the portion of the public road concerned were in good order and condition on the date of issue of such permit.
- (7) Prior to performing any work in the road reserve, the person referred to in subsection (2) must, once written permission has been obtained, follow the procedures contained in the Code of Practice.

[Please note: numbering as in original.]

31. Emergency works by service providers

- (1) A service provider may perform any emergency works as and when necessary without first making application for any permission required in terms of this Chapter, where applicable.
- (2) A service provider shall comply with the requirements specified in the Code of Practice with regard to emergency works.

32. Other works in the road reserve

- (1) A person performing any activity which is authorised in terms of any other law and which necessitates works in the road reserve must comply with the procedures in the Code of Practice.
- (2) The requirements to obtain the prior written approval of the Council in terms of sections 28(1), 29(1) and 30(1) are not applicable to a public service provider
- (3) A public service provider must comply with the procedures in the Code of Practice.

Chapter 5

Installation of electronic communications facilities

33. Works on or under public roads and other municipal land

- (1) No licensee may perform work in the road reserve including --
 - (a) entering upon and breaking or opening up any public road to --
 - (i) install, construct, maintain, alter or remove any electronic communications facilities or pipes, tunnels, trenches or tubes required for electronic communications facilities or electronic communication networks, under the road reserve;
 - (ii) alter the position of any pipe for the supply of water, gas or electricity, other than a sewer drain or main, for the purpose of installing, constructing, maintaining, altering or removing any electronic communications facilities or pipes, tunnels, trenches or tubes required for electronic communications facilities or ECNs, under the road reserve; or
 - (b) entering upon any public road to install, construct, maintain, alter or remove any electronic communications facilities or pipes, tunnels, trenches or tubes required for electronic communications facilities or ECNs upon, over, along or across the road reserve;

without first giving notice to the Council, in accordance with the provisions of these By-Laws, of the works to be performed.

- (2) The notice referred to in subsection (1) must be received by the Council no less than thirty (30) days prior to the commencement of the works to be performed.
- (3) The notice referred to in subsection (1) must be submitted to the Council--
 - (a) in the form [set out in Schedule 2 Appendix A / prescribed by this purpose by the Council / published on the official website by the Council for this purpose from time to time] and must include --
 - (i) a copy of the individual or class licence held by the licensee or details of the specific regulation prescribed in terms of section 6(1) of the Electronic Communications Act in terms of which the licensee is exempted from the requirement to hold a licence to provide electronic communication network services, as the case may be;
 - (ii) an area plan;

- (iii) an indication of the number of days to be taken to perform the works referred to in subsection (1)(a) or (b) and any works required to be undertaken by the licensee to restore the public road as provided for in section 39;
 - (iv) the times of the day during which the works referred to in subsection (1)(a) or (b) and any works required to be undertaken by the licensee to restore the public road, as the case may be, will be performed;
 - (v) the commencement date of the works referred to in subsection (1)(a) or (b);
 - (vi) details of any lane rental agreed with the [Council / JRA], as provided for in the Code of Practice;
 - (vii) details of the manner in which the public road is to be restored, as provided for in section 39;
 - (viii) details of any other service providers whose existing facilities appear on the area plan;
 - (ix) confirmation that the notice referred to in section 35(1) has been given to any other service providers and details of such service providers;
- (b) **3 (three) copies**
- (a) accompanied by the processing fee, if any, determined by the Council.

[Please note: numbering as in original.]

- (4) The Council shall, within 30 (Thirty) days of receipt of the notice referred to in subsection (1), in writing acknowledge receipt of that notice.
- (5) The Council may, where any of the requirements of subsection (3) have not been complied with or the information provided by the licensee is deficient, in the acknowledgement of receipt referred to in subsection (4), direct the licensee to comply with those requirements or provide any additional information to the Council within the time specified in such acknowledgment.
- (6) In the circumstances contemplated in subsection (5), the licensee will be regarded as having submitted the notice provided for in subsection (1) on the date on which the licensee complies, to the satisfaction of the Council, with the Council's direction.

34. Area plan

The area plan to be submitted in terms of section 33(3)(a)(ii) must -

- (1) indicate the area on which the work is to be performed by the licensee;
- (2) be prepared to a minimum scale of 1:500;
- (3) indicate the category of the public road on or under which the works are to be performed, as provided for in the Code of Practice;
- (4) depict
 - (a) North point;
 - (b) a block plan with stand numbers, street names and house numbers, where applicable;
 - (c) the work to be performed by the licensee;
 - (d) the position of and depth below or height above the surface of the ground of any electronic communications facility or pipe, tunnel, trench or tube required for an electronic communications facility that has been installed or constructed or is to be installed or constructed;

- (e) the distance of the licensee's electronic communications facility or facilities from the public road reserve or property boundary;
- (f) the position and extent of all structures, including underground structures such as, but not limited to, manholes, chamber and junction boxes;
- (g) the location of the existing facilities of all other service providers.

35. Agreement in respect of works on municipal land other than a public road

- (1) Where a licensee wishes to install any electronic communications facilities on any land or other property of the City in the municipal area the agreement between the City and the licensee in relation to the right to use that land or other property must address the manner in which the works in question are to be performed.
- (2) The agreement referred to in subsection (1) must address *inter alia* --
 - (a) the length of time to be taken in performing the works;
 - (b) the manner in which the licensee will access the municipal land in question;
 - (c) the works to be performed;
 - (d) the safety measures to be adopted during the performance of the works to ensure the safety of the public or sections of the public using the municipal land in question;
 - (e) the remuneration to be received by the City in respect of the use of the municipal land in question;
 - (f) any specifications which must be complied with in the installation of electronic communications facilities or electronic communications networks, subject to any regulations published in terms of section 28 of the Electronic Communications Act; and
 - (g) any specifications with which the restoration of the municipal land must comply and any period during which the works performed in the restoration of the municipal land is guaranteed by the licensee.
- (3) The matters to be addressed in the agreement between the City and the licensee are in addition to any matters which are required to be addressed in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and any regulations published under that Act in respect of the granting of rights to use the assets of a municipality.

36. Notification of the public and service providers

- (1) A licensee must, at the same time as giving notice to the Council of any works in the road reserve, as provided for in section 32, to be performed by the licensee --
 - (a) give written notice to any service provider whose existing facilities appear on the area plan, of the works to be performed;
 - (b) publish notice in two (2) daily newspapers which are circulated throughout the municipal area of the works to be performed.
- (2) The Council may publish the material details of each notice submitted in terms of section 33(1) on the official website in order to facilitate co-operation between licensees on the allocation and sharing of electronic communications facilities, as provided for in Chapter 8 of the Electronic Communications Act, and the pipes, tunnels, trenches and tubes required for electronic communications facilities.

37. Occupation of and works on or under public roads

- (1) Where any works in the road reserve are to be performed by a licensee --
 - (a) the licensee must comply with the requirements set out in the Code of Practice; and
 - (b) the licensee must comply with any specifications with regard to the height or depth at which facilities, including electronic communications facilities, must be installed as set out in the Code of Practice or published for this purpose by the City, subject to any regulations published in terms of section 28 of the Electronic Communications Act.
- (2) Where the licensee performs any works, as provided for in section 33(1)(a)(ii) -
 - (a) the licensee must co-operate with the City or other service provider responsible for the pipe in question, as the case may be, to determine the most efficient and expeditious, and least disruptive, manner in which the works may be performed;
 - (b) the City or other service provider responsible for the pipe in question, as the case may be, may supervise, in the manner it deems fit, the works performed by the licensee and may impose reasonable conditions on the manner in which the works should be performed;
 - (c) the licensee is responsible, in addition to being responsible for the costs of restoration as provided for in section 36, for any and all reasonable costs incurred by the City or other service provider responsible for the pipe in question, as the case may be, as a result of the works performed, including, but not limited to, costs incurred through -
 - (i) the deployment of personnel to supervise the works;
 - (ii) any repairs to the pipe which may be necessary due to the works;
 - (iii) any preparatory work done to determine the manner in which the works should be performed;
 - (d) the licensee must pay the costs referred to in subsection (3)(c) upon presentation of an invoice by the City or other service provider responsible for the pipe in question, as the case may be, within the period of time specified in that invoice, which shall not be less than thirty (30) days, failing which the City or other service provider concerned shall be entitled to charge interest upon the unpaid amount at the rate specified in the invoice.

38. Control and supervision of works

- (1) A licensee must ensure that a copy of the notice submitted to the council in terms of section 33(1) and the acknowledgement of receipt referred to in section 33(4), is available at the site where any works in the road reserve, including the restoration of the public road, are being performed, for inspection by the Council or law enforcement officials during those times of the day that work is being done.
- (2) The Council may, in the acknowledgement of receipt referred to in section 33(4), require a licensee to erect any signage in addition to that provided for in the Code of Practice, indicating that the works in the road reserve are being performed by the licensee and providing contact details for the licensee, and the licensee must then erect any such signage upon commencing the works in question, and must maintain such signage for the duration of the works.
- (3) A licensee must ensure that any works in the road reserve, including to restore the public road, which are performed by the licensee -
 - (a) are planned to be performed and are performed in the shortest possible time and in the manner calculated to cause the least possible disruption to other activities performed on the public road in question and, in particular, that in performing any work under a public road, any excavation is kept to a minimum;

- (b) are performed, subject to subsection (4), within the time specified in the notice submitted in terms of section 33(1).
- (4) Where the licensee is, for any reason beyond its control, unable to complete the works in the road reserve, including the restoration of the public road, within the time specified in the notice submitted in terms of section 33(1), the licensee must, as soon as it is apparent that the works will not be completed within that time, notify the Council of the delay and the reasons for the delay, and must in such notice indicate the number of additional days which will be required to complete the works.
- (5) A licensee may not, subsequent to commencing any works in the road reserve but before completion of such works, abandon the site at which the works are being performed and, where a licensee is unable, for any reason, to complete the works which were intended to be performed, as described in the notice submitted in terms of section 33(1), the licensee must restore the public road and section 39 is applicable, with the necessary changes, to the restoration.

39. Restoration of public roads

- (1) Where a licensee performs any works in the road reserve, the road reserve upon, under, over, along or across which the works are performed, must be restored subsequent to the performance of the works and the licensee --
 - (a) is responsible for the costs of restoration;
 - (b) in the case of works provided for in section 33(1)(a)
 - (i) must backfill the road reserve;
 - (ii) must, where the permanent reinstatement of the road reserve is to be performed by the JRA, temporarily reinstate the road reserve; and
 - (iii) may, where permission is granted by the JRA in accordance with subsection (2)(b), permanently reinstate the road reserve,in accordance with the specifications and guarantee periods set out in the Code of Practice;
 - (c) in the case of works provided for in sections 33(1)(b), must take all steps necessary to restore the public road; and
 - (d) must ensure that the public road or other municipal land is restored as soon as practicably possible after performing the works.
- (2) In the case of works provided for in section 33(1)(a)
 - (a) the licensee must indicate in the notice submitted in terms of section 33(1) either whether it wishes itself to perform the permanent reinstatement of the road reserve, and, if so, details of its expertise and experience in performing such works, or whether the [City / JRA] is required to perform such works;
 - (b) the [City / JRA] must, where applicable, inform the licensee within 30 days of receipt of the notice submitted in terms of section 33(1), whether the licensee is permitted to perform the permanent reinstatement of the road reserve;
 - (c) where the [City / JRA] is to perform the permanent reinstatement of the road reserve -
 - (i) the licensee must temporarily reinstate the road reserve subsequent to the performance of the works provided for in section 33(1)(a);
 - (ii) an order for permanent reinstatement must be submitted to the [City / JRA] with the completion notice referred to in section 40(1);

- (iii) the licensee will be charged by the [City / JRA] for the permanent reinstatement of the road reserve at the applicable rates published for this purpose by the City on the official website from time to time; and
 - (iv) the licensee must make payment of the amount charged by the City for reinstatement upon presentation of an invoice by the [City / JRA] within the time period specified in that invoice, which shall not be less than thirty (30) days, failing which the [City / JRA] shall be entitled to charge interest upon the unpaid amount at the rate specified in the invoice.
- (4) Where, subsequent to the performance of any works performed by the licensee to restore the public road or other municipal land, as the case may be, the Council is not satisfied that the restoration, including, where applicable, any backfilling or reinstatement, complies with any applicable specifications or considers that, during any period during which the restoration is guaranteed, any remedial work is required in order to comply with such specifications, the Council may perform, or may direct the licensee to perform, any work necessary to ensure that the public road or other municipal land is restored in accordance with the applicable specifications, including replacing any material used by the licensee, and the licensee shall be liable for any and all costs incurred in performing such work, and must pay the costs incurred by the Council in this regard upon presentation of an invoice by the Council, within the period of time specified in that invoice, which shall not be less than thirty (30) days, failing which the Council shall be entitled to charge interest upon the unpaid amount at the rate specified in the invoice.

[Please note: numbering as in the original.]

40. Completion

- (1) Once the licensee has concluded any works in the road reserve, and the steps required to be taken by the licensee to restore the public road have been performed, and all materials, equipment and rubble have been removed from the site and the site is completely cleared and cleaned, the licensee must give written notice to the Council in the form [set out in Schedule 2 Appendix A / published by the Council for this purpose [on the official website] from time to time], that the works have been completed.
- (2) Upon receipt of the notice of completion referred to in subsection (1), the [Council / JRA], as the case may be, will arrange a meeting with the licensee at the site or sites where any works were performed to inspect the site and determine whether the requirements of these By-laws and any applicable specifications have been complied with.
- (3) If, following its inspection of the site in terms of subsection (2), the [Council / JRA] is satisfied that these By-laws and any applicable specifications have been complied with, the [Council / JRA] shall issue a certificate certifying that the works notified in terms of section 33(1) have been completed.
- (4) If, following its inspection of the site in terms of subsection (2), the [Council / JRA] is not satisfied that these By-laws and any applicable specifications have been complied with, the [Council / JRA] may direct the licensee concerned in writing to take such steps as the [Council / JRA] may consider necessary for such compliance, and the licensee must perform such steps, at its own cost, within the period specified in the direction.
- (5) Any period during which the works required to be taken by the licensee to restore the public road or municipal land are guaranteed shall commence from the date on which the certificate of completion referred to in subsection (3) is issued to the licensee.

41. Emergency works by a licensee

- (1) a licensee may perform any emergency works as and when necessary without first giving notice, as provided for in section 33(1), of the works to be performed.

- (2) A licensee shall comply with the requirements specified in the Code of Practice with regard to emergency works.
- (2) All other provisions and requirements of these By-laws, including the requirements with regard to the restoration of public roads and municipal land, completion of works, excavations and road signs and barricading, remain applicable, with the necessary changes, to a licensee who performs emergency works.

[Please note: numbering as in the original.]

42. Notice regarding trees

- (1) Where a licensee is of the opinion that a tree or vegetation within the municipal area for which the Council is responsible, obstructs or interferes with or is likely to obstruct or interfere with the operation or maintenance of any electronic communications facilities comprising the licensee's electronic communications network or pipes, trenches, tunnels or tubes required for such electronic communications facilities, as contemplated in section 27(1) of the Electronic Communications Act, in a manner which makes it necessary for the tree or vegetation to be cut down or trimmed, the licensee must give written notice to the Council of the action which is required to be taken to remedy the situation.
- (2) The Council shall, subject to section 27(4) of the Electronic Communication Act, perform the action which is required to be performed, or shall notify the licensee of the reasons, on the basis of section 27(4) of the Electronic Communications Act, that such action cannot be taken or any further action to be taken by the licensee, as soon as reasonably practicable and, in any event, within 30 (Thirty) days of receipt of the notice referred to in subsection (1).
- (3) In the event that, following the expiry of the period referred to in subsection (3), the Council has not performed the required action as specified in the notice given in terms of subsection (1), or given notice as provided for in subsection (2), the licensee may, subject to section 27(4) of the Electronic Communications Act, take the required action itself: provided that the licensee must ensure that all precautions necessary to ensure the safety of members of the public and any person engaged in performing the required action, and to prevent damage to property, are taken and that the action is performed in the manner calculated to cause the least disruption to other persons or activities performed in the vicinity of the trees or vegetation in question.
- (4) Where the Council performs the required action as specified in the notice referred to in subsection (1), the licensee is responsible for all and any reasonable costs incurred by the Council in performing the action, which shall be paid by the licensee upon receipt of an invoice from the Council setting out such costs, within the period of time specified in that invoice, which shall not be less than thirty (30) days, failing which the Council shall be entitled to charge interest on the unpaid amount at the rate specified in the invoice.

43. Failure to give notice

- (1) Where a licensee, other than in the circumstances contemplated in section 41(1), does not comply with the requirement to give notice, as provided for in section 33(1), and, having failed to give such notice, commences the performance of any works, the Council or any law enforcement official may direct the licensee immediately to cease any works being performed and to submit the requisite notice in terms of section 33(1) within 30 (Thirty) days] of the date on which the direction was issued.
- (2) Where a licensee is directed, in terms of subsection (1), to cease the performance of any works --
 - (a) the Council may direct the licensee to restore, at its own cost, the public road on a temporary basis, in accordance with any requirements specified by the Council so as to render it safe for use by the public or sections of the public, until the expiry of the period referred to in section 33(2);

- (b) the Council may itself take any steps necessary to restore the public road or municipal land, as the case may be, on a temporary basis, so as to render it safe for use by the public or sections of the public, until the expiry of the period referred to in section 33(2), and the licensee shall be responsible for all costs incurred by the Council in taking such steps;
 - (c) the licensee may be required, at the direction of the Council, to pay a deposit to the Council, in an amount determined by the Council, as security for the costs referred to in subsection (2)(b).
- (3) Where a licensee does not submit the requisite notice in terms of section 33(1) within the time period referred to in subsection (1), the Council may direct the licensee to restore the public road and section 39 will be applicable, with the necessary changes, to the licensee.
- (4) Where a licensee does not comply with the requirement to have available for inspection, at any site where works in the road reserve are performed, the notice and acknowledgement of receipt, as provided for in section 33, the Council may direct the licensee to cease the works until a copy of the notice and acknowledgement of receipt is made available for inspection.

Chapter 6

General provisions

44. Offences and penalties

- (1) a person who --
 - (a) fails to obtain any permit or permission which is required to be obtained in terms of these By-laws;
 - (b) fails to obtain any approval which is required in terms of the Code of Practice;
 - (c) fails to comply with any notice or direction given by the City in terms of these By-laws, other than a direction referred to in section 43;
 - (d) obstructs or hinders any authorised official or employee of the Council in the execution of his or her duties under these By-laws;

is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment, to imprisonment not exceeding one day, for every day that the offence continues, after a written notice has been issued by the Council, and served on the person concerned, directing the person to stop the offending activity.
- (2) A person who is not a licensee, who installs electronic communications facilities in the municipal area is guilty of an offence.
- (3) A licensee who --
 - (a) other than in the circumstances contemplated in section 40(1), performs any works in the road reserve without having given notice as provided for in section 32(1), read with section 32(5) and (6);
 - (b) performs any works in the road reserve without complying with a requirement imposed in terms of section 37(2);
 - (c) contravenes section 37(5);
 - (d) performs any act in relation to a tree or vegetation in contravention of section 42;

- (e) contravenes or fails to comply with a direction made in terms of section 38(3), section 39(4), section 42(1), section 42(3) or section 42(4);

is guilty of an offence.

- (4) A person who commits an offence in terms of subsections (2) or (3) is liable on conviction to a fine not exceeding R2 000] or, in default of payment, to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R50 000.00, for every day that the offence continues, after a written notice has been issued by the Council, and served on the person concerned, directing the licensee to stop the offending activity.

45. Repeal and amendment of by-laws

The by-laws listed in the first and second columns of Schedule 1 are amended or repealed to the extent indicated in the third column.

46. Short title

These by-laws are called the Public Road, Electronic Communications Networks and Miscellaneous By-laws, 2003.

Schedule 1

Amended By-laws

Number and year	Name of by-law	Extent of amendment or repeal
Notice No. 827, Gauteng <i>Provincial Gazette</i> Extraordinary No. 179 of 21 May 2004	Encroachment on Property By-laws, 2004	Amendment of section 11(1)(a): Any person wishing to erect or construct an encroachment on, under or over any public road, or any immovable property owned by or vested in the Council must, save to the extent that the erection or construction is not governed by the Public Road, Electronic Communications Networks and Miscellaneous By-laws, 2003, apply to the Building Control Officer on a form prescribed by the Council for that purpose.
Notice No. 831 in Gauteng <i>Provincial Gazette</i> Extraordinary No. 179 of 21 May 2004	Public Open Spaces By-laws, 2004	Amendment of section 17(3): The provisions of this section are not applicable to the extent that the Public Road, Electronic Road, Electronic Communications Networks and Miscellaneous By-laws, 2003, are applicable.

Notice No. 835 in Provincial Gazette Extraordinary No. 179 2004.	Water Services By-laws, 2004	Amendment of section 20(2): No person may interfere with, or 21 May 2004, or willfully or negligently damage, or permit damage to or interference with, any part of the water supply system or sewage disposal system belonging to the Council, save to the extent permitted under Public Road, Electronic Communications Networks and Miscellaneous By-laws, 2003.
Administrator's Notice 281 dated 27 June 1934	Road Traffic By-laws (JHB)	Repealed. The whole
Administrator's Notice 368 dated 14 March 1973	Standard Street and Miscellaneous By-laws (Randburg Municipality)	Repealed. The whole
Administrator's Notice 652 dated 24 April 1974	Standard Street and Miscellaneous By-laws (Sandton Municipality)	Repealed. The whole
	Standard Street and Miscellaneous By-laws (Roodepoort Municipality)	Repealed. The whole
	Standard Street and Miscellaneous By-laws (Midrand Municipality)	Repealed. The whole
Government Notice R. 2606 dated 2 December 1983 under section 27 (2A) of the Black Local Authorities Act, 1982, (Act 102 of 1982) read with section 13(3) of the local Government Transition Act, 1993 (Act No 209 of 1993)	By-laws relating to Streets and Street Collections as applied by the Municipalities of Alexandra, Diepmeadow, Dobsonville and Soweto	Repealed. The whole
Local Authority Notice 741 dated 22 March 1989	Standard Traffic By-laws (Randburg)	Repealed. The whole

Local Authority Notice of Roodepoort Municipality on page 5161 in <i>Official Gazette</i> dated 21 December 1988	Standard Traffic By-laws (Roodepoort)	Repealed. The whole
Administrator's Notice 901 dated 19 August 1970 as amended by Administrator's Notice 1692 dated 24 October 1973	Parking Meter By-laws	Repealed. The whole

[Please note: Schedule 2 - Code of practice for work in the road reserve was omitted in the original, but can be found in (Public Road and Miscellaneous By-law, 2004)]