

POLICY: PLACEMENT AND USE OF SHIPPING CONTAINERS ON PROPERTIES WITHIN THE EKURHULENI METROPOLITAN AREA

Item DP 5-2003 CM 30/01/2003	FINAL DRAFT UNIFORM POLICY ON THE PLACEMENT AND USE OF SHIPPING CONTAINERS ON PROPERTIES WITHIN EKURHULENI METROPOLITAN AREA (ITEM DP 22-2002(MC) – MC 05-12-2003)
---------------------------------	--

RESOLVED:

1. **THAT** the report on the uniform policy on the use and placement of shipping containers in the Ekurhuleni Metropolitan Municipal area **BE NOTED**.
2. **THAT** the workshops held respectively on 28 August 2002, 14 October 2002, 15 October 2002 and 16 October 2002 in respect of the proposed policy on the placement and use of shipping containers **BE NOTED**.
3. **THAT** the final draft policy on the use and placement of shipping containers in the Ekurhuleni Metropolitan Municipal area attached to the report as "Annexure A" **BE APPROVED** and implemented with immediate effect.
4. **THAT** the determination of the application fee payable on applications to place and use shipping containers at R150,00, **BE APPROVED**.
5. **THAT** in view of (3) above, all identified and/or known operators and/or owners of businesses in shipping containers **BE NOTIFIED** of the Uniform Policy and instructed to comply with the provisions therein within 3 months.
6. **THAT** where necessary and/or reasonable upon the request of the shipping container owner and/or occupant, extensions of time to comply with the provisions of the Uniform Policy in (3) above **BE GRANTED** and limited to periods not exceeding 4 additional months.
7. **THAT** on expiry of notification periods, legal action **BE INSTITUTED** against non-complying/ illegally placed shipping containers with a view to remove or cause the removal of such shipping containers.
8. **THAT** the responsibilities of departments as outlined in the policy document referred to in (3) above **BE IMPLEMENTED**.
9. **THAT** the City Manager, or his nominee, **BE AUTHORISED** to oversee the implementation of the uniform policy referred to in (3) above.

UNIFORM POLICY ON THE PLACEMENT AND USE OF SHIPPING CONTAINERS ON PROPERTIES WITHIN EKURHULENI METROPOLITAN AREA (ITEM DP 22-2002(MC) - MC 05.12.2003)

1. PURPOSE OF THE REPORT

The purpose of this report is to provide feedback on workshops held and to further propose the adoption of a uniform policy on the placement and use of shipping containers on properties within Ekurhuleni Metropolitan area.

2. MOTIVATION

2.1 Background

Over the past few years there has been a steady increase in the placement and use of shipping containers within Ekurhuleni Metropolitan area for various business purposes. Numerous requests from the public to place shipping containers on properties indicate the pressing demand and desirability for businesses operating from shipping containers.

Businesses operating from shipping containers (and other informal businesses) provide essential services that would otherwise not be available to the community, particularly in the previously disadvantaged areas (e.g. telecommunications and retail). Furthermore, these informal and/or micro businesses, with the backing of large formal establishments (e.g. Vodacom, MTN, Telkom, Bakeries and Coca-cola), provide alternative employment in the face of current high unemployment rate in South Africa in general and specifically within the Ekurhuleni Metropolitan area.

It is therefore obvious that the need for the usage of shipping containers within the Ekurhuleni Metropolitan area cannot be negated nor ignored. Thus it is critical to set in place mechanisms and procedures to facilitate and support the proper and legitimate accommodation of shipping container for business purposes.

2.2 Portfolio Committee Decisions

On 19 June 2001 the LED Portfolio Committee considered the draft policy on shipping containers and resolved inter alia as follows:

*“(a) THAT the draft policy **BE CIRCULATED** to other departments of the Metropolitan Council for their urgent comment, with report back to this committee.”*

Furthermore, on 02 July 2002 the Development Planning Portfolio Committee considered the final draft policy under Item DP 91 -2002 and resolved as follows:

*“(1) **THAT** the final draft policy on the use and placement of shipping containers in the Ekurhuleni Metropolitan Municipal area **BE APPROVED AND IMPLEMENTED** after the workshop with Councillors has been held.”*

2.3 Policy Workshops

A Metro-wide workshop was held on Wednesday 28 August 2002 at the Boksburg Civic Centre in the Council Chamber.

The conclusion of the workshop was that in view of the poor turnout / attendance at the Workshop, further workshops be held per Service Delivery Region in order to solicit wider input into the proposed policy. Follow up workshops were then held as follows:

Southern SDR:	09h00 on Monday 14 October 2002 Alberton Civic Centre, 3 rd Floor Auditorium
Northern SDR:	09h00 on Tuesday 15 October 2002 Kempton Park Civic Centre, Council Chamber
Eastern SDR:	09h00 on Wednesday, 16 October 2002 Springs Civic Centre, Council Chamber

At all the workshops held, valuable input was obtained with respect to the proposed policy on shipping containers and further issues of concern were raised and noted as follows:

- (i) The manner in which existing containers are going to be dealt with in so far as compliance with the proposed policy is concerned
- (ii) Great care should be taken when dealing with existing containers so as to avoid disrupting and possibly terminating services that are provided by businesses operated from shipping containers
- (iii) It is suggested that public meetings be held (per SDR) to inform the wider community of the proposed policy
- (iv) Council should remove illegally placed containers
- (v) It is suggested that Shipping containers be deemed "special structures/building" so as to facilitate ease of accommodation in terms of land use rights enshrined within existing town planning schemes.
- (vi) The uses to which shipping containers may be put to must be specified in the policy

3. DRAFT POLICY

Currently a draft policy (attached as **Annexure A**) has been formulated and circulated. The policy provides for the following:

- * The position of the Council on shipping containers
- * The placement of containers on private properties
- * The placement of containers on Council owned land
- * Illegal containers
- * Roles and responsibilities of various departments
- * Guidelines for applicants
- * Assessment guidelines for officials

4. COMMENTS OF RELEVANT DEPARTMENTS

The following comments were previously rendered by the various departments:

LED and Environment & Tourism

These departments were part of the initial policy development process and therefore there is no need to obtain comments at this stage.

Public Safety

It is accepted that such containers will be used for business purposes.

It must be noted that the placement of any containers in contravention of the National Road Traffic Act, 1996, cannot be condoned. This includes the placement thereof on a pavement (which by definition is part of the public road) in or on the roadway, or in a road reserve. The placement thereof in a position where it obscures the visibility of a road user or where it obstructs a road sign is equally unacceptable. Such containers will be removed at the cost of the owner.

Roads, Transport and Civil Works

Comments are attached under "ANNEXURE B"

Housing

Report and recommendations are supported.

Municipal Infrastructure (Water, Sanitation, Electricity, Cleansing & Gas)

This department supports the policy, provided there will be a strict identification of the Council's existing services (e.g. water and sewer lines) before the container is placed to avoid to have them on existing services.

Corporate & Legal

- A. The above policy is supported provided that Corporate and Legal services Department shall be informed timeously of land available & suitable for containers in order to serve notices of eviction for those currently trading illegally on various erven & road reserves etc. Also to advise the community of the available stands in order to relocate them if necessary
- B. The proposed policy in its current form could be difficult to enforce in certain circumstances. To overcome this it is proposed that the reference to National

Building Regulations in clause 2.2 of the policy be amended to read "National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977)"

It is also suggested that the words "building and site" be inserted before the word "plans" in the first line of clause 2.6 of the policy.

Other than the above, the policy appears in order from a legal perspective.

COMMENTS OF THE EXECUTIVE DIRECTOR: DEVELOPMENT PLANNING:

The report served at the Development Portfolio Committee held on 12 November 2002. The item is supported.

ANNEXURE A

DRAFT POLICY AND GUIDELINES ON THE PLACEMENT AND USE OF SHIPPING CONTAINERS WITHIN THE EKURHULENI METROPOLITAN MUNICIPAL AREA

DRAFT POLICY & GUIDELINES ON THE USE & PLACEMENT OF SHIPPING CONTAINERS WITHIN THE EKURHULENI METROPOLITAN AREA

DEFINITIONS

- Shipping container.** A lockable steel pre-fabricated, movable unit structure originally designed for purposes of containing bulk goods in transit (on ships, trains and trucks). These shipping containers are no longer required for purposes for which they were originally designed and so are being customised for reuse in numerous circumstances.
- Road reserve:** As per definition in the National Road Traffic Act, 1996 (Includes side walks and pavements)
-

PART 1: EKURHULENI METROPOLITAN MUNICIPALITY POLICY POSITION

- 1.1 The use and placement of shipping containers on properties within the Ekurhuleni Metropolitan area is supported where desirable, subject to compliance with the provisions contained in this policy.
 - 1.2 The structural adequacy of the shipping containers thus used shall be in accordance with the National Building Regulations and any other by-laws of the Council.
 - 1.3 The use of the shipping container shall exclude residential purposes and shall further be in accordance with, and determined by the land use provisions as contained in the applicable town planning scheme(s) within the Ekurhuleni Metropolitan area.
 - 1.4 Any application for the placement and use of a shipping container for business purposes shall be subject to written comments from the surrounding property owners. It shall be the responsibility of the applicant to obtain such comments.
 - 1.5 The placing of shipping containers within road reserves is deemed to be undesirable and therefore not supported, except in special circumstances/ allocated streets to be determined by the Council at its sole discretion.
 - 1.6 The Municipality reserves the exclusive right to pronounce judgement in respect of the structural adequacy of a container in the context of this policy.
-

PART 2: PLACEMENT & USE OF CONTAINERS ON PRIVATE PROPERTIES

- 2.1 The placement and use of shipping containers on private properties shall be in accordance with the land use provisions of the applicable town- planning scheme (including the definition(s) associated with containers)

- 2.2 The shipping containers thus accommodated shall comply with the requirements of the National Building Regulations (or exemption thereof as the case may be) and the Health regulations.
 - 2.3 An owner of any property within the metropolitan area who intends to place container or allow a container to be placed on the property under his/her ownership shall lodge the necessary application with the Metropolitan Council to place a shipping container on his/her property.
 - 2.4 The Metropolitan Council may, on approval of the application to place a container on any private property, impose conditions it deems to be necessary.
 - 2.5 The Metropolitan Council shall, in all instances, reserve its right to withdraw its permission should the owner / applicant fail to comply with conditions of approval.
 - 2.6 The Council may, on submission of relevant site plans, consider requests to encroach building lines and/or servitudes when the positioning of containers is considered.
-

**PART 3:
PLACEMENT & USE OF CONTAINERS ON COUNCIL-OWNED (PUBLIC) PROPERTY**

- 3.1 The Metropolitan Council may, from time to time and where desirable, identify (through the Executive Director, Development Planning) and approve sites / stands under its ownership to be made available for the placement of shipping containers for purposes it may determine and/or approve of as follows:
 - 3.1.1 Sites/stands providing for single occupation
 - 3.1.2 Sites/stands providing for multiple occupation. (clustering)
- 3.2 Any person who wishes to place a container on any site / stand identified by 'the Council and under its ownership shall be required to enter into a lease agreement on application. Applications to lease Council land for the placement of shipping containers shall be treated on a first come first served basis and sub-letting shall be prohibited.
- 3.3 Lease agreements with Council for leasing of land for purposes of placing and using shipping containers shall, inter-alia be subject to the following:
 - 3.3.1 Payment of a cash deposit of R1 000,00 (or an amount equivalent to the removal costs of a shipping container as determined by the Council), over and above the relevant application fee. The deposit thus paid shall be used to remove the container in the event that the owner abandons the container. On termination of the lease agreement the deposit shall only be refunded to the owner! applicant once all conditions have been complied with, and the container removed
 - 3.3.2 Stipulations pertaining to the provision and consumption of services
 - 3.3.3 Limit the advertising on the body of the container to advertising the use of the container and in compliance with advertising by-laws.
- 3.4 The shipping containers thus accommodated shall comply with the requirements of the National Building Regulations (or exemption thereof) and the Health regulations

**PART 4:
ILLEGALLY PLACED CONTAINERS**

- 4.1 A shipping container shall be considered to be illegal under the following circumstances:
- (a) When placed within the road reserve and any other land, whether publicly owned or privately owned without the prior permission of the Council
 - (b) When placed on any other Council property without any agreement being entered into or any documented permission being obtained by the owner of the shipping container
 - (c) When placed on any other property without the prior approval of the Council

**PART 5:
DEPARTMENTS' RESPONSIBILITIES**

5.1 Development Planning

- 5.1.1 Receive, process and approve or refuse applications for the placement and use of shipping containers for business purposes on properties within the Ekurhuleni Metropolitan Municipal area
- 5.1.2 Determine appropriate application fees for applications to place containers on private properties as well as effective identification.
- 5.1.3 Remove (or cause to be removed) illegally placed containers on any property within the Ekurhuleni Metropolitan area
- 5.1.4 Identify council owned sites / stands suitable for placement and use of shipping containers based on need and desirability
- 5.1.5 Compile and maintain a database of identified council owned sites / stands suitable for placement and use of shipping containers
- 5.1.6 Provide comments on all applications to place shipping containers on private properties
- 5.1.7 Provide comments on all applications to lease Council owned land for purposes of placing shipping containers

5.2 Public Safety:

- 5.2.1 Take necessary steps to remove and impound illegally placed containers within the road reserves.

5.3 Finance:

- 5.3.1 Determine economical rental for the lease of Council land for shipping containers.
- 5.3.2 Collect the rental payable for the lease of Council land for shipping containers

5.4 Corporate and Legal:

- 5.4.1 Receive and process all applications to lease Council owned properties for purposes of placing shipping containers.
- 5.4.2 Draw up and sign the lease agreements (after consultation with the Development Planning Department and the Building Control Division)
- 5.4.3 Take necessary action against defaulting applicants / lessees
- 5.4.4 Institute necessary and appropriate steps to dispose of impounded shipping containers

5.5 Building Control Division (Roads, Transport & Civil Works)

- 5.5.1 Consider and approve site plans submitted with applications to place and use shipping containers on properties with specific reference to positioning and drainage.

5.6 Municipal Infrastructure (Water, Sanitation, Electricity, Cleansing and Gas):

- 5.6.1 Investigate sustainable and appropriate means of providing services to council owned sites / stands identified for placement and use of shipping containers.
- 5.6.2 Provide services to council owned sites / stands identified for placement and use of containers at the request of the applicant, and only once the applicable deposit(s) have been paid.

**PART 6
GUIDELINES TO APPLICANTS**

- 6.1 Ensure that an application form is filled/ completed
- 6.2 Obtain comments of adjacent and / or surrounding neighbours (one on either side of application site, and three across the street apposite the application site where applicable).
- 6.3 Provide proof of ownership and permission (i.e. Power of attorney or affidavit from the owner) of the owner in cases where the applicant is not the property owner.
- 6.4 The intended use of the container must be specified.
- 6.5 Since a container-operated business need not be considered a permanent undertaking, applicants must declare acceptance of responsibility to remove the container when, on demand by the Municipality, the shipping container is no longer structurally adequate.

**PART 7
ASSESSMENT GUIDELINES FOR OFFICIALS**

- 7.1 All adjacent and surrounding Neighbours comments must be solicited by the applicant
- 7.2 Any "objections" lodged must be substantiated and where applicable alternatives and / or remedial measures must be provided by the dissenting neighbour(s).
- 7.3 Where remedial measures required are requested / insisted upon by the dissenting neighbour(s), these shall, within reason, be imposed as conditions of approval.

- 7.4 An Application Form shall be completed by the applicant a full / complete application must consist of a completed application form and the payable application fee.
- 7.5 The application must also include comments from relevant surrounding neighbours.
- 7.6 The proposed use of a container shall comply with policy and the relevant town planning scheme
- 7.7 In the case of Council owned land being the subject property, the necessary lease agreement shall be concluded prior to or simultaneously with the granting of permission to place and use a shipping container on such Council owned land.
- 7.8 The applicant must submit a site plan of the application site / property. The proposed position of the container must be satisfactory in terms of.
- 7.8.1 Not obstructing entrances, view (for traffic).
 - 7.8.2 Sufficient space must be left open around the container
 - 7.8.3 Not "sealing" or obstructing windows and other openings on existing buildings
 - 7.8.4 Adjacent properties' privileges.
-

PART 8
STANDARD APPLICATION FORM