

Section 6: Strategic Planning

ITEM C/6/54/04/18

Mayoral Committee Meeting for recommendation to Council

DEVELOPMENT OF BITOU TOURISM BY-LAW

Department: Strategic Services **Demarcation:** All Wards

File Ref: 1/3/1/55

Attachments: Annexure A - Draft Bitou Tourism Bylaw
Annexure B - Council resolution C/6/27/06/17

Report from: Head Strategic Services

Author: Manager: LED and Tourism

Date: 6 April 2018

Purpose

To request from Council that the Tourism Bylaw be recognised and be subjected to a public participation process as required in terms of Chapter 7, Section 152(1)(a) of the Constitution of South Africa.

Background

Bitou Local Municipality views local tourism as an important part of integrated local economic development. The Municipality's intention is therefore to uniformly administer tourism activities. The development, promotion and management of tourism and its assets, aims at meeting demands for visit, leisure, recreation of people and the sustainable development of tourism while preserving and fully realizing cultural identity, good traditions and customs of the community within the Bitou Local Municipality. Thus contributing in generating employment and bringing about socio-economic development within the Municipality.

Council resolution C/6/27/06/17 (Annexure B) indicated that this process will be completed by the end of September 2017, however, the Bitou Municipality decided not to appoint a service provider and opted that the legal services unit will assist in the drafting and finalization of the tourism bylaw. That shift in the process as well as capacity

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constraints resulted in the delay experienced. However, given the fact that we have an existing agreement with Plett Tourism, the Bitou Municipality effectively has time till the end of the financial year to complete the process.

The Bitou Tourism By-Law (Annexure A) shall regulate these tourism activities; defining the rights and obligations of Bitou Municipality and the appointed service utility in the management of tourism activities in Bitou.

The draft policy will follow a public participation process whereby stakeholders will be engaged to partake in the finalization of the Bitou Municipality Local Tourism By-Law.

In developing the Bitou Municipality Local Tourism By-Law, the WESGRO model were examined and the bylaw as developed by the Western Cape Government was used as a source document.

Recommended by the Acting Municipal Manager

1. That the draft Bitou Tourism By-law be approved in principle by the MAYCO and Council and be subjected to a public participation process as required in terms of Chapter 7, Section 152(1)(a) of the Constitution of South Africa.
2. That after the public participation process as mentioned in 2 above, the draft Bitou Tourism By-law be re-submitted to Council for final approval.

BITOU MUNICIPALITY LOCAL TOURISM BY-LAW

In terms of Section 156 of the Constitution of the Republic of South Africa, 1996 the Bitou Municipality enact this Local Tourism By-Law to administer its executive authority in respect of local tourism related matters to regulate the involvement of the community in the effective administration of local tourism.

1. INTERPRETATION

In this by-law, unless the context indicates otherwise –

“Board” means the Bitou Local Tourism Advisory Board established in Section 2;

“Executive Mayor” means the Executive Mayor of the Municipality;

“Municipality” means the Municipality of Bitou established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, duly authorised agent or any employee acting in connection with this By-Law by virtue of a power vested in the Municipality and delegated or sub-delegated to such political structure, political office bearer or employee;

“Municipal Council” means the Municipal Council of the Municipality;

“Municipal Manager” means the Municipal Manager of the Municipality;

“Plett Tourism Association” means the voluntary Association managing tourism in the area of the Bitou Municipality;

“tourism” means the promotion or encouragement of tourists to travel through or visit the Bitou Municipal area as tourists;

“**Tourism Fund**” means the budget fund of the Municipality that reflects monies paid to the Municipality by tourist establishments from fees, charges, or tariffs imposed in terms of this By-Law as well as conditional and unconditional grants received from national and provincial government intended for and to pay for tourism and tourist facilities in the Municipal area;

“**tourist**” means a person visiting or travelling through the Municipal area for pleasure, recreation, sport, business or cultural purposes;

“**tourist establishment**” means a business catering predominantly for tourists;

“**tourist facilities**” means facilities and amenities under the control of or for which the Municipality is responsible such as, but not limited to, beaches, sports facilities, municipal parks, public open space, municipal roads, public transport and public parking intended for tourism or for use by tourists;

“**tourist organisation**” means an organisation representing tourist establishments providing a similar product or service to tourists accredited in terms of this By-Law;

2. ESTABLISHMENT OF THE BOARD

(1) The Board is hereby established. The Board will not be a body corporate and will not be capable of suing and being sued in its own name but exists solely to advise the Municipality on matters and perform the functions provided for in this By-Law.

(2) No member of the Board will have the power or authority to act on behalf of the Municipality, nor will the Municipality be bound to any advice or representation by the Board or a member of the Board.

3. COMPOSITION OF THE LOCAL TOURISM BOARD

The Board shall consist of the following members:-

- (1) A representative of the Municipal Council nominated by the Executive Mayor who shall act as the Chairperson of the Board.
- (2) An official of the Municipality designated by the Municipal Manager.
- (3) A representative of the Plett Tourism Association nominated by the Association.
- (4) Nominated representatives of the community as from time to time appointed in accordance with Clause 5.

4. FUNCTIONS AND RENUMERATION OF THE BOARD

- (1) The Board shall be responsible to advise the Municipality on:
 - (a) The establishment, maintenance and upgrade of tourist facilities.
 - (b) The marketing of Bitou as a tourism destination.
 - (c) The charging of fees, charges or tariffs to fund the Tourism Fund.
 - (d) The matters as provided for in this By-Law.
 - (e) Any matter relating to tourism or tourists that in the opinion of the Board is relevant or incidental to the powers, functions and duties of the Municipality in terms of this By-Law.
- (2) Members of the Board not employed by the Municipality will be entitled to the payment of their reasonable expenses as determined by the Municipal Manager from time to time.
- (3) The Board will regulate its meetings and perform its functions in terms of this By-Law as from time to time determined by it.

5. THE SELECTION OF COMMUNITY BOARD MEMBERS

- (1) Whenever the need arises the Municipality will by way of a notice in a local publication call for the nomination of the Board members to be appointed in terms of Section 3(3) to serve on the Board.
- (2) It will be a requirement for appointment to the Board that the persons to be appointed:-
 - (a) Must be a member of a tourist organisation.
 - (b) Permanently reside in the area of the Municipality.
 - (c) Have experience in tourism.
- (3) From the nominations received pursuant to a notice in terms of this Section, the Board must select two members to serve on it.

6. ACCREDITATION OF TOURIST ORGANISATIONS

- (1) A tourist organisation may apply to the Municipality for accreditation in terms of this By-Law.
- (2) A tourist organisation will qualify for accreditation as a tourist organisation if:
 - (a) the organisation is regulated by a constitution that:-
 - (i) sets standards with which a tourist establishment must comply to become a member of the organisation, which standards must comply with the requirements of any applicable law and are generally accepted in the applicable industry as good practice in providing the applicable service or goods to tourists;
 - (ii) prohibits unfair discrimination against a person applying to become a member of the organisation and by members of the organisation in providing goods or services to tourists;

- (iii) requires the utilisation of locally-produced products and services by members where such is readily available locally;
 - (iv) requires the preferential employment of persons resident in the area of the Municipality by members;
 - (v) that provides mechanisms for tourists to lodge complaints with the organisation in respect of the goods or service provided by a member of the organisation;
 - (vi) that provides for the organisation to take disciplinary steps against members who do not comply with the constitution.
- (3) Accreditation of a tourist organisation in terms of this Section may not be unreasonably refused by the Municipality and a tourist organisation may not ~~unreasonably refuse an application by a tourist establishment to become a~~ member of such tourist organisation.
- (4) A tourist organisation accredited in terms of this Section must provide the details of its members to the Municipality and update such details as and when they change.
- (5) For the purposes of this Section the Plett Tourism Association will be deemed to be a tourist organisation.

7. COMPULSORY REGISTRATION OF A TOURIST ESTABLISHMENT

- (1) A person conducting a tourist establishment in the Municipal area continuously for longer than 30 days must register the tourist establishment with the Municipality in terms of this Section.
- (2) When registering a tourist establishment with the Municipality such information in respect of the establishment as determined by the Municipal Manager

from time to time concerning the ownership of the establishment and its business must be supplied.

(3) The Municipality shall from the information in 7(2) determine the tourist organisation accredited with the Municipality that the tourist establishment must apply for membership of. Whenever the Municipality is of opinion that no suitable tourist organisation is accredited for the establishment, it will refer the application to the Board to advise on.

(4) Should the Municipality after considering the advice of the Board determine that a suitable tourist organisation for the tourist establishment to become a member of is not accredited with the Municipality, it shall direct the tourist establishment to, within the period stated in the direction, form a tourist organisation and accredit it with the Municipality.

(5) Tourist fees, charges and tariffs payable in terms of this By-Law shall be collected from tourist establishments by the tourist organisations that the establishment is a member of, for payment to the Municipality in accordance with Section 8(4).

8. DETERMINATION AND PAYMENT OF TOURIST FEES, CHARGES AND TARIFFS

(1) After consultation with tourist organisations accredited with the Municipality in terms of Section 6 and taking into account the expenditure items in Section 9(3), the Board shall, within 3 months after coming into operation of this By-Law and thereafter annually on or before 1st June every year, prepare a report recommending fees, charges and tariffs to be collected from tourists and paid over to the Municipality during the next year.

(2) Before tabling of the Schedule of Fees, Charges and Tariffs for consideration by the Municipal Council, the Schedule shall be published in a local publication for public comment to allow the public an opportunity to make representations with regard to the proposed Schedule of Fees, Charges and Tariffs, which representations must be presented to the Municipal Council for consideration simultaneously together with the proposed Schedule.

(3) Fees, charges and tariffs imposed by the Municipal Council in terms of this Section must be published for two consecutive weeks in a local publication.

(4) To the extent that fees, charges and tariffs are imposed on tourists for goods and services provided by tourist establishments, such fees, charges and tariffs will be collected from tourists by tourist establishments and paid over to the tourist organisation to which the tourist establishment belongs on the last day of the month during which it was collected, for onward payment to the Municipality by the 15th day of the following month.

(5) From the fees, charges and tariffs collected from tourists in terms of this Section, the collectors will be entitled to such collection commission as the Municipal Manager may determine from time to time.

9. PAYMENT FROM TOURISM FUND

(1) On the date of enactment of this By-Law, the Municipality will reserve for the purposes of the Tourism Fund the amount of R5 000 000,00 (Five Million Rand) as a grant in the budget to the Tourism Fund. Thereafter fees, charges, tariffs and grants from national and provincial government for local tourism and tourism facilities will be reflected in the Tourism Fund from which all payments in terms of this By-Law will be made.

(2) The Municipal Manager will take reasonable steps to ensure that monies received from municipal rates and taxes and conditional and unconditional grants from the national and provincial government not relating to the municipal fund is not reflected in such fund, and that monies received for the Tourism Fund are only utilised for the purposes of such fund and in particular for payment in terms of this By-Law.

(3) For the purposes of payment from the Tourism Fund, the Board shall, after consultation with tourist establishments, determine the priority for spending from the Tourism Fund from the following expenditure items:-

- (a) Tourism facilities.
- (b) Tourism marketing by way of electronic campaigns, advertising, promotions at tourism events held within the Republic of South Africa.
- (c) Tourism events to be hosted within the area of the Bitou Municipality.
- (d) Involvement of the Municipality in the establishment of tourist facilities that do not currently exist, either in public/private partnership ventures or ventures in which the provincial or national government is a partner.
- (e) Other tourism ventures proposed by the Board and agreed to by the Municipal Council from time to time.

10. ADMINISTRATIVE ASSISTANCE TO THE MUNICIPALITY

(1) Whenever so requested by the Municipality, or when the Board identifies the need therefore, or in terms of this By-Law, a tourist organisation will act as the agent for the Municipality in the following:-

- (a) Collect and pay over to the Municipality fees, charges and tariffs imposed in terms of this By-Law.

- (b) Provide details of the number of tourists visiting tourist establishments and such further information regarding tourists as determined by the Municipal Manager, provided that no private, personal and confidential information may be collected or provided in terms of this By-Law.
 - (c) Conduct such research as determined by the Municipal Manager to identify tourism trends, needs and wants.
 - (d) Identify and report tourist establishments that are not registered in terms of this By-Law, do not collect prescribed fees, charges and tariffs from tourists as prescribed by this By-Law, and/or do not pay fees, charges and tariffs collected in terms hereof over to the Municipality.
- (2) A tourist organisation that performs an administrative duty for the Municipality in terms of this Section will be entitled to the collection commission in Section 8(5), such fee as provided for in the relevant Schedule of Fees, Charges and Tariffs or as agreed with the Municipality in writing.

11. SEARCH AND SEIZURE

- (1) Whenever a member of the South African Police Service or a peace officer is of opinion that it is reasonably necessary for the purpose of determining whether a person or persons is conducting a business as a tourist establishment in the Bitou Municipal area in contravention of Section 7(1), such member of the South African Police Service or peace officer may cause the premises where the business is conducted to be entered into and any business records of the business seized in

terms of a warrant issued by a magistrate or justice in terms of Section 21 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) A magistrate or justice may issue a warrant to search and seize a premises in terms of this By-Law if he or she is of opinion that such search and seizure is necessary to prove that a tourist establishment was or is conducted in contravention of Section 7(1).

(3) An application for a search and seizure warrant in sub-section (2) shall be made in the name of the Municipality in the form as determined by the Municipal Manager from time to time and shall be accompanied by a statement under oath that contains the facts pertaining to the conducting of the business as well as the reason why it is alleged that such a business is or was conducted in contravention of Section 7(1).

(4) A magistrate or a justice issuing a warrant in terms of this section may impose such conditions to the execution of the warrant as he or she deems appropriate in the circumstances.

(5) Records and other evidence seized in terms of this Section must be provided to the person or persons investigating the transgression of Section 7(1) and to determine the amount or amounts of the applicable fees, charges and tariffs that should have been collected and paid over to the Municipality, or was collected but not paid over to the Municipality. If an administrative fine is imposed and paid, then articles and records seized in terms of this section must be returned to the person in charge of the business; alternatively it must be presented in court during criminal prosecution for the presiding officer to make an order on the disposal thereof.

12. PENALTIES

(1) A person who contravenes or fails to comply with the provisions of this By-Law shall be guilty of an offence and liable on conviction to –

- (a) A fine or imprisonment, or either such fine or imprisonment or both to such fine and such imprisonment; and
- (b) In the case of a continuing offence, to an additional fine or an additional period of imprisonment for each day on which such offence is continued; and
- (c) An administrative fine equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure, including payment of fees, charges and tariffs that should have been collected and paid over to the Municipality by the tourist organisation.

(2) A fine imposed by a court in accordance with Section 12 (c) must be paid over to the Municipality.

13. EXEMPTION FROM LIABILITY

(1) The Municipality shall not be liable for any injury sustained by any tourist due to any action or failure by a tourist establishment or tourist organisation in terms of this By-Law.

(2) The Municipality as a whole, individual counsellor, or any person in the service of the Municipality, or any person or organisation to whom the Municipality has entered into an agreement for the administration of this By-Law shall not, except in the event of any wilful act or omission on the part of the Municipality or said person or organisation, be liable for any loss or damage which results from any loss

or damage to property which is caused by negligence or arises out of or in connection with anything that is done or performed in good faith in the exercise or performance of a power, duty, or function conferred or imposed in terms of this By-Law.

14. APPEAL

A person whose rights are affected by a decision of the Municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of Section 62 of the Local Government: Municipal Systems Act, Act No. 32 of 2000, to the Municipal Manager within 21 (twenty one) days of the date of the notification of the decision.

15. REVOCATION OF BY-LAWS

The provisions of any By-Laws previously promulgated by the Municipality or by any of the disestablished Municipalities now incorporated in the Municipality, are hereby repealed as far as they relate to matters provided for in this By-Law, and insofar as it has been made applicable to the Municipality by the authorisation for the execution of powers and functions in terms of Section 84(3) of the Local Government: Municipal Structures Act, Act No. 117 of 1998.

16. TRANSITIONAL ARRANGEMENTS

(1) Notwithstanding the date of commencement of this By-Law, any provision thereof that requires registration with and payment to the Municipality of any fees, charges or tariffs to be raised and paid over to the Municipality will not come into

operation on such date but on a date 6 (six) months thereafter, or such longer period as the Municipal Manager may determine by publication in the Provincial Gazette.

(2) The Municipal Manager may in accordance with sub-section (1) determine different dates for the coming into operation of different Sections of this By-Law.

17. SHORT TITLE AND COMMENCEMENT

This By-Law may be cited as the Local Tourism By-Law, and subject to the transitional arrangements in section 17 commences on the date of publication thereof in the Provincial Gazette.

EXTRACT FROM THE CONFIRMED MINUTES OF THE SPECIAL COUNCIL MEETING OF BITOU LOCAL MUNICIPALITY HELD IN THE COUNCIL CHAMBER, MUNICIPAL OFFICES, SEWELL STREET, PLETTENBERG BAY ON FRIDAY, 30 JUNE 2017 AT 09H00

Resolution C/6/27/06/17

DEVELOPING OF BITOU TOURISM BY-LAW

Department: Strategic Services

Demarcation: All Wards

File Ref: 1/3/1/55

Resolved

1. That the development of the Bitou Tourism By-law be recognised by the MAYCO and Council as a by-law to give effect to municipal policies related to tourism and economic development by 30 September 2017.
2. That the following process plan be approved:

Item	Duration	Responsibility
Develop bid specifications for procurement of a service provider	1 week 3 July 2017 – 7 July 2017	Manager LED & Tourism
Approval of Bid specifications	2 weeks 10 July 2017 – 21 July 2017	Manager LED & Tourism
Advertise tender	2 weeks 24 July 2017 – 4 August 2017	Manager LED & Tourism
Appoint service provider	2 days 8 August 2017	Manager LED & Tourism
Sign contract with appointed service provider	1 day 10 August	Manager LED & Tourism
Set up meetings with stakeholders	2 weeks 11 – 25 August 2017	Service Provider
Public Participation process	3 weeks 28 August 2017 – 15 September 2017	Service Provider
Formulate draft Tourism Bylaw	1 week 18 – 22 September 2017	Service Provider
Develop item to MAYCO for adoption of the Draft Tourism Bylaw	1 day 26 September 2017	Manager LED & Tourism
Handover of council approved Tourism Bylaw to be promulgated	1 day Dependent on MAYCO meeting	Manager Legal Services

Proposed: Councillor N Ndayi

Seconded: Councillor J N Kamkam

To be Actioned by: Head Strategic Services; Manager LED & Tourism