



### What can you make by-laws about?

- 1 BYLAWS ... SUBJECT MATTER ..... 1
- 2 SOURCES OF LEGISLATIVE COMPETENCY ..... 3
  - 2.1 By virtue of the Constitution ..... 3
  - 2.2 By assignment ..... 9
  - 2.3 By new legislation ..... 9
    - 2.3.1 By agreement ..... 10
- 3 DISTRICT AND LOCAL MUNICIPALITIES ..... 10
- 4 IN CONCLUSION ..... 12

## 1 BYLAWS ... SUBJECT MATTER

We have explored *how* to make by-laws, but an important question is:

### What can you make by-laws about?



#### Think it through!

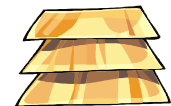
Local government cannot make by-laws on *any* matter. Some matters "belong" to national or provincial government, while others "belong" to local government.



#### X-ample!

A municipality cannot make a by-law dealing with income tax. This is clearly a job for national government and, in particular, the South African Revenue Services.

So what *can* you make by-laws about?



The Golden Rule is that your council can generally make a by-law on any matter on which it has executive competence.



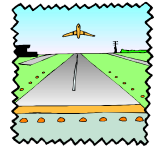
#### Think it through!

Executive competence is the power of a municipality to take action about something. Each sphere of government (national, provincial or local









## BY-LAWS

government) derives its power to act – to *do* things – from legislation, particularly the Constitution. For example, the Constitution provides that "municipal airports" are a municipal competence. This means that a municipality may *do* things about "municipal airports".



### **X-ample!**

Carrying on with our example of "municipal airports" as a municipal competency, a municipality is entitled, by virtue of this competency, to-

-  establish a municipal airport;
-  liaise with the civil aviation authorities;
-  employ staff to run the airport;
-  hire or purchase equipment;
-  advertise; and
-  adopt by-laws to regulate the operation of the airport etc.

The Constitution provides that a municipal is empowered to make by-laws about any matter in respect of which it has executive competence. So to answer our question,

### **What can you make by-laws about?**

we need to first find out more about local government's executive competency. Basically, a municipality can make by-laws on any matter in respect of which it has executive competency.

In answering our question, we need to find out –

- what executive competencies are granted to local government by the Constitution; and



- how these competencies are split between district and local governments (ie. the power to make by-laws depends on whether your council represents a district or local municipality).



Read on to find out more about what the executive competencies provided to local government by the Constitution, as well as how these competencies are split between district and local governments ...

## 2 SOURCES OF LEGISLATIVE COMPETENCY

A municipality has legislative competency (ie. can make by-laws) on any matter in respect of which it has executive competency. A municipality acquires an executive competency in one of two ways –

1. By virtue of the Constitution; or
2. By assignment.

### 2.1 BY VIRTUE OF THE CONSTITUTION

The [Constitution](#) provides in [section 156\(1\)\(a\)](#) that local government has executive authority to deal with the matters listed in –

- [Part B of Schedule 4](#); and
- [Part B of Schedule 5](#).

These Schedules deal with areas of concurrent national and provincial competence (Schedule 4) and exclusive provincial competence (Schedule 5). In other words, the main purpose of the Schedules is to draw the line between national and provincial government. However, the Schedules are split into 2 parts (Part A and Part B) and Part B is relevant for determining municipal executive competencies.

Let's take a look at the executive competencies assigned to local government in terms of Part B of Schedules 4 and 5. The table below lists the competencies together with any applicable restrictions placed on the exercise of these competencies ...



## BY-LAWS

	Competency	Restrictions
<b>Part B of Schedule 4</b>	Air pollution	
	Building regulations	
	Child care facilities	
	Electricity and gas reticulation	
	Firefighting services	
	Local tourism	
	Municipal airports	
	Municipal planning	
	Municipal health services	
	Municipal public transport	
	Municipal public works	Only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law.
	Pontoons, ferries, jetties, piers and harbours.	Excluding the regulation of international and national shipping and matters related thereto
	Stormwater management systems in built-up areas	
	Trading regulations	
	Water and sanitation services	Limited to portable water supply systems and domestic waste-water and sewage disposal systems
<b>Part B of Schedule 5</b>	Beaches and amusement facilities	
	Billboards and the display of advertisements in public places	
	Cemetaries, funeral parlours and crematoria	
	Cleansing	
	Control of public nuisances	
	Control of undertakings that	



## BY-LAWS

	sell liquor to the public	
	Facilities for the accommodation, care and burial of animals	
	Fencing and fences	
	Licensing of dogs	
	Licensing and control of undertakings that sell food to the public	
	Local amenities	
	Local sport facilities	
	Markets	
	Municipal abattoirs	
	Municipal parks and recreation	
	Municipal roads	
	Noise pollution	
	Pounds	
	Public places	
	Refuse removal, refuse dumps and solid waste disposal	
	Street trading	
	Street lighting	
	Traffic and parking	

The answer to our question,

### What can you make by-laws about?

is that municipalities may make bylaws relating to any of the executive competencies listed in the schedule above, subject to any applicable restrictions.



Let's take a closer look at these executive competencies before we find out how powers are split between district and local councils. The table below defines each competency and provides some examples of subjects which may fall within that competency (remember to refer to the table above to determine if any restrictions apply to the competency in question) ...



## BY-LAWS

Competency	Definition	Examples
Air pollution	Regulating various types of air pollutants	Industrial air pollution; the making of fires etc
Building regulations	Regulating the construction of buildings	Building plans; building inspections; demolition of unsafe buildings etc
Child care facilities	Regulating crèches and day care facilities	Safety; inspections; parking arrangements; maximum numbers etc
Electricity and gas reticulation	Regulating the provision of electricity or gas to households	Connection arrangements and fees; tariffs; disconnection etc
Firefighting services	Regulating the establishment and operation of a municipal fire station	Fire safety rules; fire inspections; call-outs; tariffs etc
Local tourism	Regulating local tourism	Establishing tourism associations; tourist attractions; admission fees etc
Municipal airports	Regulating and establishing a municipal airport	Opening hours; operations; safety; access; tariffs etc
Municipal planning	Regulating local integrated development planning	Land use planning; local economic development planning etc
Municipal health services	Regulating the provision of municipal health services.	Primary health care; environmental health (inspections; standards etc)
Municipal public transport	Regulating the provision of a municipal transport service	Municipal buses; taxi ranks; stopping places; tariffs etc
Municipal public works	Regulating physical infrastructure needed to carry out all the municipality's duties	Establishment of, and access to, municipal premises
Pontoons, ferries, jetties, piers and harbours.	Regulating pontoons (a flat boat used to form a bridge over a river), ferries (a boat used for carrying people across water), jetties (a type of pier), piers (a structure	Access to harbours and piers; safety; tariffs etc



## BY-LAWS

	projecting into water for landing purposes) and harbours (a port in which ships take shelter).	
Stormwater management systems in built-up areas	Regulating the provision and maintenance of stormwater drainage	Use; acceptable substances which may be entered into the drainage system etc
Trading regulations	Regulating formal and informal trading	Street trading
Water and sanitation services	Regulating the provision and maintenance of water supply and sewage removal	Water purification and reticulation; sewage removal and treatment; tariffs etc
Beaches and amusement facilities	Regulating the use of beaches	Safety; hours etc
Billboards and the display of advertisements in public places	Regulating the display of advertising billboards	Signs on private and public property; dimensions; obstruction of road signs etc
Cemeteries, funeral parlours and crematoria	Regulating the operation of cemeteries, funeral parlours and crematoria	Safety; environmental health etc
Cleansing	Regulating the cleaning of public streets and places	Littering; the provision of bins etc
Control of public nuisances	Regulating public nuisances	Barking dogs; noisy parties etc
Control of undertakings that sell liquor to the public	Regulating the operation of pubs, taverns, bottle stores etc	Opening hours; health and safety; inspections etc
Facilities for the accommodation, care and burial of animals	Regulating the operation of animal parlours, kennels and pet cemeteries	Inspections; health and safety etc
Fencing and fences	Regulating the erection of fences and gates	Permissions; dimensions; types of materials etc
Licensing of dogs	Regulating the licensing of dogs	Licence fees; seizure and destruction
Licensing and control of undertakings that sell food to the public	Regulating the operation of restaurants, bed & breakfasts etc	Opening hours; health and safety etc





## BY-LAWS

Local amenities	Regulating access to public swimming pools; parks etc	Opening hours; prohibited activities; tariffs etc
Local sport facilities	Regulating the operation of sports grounds, stadiums etc	Opening hours; prohibited activities; tariffs for hire etc
Markets	Regulating the operation of municipal markets	Market permits; opening hours; tariffs etc
Municipal abattoirs	Regulating the operation of municipal abattoirs	Opening hours; health and safety; tariffs etc
Municipal parks and recreation	Regulating the operation of municipal parks	Opening hours; prohibited activities; entry fees etc
Municipal roads	Regulating the establishment and use of public roads	Construction; maintenance etc
Noise pollution	Regulating noisy activities	Industrial noise; noisy parties; barking dogs etc
Pounds	Regulating the operation of pounds	Impounding animals; conditions of release; tariffs etc
Public places	Regulating the operation of public places, such as libraries and public halls	Entry; conditions of use; prohibited activities; tariffs etc
Refuse removal, refuse dumps and solid waste disposal	Regulating the operation of refuse removal services and municipal dump sites	Entry; prohibited uses; tariffs etc
Street trading	Regulating informal trading	Location; prohibited activities; hire of stands etc
Street lighting	Regulating the provision of street lighting	Establishment; maintenance; vandalism etc
Traffic and parking	Regulating traffic control and parking on streets/municipal parking grounds	Offences; road safety; entry to parking grounds; parking on public streets; tariffs etc





## 2.2 By assignment

As mentioned above, municipalities acquire executive competencies, firstly, in terms of the provisions of the Constitution and, secondly, by assignment.

Assignment is a type of delegation in which the assignor (in this case, provincial or national government) makes a municipality responsible for a function which is not normally a municipal competency.

[Section 156\(4\)](#) of the [Constitution](#) provides that national and provincial government must assign any functions listed in Part A of Schedules 4 or 5 to a municipality if –

- the municipality can more effectively undertake the function; and
- the municipality has the capacity to undertake the function.

The assignment must be negotiated and must be effected by agreement.

Municipal legislation provides for the following types of assignment of powers and functions:

## 2.3 BY NEW LEGISLATION

[Section 9](#) and [Section 10](#) of the [Local Government: Municipal Systems Act](#) provides that national government (a Cabinet member or Deputy Minister) or provincial government (a MEC) may initiate the assignment of powers or duties to local government by way of national or provincial legislation.

National or provincial government are required to comply with the following procedures before enacting legislation which assigns powers or duties to municipalities:

Step	Comment
#1	Consult with – <ul style="list-style-type: none"> <li>✚ the Minister of Provincial and Local Government Affairs, the national Minister of Finance and SALGA (in respect of national legislation); and</li> <li>✚ the MECs responsible for local government and finance and organized local government representing municipalities within the province (in respect of provincial</li> </ul>



## BY-LAWS

	legislation).
#2	Where the draft legislation has financial implications, obtain and consider the recommendations of the Financial and Fiscal Commission.
#3	Publish the draft legislation for comment, inviting representations from organized local government and other interested persons.

### 2.3.1 By agreement

[Section 10](#) of the [Local Government: Municipal Systems Act](#) provides that national or provincial government may assign a power or duty to local government by agreement, but only after consulting with the Minister of Provincial and Local Government Affairs.

Whether a power or duty is assigned by legislation or by agreement, the national/provincial government concerned is required to ensure that sufficient funding is available, and that any required capacity building is provided, if –

- the assignment imposes a duty on the municipality concerned;
- the duty falls outside normal local government duties (ie. the duties set out in [Part B of Schedule 4](#) and [Part B of Schedule 5](#)); and
- the performance of the duty has financial implications for the municipality concerned.

## 3 DISTRICT AND LOCAL MUNICIPALITIES

District and local municipalities share the same areas of jurisdiction. So how do you split the powers assigned to local government by the Constitution between district and local councils operating in the same areas?



[Section 84](#) of the [Local Government: Municipal Structures Act](#) provides that –

- a district municipality has the powers set out in the Table: District Municipal Powers (below); and
- a local municipality has all the powers granted to local government by the Constitution excluding the powers set out in the table.



**Table: District Municipal Powers**

Power	Comment
Integrated development planning	For the district municipality as a whole, including a framework for integrated development plans of the local municipalities within the district
Potable water supply systems	
Bulk supply of electricity	Including the transmission, distribution and, where applicable, the generation of electricity
Domestic waste-water and sewage disposal systems	
Solid waste disposal sites	<p>In so far as this relates to –</p> <ul style="list-style-type: none"> <li>• the determination of a waste disposal strategy;</li> <li>• the regulation of waste disposal; and</li> <li>• the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.</li> </ul>
Municipal roads which form an integral part of a road transportation system for the district as a whole	
Regulation of passenger transport services	
Municipal airports serving the district as a whole	
Municipal health services	
Fire fighting services serving the district as a whole, which includes –	



## BY-LAWS

<ul style="list-style-type: none"> <li>• planning, co-ordination and regulation of fire services;</li> <li>• specialized fire fighting services, such as mountain, veld and chemical fire services;</li> <li>• co-ordination of the standardization of infrastructure, vehicles, equipment and procedures; and</li> <li>• training of fire officers.</li> </ul>	
<p>The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in a district</p>	
<p>The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of the municipalities in the district</p>	
<p>Promotion of local tourism for the area of the district municipality</p>	
<p>Municipal public works</p>	<p>Municipal public works required for carrying out any of the above functions or any function assigned to the district municipality</p>
<p>Receipt, allocation and if applicable the distribution of grants made to the district municipality</p>	
<p>Imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality</p>	

## 4 IN CONCLUSION

You can make by-laws on any subject which relates to a power or duty in respect of which your municipality has executive competence. Executive competence comes from either –

- ✘ the enabling provisions of the Constitution; or



## BY-LAWS

---

- ✘ the assignment of powers or duties by national/provincial government to a municipality by agreement.

If your municipality is empowered to deal with a matter, then it will generally have the authority to make by-laws on that matter!



YOUR'E A STAR

YOU HAVE ABSOLUTELY COMPLETED THE

“WHAT CAN YOU MAKE BYLAWS ABOUT?”

MODULE