



**DEPARTMENT OF LOCAL
GOVERNMENT AND HOUSING**

MODEL/STANDARD BY-LAWS

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GLOSSARY

Constitution	The Constitution of the Republic of South Africa, 1996
DPLG	Department of Provincial and Local Government
EPRD	European Programme for Reconstruction and Development
EU	European Union
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MSAA	Local Government: Municipal Systems Amendment Act 44 of 2003
Property Rates Act	Local Government: Municipal Property Rates Act 6 of 2004
Structures Act	Local Government: Municipal Structures Act 117 of 1998
Systems Act	Local Government: Municipal Systems Act 32 of 2000

INTRODUCTION

About this Project

The European Union through the European Programme for Reconstruction and Development (“EPRD”) and the South African Government through the Department of Provincial and Local Government (“DPLG”) have implemented a programme to strengthen local governance in Mpumalanga and Limpopo Provinces (“the project”). One part of this project is to develop a suite of model by-laws for the two provinces. The project began on 25th May 2004 for completion on 9th August 2004.

Faced with an extremely wide choice, the Project has focussed on five topics for the model by-laws. These are:

- * Water and Sanitation;
- * Credit Control and Debt Collection;
- * Electricity Supply;
- * Waste Management;
- * Cemeteries, Funerals and Crematoria.

The Water and Sanitation and Credit Control and Debt Collection are draft model by-laws produced by the Department of Water Affairs and Forestry (“DWAF”) as part of a separate project funded and implemented by DWAF. They have been included among the suite of these model by-laws with the permission of DWAF. Also included are extracts from the DWAF model by-laws pack (see Annexure B).

There are four primary justifications for choosing the five areas above rather than other municipal functions. First, water and sanitation, electricity, and refuse removal are so-called “trading services” and provide the bulk of municipal revenue. They also attract litigation – particularly rights-based litigation. Providing model by-laws for these services and for credit control and debt collection will reduce legal risk in these critical areas and encourage revenue generation.

Second, the three trading services and cemeteries provide the primary opportunities for municipal service partnerships (“MSPs”). By-laws have not historically made provision

for outsourcing arrangements with service providers, and it will be useful for standard by-laws to be developed for these services.

Finally, the sectors which are the focus of this project have been subject to significant regulation through recently-enacted national legislation. It is useful for new standard by-laws to be crafted in these areas and give effect to new legislation in specific sectors.

About this Guide

The models are accompanied by this user-guide which has two purposes. The first is to set the model suite within the context of the by-law making process, to describe the procedures that must be followed, to touch upon some of the problems and pitfalls that can arise along the way, and to discuss some of the policy and resource issues that form the backdrop. The second is to give a brief summary of the contents of each model.

The authors are the consultancy team responsible for delivering the Development of the By-laws Project for the EPRD and the DPLG.

Who is this Guide For?

The main target for this guide is not the legal profession. It is not a definitive exposition of the law and is not intended to carry any legal authority or to be a source reference. It is aimed at elected members of municipalities, staff (especially those who have to administer by-laws in their day-to-day work), and the public.

Those wishing to have a more authoritative account are directed to the Constitution Chapter 7 and Schedule B, the Local Government: Municipal Systems Act (No 32 of 2000) (“the Systems Act”), and, of course, the by-laws themselves.

What is the Relationship of the Model By-laws User guide to Other Available Guidelines and Tools of the Province?

This user guide should not be viewed in isolation. Account must be taken of applicable guidance at national level as well as policy and planning at municipal level. Accordingly, this guide includes model by-laws adopted by DWAF as well as draft guidance provided by DWAF which is set out in Annexure B.

THE LEGAL FRAMEWORK

“By” or “bye” is an old English word meaning “small”, “minor” or “subordinate”, as in “by-road” - a minor road. So, classically, a “by”-law is a subordinate law made by a body other than Parliament (not necessarily a municipality – for example, a railway operator will have by-laws). Under the Constitution, by-laws no longer have the status of “subordinate legislation”, but the term “by-law” has remained to describe municipal legislation.

By making by-laws municipalities exercises their original legislative authority as conferred by the Constitution. This is a power under section 156 of the Constitution and relates to all the “local government matters” listed in Part B of Schedules 4 and 5. Several functions are set out in these schedules including:

- * Pollution Control (air and noise);
- * Control of animals;
- * Building regulations;
- * Cemeteries, funeral parlours and crematoria;
- * Refuse removal, refuse dumps and solid waste disposal;
- * Electricity reticulation;
- * Fire fighting services;
- * Control of public nuisances;
- * Pounds;
- * Traffic and parking;
- * Billboards and the display of advertisements in public places;
- * Municipal parks and recreation;
- * Local amenities;
- * Stormwater management systems;

- * Municipal roads;
- * Street trading;
- * Municipal public transport; and
- * Water and sanitation services.

One implication of this is that a municipality could have a very large set of by-laws to enforce if it chose to cover most aspects of these services, not simply one for each in the list but maybe several. This is because it is entirely feasible that more than one by-law is needed in a single service area. For example, by-laws to cover a park used for playing sports would be very different from those used to regulate a park set out as botanical gardens.

Furthermore, general municipal by-law making powers are enshrined in the Constitution, and the list above covers the “constitutional” areas. But there are also by-law powers in statutes for particular purposes, so the full range is rather larger than the “constitutional” list indicates at first glance. These by-laws would include the following under the Systems Act:

- * Credit control and debt collection by-laws; and
- * Tariff Policy by-laws

Another distinction needs to be made. Most by-laws are “discretionary”, which means that it is a matter for the Municipality to decide for itself whether it wishes to make them. But others are “mandatory”. The municipality *must* make them. Tariffs Policy By-laws are an example of this as set out below in Box 1.

Box 1: Section 75 of the Systems Act

*75. **By-laws to give effect to policy.**—(1) A municipal council **must** adopt by-laws to give effect to the implementation and enforcement of its tariff policy.*

(2) By-laws in terms of subsection (1) may differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.

With the obvious exception of the mandatory by-laws, the discretionary list is a menu from which the Municipality can choose, but again there is another obvious exception where the topic is

irrelevant (an inland Municipality might not have much use for by-laws regulating beaches). Alternatively, a Municipality may choose not to have a particular service. Public transport and gas reticulations are examples. In some other cases, the facility simply may not exist (not every Municipality owns an airport).

The Constitution also says that a Municipality *may* make by-laws for regulating its own business and proceedings and for creating its committee system – they are essentially *governance* by-laws. These would conceivably cover such areas as standing orders for the conduct of meetings, the powers and duties of committees, financial regulations, tender procedures, and so on. It is not mandatory, so a Municipality may choose, if it thinks fit, to adopt other methods for its own internal regulation.

“Model” By-Laws

Both the minister of DPLG and MEC’s for Housing and Local Government have the power under the Systems Act to publish model by-laws for the “governance” and the “Constitution” topics. Municipalities are free to adopt the models. There are two main advantages in this:

- * First, the municipality does not have the trouble and expense of drafting its own versions; and
- * Second, model by-laws have gone through a careful review process and over time will be tested for their legal validity. This means it is less likely that the by-laws would be susceptible to challenge in legal proceedings. This can be very important. If by-laws are flawed for some reason – through drafting errors, a breach of the boundaries described below, or some other reason that might go to the root of their validity – the consequences could be serious if a court found against the municipality. It would lose the particular case; it might also have to face further challenges on the same basis. Moreover, even for a minor flaw, the municipality would have to start the whole by-law making procedure afresh to correct it.

But there is no obligation to adopt model by-laws, and no power at higher levels to require it. A municipality may adopt the model “as is”, or amend the model to suit its own situation, or draft its own by-laws (or it may already have perfectly satisfactory by-laws of its own). Whichever course is chosen, the procedure for making a by-law is exactly the same; the models do not offer any short-cuts around the adoption process itself.

The Limitations

There are clear constitutional boundaries covering by-law powers; a Municipality must not step outside them.

Although there is power to make a by-law “for the effective administration of the matters that it has the right to administer”, that is, not only the areas listed in the Constitution but also powers given in statutes - it must not conflict with any national or provincial legislation. If there is a conflict, the by-law will be invalid.

But in addition, there are some “invisible” boundaries. The reverse side of the Constitutional power is that it is not possible to make a by-law affecting something outside the Municipality’s responsibilities. It is also not possible to make a by-law even if the subject is within the Municipality’s powers if it attempted to apply to something outside the Municipal area.

A by-law will be invalid if its effect is to make something illegal that the Constitution or national or provincial legislation specifically says is legal; and by the same token, it cannot make something legal that the higher legislation says is illegal.

Provincial and National Legislation

In making by-laws it is further important to assess if there is provincial and national legislation that may prescribe specific matters for the sectors addressed in the by-laws. This includes provincial acts and ordinances and national legislation regulating energy, the environment, road traffic, occupational health and safety, and resources such as water. Examples of this legislation that is referred to in the five by-laws of this project includes:

- * the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
- * the Commonwealth War Graves Act, 1992 (Act 8 of 1992);
- * the Health Act, 1977 (Act 63 of 1977);
- * the National Heritage Resources Act, 1999 (Act 25 of 1999);
- * the Standards Act, 1993 (Act 29 of 1993);
- * the National Road Traffic Act, 1996 (Act 93 of 1996);
- * the Environment Conservation Act, 1989 (Act 73 of 1989);
- * the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);
- * the Water Services Act, 1997 (Act No. 108 of 1997); and
- * the Deeds Registries Act, 1937 (Act No. 47 of 1937).

THE PROCEDURE

Making a By-Law

The procedure for by-law making is set out in section 12 of the Systems Act and is reproduced in Box 2 below. However, the Constitution and other legislation also prescribe requirements for making by-laws, as we explore below.

Box 2: Section 12 and 14 of the Systems Act

*“12. **Legislative procedures.**—(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*
- (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 proposed by-law.*

...

*13. **Publication of by-laws.**—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*
- (b) takes effect when published or on a future date determined in or in terms of the by-law.”*

There is a golden rule which is set out in the Constitution. Although a Municipality may delegate many of its functions to a Committee, *it cannot delegate the making of a by-law*. A full Council decision is essential. In addition, a by-law may only be proposed by an elected member or a committee.

What is more, the decision can only be taken by a majority vote of all the members of the Municipal Council, not just a majority of the members present at the meeting (or, for that matter, a majority of members present and voting, so a by-law could not slip through because of a large number of abstentions).

There are two other requirements. All the members must be given reasonable notice before the vote is taken. In practical terms, this means that every member must be given a copy of the draft by-law well in advance of the meeting. What is reasonable is a matter of degree. A few days notice might be sufficient for a two-page document on a straightforward topic. It would not be reasonable for 200 pages of complex and highly technical building regulations. Typically by-laws will be considered by committees before appearing on the agenda for a full Municipal Council meeting. But the fact that the draft might have been through committee even several times before the Council meeting would not be an acceptable reason for reducing the notice period.

Publication

In addition, in the interests of transparency and natural justice, a draft by-law must be published for public comment before it is voted on. The Constitution requires it. Again this implies a reasonable period for public responses. Attempting to curtail the timetable would almost certainly render the by-law invalid. There is no fast-track procedure.

Taking Effect

Once made, the by-law must be published in the Provincial Gazette to take effect. Usually, a by-law will be effective from the date of publication in the Gazette. The exception is when the by-law itself specifies that it will come into effect on a later date. One important effect of this, of course, is that municipal staff must be very careful to check the effective date of the by-law before attempting to enforce it.

In light of the above discussion the following process is recommended:

- * the draft by-laws must be approved for consultation by resolution of the Municipal Council. The resolution should specify the official languages in which the notice calling for public comment should be published;
- * the draft by-laws (full text) and notice calling for public comment should be published for public comment in the Provincial Gazette for a period of at least 14 (fourteen) calendar days;
- * the notice calling for public comment must include a statement –
 - inviting the public to submit written comments in connection with the draft by-laws before or on a specified date or period;
 - specifying how comments should be submitted (postal, physical address and fax number);
 - that additional copies of the draft by-laws may be obtained from the Government

Printer or 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 of the municipality every weekday between the hours of 8:00 and 16:00;
- that members of the community who 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;
- * on publication of the draft by-laws for public comment, 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;
- * on publication of the draft by-laws for public comment, radio broadcasts covering the area of the municipality inform the community of the proposed by-laws and provide information on where the by-laws are available for inspection and how comments may be made;
- * on the expiry of the period allowed for public comment, all comments must be reviewed and amendments, if necessary, be affected to the by-laws;
- * no further notice and comment process is necessary, even if amendments are made to the by-laws – but a notice informing the public of significant changes after the public comment period is desirable; and
- * promulgation of the by-laws, by publication in the Provincial Gazette.

The “Code”

A municipality is obliged to compile all its by-laws into a single volume in either bound or loose leaf form (and, since it will be making new by-laws or amending old ones from time to time, loose-leaf is the practical solution). This is the “municipal code”.

“When feasible”, the code must be kept in electronic form. This suggests that if it has the technology and resources, the municipality has no choice but to produce an electronic version. The code must be kept at the Municipality's head office, and it must be up-to-date.

The municipality is obliged to provide a copy of the code or an extract from it to a member of the public (not only a resident of the area) on request, and to make a reasonable charge for it.

THE POLICY CONTEXT

Like every aspect of local government service provision, by-laws need a policy context. Making a by-law simply because the municipality has the power to do so is not usually good policy, even if the need for the by-law seems self-evident.

This requires finding satisfactory answers to a series of questions. For example:

- * **What** is the problem? Have we identified it correctly? As stated above, municipalities have a power to make by-laws, but they are not usually compelled to do so (except in some specific cases). There is little point in going through the complicated procedure unless it is to deal with real situations that need controlling through legal powers.
- * **What** is our policy for dealing with the problem? The Council ought to decide this before making any further decision, and the existence of a problem does not always mean that the Council should feel obliged to regulate for it. For example, playing noisy music late at night might be a nuisance that some Councillors believe should be controlled. Others might feel that this would be an interference with people's rights and freedoms.
- * **What** are the options for dealing with the problem? It may be something where a legal intervention is inappropriate or heavy-handed, or where administrative action is quicker or more effective.

Box 3: Alternative Ways of Dealing with Problems

For example, do our Standing Orders really need to be enforced through the power of the law, rather than through a resolution of the municipal council or the authority of the Chairperson and the civic dignity of the members?

The problem may also be already covered by some other legal mechanism – for example, playing noisy music late at night may already be dealt with under the law of nuisance.

- * **When** do we want it to come into effect? This is about priorities. There are 38 main categories of powers and functions for which local authorities may make by-laws, so it is important for potential by-laws to form a queue.
- * **Who** will draft (and translate) it? (Do we have in-house skills, or are we adopting a model, or do we need to find someone outside?)
- * **Who** will use it? Are there staffing implications here?
- * **Who** will enforce it? From time to time, we will need to prosecute. Do we have in-house

skills and resources or do we have to go outside?

- * **What will it cost?** There are two aspects to this question. First, since there will undoubtedly be a cost factor, the cost of making, policing and enforcing the by-law must be estimated and judged in policy terms against the Municipality's other spending priorities. Second, the money must be available.

Some More Pitfalls

There are a number of reasons for making a by-law. It may be to regulate, to control, to eliminate, to punish, to encourage – or all of these. But they can be a cumbersome administrative strategy. At the outset, they need time-consuming and careful drafting if they are (literally) to “stand-up in Court”.

The procedures for making them are lengthy – and if there is a mistake in the procedure at any stage, it has to be started all over again. Perhaps most importantly, even a simple amendment to a by-law means going through the whole procedure again. This can be costly in money as well as in time and effort.

Box 3: Example Showing Implications of Using By-Laws

For example, if standing orders introduced as by-laws stipulate a particular procedure for putting issues on the agenda of council meetings, if the Municipality decides to change this process, it may be unable merely to pass a resolution to bring in the new charges at the start of the next month. If so, it will have to go through the by-law amending procedure.

Some Resource Implications

All municipal activities require resources and all have their costs, even if they are not always readily apparent.

- * **Money**

There will be expenditure at all stages of the by-law making process. It may be that a municipality has legal staff with both the skills and the time to draft all the by-laws needed. If the municipality is in this fortunate position, there is nevertheless a money cost in terms of salaries and supporting expenditure of the staff doing the work.

If not, the work might have to be outsourced, involving possibly substantial payments to the agency employed to do the work on the Municipality's behalf.

There will costs for printing, publishing and perhaps for translation.

Enforcement of by-laws may culminate in court action; if the municipality has in-house prosecution resources, there is a salaries cost; if not, there will legal fees to be paid. There will also be court charges and possibly the other party's legal costs in the event of an unsuccessful prosecution.

* **Staff**

There must be adequate staff to operate the by-laws which also involves financial implications.

They are not necessarily – or even mainly - legally trained. They will be technical or administrative staff who use by-laws as a routine administrative tool. For example, by-laws relating to meat, milk and other foods will be operated as a matter of daily routine by public health inspectors.

Of course, the municipality would still employ these inspectors even if no by-laws had been made, but in many other instances the passing of a by-law might have a more explicit staffing implication - a municipality that decided to outlaw ball games or loud music or alcohol in a park would have to employ additional staff to enforce this ban, whereas previously only maintenance workers would be needed to look after the gardens.

Without an enforcement capability, the by-law might be largely a dead letter.

* **Training**

As in almost every aspect of local government work, the operation of by-laws requires adequate staff training. This has both a time and a financial implication. Provision needs to be made in both training programmes and in budgets.

* **Estimating and budgeting**

All of the above implies that, when contemplating making a by-law, both the start-up costs of making the by-law and the recurrent costs of operating it are properly evaluated and that estimates of expenditure are included in the Municipality's annual budgets.

* **The time factor**

Time is an important element of policy. The simple basic questions are

- Is it urgent?
- Is it important?

- Is it urgent *and* important? They are not the same.

Time has a particular importance in resource allocation, because a proposal to make a by-law will need to be prioritised against other demands on resources generally and against competing claims for other by-law proposals specifically.

Table 1: Showing Possible Timing for Passing By-Laws

Action	Weeks
1. Drafting the first "rough cut"	8
2. Time for comment from other officials	2
3. Redraft	2
4. Consideration by committee	4
5. Notice to Councillors	2
6. Approval by full Council for public comment	4
7. Publication of draft for public comment	4
8. Consideration of public comments	2
9. Revision of draft, printing and binding of final version	3
10. Council Decision to Enact the by-law	4
11. Publication in Gazette	1
TOTAL	36

Once a proposal reaches the head of the list of priorities, there is then the time factor involved in actually making the by-law. The only real certainty here is that it is not a swift process as shown above in Table 1.

From the table, it could take a period of nine months to make a by-law provided all goes smoothly and no snags are met on the way. If there is disagreement in committee or in full Council needing reference back for redrafting, it will be necessary to increase the timescale by the full length of a meetings cycle. The same will apply if there are public comments requiring redrafting. Of course, the point of a model by-law is to reduce this period by avoiding the time taken for drafting.

The meetings cycle itself also has its effect. The above assumes a cycle of about six weeks. If it is less frequent, or if the draft misses a cycle because it was too late to be included on the agenda for the next meeting, this will also extend the time taken to promulgate the by-law.

Of course, one way of shortening the time-span is to adopt a model by-law if this is available. This cuts out entirely the drafting period, and should avoid most problems when the proposal is debated as the model should be largely non-contentious. However, as mentioned above, the public comment process and council decision-making process is still necessary.

The policy indicator here is that the entire process demands careful planning and scheduling to keep the time-span within manageable limits.

Time is also an important consideration when deciding whether a by-law is the most effective way of dealing with the issue that it is supposed to address.

The Enforcement Problem

Enforcement contains another time/resource problem. Essentially, it means court action. Resources will be needed to prepare the case for hearing. Individual cases may be relatively simple, but a heavy caseload can be prodigal of time and money.

This action will have to queue for hearing, maybe for many months if the court lists are overcrowded.

When the hearing takes place, not only will the Municipal Council have to be represented in order to prosecute the case, but also municipal staff will probably have to attend as witnesses. The time penalty here could be considerable, with staff being taken away from their usual jobs. At the end of the day, any revenue recovered in fines may be only a small part of the cost of the case.

Is there a better way?

Administrative Penalties

One device that experience elsewhere has shown to be an effective alternative to prosecution is the concept of administrative penalties. In simple terms, someone who is alleged to have committed an offence gets a "ticket", as is common with motoring offences in many countries. A person who is served with a ticket then gets the option of paying a fixed or specified penalty within 28 days and avoids a court appearance.

The ticket is not the same as an admission of guilt, which means that once the penalty is paid the alleged contravention cannot be reopened.

The administrative penalty concept has been introduced into two of the model by-laws, namely Waste Management and Electricity Supply. In simple terms, instead of issuing a summons through the magistrates' court to initiate formal proceedings, the municipality through an authorised official

is empowered to issue an offender against a by-law with an “infringement notice”. The so-called “affected person” may pay the penalty and avoid a court appearance or elect to be tried in court. Not all by-laws are appropriate for this approach, and some municipalities might not wish to adopt it.

It should be stressed that there are existing provisions in South African procedural law relating to minor offences which enable a person to make an admission of guilt and pay a fine without having to undergo a criminal prosecution, as laid down in section 57 of the Criminal Procedure Act 51 of 1977 (“the Criminal Procedure Act”). The purpose of this provision in the Criminal Procedure Act is to avoid unnecessary court appearances and to create a speedy and simple procedure for dealing with trivial offences. An accused, who elects to pay an admission of guilt waives several procedural rights, the most important being the necessity of proof beyond a reasonable doubt. From the point of view of a municipality, section 57, although of great value, has some obvious disadvantages.

However simple or speedy it may be than normal criminal proceedings, the admission of guilt process under the Criminal Procedure Act nevertheless requires that criminal proceedings must first be initiated by summons or notice in the ordinary way and it requires either the prosecutor or the clerk of the court to believe, on reasonable grounds, that a court would not impose a fine in excess of a determined amount. In other words, the procedure has the disadvantage of being dependent on persons who may well be over-worked in very busy courts. More important than that, possibly, is the fact that a municipal official cannot himself or herself, deal with trivial offences without setting criminal proceedings in motion. And that goes, with even greater emphasis, to an employee of a service provider.

A system of administrative penalties avoids involvement with the courts and with criminal procedure generally. Furthermore, it will give persons “at the coal face” in the municipality the ability to handle and dispose of trivial matters themselves.

In assessing the idea of administrative penalties, the existence of section 57 of the Criminal Procedure Act may be construed as implicitly excluding an administrative procedure of the kind described above. Furthermore, there is a right to access courts in South Africa’s Bill of Rights and a “pure” administrative system would in all likelihood violate this right. It is for these two reasons important to depart from the approach of the Criminal Procedure Act and give the alleged perpetrator an election to choose the administrative way or the judicial route (a so-called “quasi-administrative” system). Even with the introduction of an election, the inclusion of administrative penalties in by-laws is novel in South Africa. Currently they appear only in road traffic legislation and in the City of Johannesburg’s Waste Management By-Laws. Hence there is the risk of legal challenge.

The drafting in the models administrative merely empowers municipalities to introduce the penalty system and does not compel it. In short, if a decision was taken to introduce administrative penalties into the model by-laws, it would be for a municipality to decide whether to take legal risk in implementing such a system.

Administrative penalties in specific have been included in Waste Management and Electricity Supply models. If it is decided to retain these provisions, they can also be included in the Cemeteries and Crematoria By-Laws. Whether they are introduced into Water and Sanitation model by-laws will be a policy decision reserved for the Department of Water Affairs and Forestry. They are not currently included. Municipalities can, however, amend the DWAF model by-laws to introduce these provisions, if they so wish.

If a municipality does go the administrative penalty route, it will have to appoint so-called “authorised officials” and decide on appropriate amounts for various penalties.

THE MODELS

The next five sections deal with the general thrust of the five models. Although they are no substitute for reading the full text of each by-law, they set out in broad terms what the models cover.

Of course, there is no obligation on any municipality to adopt any of the models, but neither is it an “all or nothing” situation. Any municipality is free to adopt, adapt, amend or improve any part of any model to suit its own needs and aspirations.

MODEL 1: DWAF CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

There are nine chapters that broadly cover services to customers, assessment rates, services to indigent customers, emergencies, unauthorised services, and offences. As Annexures, there are specimen application forms for the supply of services and for registration as an indigent customer.

*** Application**

Customers are to apply for services in the manner specified in the by-laws, a relatively simple application form. If the municipality is unable or unwilling to supply the service, it must give its reasons within seven days. Property developers must inform the municipality as soon as the development reaches a stage at which it can be serviced.

*** Charges**

The municipality must publish its charges, and in addition to tariffs, it may levy a monthly, annual or lump-sum charge. Under fairly closely-drawn rules, the municipality may subsidise serves (but not to commercial customers).

*** Payments**

There are detailed rules governing payments by customers. Where there is a metered service (and the municipality is obliged to provide this when it is financially and physically possible) the customer is charged on an estimated basis if for some reason the meter is not read, but the customer is entitled to a rebate when actual consumption is known. The municipality may have incentive e schemes to encourage prompt payment.

*** Accounts**

There are very detailed provisions as to what the account must contain. They must be

sent out monthly, but the customer is liable to pay even if he does not receive the account or disagrees with it. There is an appeals procedure that works on the principle that the amount outstanding must be paid first if the municipality requires this.

* **Arrears**

There are the usual powers to collect arrears, but before the customer is cut-off, the municipality must consider the impact on the customer's quality of life and health and right to access to basic services.

* **Disconnection**

A municipality is not allowed to disconnect a basic household supply, unless failure to do so would have a detrimental impact on the supply of the service to the wider community. Its remedies are limited to reducing water pressure or the hours of supply.

* **Assessment Rates**

These are the responsibility if the owner even if he is not the occupier and if the account is in someone else's name unless the owner is the municipality).

* **Indigent Customers**

An application must show evidence of means, and must be decided within fourteen days. The customer must re-apply annually to maintain his indigent status. The level of subsidy for indigent customers is part of the annual budget-making process.

* **Emergencies**

A municipality may declare an emergency situation if there is a significant risk to the financial viability of the service or to the municipality itself unless unusual measures are adopted. Public notice of the emergency must explain the cause of the situation and what the municipality is doing about it. Meanwhile, it must supply basic levels of service.

* **Unauthorised Services**

It is contrary to the by-laws to gain access to services except by the standard agreement. Anyone who does will be charged at the average cost of consumption for the area. Similarly, interference in any way with service installations, obstruction of access and illegal re-connection may lead to the municipality recovering the value of services used and the cost of rectifying any damage or interference.

*** Penalties**

Offences carry a maximum imprisonment of six months or a corresponding fine or community service. Continuing offences carry a fine of R50 per day or additional imprisonment.

MODEL 2: WASTE MANAGEMENT BY-LAWS

These by-laws comprise 9 chapters for the management, collection and disposal of domestic and commercial wastes, control of the transportation and disposal of waste by hauliers, the licensing of private service providers, the control of littering, dumping and abandoned articles, and the introduction of administrative penalties for minor infringements. They repeal a range of existing by-laws covering similar topics.

*** Local Waste Plans**

A local waste plan is an integrated waste management planning system developed by a municipality. In anticipation of legislation that will require municipalities to develop local waste plans, the by-laws give the municipality guidance on the scope of objects of local waste plans, but do not compel municipalities to develop them.

*** Waste Management Information System**

A municipality has a discretionary power to produce a system that describes how waste is managed within the municipality, and a decision to do so must be published in the Provincial Gazette at least three months before the system comes into operation. The purposes are to assist strategic planning, to provide information to provincial and national government, and to waste generators, service providers, licensees, and the local community. The system contains information that the municipality considers relevant, and must be provided to any member of the local community on request (for which it may charge a fee). The likely information will cover major sources; quantities and types of waste; handling, treatment and disposal facilities; management of radioactive wastes, and markets for particular types of waste.

*** Basic Services**

There is a duty, within resource constraints, to move towards regular access by the community to basic services, and the municipality may differentiate services on a population and geographical basis. It has the sole right to determine the amount of waste

that it will collect, the frequency of service, and the maximum individual amount of waste that it will collect. Either the municipality or the service provider is able to decide the frequency of service and collection points, separation of waste for recycling, and the waste that it will not collect (in which event it must recommend to the owner suitable alternative means of collection). A suitable receptacle must be provided for different types of waste; the municipality may require large quantities to be compacted, and the generator may elect to do so.

*** Obligations of Waste-Generators**

Waste generators (that is, persons generating waste) must provide suitable receptacles secured from interference from animals, and not put anything in them that might injure an employee or make it difficult for employees to handle. Receptacles must be kept secure, not used for any other purpose, and be placed outside the premises on collection day. They must be so placed that there is easy access for the collectors. The rate or tariff for the basic service is payable even if little used or not used at all.

*** Commercial Service Providers**

The municipality may stipulate that anyone collecting waste as a business (except garden waste) must be licensed by the municipality (see below), and customers must satisfy themselves that their contractor is licensed. The municipality may also stipulate (by Gazette notice) that certain categories of waste must be disposed of in a particular site. This is termed “flow control”. The waste generator must ensure that waste is suitably stored whilst awaiting collection so as not to cause a nuisance or health risk, that it is not stored in a public place, and that the contractor only collects waste authorised by his licence.

*** Garden Refuse**

This may be composted, provided that it does not cause a nuisance, otherwise it must be removed within a reasonable time. Anyone can do this, but it can only be taken to an approved site. The municipality may provide a suitable container for garden refuse, and it may also remove garden refuse at the same time as the normal collection at the domestic tariff.

*** Building Waste**

This must be stored on the premises when awaiting collection and must not accumulate

to the extent that it becomes unsightly or a nuisance. The municipality may allow a "skip" to be positioned in the road reserve, but it must have the name, address and telephone number of the person in charge of it marked on it, have reflectors or chevrons at front and back, and be covered at all times when not in use. The waste must be disposed of by a licensee at a designated site, unless permission has been given for it to be recycled or used for land reclamation.

*** Hazardous Waste**

The municipality must be notified of any activity liable to generate hazardous wastes, and may require the waste to be analysed by a qualified industrial chemist. It must be properly stored on the premises so that it does not become a nuisance or health risk or damage the environment. It may only be transported by a suitable licensed contractor, who must, prior to transportation, notify the municipality of the date of collection, the quantity and nature of the waste and its destination (which must be a special site designated by the municipality).

*** Transportation and Disposal**

Waste may only be carried in a vehicle of suitable size and construction, which must be always in a clean, sanitary and roadworthy condition. Loose waste must be covered with a tarpaulin or net to prevent it from falling from the vehicle, and it may only be tipped at a site approved by DWAF. Burning of waste is not allowed, and incineration is only permitted at an approved place. Disposal of garden waste is limited to loads of one tonne or less. Entry to disposal sites is subject to conditions, and the municipality may require a vehicle to be weighed at a weigh bridge before entry. The load may be subject to inspection and analysis. Waste may not be stored longer than 90 days.

*** Service Providers**

A municipality may outsource the provision of the basic services to a service provider.

*** Licensees**

A municipality is enabled to set up a licensing system to control private waste collection operators. The categories covered are industrial, hazardous, recyclable, health risk and building wastes, and bulk containerised wastes. Licence applications will be heard by a Licence Adjudication Panel, which may only reject an application for failure to comply with the standards laid down in the by-laws or because the application itself is

incomplete. However, it may impose conditions to compliance with national, provincial or local policy. The licence will specify the period of validity and the categories of waste permitted. The licensee is obliged to comply with all legislative requirements and to keep monthly records of the waste collected and carried. Renewals require two months notice, but if the municipality does not make a decision within two months, the licence is extended until a decision is made, in which event it must advise the licensee as to when the decision will be made. The licence must be displayed by a sticker on each vehicle.

*** Suspension and Revocation of Licences**

The municipal manager may suspend or revoke a licence for non-compliance with legislation or the conditions of the licence or for other reasonable cause, but the licensee must be given the opportunity of being heard and the municipal manager must make a decision within two weeks thereafter and inform the licensee within a further seven days. There is a right of appeal by the licensee to the municipal committee responsible for waste disposal.

*** Litter and Dumping**

The municipality and owners of land to which the public has access must provide suitable litter bins, and must ensure that they are emptied and cleansed regularly. Littering is an offence, but it is the duty of the municipality or owner to remove it before it becomes a health hazard or nuisance. Dumping is also an offence, but if the article is of value, the municipality must public a notice in a newspaper that it intends to dispose of it, and notify the police.

*** Enforcement**

The municipality may appoint "authorised officials" to enforce the by-laws. They will have powers of entry and search. Vehicle search without a warrant is only with the consent of the owner or driver, but an officer may search premises without a warrant if there is an environmental emergency. If a vehicle is carrying dangerous waste, the official may seize the vehicle, but must return it to the owner within 48 hours of disposing of the waste. Warrants are issued by a magistrate or justice. Authorised officials have the right to question in accordance with the law.

*** Supervision**

The workplaces of licensees must be inspected at least twice a year and issue

compliance certificates. If the licensee fails to obtain a compliance certificate for three inspections over two years, the licence may be revoked.

* **Enforcement Notices**

In the event of a public health or environmental nuisance or hazard, or a breach of licence conditions, an enforcement notice may be issued, and if it is not complied with after 21 days the municipality itself may rectify the nuisance or breach at expense of the offender, subject to the right of the offender to make sworn written representations. A licensee committing the same offence within five years may have his licence revoked immediately. Any person may make a complaint about a public health or environmental hazard leading to the issue of an enforcement notice. There is a right for any affected person to make written representations which the municipality must consider and then by order either confirm, alter or set aside the enforcement notice.

* **Administrative Penalties**

These allow the issue of "infringement notices" as described earlier.

* **Offences**

Offences carry a maximum imprisonment of six months or a corresponding fine or community service. Continuing offences carry a fine of R50 per day or additional imprisonment.

MODEL 3: ELECTRICITY SUPPLY BY-LAWS

These by-laws comprise eleven chapters covering the conditions of supply, technical provisions relating to systems and measurement, the status of electrical contractors, costs and penalties. They contain the concept of administrative penalties. They repeal existing by-laws relating to this topic.

* **Provision of Services**

A general duty is imposed on the municipality to ensure access by the local community to electricity supplies. It has a power to differentiate between different sections of the community and different geographical areas, but in doing so it must have regard to the law, equity, public health and the environment. Apart from ESKOM, it has a monopoly of supply. Customers must enter into service agreements; anyone who does not will still be

liable for the cost of electricity used.

* **Property Rights**

No connection is made until the owner of the property has given written consent for the municipality to enter. If consent is later withdrawn, the customer must pay for removal of the connection and the new installation. The municipality acquires a servitude (a property right allowing the municipality to enter and do work) on private property, but it must pay compensation to the owner. It also has the right of admittance to inspect, test or maintain the service. An official of the municipality must produce his ID on request.

* **Misuse**

If a customer misuses the service, the municipality may disconnect the supply and then reconnect it when it has remedied the misuse, at the expense of the customer.

* **Payment**

Tariffs are available at the municipal offices. A deposit may also be required. Resale of electricity (for example, in premises of multi-occupation or by a farmer to farm workers) requires the prior consent of the municipality.

* **Disconnection**

The supply may be disconnected on 14 days notice for reasons of safety or for non-payment. If the customer then reconnects, the municipality may remove the whole supply physically.

* **Non-liability**

The municipality is not liable for any damage or loss arising from a failure or interruption of the supply. If the failure is due to a fault in the customer's equipment, the municipality is not obliged to attend to it. If it does, it may charge not only for the work but also for the reconnection.

* **Tampering**

A customer is forbidden to tamper with the seals or locks on the municipality's equipment or with the meters and other installations, upon pain of immediate disconnection.

* **Protection of Mains**

Building work, tree planting, excavation or other interference with the mains is prohibited except with the consent of the municipality. Connection to or diversion of the supply are also forbidden. Trees and vegetation must be cut back if they are liable to interfere with the overhead power lines, and the municipality may do this if the owner does not. However, except in an emergency the municipality needs a court order for demolitions.

* **Connections**

Unauthorised connections and reconnection are prohibited, and the customer is liable for any consequential costs or charges. The municipality may temporarily disconnect the service at the request and expense of the customer, but the customer is not liable to pay if the temporary disconnection is at the volition of the municipality. Reasonable notice must be given, unless there are exceptional circumstances.

* **Load Reduction**

At times of peak load, or in an emergency, the municipality may reduce the supply without liability for any consequences.

* **Technical Provisions**

There are detailed clauses covering high, medium and low voltage switchgear and equipment, substation accommodation, and wiring diagrammes and specifications.

* **Standby Supply**

A customer needs the approval of the municipality before installing standby equipment, for example, an emergency generator.

* **Consumer Responsibilities**

The consumer is responsible for the connection to the mains and for keeping it in good order. In the event of a hazardous fault, the consumer must notify the municipality, which is entitled to reimbursement for making it good. Two days notice must be given to discontinue the supply and on change of occupancy, otherwise the customer remains liable, and the new occupant must apply for service within 10 days to avoid disconnection. The consumer must keep the meters and other equipment in good order, and any interference or damage

that makes the equipment dangerous is rectified at the customer's expense.

* **Service Connection**

The consumer must pay for the connection, but ownership and maintenance responsibility remains with the municipality. All connections must be underground, unless an overhead connection is specifically required by the municipality. There are special provisions for multi-occupancy premises. The municipality will specify the meter position and housing, where it can be accessed at reasonable times

* **Systems of Supply**

There are technical provisions relating to supply systems.

* **Metering**

The municipality has an obligation to provide a meter at the consumer's expense. For premises in multiple occupation, the municipality can choose to meter the whole block or individual units, or groups. The meter is presumed to be accurate, but the consumer is entitled to have the meter tested on payment of a fee. If the meter is found to be inaccurate, the fee is refunded. The consumer also has the right to have the meter independently tested at his own expense and the result is conclusive. Credit meters are normally read monthly. There is no refund on prepayment meters if the consumer leaves the premises with credit remaining.

* **Electrical Contractors**

The fact that an electrical contractor may be accredited by the municipality does not make the municipality liable for any loss or damage caused by the contractor, who is working on behalf of the consumer.

* **Cost of Work**

Any damage caused by a contravention of the by-laws may be recharged to the consumer.

* **Offences**

Offences carry a maximum imprisonment of six months or a corresponding fine or

community service. Continuing offences carry a fine of R50 per day or additional imprisonment.

* **Establishment of an Administrative Penalty System**

The by-laws contain provisions for administrative penalties as previously described.

MODEL 4: CEMETERY & CREMATORIA

The Cemetery and Crematoria By-Laws has fourteen chapters, plus a schedule that repeals all previous by-laws relating to the same topics. The by-laws aim to provide for the establishment of public and private cemeteries, for funerals and interments, maintenance, management and regulation, including behaviour in cemeteries. The key provisions follow.

* **Establishment**

The municipality is able to acquire land, set-up cemeteries and maintain them. It is also given an obligation to ensure that there is adequate space for the burial of bodies within the area. Caretakers must be appointed to manage the cemeteries. It may classify cemeteries to establish varying service levels to ensure affordability. When a cemetery is full, it must be declared a “passive” cemetery, which the municipality still retains a responsibility to maintain.

* **Private Cemeteries**

The authorisation of the municipality is needed for both new and existing private cemeteries. They must be managed along the same lines as a municipal cemetery. An application must be published in a local newspaper, allowing at least 14 days for objections. Within seven days, the municipal manager must submit the application to the municipality which must decide the application within a further thirty days.

* **Service Providers**

All or any cemetery services can be provided under an MSP, but the municipality still has responsibility to respect and uphold the by-laws.

* **Tariffs**

Whether the services are direct or by MSP, the municipality has responsibility for fixing

maximum tariffs, which it must do annually.

* **Disposal of Bodies**

It is forbidden to dispose of a body except by burial or cremation in an approved cemetery or crematorium.

* **Undertakers**

Funeral undertakers have to be certified by the municipality, and operate from approved premises, which the municipality has the right to inspect.

* **Funerals**

Religious services for any denomination are allowed, except in part of a cemetery reserved for members of another denomination. No music is allowed except sacred singing. The hours during which funerals may take place are specified. Permission to inter is obtained from the caretaker.

* **Purchase of Grave Space**

Anyone (not only a resident) may buy a grave space – but they cannot sell it to someone else. The municipality may repurchase for administrative or environmental reasons, but it must pay compensation of at least the inflation-proofed purchase price.

* **Practical Considerations**

There are detailed provisions regarding grave sizes, earth covering, materials for coffins, and multiple burials.

* **Non-Residents**

Burials of non-residents are allowed with prior consent.

* **Paupers and Indigents**

Burials are the responsibility of the municipality at public expense.

* **Exhumations**

These are not allowed except in accordance with law and with the written consent of the Department of Health and the municipality. The Medical Officer of Health and a member

of SAPS must be present.

* **Maintenance**

The municipality is responsible for maintaining the whole cemetery, including private grave spaces.

* **Memorials**

Permission is required to erect memorials, including the design, materials to be used, manner of erecting, and inscriptions. Memorials must be kept in good repair. If not, the municipality can do the work and recharge the cost to the person who erected the memorial.

* **Adornment of Graves**

This is limited to two vases and flowers unless permission is given for something more. In granting permission, regard must be had to the religious and cultural values of the local community, as well as those of the deceased.

* **Cremations**

These are largely regulated by statute. With permission, ashes may be interred in an existing grave; if they are not collected, they may be strewn in the garden of remembrance.

* **Prohibited Conduct**

There are detailed provisions designed to secure appropriate conduct in a cemetery.

* **Offences**

Offences carry a maximum imprisonment of six months or a corresponding fine or community service. Continuing offences carry a fine of R50 per day or additional imprisonment.

MODEL 5: DWAF WATER & SANITATION BY-LAWS

* **Scope**

The key topics are procedures for applying for services, payment of accounts, termination of services, service levels, conditions for water and sanitation services, water service intermediaries, and unauthorised water services.

* **Application, Payment and Termination**

The sole means of obtaining service is by application in terms of the by-laws, and the credit control by-laws are operative as part of the procedure. A municipality may have differential tariffs, and in addition may levy a monthly, annual or lump-sum charge. Not only the customer but also the owner or occupier of the premises may be liable to meet the charges.

* **Service Levels**

There is considerable latitude allowed to the municipality in fixing service levels, but the by-laws give strong indicators of what is acceptable; for example, a communal water supply service and on-site sanitation that include a stand pipe within reasonable walking distance and a VIP latrine for each household. These are installed free of charge, there is no tariff and they are maintained by the municipality.

* **Conditions for Water Services**

The Engineer for the municipality has sole responsibility to provide a connection to the water supply. He is also responsible for maintaining the statutory minimum standards of quantity, quality and pressure. Prevention of water pollution is the responsibility of the owner of the premises. There are detailed provisions enabling the municipality to restrict supply, for example, in drought conditions. Metering and measuring of supplies are treated in detail, and a customer may also be required to conduct a water audit giving information about such matters seasonal demand, the quantities used, the number of people with access to the supply and anti-pollution measures.

* **Installation**

Except for housing, installation work requires written permission (valid for two years)

from the municipality. All work must be done or supervised by a registered plumber. All pipes and fittings have to be authorised. All work has to be tested to certain standards under the scrutiny of the Engineer before a mains connection is allowed.

* **Communal Services**

The Engineer can install communal services, and he is also able to approve temporary supplies from fire hydrants.

* **Boreholes**

These are prohibited in a dolomite area. The municipality has a discretionary power to require notification when a borehole is to be sunk, and may seek an environmental impact assessment first.

* **Fire Services Connections**

Clearance from the municipality is needed for installing fire hydrants, sprinklers, and other fire-fighting systems that are connected to the water supply.

* **Sanitation Services**

All premises must be connected to the main sewer if the area is serviced. There are detailed conditions relating to connections and to discharges into the sewer, especially in relation to industrial effluents.

* **Drainage Installations**

The owner of premises has responsibility for both the construction and maintenance of all the installations on his property. They cannot be disconnected except when they cease to be used, and this can only be done with the permission of the municipality and under the supervision of the Engineer. There are obligations to prevent blockages and to clear them as soon as they are discovered.

* **Ventilated Improved Pit Latrines (VIP toilets), Septic Tanks etc**

The municipality can approve the installation of VIP toilets and lay down the conditions. The by-laws give the essential technical specifications. They also govern the installation of septic tanks, conservancy tanks and French drains.

* **Industrial effluent**

Discharge into the sewer is prohibited except with the permission of the municipality. Moreover, anyone intending to build premises that will discharge industrial effluent must apply for permission at the same time that he lodges his building plan. Permission may be withdrawn for contravention of any conditions. Standards of effluent may be prescribed, together with methods, systems and technical requirements.

* **Transportation of Sewage by Road**

The permission of the Engineer is required before sewage arriving by road haulage can be discharged into the sewer or treatment plant.

* **Intermediaries and Unauthorised Water Services**

The municipality may require the registration of intermediaries, and it can lay down standards and conditions for quality, service standards and charging regimes. Unauthorised access to services is prohibited, and no-one other than the municipality may manage, operate or maintain water services infrastructure.

* **Offences**


Offences carry a maximum imprisonment of six months or a corresponding fine or community service. Continuing offences carry a fine of R50 per day or additional imprisonment.

ANNEXURE A: PROJECT PROPOSAL

This suggested pro forma is intended as a simple and effective format for presenting to a committee a proposal to make a by-law. It is intended to capture the main policy and resource issues described in the preceding pages.

<p>Proposal: (What?) Set out the exact nature of the proposal that you are asking the Committee to decide, for example, “It is proposed that the Municipal Council should make by-laws limiting the playing of music, whether by musical instrument or electronic means except during the hours of daylight in all public parks, and to stipulate penalties for breach of the by-laws”.</p>
<p>Justification: (Why?) Set out the reasons for the proposed action for example, “All the Municipal parks are located in high density residential areas. During the past year they have become increasingly the venue for parties lasting until the early hours of the morning as a consequence of which both the Council and Councillors have been inundated with complaints from residents and threats to withhold rent and other payments unless action is taken”.</p>
<p>Policy: (What?) Set out the existing council policy on the issue. If there is none, or if it is not clear, the matter should be referred to the committee before taking further action. For example, “At its meeting held on 21 April 2004, the Council determined that there was an ongoing and increasing nuisance that justified the residents’ complaints, that must be brought under control, and instructed the Municipal Manager to submit proposals to this committee for the suppression of the nuisances”.</p>
<p>Action: (How?) Set out the proposed solutions to the problem for example, “The Provincial Government has published model Public Parks By-laws that contain all the clauses necessary to achieve the desired effect. The Municipal Manager recommends that these be adopted with the addition of administrative penalties enabling the Parks Superintendent to serve infringement notices directly on offenders”.</p>
<p>Procedure: (How?) Set out the procedure to be followed to achieve the objective “Copies of the draft by-laws will be circulated to all Councillors, placed on public deposit, advertised for public comment, and, on expiry of the notice period, submitted to the Council for adoption. The resolution to adopt must be passed by a majority of the whole Council”.</p>
<p>Promulgation: (When?) Set out the timescale for the by-law to come into effect for example, “After translation in accordance with the Council’s language policy, the by-law will be sent for publication in the Gazette and will therefore come into effect immediately thereafter”.</p>
<p>Legal Implications: Set out all the legal implications of adopting the by-laws, particularly if the decision has been taken to have an administrative penalty system or a licensing system in the case of waste management. Mention any amendments made the model by-laws and provide reasons for the amendment.</p>
<p>Resource Implications: Set out not only the estimates for making but also enforcing - for example:</p>

Code	Item	2004/5	2005/6
	Salaries and wages		
	Legal fees		
	Advertising costs		
	Translation fees		
	Transport		
	Court costs		
	Staff training		
	Printing		
	Enforcement		
	Vehicles		
	Other		





Extracts from the legislation (excluding provincial legislation) that sets out what must be addressed in by-laws is attached as Annexure A.

The Policy Framework: The Strategic Framework for Water Services

Cabinet has approved and adopted a Strategic Framework for Water Services (“SFWS”) in September 2003. The SFWS does not refer to specific matters to be included in by-laws in addition to those already provided for in the Water Services Act. It however does contain a number of policy statements in respect of tariffs and credit control and debt collection. These policy statements will be given effect to in amendments to the Water Services Act.

It is thus important to take note of these policy statements as they represent National government policy and will be given specific legislative content.



An extract from the relevant sections of the SFWS is attached as Annexure B.

Why Make Separate Water Services and Credit Control and Debt Collection By-Laws for Water Services?

The Water Services Act does not require that all matters, which have to be dealt with in by-laws by municipalities, must be included in the same by-laws. Matters such as tariffs and credit control and debt collection are required by the Act to be dealt with in by-laws but it may be included in by-laws other than those relating to these topics, as long as they are dealt with in those other by-laws.

It follows that the Water Services By-laws of the municipality may include matters such as those relating to tariffs, credit control and debt collection (including matters such as subsidised services and indigent consumers). But, if they do, the extent to which they address those matters must be informed by –

- * the *types of accounts* rendered by the municipality and its water services providers;
- * the structure of the water services function within the municipality; and
- * the risk of their creating conflicting by-laws by their being so included.

Where a single account for all municipal services provided by a municipality is rendered to customers, it is advisable to include the legislative requirements for water services that relate to credit control and debt collection in the municipality’s credit control and debt collection by-laws, which relate to all municipal services. Where separate accounts for water services and other

municipal services are rendered the legislative requirements for water services that relates to credit control and debt collection could be included in the water services by-laws. Where a water services provider is rendering accounts for water services, it would be good practice for the agreement between the municipality and provider to specify which by-laws of the municipality the provider must comply with.

Most municipalities have separate tariff and credit control and debt collection by-laws, which are administered by their Finance Departments. Where tariff setting and credit control and debt collection are controlled by a Department other than the Department primarily responsible for water services, it may be advisable to include tariff and credit control and debt collection matters relating to water services in the by-laws administered by the Department responsible for the credit control and debt collection function.

To Include tariff and credit control and debt collection matters into the water services by-laws of the municipality, where the latter has general credit control and debt collection by-laws, may result in duplication or conflict between the by-laws, thus complicating effective and efficient tariff setting and credit control and debt collection.

ANNEXURE B FROM THE DWAF BY-LAWS PACK: Extracts from the Strategic Framework for Water Services, 2003

Tariffs

Retail tariff policies must be based on the following tariff principles:¹

- * Tariffs should be applied equitably and fairly.
- * The amount individual users pay for services generally should be in proportion to their use of that service.
- * Water and sanitation tariffs for domestic use should be pro-poor in their orientation, that is, they should seek to ensure that a minimum *basic* level of water supply and sanitation service is affordable for all households, especially vulnerable groups such households headed by women or children or affected by HIV/Aids.
- * Tariffs must reflect all of the costs reasonably associated with rendering the service.

¹ These tariff principles are consistent with those set out in the Municipal Systems Act and the Water Services Act.

- * Tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned.
- * The economical, efficient and effective use of resources, the reduction of leaks and unaccounted-for water, the recycling of water, and other appropriate environmental objectives must be encouraged.
- * A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.
- * All forms of subsidies should be transparent and fully disclosed.

Retail water and sanitation tariff policies – water services authorities. Retail water and sanitation tariff policies must be developed by water services authorities. These must conform to the following requirements.

Revenue requirements. When determining the revenue requirements for water services, a water services institution must take into account at least the following: realistic operating and maintenance costs (including any relevant and applicable overheads, charges and levies), interest costs, depreciation charges, a reasonable rate of return on assets (where appropriate), and provisions for bad debt and other future costs (including infrastructure expansion). In addition, a water services institution must determine the cash needs to maintain a financially viable and sustainable operation over time, taking into account any available and secure operating subsidies. A water services institution may take into account a contribution to the general municipal rates fund (where appropriate).

Costs. All water services authorities must plan to provide all households with at least a basic level of water supply and sanitation service). In the first instance, national government subsidies in the form of the municipal infrastructure grant and the local government equitable share should be used to assist in the provision of these services). Taking these sources of subsidy into account, any additional costs associated with the provision of basic water supply and sanitation services (including the implementation of free basic water supply and sanitation policies) must be included in the revenue requirements outlined above. The costs of rehabilitation and system expansion must be taken into account. Water losses and unaccounted-for water must be managed down to acceptable levels. The allocation of funds for maintenance must be sufficient to maintain the water services infrastructure and related systems adequately.

Contributions. The contribution from water services to the rates and general fund should be limited to less than ten percent of gross revenue from the sale of water. Income from sanitation

charges should not be used to subsidise other services.

Consumer categories. Retail water and wastewater tariffs shall distinguish between at least three categories of consumers: domestic, industrial and other.

Levels of service. Retail water and wastewater tariffs shall distinguish between significantly different levels and standards of service provided and between at least the following: a communal water service (water services provided to more than one household); where a controlled (limited or restricted) volume of water is supplied to a household; where an uncontrolled volume of water is supplied to a household (that is, the volume of water supply is not limited for all practical purposes); where a household is connected to a sewer and where a household is not connected to a sewer.

Cross-subsidies. Tariffs shall support the viability and sustainability of water supply services to the poor through cross-subsidies (where feasible) and discourage wasteful or inefficient use.

Metering. All connections providing an uncontrolled volume of water supply shall be metered and tariffs shall be applied in proportion to water use.

Marginal domestic tariff above the basic amount. Where domestic consumers consume just more than a defined basic amount, water services authorities shall not be entitled to recoup the full financial cost of providing the basic amount in the marginal tariff for the next small increment consumed. In other words, if the free basic water allocation is 6 kl per month, then a water services authority may not require a consumer who uses 7 kl per month to pay for the full financial costs for the supply of 7 kl per month.

Domestic water tariffs for water consumed significantly in excess of a defined basic amount shall at least recover the full direct financial costs of the service provided in excess of the defined basic amount, and may take into account any external economic costs and benefits (externalities) associated with the provision of the service including, where appropriate, the *average incremental costs* that would be incurred to increase the capacity of the water supply and wastewater infrastructure to meet an incremental growth in demand.

Industry and non-domestic. Water and sanitation tariffs for industrial and other categories of non-domestic consumer shall at least recover the full direct financial costs of the service. Tariffs may take into account any external economic costs and benefits (externalities) associated with the provision of the service including, where appropriate, the average incremental costs that would be incurred to increase the capacity of the water supply and wastewater infrastructure to meet an incremental growth in demand.

Tariff increases. Water services authorities must strive to keep tariff increases to below the rate of inflation. Tariff increases must be based on the efficient use of resources and the actual input cost increases incurred (for example, chemical and energy costs). Where there have been no recent expansions in infrastructure, then it should be possible to keep tariff increases to well below the rate of inflation due to the fact that fixed depreciation and financing costs are likely to make up a significant share of total costs. Conversely, when system expansion has occurred and this has resulted in increased depreciation and financing costs, then tariff increases in excess of inflation may be necessary in order to maintain the financial viability of the service. Where current tariffs do not adequately cater for system rehabilitation and maintenance, then tariffs will need to be increased appropriately.

Subsidies. Where subsidies for water services are applied, these shall be prioritised for the provision of basic water supply and sanitation services in terms of the free basic water and free basic sanitation policies.

Special tariffs. Water services authorities may implement special tariffs during periods of water restrictions to reduce water use to within sustainable levels.

Credit Control

Effective credit control is a critically important component of providing a reliable and effective service to all communities and consumers. Failure to consistently apply fair credit control policies can result in consumers and whole communities going without water.

Water services authorities have the responsibility to develop a credit control policy. This policy must provide for credit control procedures which are fair and equitable, provide for warnings and adequate notice, provide for consumer representations, allow alternative payment arrangements, and set out a fair procedure that will be applied in the event of non-payment. Where a consumer continues to fail to pay for services provided after the application of such procedures and a fair warning, a municipality must be able to take actions that will limit its financial loss and promote good payment habits.

When a municipality formulates its credit control policy it must take into account the impact of credit control mechanisms (and the lack thereof) on the community, the existing service delivery context, the need for financial viability to support the sustainable provision of services and the effectiveness of the proposed credit control mechanisms.

The following principles must be incorporated in the credit control policy:

Compassion. Local government must develop and implement a credit control policy which is compassionate, especially towards poor and vulnerable households. This means that priority should be given to providing a reliable, secure, sustainable and affordable water supply and sanitation service to all households including the poor. Policies and procedures should seek to avoid the accumulation of bad debt and the high costs associated with restrictions or disconnections and reconnections.

Communication. Consumers must be informed with respect to water consumption, credit control, debt collection and disconnection policies, credit control procedures and consumer responsibilities. Communication must be clear and accessible and, wherever practical, in the home language of the consumer.

Fair process. All restrictions and disconnections must be done in terms of a fair and transparent process and as a result of the failure of a consumer (or consumers) to fulfil their obligations in terms of a consumer contract.

Warning. Domestic consumers must receive a warning prior to any credit control action.

Restricting domestic connections. In the first instance, and after following due process (including a warning), domestic water supply connections must be restricted and not disconnected, ensuring that at least a basic supply of water is available. (Only where the costs associated with restricting water services in this manner would have a substantial and significant impact on the sustainable provision of water services to the broader community, may water services be disconnected after proper procedures have been followed.)

Tampering. Disconnection (after a warning) may be appropriate where services equipment has been tampered with, since tampering may jeopardise the health of consumers and the proper functioning of the system.

Interference. Where a domestic consumer's access to water services has been restricted (in terms of an appropriate policy and procedure) and that consumer interferes with the restriction in a manner that renders the limitation less effective, the municipality may disconnect such a consumer (after a warning) until such time as the consumer has made an arrangement for settlement of the outstanding amount and has paid any fine that the water services provider may impose.

Disconnecting water supplies. A water services provider has the right to disconnect water services of domestic water consumers only where all of the above provisions have been followed. A water services provider has the right to disconnect water services of non-domestic water consumers whenever a non-domestic consumer has breached its contract with the water services

provider, provided a fair process is followed.

In addition to the above, various alternative or complementary credit control mechanisms could be considered where appropriate.

Responsibility for implementing credit control: Water services providers have the responsibility of implementing credit control (in terms of the credit control policy established by the water services authority) where they assume the financial risk and have the responsibility for collecting user charges. Where this is not the case, then the water services authority has the responsibility to implement credit control itself. In order to protect the financial viability of a water services provider, a water services authority must give the water services provider the right to restrict and disconnect water services connections subject to the credit control policy established by the water services authority and developed in terms of the policies set out in this White Paper.

Balancing rights and responsibilities: The limitation and disconnection of water services is a sensitive issue that requires the balancing of rights and obligations. Consumers have a right to a basic water supply and sanitation service. However, this right also embodies the obligation to exercise that right reasonably and in accordance with general limitations placed on that right. At the same time, water services authorities must ensure sustainable provision of water services and safeguard the financial viability of the water services provider. These rights and responsibilities must be clearly communicated to consumers.