

**EXAMPLE OF REPORT FOR INTRODUCTION OF A NEW DRAFT BY-LAW**

**[Name of municipality] MUNICIPALITY**

*Note ; Relevant names and or information must be inserted where indicated by [--- ].*

**REPORT TO THE [MAYORAL COMMITTEE or RELEVANT PORTFOLIO COMMITTEE]**

**SUBJECT:** INTRODUCTION OF DRAFT BY-LAW ON MUNICIPAL LAND USE PLANNING

**DIRECTORATE:** REPORT BY MUNICIPAL MANAGER

**AUTHOR:** [Name of author of report]

**CONTACT DETAILS:** [Tel. nr. of author]

**FILE REFERENCE:** [Insert file reference number ]

**DATE:** [Insert the date of the report]

**ANNEXURE A:** A copy of the Standard Draft By-law on municipal land use planning, as compiled by the Western Cape Government.

**ANNEXURE B:** Proposed notice to publish the proposed By-law on municipal land use planning.

**ANNEXURE C:** Extract from the Local Government; Municipal Systems Act, 2000 (Act 32 of 2000)

**ANNEXURE D:** [Insert name of any other relevant attachment which may be required]

**ITEM NUMBER:**

## **1. PURPOSE OF REPORT**

The purpose of this report is obtain a Council resolution in respect of the introduction of the proposed By-law on municipal land use planning, proposed by Councillor **[insert the name of the relevant Councillor]** as provided for in terms of Section 12(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), hereafter referred to as "*the MSA*".

## **2. BACKGROUND**

The Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), hereafter referred to as "*LUPO*", as a 1985 piece of legislation, predates the current Constitution of the RSA and was found to be unconstitutional in many respects. The Constitution confers "municipal planning" firmly as a municipal competency whilst in LUPO many of these powers vest with the Minister.

As a result of the Constitutional provisions in terms of planning, the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), hereafter referred to as “SPLUMA”, was introduced as a national framework act to control land use planning. Within the Western Cape Province, the Western Cape Government will be repealing LUPO and is in the process of approving the new Western Cape Land Use Planning Act, hereafter referred to as “LUPA”.

### 3. EFFECT OF THE LAW REFORMS

It is important to note that both SPLUMA and LUPA are “framework” legislation, meaning that it sets a framework and certain minimum standards which municipalities must comply with in terms of their land use planning functions. This means that municipalities must “give effect to” the provisions of SPLUMA and LUPA via their own legislative powers.

In the past, there was no legislation on national level which made provision for the execution of municipal land use planning. This was done via old order legislation by means of provincial ordinances, such as LUPO.

LUPO does not recognise that municipal land use planning is a municipal land use planning competency. Besides other matters, LUPO controlled many aspects of municipal land use planning such as:-

- *The compilation and approval of town planning schemes and structure plans, which needed to be approved by the Minister.*
- *Approval of certain land use applications*
- *The manner in which subdivision approvals are confirmed*
- *Prescribing time frames and lapsing periods*
- *Consideration of appeals*

These matters are not regulated in detail by the SPLUMA or LUPA as these are regarded as municipal planning competencies.

In terms of Section 156(2) of the Constitution, municipalities have the right to make by-laws for the matters which they have the right to administer, in this case “municipal planning” as set out in Schedule 4 B of the Constitution, read with section 11(3)(e) and (m) of the MSA. An effective means to regulate municipal planning would be to make, adopt and implement municipal planning by-laws..

The effect of the two pieces of law reform in short entails that Municipalities will now have full responsibility for land use planning in their areas of jurisdiction, which entails:

- *drafting of municipal spatial development frameworks,*
- *new integrated municipal zoning schemes,*
- *receive and consider all land use applications,*
- *decision making on land use applications by delegation to officials and to the Tribunals to be established.*

- *appeals against decisions of the delegated official or the Tribunal to the Council's appeal authority,*
- *regulating time frames, notifications, confirmation of subdivision arrangements,*
- *lapsing of rights, and*
- *transgressions and enforcements.*

#### **4. PROPOSED STANDARD DRAFT BY-LAWS ON MUNICIPAL LAND USE PLANNING**

Although assented to by the President it is uncertain when SPLUMA, will be implemented. Indications are that it will be towards the end of 2014.

The Western Cape Government is aware of these uncertainties as well as the potential capacity limitations of municipalities to draft by-laws needed on municipal land use planning. As a result the Western Cape Government's Minister of Local Government, Environmental Affairs and Development Planning, has embarked on a process in terms of Section 14(2) of the MSA, to compile standard draft by-laws for municipal land use planning. A copy of the standard draft bylaw is attached hereto as Annexure A.

It should be noted that the Western Cape Government is still in the process to finalise the standard draft bylaws in terms of Section 14 of the MSA and will provide the approved standard draft bylaw once published in the Provincial Gazette by the Department. Due to time constraints, municipalities have been encouraged though to commence with the process to draft bylaws by using the draft that is available.

The proposed municipal land use planning by-laws in the current form makes provision for the following matters-

- Chapter I, Interpretation
- Chapter II, Application Of By-Law
- Chapter III, Spatial Planning
- Chapter IV, Development Management
- Chapter V, Application Procedures
- Chapter VI, Criteria For Decision Making
- Chapter VII, Extension Of The Validity Of Approvals
- Chapter VIII, Municipal Planning Decision Making Structure
- Chapter IX, Provision Of Engineering Services
- Chapter X, Enforcement
- Chapter XI, Miscellaneous

#### **5. TIME FRAMES**

It has been indicated that the time frames for implementation are tight and accepting that it could take up to 6 months for a municipality to adopt a by-law,

the target date for end of September 2014 means that by then the municipality must have completed the following steps:-

- a. Introduce into Council, either by a Councillor or a committee of the Council (*see section 12(1) of the MSA*)
- b. Publish the proposed standard draft by-law on municipal land use planning for a 30 day period for the public to submit representations.
- c. Submit to the Council a full report on the proposed by-law, including any necessary amendments.
- d. Publish the approved by-law with an indication of the date of the implementation thereof.

In order to save time it is suggested that the proposed standard draft by-laws, as prepared by the Western Cape Government, be used for the public participation process prescribed in section 12(3) of the MSA and that the final standard draft by-law on municipal planning when received from the Western Cape Government be used as basis for the final approval of the by-law on municipal land use for the municipality to be published in terms of section 13(a) of the MSA.

## **6. INTERNAL COMMENTS**

**Comments of the Municipal Manager**

**Comments from the Chief Financial Officer**

**Comments of the Director Technical Services (*including electricity*)**

**Comments of the Director Corporate Services (Legal Services)**

**Comments from [other Directors which may be deemed necessary]**

## **RECOMMENDATION**

1. That the contents of the report be noted.
2. That in terms of section 12(2) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) a by-law on municipal land use planning be made.
3. That in terms of section 12(3)(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) the proposed by-law on municipal land use planning be published for public representations.
4. That the proposed by-law on municipal land use planning and any representations received, be submitted to Council for consideration after publication thereof.

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**MUNICIPAL MANAGER**

**Extract from the Local Government; Municipal Systems Act, 2000 (Act 32 of 2000)**

**Legislative procedures**

12. (1) Only a member or committee of a municipal council may introduce a draft by-law in the council.
- (2) A by-law must be made by a decision taken by a municipal council—
- (a) in accordance with the rules and orders of the council; and 35
  - (b) with a supporting vote of a majority of its members.
- (3) No by-law may be passed by a municipal council unless—
- (a) all the members of the council have been given reasonable notice; and
  - (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 40 proposed by-law.
- (4) Subsections (1) to (3) also apply when a municipal council incorporates by reference, as by-laws, provisions of—
- (a) legislation passed by another legislative organ of state; or
  - (b) standard draft by-laws made in terms of section 14. 45

**Publication of by-laws**

13. 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 other practical way to bring the contents of the by-law to the attention of the local community; and 50
  - (b) takes effect when published or on a future date determined in or in terms of the by-law.