



**Department Local
Government and Housing**
Local Government Branch
Enquiries: CL Hohne
Tel: 083 293 2862
Fax: 086 651 4935
Email: chohne@lgh.fs.gov.za

TO: All Speakers,
Municipal Managers
In the Free State Province
and SALGA Free State

LOCAL GOVERNMENT CIRCULAR: 2 OF 2005

REGULATORY SERVICES AND SUPPORT: ADOPTION OF BY-LAWS AND STANDARD BY-LAWS

1. The correct procedure to be followed with the adoption of by-laws is as follows:
 - i) The proposed by-law must be published for comment. In this regard you are referred to section 160 of the Constitution, which determines:
“(4) *No by-law may be passed by a Municipal Council unless-*
(a) the proposed by-law has been published for public comment.”
 - ii) The Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), section 12 has a similar stipulation, namely:
“(3) *No by-law may be passed by a municipal council unless -*
(b) the proposed by-law has been published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law.”
 - iii) When a by-law is passed by a municipal council, section 162 of the Constitution stipulates:
“(1) *A municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.*”
 - iv) The same requirement is set by section 13 of the Systems Act, where it is stipulated-
“*A by-law passed by a municipal council-*
(a) must be published promptly in the Provincial Gazette, and, when feasible, also in a local newspaper or in any practical way to bring the contents of the by-law to the attention of the local community; ...”

- v) From the cited stipulations it is clear that:
Not only the intention of a municipality to pass a by-law must be published, but the complete text of the proposed by-law must be published to afford the community the opportunity to comment on it. Although some municipalities put this advertisement in the Official Gazette, it is not prescribed that this advertisement must be in the Official Gazette. At this stage publication in a local newspaper is sufficient.

After the time during which representations can be made, has lapsed, the matter must be brought before the council again. Then the comments, if any, must be dealt with fully, to decide on the final contents of the by-law.

When this is done, the complete text must again be published. This time it is obligatory to publish it in the Official Gazette. When feasible, it can also be published in a local newspaper.

Only after this second publication in the Official Gazette the by-law will be enforceable.

- vi) In the case of the adoption of standard by-laws promulgated by the MEC, the same process as indicated above, must be followed. In this regard you are referred to section 14 of the Systems Act, which stipulates:

“(4) If a municipal council intends to adopt a standard draft by-law with or without any modifications or qualifications, it must follow the procedure set out in section 12(3) and, after adoption, publish the by-law in accordance with section 13.”

2. Attention is also invited to section 21 of the Systems Act, which stipulates:
“(4) When the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation, will assist that person to transcribe that person’s comments or representations.”
3. Please note that this stipulation must also be complied with when proposed by-laws are published for comment.
- 4. Municipalities are requested to inform the Department when notices about the intention to adopt, or final publications of by-laws, are published.**
5. Municipalities’ attention is drawn to the fact that assistance can be given by the Department with the rationalisation of by-laws.

With kind regards

MM Tsoametsi
Deputy Director-General
Local Government

Date:

Circular 1 of 2005 dateddealt with the Circular System Of
The Branch Local Government and was sent to Mayors, Speakers, Municipal
Managers in the Free State and SALGA Free State