

**GUIDE FOR PROMULGATION OF
BY-LAWS**

What is the Purpose of this Guide?

The purpose of the guide is to provide guidance to and assist municipalities in drafting and promulgating by-laws.

Who is this Guide for?

This Guide is primarily for councillors and officials of district and local municipalities.

What is covered in this Guide?

The Guide contains

- Guidance on the need for by-laws and the structuring of by-laws;
- Guidance on what must be included in by-laws;
- Guidance on the legislative processes regulating the making of by-laws;
- Guidance on the Municipal Code, and
- Further assistance

How should the draft By-laws published on the Local Government and Housing website be used?

The draft by-laws published on the Local Government and Housing website are comprehensive.

A municipality may choose which draft by-laws or a combination of draft by-laws it needs.

The municipality must in a by-law select the appropriate sections and amend other sections to suit its needs.

A draft by-laws on the website should not be used as is, without at least a detailed assessment of which sections thereof is appropriate in the local circumstances.

By-laws give effect to municipal policies.

The draft By-laws published on the Local Government and Housing website must therefore be used together with the relevant Council policy.

INTRODUCTION

What are By-laws?

By making by-laws, a municipality exercise its original legislative authority as

conferred by the Constitution of the Republic of South Africa Act 108 of 1996.

By-laws are the legislation of a municipality, similar to the legislation made by the National and Provincial Governments. However, any by-laws that conflict with national or provincial legislation are invalid.

By-laws are intended to give effect to and regulate the policies of a municipality.

The promulgation of regulations by a municipality in terms of a by-law is not possible. The Constitution and the Municipal Systems Act recognise by-laws as the only instrument through which a municipality exercises its legislative authority. Where a municipality wish to impose or provide for additional requirements or obligations other than those specified in the by-laws the most effective way to do so is to create enabling provisions in the by-laws that allow the municipality to impose conditions on granting approvals, to issue notices for compliance with the by-laws and to determine matters by way of public notice.

By-laws are, as stated above the legislative instrument through which a municipality gives effect to its policies and are critical instruments in ensuring the municipality's sustainability.

By-laws set out the relationship between the municipality, its service providers and consumers. By-laws should provide clarity in respect of the rights and responsibilities of the municipality, its service providers and consumers.

By-laws are also a regulatory instrument against which a municipality can monitor its own performance or that of its service providers.

Who makes, implement and complies with By-laws?

The Municipal Council (at a full council meeting) makes by-laws. The municipality (officials) or appointed service providers of the municipality implements by-laws.

Provincial Legislation

In making by-laws it is further important to assess if there are provincial legislation

that may prescribe matters to be addressed in tariff or credit control and debt collection by-laws.

THE LEGISLATIVE PROCESSES REGULATING THE MAKING OF BY-LAWS

Which Legislation Regulates the Making of By-laws?

The Constitution of the Republic of South Africa

Section 156(2) of the Constitution states that: -

A municipality may make and administer by-laws for the effective administration of matters that it has the right to administer.

Municipal Systems Act

The Municipal Systems Act in sections 12 and 13 sets out the processes that must be followed when a municipality makes by-laws.

What does the Municipal Systems Act say?

- What does Publication and Community Consultation mean?
- The Act does not define published or public comment.

The following process is therefore recommended in terms of section 21 and 21A of the Act:

That: -

- The draft by-laws (and the official languages in which the notice calling for public comment should be published, if the Municipal Council has not done so already) be approved for consultation by resolution of the Municipal Council;
- The Notice calling for public comment is published in the official languages determined by the Municipal Council. The notice calling for public comment must include a statement: -
 - Stating what is addressed in the by-laws published for comment;
 - Inviting the public to submit written comments in connection with the draft by-

laws before or on a specified date or within a specified period;

- To whom and how comments should be submitted (postal and physical address, fax number and e-mail address);
- That copies of the draft by-laws may be obtained from the office of the Municipal Manager against payment of a nominal fee;
- That the draft by-laws are available for inspection at the offices, the satellite offices and library of the municipality every weekday between the hours of 8:00 and 16:00;
- That the draft by-laws are available for inspection on the official website of the municipality if it is in existence (include website address);
- That members of the community that cannot read or write may visit the municipality's offices (name of official to be specified) during the above office hours where assistance will be provided in transcribing their comments or representations;
- That members of the community that wish to have the draft by-laws explained to them in a different language, may visit the municipality's offices (name of official to be specified) during the above office hours where assistance will be provided;
- The notice calling for public comment be published for public comment in the Provincial Gazette for a period of at least 14 (fourteen) calendar days;
- The same notice as published in the provincial gazette, is published in the local newspapers or, if the municipality has determined a newspaper or newspapers of record, in such newspaper or newspapers;
- Radio broadcasts covering the area of the municipality informs the community of the proposed by-laws and provide information on where the by-

laws are available for inspection of the public participation process embarked on by the municipality and how comments may be made;

- The municipality at this stage must embark on a public participation process involving all its communities.
- On the expiry of the period allowed for public comment, the municipality must review all comments, make amendments, if necessary, and affect the amendments, if any to the by-laws;
- The draft by-laws with or without amendments must be submitted to the Municipal Council for adoption by council resolution and promulgation thereof;
- The final by-laws are published in terms of a Notice for public notice in the Provincial Gazette and take effect on the date of this publication or on a future date stated in the Notice.

FURTHER ASSISTANCE

The Sub directorate: Regulatory Services of the Department is available to any municipality to render technical assistance needed in terms of the process of the compilation, publication for public comment, amendment prior to adoption, the adoption of and the promulgation of any by-law.

THE MUNICIPAL CODE

The Systems Act in section 15 requires municipalities to compile and maintain in bound or loose-leaf form, and when feasible also in electronic format, a compilation of all its by-laws, including any provisions incorporated by reference as by-laws of the municipality. This compilation, to be known as the Municipal Code, must be constantly updated and annotated and kept at the municipality's head offices as official record of all applicable by-laws.

Municipalities, at the request of a member of the public, must provide that person with a copy of or an extract from its Municipal Code against payment of a reasonable fee determined by the municipal council.

After promulgation each by-law must promptly be included in the Municipal Code.