**8.1 GENERIC BY-LAWS**

The purpose of municipal by-laws is to regulate matters on which municipalities have a right to administer. These matters are outlined in Part B of Schedules 4 and 5 of the Constitution[[1]](#footnote-1).

**LEGISLATIVE MANDATE**

Section 151(2) of the Constitution[[2]](#footnote-2) provides that the executive and legislative authority of a municipality is vested in its municipal council. Section 156(2) of the Constitution[[3]](#footnote-3) provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

Section 162 of the Constitution[[4]](#footnote-4) provides that a municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.

Section 160 of the Constitution[[5]](#footnote-5) provides that:-

(3)*(a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.*

*(b) All questions concerning matters mentioned in subsection (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.*

*(c) All other questions before a Municipal Council are decided by a majority of the votes cast.*

(4) 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.*

Section 12 of the Municipal Systems Act[[6]](#footnote-6) provides that:-

(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—

1. in accordance with the rules and orders of the council; and
2. with a supporting vote of a majority of its members.

(3) No by-law may be passed by a municipal council unless—

1. all the members of the council have been given reasonable notice; and
2. 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.

(4) Subsections (1) to (3) also apply when a municipal council incorporates by

reference, as by-laws, provisions of—

1. legislation passed by another legislative organ of state; or
2. standard draft by-laws made in terms of section 14 (by the MEC for Cooperative Governance and Traditional Affairs).

Section 13 of the Municipal Systems Act[[7]](#footnote-7) provides that:-

A by-law passed by a municipal council—

1. *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*
2. *takes effect when published or on a future date determined in or in terms of the by-law.*

Section 14(2)(a) of the Municipal Systems Act[[8]](#footnote-8) provides that an MEC for local government on request by organised local government representing local government in the Province, or after consulting the Minister and organised local government, may by Notice in the *provincial gazette*—

1. make standard draft by-laws concerning any matter for which municipal councils in the province may make by-laws; and
2. amend any standard draft by-laws made in terms of sub-paragraph (i).

**APPLICATION**

In line with her supportive mandate as outlined above, the MEC for CoGTA has a prerogative to prepare Standard Draft By-laws. If a municipal intends to adopt a Standard Draft By-law published by the MEC, the processes outlined in sections 12 and 13 of the Municipal Systems Act[[9]](#footnote-9) must adhered to.

The following Standard Draft by-laws are included herein:

* + 1. Beaches By-law
    2. Cemetery, Crematoria and Undertakers
    3. Child Care Facilities By-law
    4. Disaster Management By-law
    5. Electricity Supply By-law
    6. Fire Fighting By-law
    7. Liquor Trading By-law
    8. Municipal Premises and Facilities y-law
    9. Municipal Property Rates By-law
    10. Nuisance and Behaviour in Public Places By-law
    11. Outdoor Advertising By-law
    12. Pound By-law
    13. Property Encroachment By-law
    14. Public Transport By-law
    15. Street Trading By-law
    16. Waste Removal By-law
    17. Water Supply by-law

1. Constitution of the Republic of South Africa, 1996 [↑](#footnote-ref-1)
2. Constitution supra [↑](#footnote-ref-2)
3. Constitution supra [↑](#footnote-ref-3)
4. Constitution supra [↑](#footnote-ref-4)
5. Constitution supra [↑](#footnote-ref-5)
6. Local Government: Municipal Systems Act No. 32 of 2000 [↑](#footnote-ref-6)
7. Municipal Systems Act supra [↑](#footnote-ref-7)
8. Municipal Systems Act supra [↑](#footnote-ref-8)
9. Municipal Systems Act supra [↑](#footnote-ref-9)