

## SECTION 61 SUBCOUNCILS

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*The terms of reference of Subcouncils are:*

- *to make recommendations to Council on any matter affecting its area of jurisdiction; and*
- *to exercise any power, duty or function delegated by Council*
- *to exercise any power, duty or function conferred upon it in terms of the Subcouncil By-law*

*NOTE: It is the Speaker's responsibility to coordinate all processes flowing from the implementation of these delegations.*

*Acting in terms of section 59 of the Systems Act, Council hereby delegates the following powers, functions and duties to Subcouncils including the power to sub delegate any of their delegated powers, functions and duties to members of the municipal staff only in terms of section 17 the Cape Town Subcouncil By-law 2003:*

### **51. General**

- (1) To assess the performance of service delivery generally within their area of jurisdiction (outcomes monitoring).
- (2) To identify the needs of the Municipality as far as it relates to the functional area of the Subcouncil.
- (3) To review and evaluate those needs referred to in paragraph 51(2) above in order of priority.

- (4) To recommend appropriate comments on National and Provincial draft legislation, regulations, policy frameworks etc. that affects the Subcouncil and submits such comment to the Director: Legal Services.
- (5) To require any councillor(s) and/or official(s) to appear before the Subcouncil to assist the Subcouncil in the performance of its functions.
- (6) To request reports from the relevant line functionaries on activities planned to be executed within the Subcouncil area.
- (7) To make recommendations with regard to the determination of Service Delivery Areas and operational matters relating thereto.

## **52. IDP, Budget and Business Planning**

- (1) To develop Subcouncil draft business plans and make recommendations thereon.
- (2) To make recommendations in regard to the setting or revision of tariffs, levies, taxes and duties.
- (3) To monitor the implementation of Council's budget, business plans, strategic objectives, policies and programmes.
- (4) To comment and make recommendations in regard to the draft IDP and budget.
- (5) To monitor the implementation of Council's IDP, budget, business plans strategic objectives, policies and programmes.

- (6) To make representation to the relevant line departments for the inclusion of the capital and operating budgetary requirements.

### **53. Street naming**

- (1) To name streets after consultation with the public and developers where applicable.

### **54. Business Licensing**

- (1) To grant licences for health facilities or entertainment as provided for in terms of item 2 of schedule 1 to the Businesses Act 1991, and to exercise all powers conferred on the Municipality in terms of section 2(4) to 2(10) of the aforesaid Act.
- (2) To comment on and make recommendations regarding the demarcation and amendments thereto, of prohibited and restricted trading areas proclaimed in terms of the Businesses Act 1991.
- (3) To comment on applications in terms of the Western Cape Gambling and Racing Act 1996 (Act 4 of 1996)

*[Inserted C08/12/08 by CI 3 December 2008]*

### **55. Liquor Licences**

- (1) To comment on applications for liquor licences.
- (2) To comment on applications for extension of trading hours on premises where liquor licences have been granted.
- (3) To make recommendations to the Liquor Board for the cancellation of any liquor licence or imposition of more restrictive conditions.

- (4) To report contraventions of the national Liquor Act or any other subsequent Act replacing such Act to the responsible Officer of the South African Police.

*[Inserted C08/12/08 by CI 3 December 2008]*

## **56. Public Participation**

- (1) To undertake public participation in the development of policy, legislation, the IDP and budget.
- (2) To facilitate the liaison between the civic organisations, ratepayers associations and similar fora within the Subcouncil area to ensure service delivery and enhance and uplift the community's environment.
- (3) To comment on by-laws and policies of Council within the timeframes advertised and submit comments and objections to the Speaker.
- (4) To facilitate the celebration of important local, national and international celebrations and events e.g. Youth Day, Human Rights Day etc.
- (5) To undertake public participation on any matter initiated by the Subcouncil.

## **57. Policies, By-laws and Regulations**

- (1) Monitoring the implementation of any Council policy, by-law or regulation affecting the Subcouncil's area of jurisdiction including:
  - (a) the policy regarding Biodiversity
  - (b) the policy regarding Energy Saving
  - (c) the by-law relating to Filming

and to report thereon to the Speaker.

**58. Public Facilities (i.e. Amenities, Sport Facilities, Parks and Recreation, Beaches and Amusement Facilities, Public Jetties, Piers and Harbours)**

- (1) To oversee the maintenance of all public facilities within the Subcouncil area and instructing the responsible director to report on how any shortcomings and irregularities will be remedied.
- (2) To oversee the management of all public facilities within the Subcouncil area and instructing the responsible director to report on how any shortcomings and irregularities will be remedied.
- (3) To grant permission for the use of public open spaces, public squares and similar places within the subcouncil's area of jurisdiction, for any events such as "Art in the Park", flea markets, sporting events, community festivals etc.

**59. Planning And Environmental Matters**

*The following directions apply in determining when S.P.E.L.U.M., Subcouncils and officials have delegated powers regarding town planning and environmental matters:*

*[Amended C74/10/07 by CI 31 October 2007]*

*When the Director : Planning and Building Development Management, Director : Spatial Planning or Director : Environmental Resource Management or a Subcouncil elect not to exercise any power, function or duty delegated to them by Council, S.P.E.L.U.M is authorised to exercise such delegated power, function or duty.*

*[Inserted C74/10/07 by CI 31 October 2007]*

SPELUM is empowered to exercise a power, function or duty conferred on Council in terms of the following laws and legal instruments :

- the Land Use Planning Ordinance no 15 of 1985( LUPO)
- the Scheme Regulations promulgated in terms of LUPO and the Black Communities Development Act, 1984,
- the National Building Regulations and Building Standards Act no 103 of 1977
- the Removal of Restrictions Act, 1967
- the National Environmental Management Act no 107 of 1998 and regulations promulgated in terms thereof
- the Environment Conservation Act
- the National Heritage Resources Act no 25 of 1999
- the Outdoor Advertising By Law, no 5801 dated 5 December 2001, and
- title deed restrictions dealing with property rights
- agreements arising out of the South African Transport Services Act no 9 of 1989

in cases where such power, function or duty has not been delegated to the City Manager, an Executive Director, a Director, a Subcouncil or to PEPCO. **Provided** that should SPELUM exercise this power, it shall report thereon to the next Council meeting and Council shall either confirm, vary or revoke such decision and no rights shall accrue until Council has so resolved.

*[Inserted C74/10/07 by CI 31 October 2007]*

- a. *All matters affecting more than one Subcouncil (i.e. extends beyond the Subcouncil's boundary) is decided by S.P.E.L.U.M. where objections have been received; where no objections have been received the Director: Land Use and Building Development Management or Director: Environmental Resource Management has the power to decide subject to the conditions set out here below.*

*[Amended C74/10/07 by CI 31 October 2007]*

- b. *Where an application is subject to an EIA, HIA or TIA , S.P.E.L.U.M. is the delegated authority. 23*

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23 EIA: A development application made in terms of LUPO which is subject to a scoping and environmental impact assessment as set out in Part 3 of R 385 of GN 28753 dated 21 April 2006 as read with R 387 as amended from time to time or an EIA required in terms of the regulations promulgated in terms of the Environmental Conservation Act and now repealed.

Note: All other development applications whether subject to an Environmental Authorisation required in Part 2 of R 385 of GN 28753 dated 21 April 2006 as read with R 386 or an EIA requested in terms of LUPO will be dealt with by Subcouncils if there are objections to a development application (not the EIA application) and by officials where there are no objections to the development application.

HIA: refers to a Heritage Impact Assessment report required in terms of section 38 of the National Heritage Resources Act no 25 of 1999 and which may or may not form part of the EIA referred to above. This does not include a Heritage statement

TIA: refers to any impact assessment dealing with traffic for a development which is likely or will generate more than 150 vehicles per hour. An impact assessment dealing with traffic

- c. *All matters relating to a Subcouncil's (i.e. that do not extend beyond the Subcouncil's boundary) area of jurisdiction is decided by the Subcouncil where objections have been received; where no objections have been received the Director: Land Use and Building Development Management or Director: Environmental Resource Management has the power to decide subject to the conditions set out here below.*

*[Amended C74/10/07 by CI 31 October 2007]*

- d. *[Deleted C74/10/07 by CI 31 October 2007]*

- e. *In exercising any power, duty or function in terms of this System of Delegation a political structure, political office bearer or official must comply with the provisions of Council's policies, By-laws and any law relating to the matter under consideration, provided that SPELUM may deviate from a section 4(10) structure plan and approved policies which are used to guide land use decision-making, but only in circumstances where S.P.E.L.U.M considers reasonable to do so taking into account inter alia the size and locality of the subject property. Provided further the powers hereby granted shall only be exercised until PEPCO has approved a policy on the subject matter.*

*In terms of Land Use Planning Ordinance No. 15 of 1985*

*Use rights*

- (1) To recommend when land is deemed to be zoned whether the most restrictive zoning permitting of the utilisation of the land concerned shall be either in conjunction with a departure or not, in terms of section 14(3).

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for a development which is likely to or will generate less than 150 vehicles per hour will be dealt with by Subcouncils if there are objections to the development application and the matter is within Subcouncil boundaries and by officials where there are no objections to the development application. The trigger for determining whether a matter is dealt with by SPELUM or not is the number of vehicles per hour, not the name of the assessment.

*[Inserted C74/10/07 by CI 31 October 2007]*

- (2) To recommend the substitution for a zoning scheme or part thereof with one in terms of which land is not necessarily zoned in accordance with the utilisation thereof, in terms of section 14(4).
- (3) To determine the zoning of land, that does not extend beyond the Subcouncil boundaries, in accordance with the utilisation thereof where a use right has lapsed because of failure to exercise such right for an uninterrupted period of two years and where objections have been received, in terms of section 14(5).
- (4) To recommend the determination of the zoning of land, that extends beyond any Subcouncil's boundaries, in accordance with the utilisation thereof where a use right has lapsed because of failure to exercise such right for an uninterrupted period of two years, in terms of section 14(5).
- (5) To grant a use right by way of rezoning in terms of section 16 or 18 in relation to land that does not extend beyond the Subcouncil boundaries, where the lawful use right of land cannot be determined, in terms of section 14(7).
- (6) To recommend the granting of a use right by way of rezoning in terms of section 16 or 18, in relation to land that extends beyond any Subcouncil's boundaries, where the lawful use right of land cannot be determined, in terms of section 14(7).
- (7) To determine the utilisation of land referred to in section 8 for the purposes of section 14(3) for land that does not extend beyond the subcouncil boundary and where objections have been received, in terms of section 14(1).
- (8) To recommend the determination of the utilisation of land referred to in section 8 for the purposes of section 14(3) for land that extends beyond any subcouncils boundary in terms of section 14(1).

### *Departures*

- (9) To approve applications for an alteration of the land use restrictions applicable to a particular zone in terms of the scheme regulations concerned in relation to land that does not extend beyond the Subcouncil boundaries where objections to such applications have been received, in terms of section 15(1).
- (10) To recommend the approval of applications for an alteration of the land use restrictions applicable to a particular zone in terms of the scheme regulations concerned in relation to land that extends beyond any Subcouncil's boundaries, in terms of section 15(1).
- (11) To approve applications to utilise land on a temporary basis for a purpose for which no provision has been made in the said regulations in respect of a particular zone in relation to land that does not extend beyond the Subcouncil boundaries and where objections have been received, in terms of section 15(1).
- (12) To recommend the approval of applications to utilise land on a temporary basis for a purpose for which no provision has been made in the said regulations in respect of a particular zone in relation to land that extends beyond any Subcouncil's boundaries and where objections have been received, in terms of section 15(1).
- (13) To approve an application by the owner to extend the period within which the use right must be exercised in relation to land that does not extend beyond the Subcouncil boundaries, in terms of section 15(5).
- (14) To recommend the approval of an application by the owner to extend the period within which the use right must be exercised in relation to land that extends beyond any Subcouncil's boundaries, in terms of section 15(5).

*Rezoning (application of owner of land)*

- (15) To grant or refuse an application by an owner of land for the rezoning thereof in relation to land that does not extend beyond the Subcouncil boundaries where objections have been received, in terms of section 16(1).
- (16) To recommend the granting or refusal of an application by an owner of land for the rezoning thereof in relation to land that extends beyond any Subcouncil's boundaries, in terms of section 16(1).
- (17) To grant an extension of the period of two years in which the use right must be utilised in relation to land that does not extend beyond the Subcouncil boundaries, in terms of section 16(2).
- (18) To recommend an extension of the validity period of two years in which the use right must be utilised in relation to land that extends beyond any Subcouncil's boundaries, in terms of section 16(2).
- (19) To determine the utilisation of land for purposes of zoning in relation to land that does not extend beyond the Subcouncil boundaries where a zoning has lapsed, in terms of section 16(2).
- (20) To recommend the determination of the utilisation of land for purposes of zoning in relation to land that extends beyond any Subcouncil's boundaries where a zoning has lapsed, in terms of section 16(2).

*Subdivisions*

- (21) To grant or refuse an application for the subdivision of land in relation to land that does not extend beyond the Subcouncil boundaries where objections have been received, in terms of section 25(1).
- (22) To recommend the granting or refusal of an application for the subdivision of land in relation to land that extends beyond any Subcouncil's boundaries, in terms of section 25(1).

*Home owners' association*

- (23) To impose conditions in relation to the compulsory establishment by the applicant for subdivision of a home owners' association when granting of an application for subdivision in relation to land that does not extend beyond the Subcouncil boundaries in terms of section 29(1).
- (24) To recommend the imposition of conditions in relation to the compulsory establishment by the applicant for subdivision of a home owners' association when granting of an application for subdivision, in relation to land that extends beyond any Subcouncil's boundaries in terms of section 29(1).

*Amendment or cancellation of plan of subdivision*

- (25) To amend or partially cancel the plan of a subdivision, including a general plan, or cancel the plan of a subdivision, including a diagram or general plan, after application for the subdivision of land has been granted in relation to land that does not extend beyond the Subcouncil boundaries, and after
  - (a) considering objections received in consequence of an advertisement of the proposed amendment or cancellation of a plan of subdivision, and
  - (b) consulting the owner of the land concerned and the Surveyor-General in relation to land units not yet registered by virtue of the granting of that application,in terms of section 30(1).

- (26) To recommend the amendment or partial cancellation of the plan of a subdivision, including a general plan, or cancellation of the plan of a subdivision, including a diagram or general plan, after application for the subdivision of land has been granted in relation to land that extends beyond any Subcouncil's boundaries, and after
- (a) considering objections received in consequence of an advertisement of the proposed amendment or cancellation of a plan of subdivision, and
  - (b) consulting the owner of the land concerned and the Surveyor-General in relation to land units not yet registered by virtue of the granting of that application,
- in terms of section 30(1).

*Compliance with provisions of zoning scheme  
and of conditions of subdivision*

- (27) To oversee enforcement of compliance with the provisions of LUPO, the provisions incorporated in a zoning scheme in terms of this Ordinance, and the conditions imposed in terms of LUPO or the Townships Ordinance, 1934.

*Conditions*

- (28) To impose conditions when granting an authorisation, exemption or application under LUPO, in terms of section 42(1).
- (29) In relation to a condition imposed by Subcouncil, whether objections are received or not, after consideration of objections received, if any, in consequence of an advertisement and after consultation with the owner of the land concerned, to –

*[Amended C74/10/07 by CI 31 October 2007]*

- (a) waive or amend any condition, and
- (b) impose additional conditions

in terms of section 42(3)

Notwithstanding the above, the Director of Planning and Building Development Management has the power to approve or amend a Site Development plan where there are no objections thereto, where a rezoning, subdivision or departure or consent /conditional use has been approved by Subcouncil subject to the submission of a site development plan and provided that the other conditions of approval imposed in terms of section 42 remain unaltered.

*[Inserted C74/10/07 by CI 31 October 2007]*

In relation to a condition imposed by an official,  
(a) to waive or impose additional conditions in terms of section 42 (3);  
(b) to consider the amendment of a condition in terms of section 42 (3) where objections have been received.

*[Inserted C74/10/07 by CI 31 October 2007]*

*Special Consent, Consent Or Conditional Use In Terms Of The Zoning Scheme Regulations*

- (30) To grant, with or without conditions, or refuse an application for the Special consent of Council, consent of Council or a conditional use referred to in the Zoning Scheme Regulations in operation in Council's area of jurisdiction in relation to land that does not extend beyond a Subcouncil boundary and in cases where objections have been received.
- (31) To recommend the granting, with or without conditions, or refusal of an application for the Special consent of Council, consent of Council or a conditional use referred to in the Zoning Scheme Regulations in operation in Council's area of jurisdiction in relation to land that extends beyond any Subcouncil's boundaries, where objections have been received.

- (32) To recommend to the Premier to amend, replace or delete a scheduled condition which is part of the scheme regulations in terms of section 9(2) where land does not extend beyond any Subcouncil's boundaries and where objections have been received.

*[Amended C74/10/07 by CI 31 October 2007]*

*Applications Made In Terms Of The Less Formal Townships Establishment Act  
No 125 Of 1991*

- (33) To request the Premier to designate by notice in the Official Gazette land as land for less formal settlement in terms of section 3, to formulate conditions for such designation and to request the Premier to declare that a provision of law referred to in section 3(5) to be applicable to designated land described in the notice in relation to land that does not extend beyond the Subcouncil boundaries and in cases where objections have been received to such designation.
- (34) To apply to the Premier to grant permission for the establishment of a Township in terms of section 10, in cases where land does not extend beyond the Subcouncil boundaries.
- (35) To approve the submission of an application for the establishment of a township in terms of Section 11 to the Premier, to formulate conditions for the establishment of the township and to recommend the exclusion of laws and suspension of servitudes and restrictive conditions referred to in section 12 in cases where land does not extend beyond Subcouncil boundaries and in cases where objections have been received.

*Regulations Promulgated In Terms Of The Black Communities  
Development Act No 4 Of 1984.*

- (36) To make recommendations to the Provincial sphere of government relating to the granting or refusing, with or without conditions, of applications for rezoning, subdivision, departures, consent of Council or amendment to town planning conditions in cases where land does not extend beyond Subcouncil boundaries and in cases where objections have been received.
- (37) To make recommendations to S.P.E.L.U.M relating to the granting or refusing, with or without conditions, of applications for rezoning, subdivision, departures, consent of Council or amendment to town planning conditions in cases where land extends beyond Subcouncil boundaries and in cases where objections have been received

*Consent in terms of title deed restrictions*

- (38) To grant or refuse the written consent of Council where a title deed condition permits an owner to exceed the use or development parameters or other restrictions set in the title deed condition in relation to the property with the written consent of Council, in cases where a Subcouncil has the delegated power to deal with the related rezoning, subdivision, departure or consent use application.

*[Inserted C74/10/07 by CI 31 October 2007]*

- (39) To consult with and comment to the Premier/relevant Minister on appeals lodged in terms of section 44(1)(a)-(c) of the Land Use Planning Ordinance no 15 of 1985 against the decision of the Sub council in cases where it was the final decision maker of Council in respect of the application and where the comment will not be in accordance with the original decision made.

*[Inserted C74/10/07 by CI 31 October 2007]*

## **60. Environmental, Heritage and Outdoor Advertising Matters**

*In terms of Outdoor Advertising and Signage By-Law, No. 10518*

- (1) To oversee the regulation of posters, placards, signs, bill-boards etc in terms of the outdoor advertising by-law.
- (2) To comment on and/or make recommendations regarding designated areas, prohibited areas and the modification and /or amendment of Areas of Control, as per the definition of areas of control.<sup>24</sup>
- (3) To make recommendations to SPELUM on applications for outdoor advertising signs larger than 4,5m<sup>2</sup> where objections are received.

### *Environmental and Heritage Authorisations*

- (4) To decide on environmental applications and heritage applications and impact assessments where objections are received.

*[Amended C74/10/07 by CI 31 October 2007]*

## **61. Removal of Restrictions**

*The following directions apply in determining when S.P.E.L.U.M., Subcouncils and officials have delegated powers regarding town planning matters:*

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<sup>24</sup> "Areas of control" means those areas set out in Schedule 1 of the By-Law; and which may be modified and/or amended from time to time, which amendments and modifications will be graphically depicted by way of maps as prepared by the Municipality from time to time.

*In terms of Removal of Restrictions Act No. 84 of 1967*

*Alteration, suspension or removal of restrictions  
or obligations in respect of land by the Premier*

- (1) To authorise the lodging of an application with the Premier to alter, suspend or remove any restriction or obligation on City land that does not extend beyond the Subcouncil boundaries, in terms of section 2(1).
- (2) To recommend the lodging of an application with the Premier to alter, suspend or remove any restriction or obligation on City land that extends beyond any Subcouncil's boundaries, in terms of section 2(1).
- (3) To comment on and make recommendation to the Premier regarding a proposed alteration, suspension or removal of a restriction or obligation in respect of any land, in terms of section 2(4).
- (3A) To comment on and make recommendations to the Premier or his delegate regarding a proposed alteration, suspension or removal or a restriction or obligation in respect of land which falls within Subcouncil boundaries, in terms of section 3(2).

*[Inserted C74/10/07 by CI 31 October 2007]*

*Alteration, suspension or removal of restrictions  
or obligations at the request of the Minister*

- (4) To comment on and make recommendation to the Premier regarding a proposed alteration, suspension or removal of a restriction or obligation in respect of any land, initiated by the Minister, in terms of section 5.

*In terms of Air Pollution Control by-law 2003)*

- (5) To direct any person to take all reasonable measures in terms of section 3 of the by-law, namely:

- (a) to prevent any potential significant air pollution from occurring; and
  - (b) to mitigate and, as far as reasonably possible, to remedy any significant air pollution that has occurred.
- (6) To oversee the taking of reasonable measures to remedy non-compliance with a directive and the recovery of all reasonable costs incurred in terms of section 3 of the by-law.
- (7) Subject to section 26, may in writing exempt certain premises, classes of premises or premises used for specified purposes from the operation of measures adopted by the Council under this section.
- (8) To authorise, amend or revoke the authorisation for the installation, alteration, extension or replacement of any fuel-burning equipment on any premises, or, to order the removal thereof in the event of a contravention in terms of sections 7 and 8 of the by-law.
- (9) To grant an owner or occupier of a premises, or the operator of fuel-burning equipment, temporary exemption from one or all the provisions of part 4 of the by-law, in terms of section 12 thereof.
- (10) To grant an owner or occupier of a premises, or the operator of fuel-burning equipment, temporary exemption from one or all the provisions of part 5 of the by-law, in terms of section 13 thereof.
- (11) To grant authorisation for the open burning of any material on any land or premises in terms of section 14 of the by-law.
- (12) To take whatever steps considered necessary in order to remedy the harm caused by the nuisance and to prevent a recurrence of it, and, to recover the reasonable costs so incurred from the person responsible for causing the nuisance in terms of section 21 of the by-law.

- (13) To grant exemptions from one or all the provisions of parts III, IV and V in terms of section 26 of the by-law.

## **62. Transport and Roads**

- (1) To recommend on the provision of traffic calming measures.
- (2) To consider the temporary closure of any road where objections have been received to such closure.
- (3) To approve special events in or on local roads.

## **63. Letting of Property**

- (1) *[Deleted C44/10/08 by CI 29 October 2008]*

## **64. Ad-hoc Task-teams and Working Groups**

- (1) To establish and determine the terms of reference of ad-hoc task-teams, and working groups and to appoint members and chairpersons thereof.