

The DDG: Local Government Branch

## **CAPACITY OF MUNICIPALITIES TO ENFORCE BY-LAWS AND OVERVIEW OF BY-LAWS**

### **1. Enforcement of by-laws**

1.1 Most municipalities have a Traffic Department with Traffic officers appointed that apart from traffic by-laws enforcement also may enforce other bylaws of the municipality on a **day to day** basis. Traffic officers are normally appointed as law enforcement officers of the municipality. As such they are allowed to issue spot fines, summonses and in some cases also may have the authority to arrest a person. This appointment does not restrict the traffic officer to only traffic matters. By-laws enforced by Traffic officers may include the following:-

- Advertising
- Control of Collections
- Control of Public Nuisance
- Dogs and Cats
- Dumping and Littering
- Fire and Emergency Services
- General Street
- Impoundment of Animals
- Keeping of Animals
- Licensing of Dogs
- Public Amenities
- Street Trading
- Taxi Ranks
- Water Services - Restrictions

1.2 On the other hand the heads of the respective departments who control and apply by-laws applicable to their components may after a written notice of instruction delivered to a person to comply with a by-law within a reasonable time, directly communicate with the local public prosecutor to summons that person in a criminal court for a contravention of any of the following by-laws:-

- Advertising
- Bed, Breakfast and Guest House Facilities
- Building Regulations By-laws
- Cemeteries and Crematoria
- Childcare Services
- Commonages
- Control of Collections
- Control of Public Nuisance
- Control of Street Vendors, Pedlars or Hawkers
- Credit Control and Debt Collection
- Delegation of Powers
- Dogs and Cats
- Dumping and Littering

- Electricity Supply
- Encroachment on Property
- Fences and Fencing
- Fire and Emergency Services
- Fresh Produce Market
- Funeral undertakers
- General Street
- Impoundment of Animals
- Informal Settlements
- Keeping of Animals
- Libraries
- Licensing of Dogs
- Numbering of Buildings
- Property Rates
- Public Amenities
- Public Swimming Pools
- Refuse Removal
- Sporting Facilities
- Storm Water
- Street Trading
- Taxi Ranks
- Unsightly and Neglected Building and Premises
- Waste Management
- Water Services
- Water Services - Restrictions

## 2. **Lack of applying by-laws**

- 2.1 Councils have legislative and executive authority in terms of the Constitution and must diligently apply this authority. It seems not always to be the case. Municipalities that have not yet rationalised their by-laws, still have the old by-laws of the disestablished municipalities in place. Councils are supposed to apply and enforce these by-laws until they have been repealed by rationalised by-laws.
- 2.2 It has however been found that:-
- (a) In many cases councillors and new municipal officials are not aware of the existence of these old by-laws and they do not apply or enforce these by-laws. In some cases the council may choose not to apply these old by-laws as they are the product of the previous dispensation.
  - (b) Some councils are hesitant to promulgate by-laws that may have a negative impact on voters. They would prefer not to promulgate dog licensing by-laws under the guise that the owners of the dogs in its jurisdiction are too poor to pay the licenses. They forget that their indigent policy could deal with this matter, but they prefer not to apply the by-law if it exists.
  - (c) Some councils are afraid of the power of local organisations. It was found that a council is very hesitant and is dragging heels to promulgate Taxi by-laws. This by-law may generate good income for the municipality, but out of fear of the local taxi association which indicated that the council would be sorry if the by-law is promulgated, the by-law has not yet been promulgated.
- 2.3 Capacity assessment:-
- (a) At the MDB Capacity assessment of municipalities during 2007 the lack of suitable by-laws to deal with a possible 38 prescribed local government functions were identified at each municipality.

- (b) Letters identifying all by-law gaps at each municipality signed by the MEC were sent to all Speakers urging municipalities to close the identified gaps.
- (c) This resulted in both Naledi and Phumelela now being in the process of adopting 15 new by-laws each. The other municipalities will be encouraged to close the gaps identified when they are visited to assist with by-laws.

### 3. Compulsory promulgation, application and enforcement of by-laws

- 3.1 In terms of its executive and legislative authority bestowed on councils by the Constitution, local municipalities must promulgate, apply and enforce by-laws.
- 3.2 Should any person be aggrieved or suffer any damage from the failure of the municipality to promulgate, apply and enforce a by-law, that person may approach the High Court for a *mandamus* to force the municipality to diligently perform its duty. The costs of such application will be for the account of the municipality.
- 3.3 A council's failure to promulgate, apply and enforce relevant by-laws also constitutes a failure to perform an executive obligation and may warrant the invoking of section 139 of the Constitution against the council. An administrator then will have to promulgate, apply and enforce the by-laws of the municipality. This will however not be practical. As soon as the intervention is lifted, the council may decide that those by-laws promulgated by the administrator did not originate in the council and that it will not be applied as is currently the case with many old by-laws applicable in municipalities.

### 4. Attitude of councillors and municipal managers

- 4.1 The attitude of councillors and municipal managers play a vital role in the promulgation, application and enforcement of by-laws.
- 4.2 The local municipality of Letsemeng is in the process of promulgating a set of by-laws. Old by-laws are not being applied, but it is the municipal manager's priority to have clean towns. No litter or waste is lying around and sidewalks are constantly weeded. This is being done without the application of any by-law. Work teams are appointed to keep towns tidy.
- 4.3 At some municipalities and towns where tidiness is not a council or municipal manager's priority communities sometimes have to live and work in filthy and neglected conditions.
- 4.4 By-laws to deal with littering will to some extent have positive results as litterbugs could be fined on the spot, but a by-law cannot deal with accumulated litter, filth and neglect by the municipality to render a vigorous cleansing service.

### 5. By-laws promulgated and applied by municipalities

	Traffic officer appointed	Street Vendors		Dumping and Littering		General Street	
		Prom	Applied	Prom	Applied	Prom	Applied
Letsemeng	Y	Yes	Yes	Yes	Yes	Yes	Yes
Kopanong		Yes	No	Yes	Unknown	Yes	Unknown
Mohokare	Y	Yes	Unknown	No*	No	Yes	Unknown
Naledi	Y	No	No	No*	No	Yes	Unknown
Mangaung	Y	Yes	Yes	Yes	Yes	Yes	Yes

	Traffic officer appointed	Street Vendors		Dumping and Littering		General Street	
		Prom	Applied	Prom	Applied	Prom	Applied
Mantsopa	Y	No	No	No*	No	Yes	Unknown
Masilonyana	Y	Yes	No	No*	No	Yes	Unknown
Tokologo	Y	Yes	No	No*	No	Yes	Unknown
Tswelopele	Y	Yes	No	No*	No	Yes	Unknown
Matjhabeng	Y	Yes	Yes	No*	No	Yes	Yes
Nala	Y	Yes	Yes	No*	No	Yes	Yes
Setsoto	Y	Yes	Yes	No*	No	Yes	Yes
Dihlabeng	Y	Yes	Yes	No*	No	Yes	Yes
Nketoana	Y	Yes	Yes	No*	No	Yes	Yes
Maluti a Phofung	Y	Yes	Yes	No*	No	Yes	Yes
Moghaka	Y	Yes	Yes	No*	No	Yes	Yes
Ngwathe	Y	Yes	Yes	No*	No	Yes	Yes
Metsimaholo	Y	Yes	Yes	No*	No	Yes	Yes
Mafofane	N	Yes	Unknown	Yes	Unknown	Yes	Unknown
Phumelela	N	Yes	No	No*	No	Yes	Unknown

\* All these municipalities have old Combined Regulations as well as Health Regulations in place. The management of dumping and littering could be covered by any of these two Regulations.



**Manager: Regulatory Services**  
**22 February 2008**