



**cooperative governance**

Department:  
Cooperative Governance  
REPUBLIC OF SOUTH AFRICA

**LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO.6 OF 2004  
CIRCULAR NO. 11 (ISSUED ON 16 FEBRUARY 2021)**

**REPLACES CIRCULAR NO.6 ISSUED ON 10 APRIL 2014**

**TO ALL:**

**MUNICIPAL MANAGERS**

**MUNICIPAL CHIEF FINANCIAL OFFICERS**

**CIRCULAR ADVISING MUNICIPALITIES ON COMPLIANCE WITH SECTIONS 6 AND  
14 OF THE ACT**

This Circular replaces Circular No.6 issued on 10 April 2014 pertaining to compliance with sections 6 and 14 of the Municipal Property Rates Act (“the Act”).

The purpose of this Circular is to provide municipalities with practical advice in respect of how to comply with these two provisions of the Act that have emerged as matters with which there has been persistent non-compliance over time.

This Circular explains what, in terms of compliance as contemplated in those provisions is expected, what in practice is done incorrectly by municipalities in attempting to comply with those provisions, as well as what the correct administrative actions that will result in compliance are in that regard.

## 1. **Compliance with Section 6 of the Act read with Section 13 of the Municipal Systems Act: Adoption and Publication of By-Laws to Give Effect to the Rates Policy**

It has been observed that municipal practice in terms of the contents of property rates by-laws, the adoption thereof and the publication of the property rates by-laws is quite varied across municipalities. There is not a consistent approach in the way in which municipalities approach compliance with section 6 of the Act. The approach to what is contained in the property rates by-law is also mixed, with some municipalities opting for brief property rates by-laws that are no longer than three (3) pages, while some municipalities' property rates by-laws are lengthy. It is observed that where property rates by-laws are lengthy, the property rates policy of the municipality is quoted at length and in certain instances the by-law is a replica of the property rates policy.

### ***What does “adoption” of a property rates by-law mean?***

The Act in section 6 stipulates that by-laws must be adopted to give effect to the implementation of the municipality's rates policy. By definition, a by-law is a piece of legislation passed by the Council of a municipality which is binding on all persons to whom it applies. Therefore, the Council of the municipality must adopt the property rates by-law. A by-law that is not adopted by the Council of the municipality cannot be deemed to be a valid legislation of the municipality, and it can therefore not be deemed to be binding on the property owners of the municipality who are liable for property rates. This is because the property rates by-law gives effect to the implementation of the municipality's property rates policy. In other words, the property rates by-law legalises the property rates policy and makes it enforceable on those to whom it applies. Adoption means that **the municipality's administration must present the property rates by-law to a meeting of the Council and the Council must adopt (or approve) the said by-law.**

### ***Publication of the property rates by-law in the Provincial Gazette***

The property rates by-law must be published in the *Provincial Gazette*. Section 162(1) of the Constitution of the Republic of South Africa states that “***a municipal by-law may be enforced only after it has been published in the official gazette of the relevant province***”. Further to that, section 13(a) of the Municipal Systems Act, 2000, requires that a by-law **passed** by a municipal council **must be published promptly in the *Provincial Gazette***. To that end, the Act cross-references to sections 12 and 13 of the Municipal Systems Act. The Act must not be read and interpreted in isolation; it must be read with the Constitution and the Municipal Systems Act as the provisions of the three laws are interrelated.

It must always be borne in mind that the Constitution is the supreme law of the Republic, and in that regard its provisions take precedence over the provisions of any other law (including a municipal by-law). Therefore, in order to protect a municipality’s property rates budget and income, the by-law that is adopted and passed by the municipality must be published in the *Provincial Gazette*.

### ***What should be contained in the property rates by-law?***

In practice, the contents of property rates by-laws vary from municipality to municipality. Despite the variation, a twin approach has been established in municipal practice; one in which the by-law is largely a mirror image of the property rates policy, resulting in a bulky property rates by-law. The other established approach is one in which the by-law is concise, only referring to salient aspects of the property rates policy.

In terms of section 6 of the Act, the property rates by-law may differentiate between different categories of properties and different categories of owners of properties liable for the payment of rates.

Because the by-law gives effect to the property rates policy, it is important that this fact be stated upfront in the property rates by-law. The relevant section of the Act in terms of which the property rates by-law is issued must also be stated in the by-law. It is important that the property rates policy, to which the by-law gives effect, be incorporated in the by-law by reference. Incorporation by reference means including a second document (in this case, the rates policy) in the main document (the by-law) by mentioning the property rates policy. The document that is being incorporated by reference (the rates policy) should be sufficiently described so that it is easily identifiable and accessible to the persons to whom it applies.

This can be done by stating in the by-law that the rates policy is incorporated by reference in the by-law. The following is a suggested wording in this regard:

*“The municipality’s rates policy is hereby incorporated by reference in this by-law. All amendments made to the rates policy as the Council may approve from time to time, shall be deemed to be likewise incorporated in this by-law.”*

To ensure that the rates policy is sufficiently described, it is recommended that the rates policy be defined in the by-law. Below is a suggested definition for the rates policy that should be inserted in the definitions section of the by-law:

**“Rates policy”** means the xxx (municipality’s name) property rates policy adopted by the Council [by Resolution No. xxx] in terms of section 3(1) of the Local Government: Municipal Property Rates Act, 2004.

A copy of the property rates by-law as published in the *Provincial Gazette* (together with the rates policy as amended from time to time) must also be placed on the municipality’s website so that it is accessible to those to whom it applies. Hard copies must also be available at the municipality’s head and satellite offices and libraries.

*\*A specimen property rates by-law is appended to this Circular for reference purposes.*

## 2. Compliance with Section 14 of the Act: Promulgation of the resolutions levying rates

**As with municipal practice relating to** the adoption and publication of property rates by-laws, municipal practice as far as compliance with section 14 of the Act is varied. A few municipalities do not promulgate the resolution levying rates in the *Provincial Gazette*, while among those that publish it, for some municipalities it does not meet the full requirements of section 14. Some municipalities publish (either in the *Provincial Gazette* or on their website) the cent in the Rand rates that are to be levied for a particular financial year with their budget documents in terms of the Municipal Finance Management Act, 2003. This is not the correct way to publish the resolution levying rates as contemplated in section 14 of the Act. The resolution levying property rates must be published separately in terms of section 14 of the Act.

In terms of section 14(1) of the Act “*a rate is levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members*”. Furthermore, section 14(2) of the Act states that “*a resolution levying rates in a municipality must be annually promulgated, within 60 days of the date of the resolution, by publishing the resolution in the Provincial Gazette*” (amongst other media in terms of section 14(3) of the Act). The provisions contained in the Act are specific to the levying of property rates and they were inserted purposefully, making publication for public record a requirement. The resolution levying rates must be passed by the municipal council every year and it must be published in the *Provincial Gazette* every year. This is because a municipal budget is passed annually and cent amount in the Rand (property) rates which form part of the municipal budget are determined every year.

The correct way to comply with the provisions of section 14 of the Act, in particular section 14(1) and (2) is for the municipal administration to, when submitting all documentation related to the budget of a particular financial year, **include specific documentation that explicitly sets out the proposed cent in the Rand rates to be levied in a particular financial year in respect of each category of property and any relief measures**

**(rebates and reductions) applicable to specific property owners, for example, indigent owners.** Ideally there should be no rebates of a general application to a category of property because the cent in the Rand rate for each property category must be the effective cent in the Rand rate. This documentation must be presented to and approved by the Council of the municipality and after approval, be published in the *Provincial Gazette* in terms of section 14(2); the publication must be done promptly so that it is done within the legislated 60 days period. A publication outside the legislated 60 days, unless specifically condoned by the MEC in terms of section 80 of the Act and related Regulations, is non-compliance with the Act.

Section 14(3) of the Act further provides that the resolution levying rates should be conspicuously displayed on the municipality's website and at the municipality's head and satellite offices and libraries. In addition, section 14(3) provides that it must be advertised in the media that the resolution levying rates is available on the municipality's website and the said locations. It is recommended that the same version of the resolution that was published in the *Provincial Gazette* be placed on the municipality's website, immediately after it is published in the *Provincial Gazette*. It is also advisable that the draft resolution levying property rates be placed on the municipality's website during the public participation processes and be replaced with the copy of the promulgated resolution afterwards.

As in the case of non-compliance with section 6 of the Act, in order to protect a municipality's property rates budget and income, the resolution levying rates that is passed by the municipality must be published in the *Provincial Gazette* within the legislated 60 days.

*\*A specimen resolution levying rates is appended to this Circular for reference purposes.*

## CONTACT PERSON

Should municipalities require any further information on matters dealt with in this Circular, request for such information should be directed to the Department of Cooperative Governance for the attention of:

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