



**City of  
Ekurhuleni**

# **GUIDELINE/DIRECTIVE ON DRAFTING MUNICIPAL BY-LAWS**

(A Reference Manual)

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**TABLE OF CONTENTS**

**CHAPTER 1**

No.	ITEM	PAGE
1.	BACKGROUND	3
2.	DEFINITIONS	3
3.	INTRODUCTION	4
4.	PURPOSE	4
5.	TITLE & APPLICATION	4
6.	COMMENCEMENT & VALIDITY	4
7.	LEGISLATIVE FRAMEWORK	4

**CHAPTER 2**

8.	THE NEED FOR A BY-LAW	5
9.	LEGISLATIVE AND EXECUTIVE AUTHORITY OF COUNCIL	5 – 6
10.	PRINCIPLES OF DRAFTING LOCAL GOVERNMENT LEGISLATION	6 – 7

**CHAPTER 3**

11.	ROLES AND RESPONSIBILITIES	7 – 8
-----	----------------------------	-------

**CHAPTER 4**

12.	PROCESS	8 – 10
-----	---------	--------

**CHAPTER 5**

13.	DESIGN AND STRUCTURE OF A BY-LAW	11
14.	THE BY-LAW MUST TAKE THE FOLLOWING STRUCTURE	11 – 13
15.	AMENDING A BY-LAW	13

**CHAPTER 6**

14.	PUBLIC PARTICIPATION PROCESS	14 – 16
-----	------------------------------	---------

**CHAPTER**

15.	MUNICIPAL COURTS	14
-----	------------------	----

**REFERENCES**

## CHAPTER 1

### 1. BACKGROUND

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The Constitution and the Municipal Systems Act recognise By-laws as an instrument through which the municipality exercises its legislative authority. Where the municipality wish to impose conditions on granting approvals or to issue notices for compliance, it creates an enabling provision in the By-law which it will be able to enforce and determines matters by way of public notice.

By-laws are, therefore, a legislation of the municipality which is 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 defined in section 1 of the Local Municipal Systems Act, 2000 (Act no 32 of 2000) as legislation passed by the Council of a the municipality binding in the municipality on the persons to whom it applies. They are intended to give effect to and regulate the policies of the municipality.

By-laws provide certainty both to city residents (who know what behaviour and actions are permitted or not permitted) and to the municipality (enforcement officials know what powers they must enforce order in their jurisdiction).

### 2. DEFINITIONS

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**“By-laws”**- means in section 1 of the Local Municipal Systems Act, 2000 (Act no 32 of 2000) as *“legislation passed by the Council of the municipality binding in the municipality on the persons to whom it applies.”*

**“City Manager”**- means the Municipal Manager of the municipality appointed in terms of the provisions of section 54A of the Systems Act and as referred to in the definition of “accounting officer” in section 1 of the MFMA, and also referred to in section 60 of the MFMA, and includes a person acting as an accounting officer, or the person to whom the accounting officer has delegated his/her authority to act.

**“Constitution”** - means the Constitution of the Republic of South Africa, 108 of 1996.

**“Council” or “Municipal Council”** - means the Municipal Council of the municipality as referred to and constituted in terms of the provisions of section 157 of the Constitution.

**“Interpretation Act”** - means the Interpretation Act, Act 33 of 1957.

**“The municipality” or “City”** - means a local government and legal entity with full legal capacity as contemplated in section 2 of the Systems Act read with the provisions of Chapter 7 of the Constitution and sections 12 and 14 of the Structures Act, with its main place of business and the offices of the City Manager, as envisaged in terms of the provisions of section 115(3) of the Systems Act, at: EGSC Building, 2nd Floor, Corner of Cross and Rose Streets, Germiston, and may, depending on the context,

**“Municipal Systems Act”** - means the Local Government: Municipal Systems Act, Act 32 of 2000 and the regulations promulgated in terms thereof.

### **3. INTRODUCTION**

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This Directive serves as a basic guideline for constructing and drafting a By-law or in amending By-law. Once the draft has been formulated, the responsible department must forward the draft By-law to Corporate Legal Services department for vetting to ensure correct legal interpretation and compliance with applicable legislative framework.

### **4. PURPOSE**

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The purpose of the directive is to firstly provide guidance and to assist internal departments of the municipality in drafting and promulgating By-laws to ensure uniformity in all the City's By-laws structure, and to ensure compliance with all applicable legislation, and further to provide a comprehensive legal reference in the drafting of By-laws.

The directive provides a guide to be used in the planning and construction of the By-laws. However, the support in legal interpretation and correctness will be provided by Corporate Legal Services Department, but it is important for the department to at least follow the basic principles of legislative drafting and most importantly, to ensure that all steps in the process has been complied with

Secondly to standardise the structure of By-laws in Ekurhuleni according to acceptable legislative drafting standards in lay-out and language, thirdly to provide background to the legislative authority under which the municipality makes By-laws and Fourthly to emphasise the importance of the statutory requirements of public participation in this legislative process.

### **5. TITLE AND APPLICATION**

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This document is known as the directive on drafting/development of By-laws of the municipality and is applicable for all departments of the municipality. This Directive revokes all previous directives, decisions and/or *ad hoc* clauses within any other Directive or Guideline, regarding the subject matter of this Directive.

### **6. COMMENCEMENT AND VALIDITY**

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This Directive shall come into full force and effect upon the approval thereof by the Municipal Manager.

### **7. LEGISLATIVE FRAMEWORK**

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This Directive is designed to be and must be implemented within the framework of the following legislation and regulations, among others:

- (1) The Constitution Act 108 of 1996;
- (2) The Municipal Systems Act 32 of 2000;
- (3) Rationalization of Local Government Affairs Act 10 of 1998;
- (4) City of Ekurhuleni's Standing Orders By-law, 2002 (as amended)
- (5) Public Participation Policy (PPP)

## CHAPTER 2

### 8. THE NEED FOR A BY-LAW

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- 8.1 The Constitution and the Municipal Systems Act recognise By-laws as an instrument through which the municipality exercises its legislative authority. Where the municipality wishes to impose conditions on granting approvals or to issue notices for compliance, it creates an enabling provision in the By-law which it will be able to enforce and determines matters by way of public notice.
- 8.2 By-laws are, therefore, legislation of the municipality which are similar to the legislation made by the National and Provincial Governments. Section 156(3) provides *“Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.”*
- 8.3 By-laws provide certainty both to municipal residents (who know what behaviour and actions are permitted or not permitted) and to the municipality (enforcement officials know what powers they have to enforce order in their jurisdiction).

### 9 LEGISLATIVE AND EXECUTIVE AUTHORITY OF COUNCIL MAKING BY-LAWS

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- 9.1 *“The Constitution Section 151 (3) provides that a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation.”*

Municipal Council has the authority to pass a By-law on any matter on which it has executive competence. Executive competence comes from either – the enabling provisions of the Constitution, or the assignment of powers or duties by National or Provincial government to the municipality by agreement. In terms of the Constitution the municipality has exclusive municipal executive and legislative authority in its area of jurisdiction to *inter alia*; pass and administer By-laws for the effective administration of matters that it has the right to administer. The Constitution provides in section 156(1)(a), that local government has executive authority to deal with the matters listed in – Part B of Schedule 4; and Part B of Schedule 5.

- 9.2 Council derives its legislative and executive authority to make By-laws in section 156 and 160 of the Constitution read with section 11(3)(m) and 12 of the Municipal Systems Act.
- 9.3 The municipality of Ekurhuleni’s Standing Orders By-law 2002 (as amended) section 182 provide that draft By-laws may be introduced as:-
- (a) an Executive draft By-law – one that is introduced by the Member of the Mayoral Committee;
  - (b) a committee draft By-law – one that is initiated and introduced by a Section 79 Committee;
  - (c) Councillor initiated draft By-law – one that is initiated by an individual Councillor
- 9.4 The first step in the By-law drafting or amending or review process will be to identify and define the need(s), problem(s) or issue(s) that necessitated the development of the new By-law or the need for amendment of the existing By-law. The department will identify the need for the By-law. The need can be identified in the following manners:-

- a) The department identifies a gap within their functional structure or enforcement which would require legislation to address the gap.
- b) There is an amendment to National or Provincial legislation that would require an amendment in the By-law.
- c) During litigation the Corporate Legal Department identifies the legislative gap that necessitates a need to amend/review a By-law.
- d) Legislative and Executive Authority of Council in Making By-laws

## **10 PRINCIPLES OF DRAFTING AND/OR AMENDING LOCAL GOVERNMENT LEGISLATION**

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10.1 The first principle to consider in drafting a By-law, is the principle of democracy which encompasses the following elements:

- (a) In drafting a By-law, a the municipality must not only be guided by the “objects” of local government when executing its executive and legislative authority, but must consider matters such as the developmental duties placed on municipalities and the Bill of Rights that are all entrenched in the Constitution, also be taken into account.
- (b) The drafting of local government legislation must ensure that the By-laws are part of the set of measures through which the municipality must prioritise basic needs to the community. The By-laws must ensure that the municipality is able to achieve sustainable service delivery. Service delivery is sustainable when it is provided in a manner that ensures that the consumer of services can afford them and the supplier can provide them on an ongoing basis. The By-laws must also promote social and economic development, in that it must aim to improve the social and economic conditions of the community.
- (c) The By-laws must not deviate from the Bill of rights which are a cornerstone of our democracy, and the following rights must be taken into consideration:
  - (i) *The right of equality*: the By-law must not be in conflict with the equality clause in the Bill of Rights;
  - (ii) ***The right to a safe and healthy environment***: Council must assess each By-law in terms of the consequence for the safety of the environment, including the safety of the community in its area of jurisdiction.
  - (iii) *Socio-economic rights*: Council must aim to provide residents with access to resources, services and opportunities, to ensure adequate standard of living; and/or;
  - (iv) *Freedom of expression*: the right to receive or impart information or ideas to ensure a culture of participation by communities in local government affairs.
- (d) Lastly, the By-law must promote *accountability* of the municipality and the right to a *transparent governance*.

10.2 The second principle of drafting a By-law is based on the principles of legislative drafting which encompasses the following elements:

- (a) *Terminology*: By-laws must be drafted in clear and simple language and must use as little jargon or technical language as possible.
- (b) *By-law must be concise*: avoid repetition and check each statement if it addresses the purpose and intent of the By-law.
- (c) *Consistency*: Standardise and use consistently any terms/ definitions, and don't switch between terms.
- (d) Follow prescribed process: give reasonable notice to Council members, publish in the provincial Gazette and Newspapers to make it readily available to the public.

## **CHAPTER 3**

### **11. ROLES AND RESPONSIBILITIES**

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#### **11.1 THE ROLE OF THE DEPARTMENT THAT REQUIRES THE BY-LAW**

- (a) identify the need;
- (b) ensure that there is a budget to advertise and promulgate the draft and final By-law;
- (c) the Head of Department must put a team together;
- (d) the team drafts the By-law;
- (e) submit request to Corporate Legal Services (CLS) to request vetting on the By-law;
- (f) after CLS vets the By-law the department must liaise with other department on the draft By-law;
- (g) prepares the item for Council approval for public participation and final approval;
- (h) prepare public participation notice;
- (i) conduct public participation;

#### **11.2 CORPORATE LEGAL SERVICES' ROLE**

- (a) communicate the identified gap to the department (legislation/case law);
- (b) vet the draft By-law;
- (c) provide comments on the draft By-law and the Council item;
- (d) provide compliance comments on the Council item
- (e) publish public participation notices;
- (f) promulgates By-law;
- (g) facilitate the uploading of the approved By-law on the internet through Communications and Brand management department and intranet through ICT;
- (h) to ensure that the Municipal code (By-law register) is updated as and when required.

- (i) There must have been a consultation with key personnel within the department to discuss the need for the By-law or the need to amend an existing By-law before the selected team can start putting together a draft By-law.
- (j) Once the department has put together a draft By-law, the next step will be to send the draft By-law to CLS for vetting (*Please refer to clause ??? for timelines*).
- (k) CLS will vet the first draft and engage and/or refer the draft back to the department for amendment where necessary. The department will have to effect the required amendments and return back to CLS for further review.

Once CLS has vetted the draft By-law, the department must circulate the draft BY-LAW to affected sister departments for comments and/or inputs before the draft is finalised (also refer to the timelines on process flow clause under Chapter 5). Once comments and/or inputs have been received from the sister departments, the responsible department will incorporate the relevant comments where necessary and send to CLS the revised draft By-law for further vetting.

CLS will vet the revised draft for compliance and send it back to the department.

On receipt of the vetted final draft from CLS, the responsible department will draft a Council Item requesting permission to public participate the draft By-law (please refer to the public participation clause below under chapter 6).

## **CHAPTER 4**

### **12. PROCESS**

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12.1 The making of a By-law entails the following important steps:

#### **STEP 1- Drafting of a By-law**

Although it is legally required that only a member or committee of the municipality may introduce a draft By-law in the Council, in practice a B-law is usually drafted by a municipal department on the instruction of a committee of the Council.

In order to assist municipal Councils, the Minister responsible for local government or the provincial Member of the Executive Council may make standard draft By-laws on any matter that a Council make laws on. These standard draft By-laws are not binding on Councils. A Council may decide to use such a By-law as a basis for its own By-law. A Council may change the standard draft By-law to fit in with local conditions or circumstances. It may also ignore the standard draft By-laws altogether. When a Council uses a standard draft By-law, it must follow the same lawmaking process as when it drafts its own By-law.

#### **STEP 2- Consulting with the community**

Section 160(4)(b) of the Constitution states that no By-law may be passed by a municipal Council unless the proposed By-law has been published for public comment.

The Municipal Systems Act requires further that this publication must be done in a manner that allows the public an opportunity to make representation with regard to the proposed By-law.

It is thus clear that the municipality must, apart from legal prescriptive procedures of advertising, establish appropriate mechanisms, processes and procedures to enable the local community to



participate in the affairs of the municipality- in this case the drafting of local legislation. The municipality must also communicate to its community information about how residents can participate.

### **STEP 3- In the Council Chambers**

The Constitution states that a municipal Council may pass no By-law unless all the members of the Council have been given reasonable notice of the By-law and the proposed By-law has been published for public comment. Both these requirements must be met before a municipal Council can lawfully enact By-law. What is regarded as reasonable notice is not altogether certain and depends on the circumstances of each case. The notice period in the standing orders of the municipality with regards to a notice of normal meeting of the Council in the absence of a prescribed notice period in this regard, should suffice to provide clarity.

To be given reasonable notice also means that Councilors should be given a copy of the draft By-law, sufficient time to study the By-law, and adequate notice of when the By-law will be debated and voted on. Debating the merits or the demerit of a draft By-law lies at the heart of democracy.

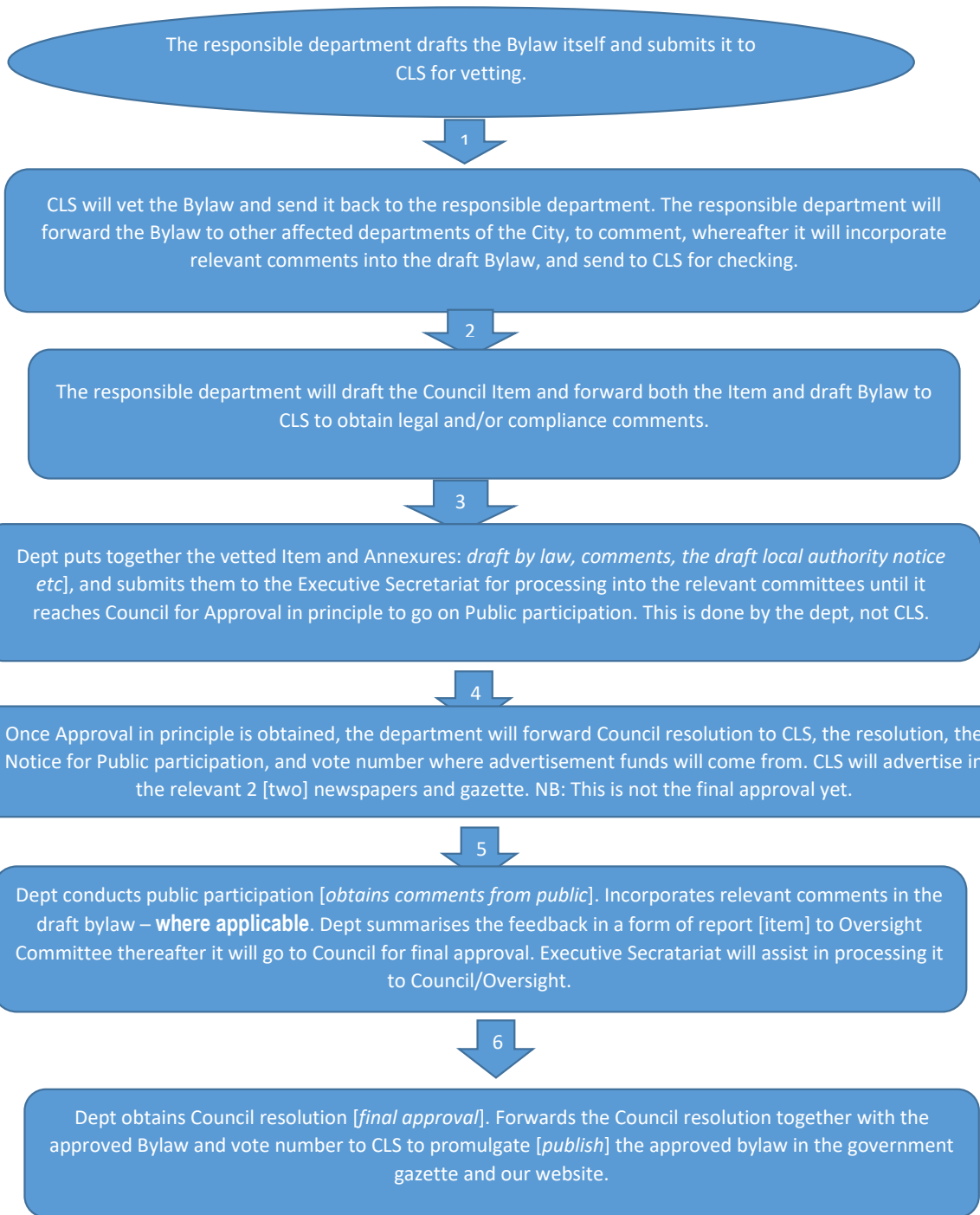
When the Council deals with By-laws, the Council or committee of the Council may not exclude the public, including the media. This is to ensure that a Council's lawmaking is accountable, responsive and open.

### **STEP 4- the municipal Council must vote on the By-law**

A majority of the members of a municipal Council must be present before a vote may be taken on any matter (a relative majority). However, all questions concerning the passing of the By-laws are determined by a decision taken by that Council with the support of a majority of its members (an absolute majority). In this regard one should distinguish between a relative majority and an absolute majority. A relative majority/simple majority is the majority of 50 percent plus 1 of the members present who form a quorum. A quorum is often less than 50 percent of the total number of members of a particular Council. An absolute majority, on the other hand, is a majority of 50 percent plus 1 of the total number of members of a Council.

### **STEP 5- publication and coming into force of By-law.**

The municipal systems act determines in section 13 that a By-law passed by a municipal Council must be published promptly in the Provincial Government Gazette and, when feasible, also in a local newspaper or in any other practical way to bring the contents of the By-law to the attention of the local community. It is further determined that a By-law takes effect when published or on a future date determines in or in terms of the By-law.



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## CHAPTER 5

### 13. DESIGN AND STRUCTURE OF A BY-LAW

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A By-law must be designed and structured in the following prescribed manner:

- a. It must have headings that tersely indicate the contents of the section;
- b. Arrangement of main and ancillary provisions must be in a proper sequence;
- c. It must be numbered properly: the following is the conventional / traditional numbering system employed in legislative drafting:
  1. - Section
    - (1) - Subsection
      - (a) - Paragraph
        - (i) - Subparagraph
          - (aa) - Item
            - (AA) - Subitem
- d. Ensure proper paragraphing and punctuation as grammatical usage and punctuation can affect the meaning of a text.

### 14. THE BY-LAW MUST TAKE THE FOLLOWING STRUCTURE

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*a. COVER PAGE*

The cover page of the By-law has the title of the By-law as well as the Authority that has approved the By-law i.e. the name of the Council and the number and year of the Council resolution.

*b. LONG TITLE*

A By-law always has a long title. It indicates the nature of the legislative measure. It sums up the nature and scope of the By-law. The long title is a part of the statute and is tabled for adoption in Council as such. It contains the conventional last sentence (*...and to provide for matters incidental thereto.*) which indicates that there are more matters in the body of the By-laws that are not mentioned in the long title.

*c. PREAMBLE*

The preamble states the circumstances for which it is proposed to legislate by the By-law. The preamble serves as an integral part of the By-law which can be used to determine its purpose.

*d. ENACTING PROVISION*

This acknowledges the authority at whose instance the By-law is enacted. Section 4 of the 1996 Constitution states that the Legislative Authority of the local sphere of government is vested in the municipal Councils (43(c)). In By-laws, the enacting provision will read as follows:

“BE IT ENACTED by the Council of the municipality of Ekurhuleni Metropolitan The municipality, as follows:-”

e. *PURPOSE AND INTERPRETATION CLAUSE – OPTIONAL BUT ADVISABLE*

The purpose of the interpretation clause is to explain how a specific part of the By-law, or the whole By-law or the terms of the By-law must be interpreted or understood.

f. *DEFINITIONS CLAUSE*

If you do not mean the general meaning of a word, you need to define it, especially where there is deviation from an ordinary meaning of the word or expression. Definitions are meant to restrict or widen the meaning of words in especially By-laws with a technical content. In the section dealing with definitions, the words defined are alphabetically arranged. Definitions appearing in the Interpretation Act should not be repeated in By-laws.

g. *OPERATIVE CLAUSE(S)*

The operative clause or clauses state what the By-law is intending to do and how it is to be done. The By-law should ensure that they make it clear on the roles and responsibilities, and the powers to enforce the By-law.

h. *OFFENCES CLAUSE*

In order to hold liable any person failing to comply with provisions of the By-law, such failure must be declared an offence in the By-law, and the By-law may contain specific provisions describing the penalty for such contravention. Only then can a punishment be prescribed. In many instances, the provisions of the Criminal Procedure Act on sentencing are employed, and at times a maximum fine to be imposed is set in the By-law.

The following phrasing is recommended: “A person who.....is liable on conviction to a fine or.....”

i. *REPEAL / AMENDMENT OF BY- LAWS*

Repeals and amendments of By-laws must be done by means of an Item to Council. However, when a new By-law is passed, it often happens that the outdated By-law needs to be repealed or amended (***Please see the section below, dealing amendment of By-laws, as amending a By-law requires a specific attention***). Therefore, the new By-law must simply contain a section that makes provision for repeals or amendments. An existing By-law may either be repealed wholly or partly (*certain sections that are no longer relevant and applicable, or which contradicts the provisions of the By-law to be adopted*). In such an instance, the repeal would normally be done in terms of a schedule to the By-law.

j. *TRANSITIONAL PROVISIONS CLAUSE*

Where a provision is intended to facilitate a transition from one By-law to another, or is intended to apply for a limited period only, it makes sense to set it out in proximity to the subject governed by that provision. Once the specific circumstances with which it was designed to deal with have been dealt with, it no longer applies, and the primary legislation continues to deal indefinitely with the new circumstances.

k. *SHORT TITLE AND COMMENCEMENT CLAUSE*

The short title is normally the last section in a By-law and provides no more than the name of the By-law and the date when the By-law will become effective, e.g. “This By-law is the Guideline By-law, 2001, and will come into operation on the date on which it is published in the Provincial Gazette.”

## I. SCHEDULE CLAUSE

The schedule clause identifies or refers to an attached schedule (*more like an annexure*) such as a schedule of electricity tariffs or a schedule of repealed By-laws.

## 15. AMENDING A BY-LAW

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- a. When a By-law stands to be altered, we can speak of an amendment / change / replacement / repeal / addition, etc. to its provisions. The point is that the By-law's original text is about to be "tampered" with.
- b. Once the amendments have been included in the text of the By-law, such a By-law is never the same again. The extent of an amendment/s to a By-law is unlimited. Anything from the name, long title, headings, preamble, and provisions may be amended – and provisions may be removed / added. Each "change" to a By-law has a particular manner / convention / procedure by which it is formulated.
- c. An example is when an Amendment to a Bylaw is published in the Provincial Gazette, the General Explanatory Note is found on the second page and is given according to the following convention:
  - a. Words in **[bold type]** in square brackets indicate omissions from existing enactments.
  - b. Words underlined with a solid line indicate insertions in existing enactments.

It follows from the form of this General Explanatory Note, that it is only used in amendments.

- d. An Amendment to a By-law is no different to a new By-law and always has a long title. The long title indicates the nature of the various amendments contained in the Amended Bylaw. The amendments can be omissions (remove) from or insertions (addition) in existing enactments, repeals (terminate) of existing provisions or substitutions (replacement) of expressions and/or provisions. The long title always starts with: "*To amend the .... Bylaws so as to provide for... and to provide for matters connected therewith.*"
- e. In an amendment to a By-law, the preamble states the circumstances for which the proposed amendments to the principle (original) By-law are to legislate and provide for. Preambles are optional in amending By-laws.
- f. Schedule for repeal/amendments of By-laws Repeals of By-laws are normally done by way of a formal resolution by Council and amendments to the full legal and public participation process as have been explained.
- g. Amendments must fit properly into the principal By-law and in sequence. The contents of the principal By-law must still be workable and understandable after the amendments are done. Amendments usually affect other provisions and other laws. This must be traced and suitably amended.
- h. As in the case of a new By-law, the short title of an Amendment By-law provides no more than the name of the statute as it is referred to, e.g. This By-law law is called the *Guideline Amendment By-law, 2001*.

## CHAPTER 6

### 16. PUBLIC PARTICIPATION

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#### **The Right to be Consulted.**

The constitution and national Legislation provide the authority for the municipality to execute its executive and legislative authority by way of inter alia making its own laws (By-laws). However, there is also a statutory responsibility – and in compliance with the democratic and Batho Pele principles the government stands for, a moral responsibility on the municipality to involve all stakeholders when developing and implementing its legislature functions.

Public participation can be defined as a process through which the views of all interested parties (stakeholders) are integrated into project decision-making- it should systematically touch each decision-making point or level during a project or process.

Public participation is open, ongoing, two-way communication, both formal and informal, between the Council (drafters of local government legislation) and its stakeholders- those interested in or affected by its actions. The purpose of such interactive communication is to enable both parties to learn about and better understand the views and position of the other.

The Local Government: Municipal Structures Act places a responsibility on the Executive Mayor, because of The municipality of Ekurhuleni Metropolitan The municipality being a category “a” the municipality with a mayoral executive system, to in terms of section 56 ensure that regard is given to public view and report on the effect of consultation on the decision of the Council. The Executive Mayor must also report annually on the involvement of communities and community organizations in the affairs of the municipality.

Public involvement in the process must occur early: Public participation takes more time and effort up front but will result in better formulated By-laws which are less controversial and require less outreach, education, and defense. Building community participation is, therefore, active.

Public involvement requires capacity building: Capacity building is the active empowerment of role players so that clearly and fully understand the objectives of public participation and may in turn take such actions or conduct themselves in ways that are calculated to achieve or lead to the delivery of the objectives. Capacity building also requires accessibility- at both mental and physical levels- collectively aimed at ensuring that participation in a public process fully and clearly understand the aim, objectives, issues, and the methodologies of the process, and are empowered to participate effectively. Accessibility ensures not only that the role players can relate to the process and the issues at hand, by also that they, at the practical level, able to make their input into the process.

Public trust is earned through openness, outreach, consistency, commitment, respect, transparency, sincerity, honesty, and results: Public involvement is integral to sound decision-making. Public participation allows the municipality/department to tap a much broader range of expertise than it has available in-house. Trust is, however, required in a public participatory process. Invariably, trust is used to refer to faith and confidence in the integrity, sincerity, honesty, and ability to process and those facilitating the process.

Public input should be solicited from all sectors of the society taking into consideration inclusivity and diversity: Equal opportunity for comments and equal consideration of comments from all stakeholders should be ensured. In a community participation process, it is important to understand differences

associated with race, gender, religion, ethnicity, language, age, economic status, and sexual orientation. These differences should be allowed to emerge and where appropriate. Ways sought to develop a consensus. Planning processes must be built on this diversity.

Public participation requires accountability: all participants in a participatory process should accept full responsibility for their individual actions and conduct as well as a willingness and commitment to implement, abide by and communicate as necessary all measures and decisions during the process.

Freedom to participate broad participation in decision-making should be encouraged and actions, which prevent effective participation, should be discouraged. Effective participation also means two-way communication and the willingness of the public to take advantage of the various opportunities to participate.

Public participation requires flexibility: the ability to make room for change for the benefit of the participatory process is often required in respect of timing and methodology. If built into the participatory processes upfront, this principle allows for adequate public involvement, realistic management of costs and better ability to manage the quality of the output.

The Municipal Systems Act in sections 12 and 13 read with section 7 of the Rationalization of Local Government Affairs Act sets out the processes that must be followed when the municipality makes By-laws. Both these Acts do not define “published” or “public comment”.

The following process is therefore recommended:

- a. 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.
- b. The Notice calling for public comment is published in the official language/s determined by the Municipal Council.
- c. 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 the draft By-laws are available for inspection at the offices, the satellite offices, customer care areas and library of the municipality every weekday between the hours of 8:00 and 16:00;
  - That copies of the draft By-laws may be obtained from the office of the Municipal Manager or nominee against payment of a nominal fee (where applicable);
  - 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;
- d. The notice calling for public comment be published for public comment in the *Provincial Gazette* for a period of at least 30 (thirty) calendar days from date of publication;
- e. The same notice as published in the provincial gazette, is published in the local newspapers being the *Star*, *Sowetan* and *Beeld* newspapers, as approved by Council Resolution.
- f. The municipality at this stage may embark on a public participation process involving all its communities.
- g. 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;
- h. The draft By-laws with or without amendments must be submitted to the Municipal Council for adoption by Council resolution and promulgation thereof; If this has not happened within one year from the date of Council passing a resolution to go on Public Participation or to publish the By-law for public comments, the process of obtaining approval in principle to public participate the By-law, **must** be started afresh.
- i. 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.

## **CHAPTER 7**

### **17. THE ROLE OF MUNICIPAL COURTS**

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The law does not require a municipal area to have a municipal court, and few municipalities have such specialised lower courts. Instead, traffic offences and By-law contraventions are dealt with by Magistrates' Courts. Well-functioning municipal courts could make By-law compliance and enforcement more effective, as they would be able to prioritise and dedicate time and resources to By-law contraventions.



**REFERENCES:**

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7. Municipal Systems Act 32 of 2000
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