

# Implementing the Property Rates Act

## GETTING THE POLICIES, BY-LAWS AND RESOLUTIONS RIGHT

As from 1 July 2009, all municipalities must implement the Municipal Property Rates Act. This requires all municipalities to have a proper rates policy, which is in turn implemented in a by-law and a rates resolution. Among the municipalities that have implemented the Act thus far (only 40% of all municipalities) there is great confusion about the exact content of the policy and by-law. The danger in this uncertainty is that if the policy and by-law do not correctly implement the Act, a municipality's ability to enforce the payment of rates may be fatally flawed.

### Legal requirements: Policy, by-law and resolution

#### *Rates policy*

The Rates Act requires a council to “adopt a policy consistent with this Act on the levying of rates on rateable property in the municipality”. The policy must address a number of issues. It must set out the “criteria to be applied” if the municipality wants to levy different rates for different categories of properties, exempt specific categories of owners or allow rebates or reductions. The policy must further “identify and quantify in terms of cost to the municipality and any benefit to the local community” any exemptions, rebates and reductions. Working out the cost of policy decisions is typical of a policy document because it informs the decisions which are eventually made – such as which properties are to be excluded from rating and which owners should receive a rebate. The policy must also “take into account” a number of social factors, such as the effect of rates on the poor, on public benefit organisations and on public service infrastructure. Furthermore, the object of the policy is “to allow the municipality to promote local, social and economic development”.

#### *Rates by-law*

A municipality “must adopt by-laws to give effect to the implementation of its rates policy”. The message is clear: A firm legal base is required to give effect to the rates policy, which imposes financial obligations on property owners.

#### *Rates resolution*

The final step in the process is the determination of the actual rates in a resolution, which must comply with the requirements of the Constitution. First, the resolution must be adopted by a majority of the members of the council, and second, it must be promulgated by publication in the *Provincial Gazette*.

### The meaning of policies, by-laws and resolutions

#### *Policy*

The underlying purpose of requiring first a policy and then a by-law is to force municipalities to state their policy choices. They must not only state *what* is decided, but, more importantly,

# JOBURG'S NEW RATES POLICY AND TARIFFS

On 20 March 2008, the City of Johannesburg approved proposed tariffs for assessment rates that will be implemented on 1 July 2008. The Rates Policy was approved by Council on 21 February 2008. The key changes in the policy are:

Rates will now be levied on the market value of the property as indicated in the new Valuation Roll. Previously the City valued property on the land value only.

Individual property owners must receive a rates account. This means Sectional Title property owners will, for the first time, get a rates account from us and it will not form part of the levy paid to Bodies Corporate.

The first R150 000 of residential property value is not ratable. This is applicable to all residential properties, including Sectional Title properties. All residential properties, excluding rate-payers on the Municipal Services Subsidy Scheme register will be subject to a minimum charge of R60 per annum.

## NEW RATES TARIFFS

Different rates tariffs will be levied on the different categories of property.

Category	Proposed Tariff (as cents in the rand)
(a) Business, commercial and industrial	0,0120
(b) Residential property	0,004
(c) Residential property with consent use	0,008
(d) Property owned by the State or an organ of state	0,006
(e) Farming land used for bona fide farming	0,004
(f) Agricultural holdings used for agricultural purposes	0,004
(g) Vacant land irrespective of zoning	0,0160
(h) Mining property	0,0120
(i) Education	0,004
(j) Religious	0
(k) Property used for multiple purposes	tariff of highest authorised use

## How to calculate your rates

Get your new valuation from our website [www.joburg.org.za](http://www.joburg.org.za)

Once the City Council then announces the tariffs (including that to be used in the year ahead for assessment rates) residents will be able to work out their new rates payable.

The following formula should be applied for:

### Residential Properties

Municipal Value of Property MINUS R150 000  
MULTIPLIED BY R 0,004 cents = Annual Rates Payable.  
DIVIDE Annual Rates Payable by 12 = Monthly rates payable.

### Sectional Title properties

Municipal Value of Property MINUS R150 000  
MULTIPLIED BY R 0,004 cents = Gross Annual Rates Payable. Gross Annual Rates Payable Minus 20% = Net Annual Rates Payable.  
DIVIDE Net Annual Rates Payable by 12 = Net Monthly rates payable.

Tariffs are open for comment until 30 April 2008. Comments should be submitted to Veli Hlophe at fax 011 358 3140 or email [velih@joburg.org.za](mailto:velih@joburg.org.za) or PO Box 1049, Johannesburg, 2000 for Budget. Comments can also be made on the City's website [www.joburg.org.za](http://www.joburg.org.za)

## For more information

you can visit our website at [www.joburg.org.za](http://www.joburg.org.za) or call us at 011 375 5555

## EXAMPLES OF POSSIBLE MONTHLY RATES ON VARIOUS PROPERTIES:

Property value (in Rand)	Educational Properties	Residential Sectional Title	Residential Properties	Business Properties	Vacant Land
CIR (cents in the rand)	0,0020	0,004 (Minus 20%)	0,0040	0,0120	0,0160
R100 000	R16,67	*	*	R100,00	R133,33
R110 000	R18,33	+	+	R110,00	R146,67
R120 000	R20,00	+	+	R120,00	R160,00
R130 000	R21,67	+	+	R130,00	R173,33
R140 000	R23,33	+	+	R140,00	R186,67
R150 000	R25,00	+	+	R150,00	R200,00
R160 000	R26,67	R2,67*	R3,33*	R160,00	R213,33
R170 000	R28,33	R5,33	R6,67	R170,00	R226,67
R180 000	R30,00	R8,00	R10,00	R180,00	R240,00
R190 000	R31,67	R10,67	R13,33	R190,00	R253,33
R200 000	R33,33	R13,33	R16,67	R200,00	R266,67
R250 000	R41,67	R26,67	R33,33	R250,00	R333,33
R500 000	R83,33	R93,33	R116,67	R500,00	R666,67
R1 000 000	R166,67	R226,67	R283,33	R1 000,00	R1 333,33
R2 000 000	R333,33	R493,33	R616,67	R2 000,00	R2 666,67
R3 000 000	R500,00	R760,00	R950,00	R3 000,00	R4 000,00
R5 000 000	R833,33	R1 293,33	R1 616,67	R5 000,00	R6 666,67
R10 000 000	R1 666,67	R2 626,67	R3 283,33	R10 000,00	R13 333,33

\* The minimum tariff of R60/annum will apply

Previous examples on how to work out your rates, where given based on the information at the time. Please note that the Final Tariffs are now available and that the Rates policy have been finalised and therefore, please note the changes in the method to work out your rates - refer to orange block



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Website of the city of Johannesburg ([www.joburg.org.za](http://www.joburg.org.za))

why. This is the practice in national government. In many cases, the first step towards legislation is the drafting of a White Paper giving the policy positions that will be taken and the reasons for them. The most obvious example is the White Paper on Local Government, which sets out the policy objectives of the Municipal Structures Act and Municipal Systems Act that followed.

The closest parallel to a financial policy is the integrated development plan (IDP), which is an internally binding

document. The Systems Act provides that the IDP binds the municipality in the exercise of its executive authority. However, once the municipality seeks to bind any other person to the provisions of the IDP, it must do so in terms of a by-law. Section 35(1)(c) of the Systems Act is clear about this, stating that the IDP “binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law”.

## By-laws

The Systems Act states in clear language that a by-law is necessary for the implementation and enforcement of a policy, the reason being that if a policy intends to bind a resident and compel him/her to pay an amount of money and, on the strength of that obligation, to sue defaulters in court, it can only be on the basis of a rule of law. Given the importance of a by-law, a more demanding adoption procedure is followed than in the adoption of a policy. The Constitution prescribes the basic requirements in section 160(3)(b). No by-law may be passed by a council unless all the members have been given reasonable notice and the proposed by-law has been published for public comment. In addition, the decision to pass a by-law must be supported by a majority of the council members. A by-law may be enforced only after it has been published in the *Provincial Gazette* and it must be accessible to the public. The Systems Act restates the constitutional requirement of section 160(3)(b).

The adoption of a policy is less demanding. Although a community participation process is prescribed for the rates policy, there is no requirement of a reasonable notice period prior to the tabling of the policy. A key difference is that there is no need for a majority of councillors to approve the policy, but only for a majority of the quorate council, namely at least half of the councillors, to approve it. In addition, the adopted policy does not need to be promulgated in the *Provincial Gazette* before it can be implemented.

## Resolutions

The actual rates and rebates are determined by an annual council resolution. In terms of the *Fedsure* decision, the resolution is a legislative act which is not reviewable in terms of administrative law. Although the resolution is not called a by-law, it constitutes a legislative act and is accordingly adopted in the same manner as a by-law – by the majority of councillors – and promulgated through publication in the *Provincial Gazette*.

## Practice

How have these distinctions between policies, by-laws and resolutions been implemented in practice? The practice actually adopted varies considerably, not only between provinces, but also within provinces.

## Policies

The main difficulty with the policies is that very few of them formulate and justify policy *choices*. They often merely repeat what the legislation says, without making any choices.

- *Writing policy*. Examples of by-laws adopted indicate that some councils grasp the meaning of ‘a policy’. They set out general policy principles that are appropriate for a policy. One rates policy sets out in its financing policy that the trading services must be self-sustainable and operated as cost centres, and that community services and other non-fee paying services will be funded by the rates income and surpluses from the trading services.
- *Rewriting the Property Rates Act*. A feature of most policies is that they merely repeat what the Property Rates Act says. It is almost impossible, in writing a comprehensive law, not to refer to the Act – but the trick lies in how one does this. One policy devotes a section to the “legislative background”, which sets out the legislative framework neatly.
- *Writing law*. The most common problem is that the policies are written as laws, with neat sections and subsections. That in itself is not objectionable, but the difficulty arises when such a policy is used as a substitute for a by-law.

## By-laws

A significant number of municipalities get it right: they translate the policies neatly into well-formulated by-laws, containing the key elements necessary to enforce the rates policy in relation to property owners. These elements are: the categories of properties in respect of which differential rates may be applied, the categories of properties and owners in terms of which exemptions, reductions, and rebates will be granted, and the enforcement mechanisms. There are, however, a significant number of municipalities with policies that are, in our view, flawed.

## The ‘cart before the horse’ by-law

In a number of municipalities, the order of instruments is wrong: the by-law merely authorises the adoption of a policy – it does not implement it. One metropolitan municipality’s by-law reads:

- (1) The Municipality shall adopt and implement a rates policy consistent with the Property Rates Act on the levying of rates on rateable property in the municipality.
- (2) The Municipality shall not be entitled to levy rates other than in terms of a valid rates Policy.

The by-law prescribes further that the content of the policy must comply with sections 3, 4 and 5 of the Rates Act. The policy is to be enforced through the municipality’s customer

care, credit control and debt collection by-law and policy “and any further enforcement mechanisms stipulated in the City’s rates policy”.

The difficulties with this approach are the following: First, the by-law does not implement the policy, as there is no policy yet. Consequently, the policy adopted in terms of the by-law is never given the force of law. A by-law cannot prospectively implement a policy whose drafting is not yet certain. Second, there can be no enforcement mechanisms in terms of policies alone.

The one-liner by-law: Incorporation by reference

Equally defective is a by-law that merely proclaims that property rates will be implemented in terms of the property rates policy. One local municipality’s by-law, for example, does not determine categories but leaves that to the rates policy. The by-law reads: “The municipality levies different rates for different categories of rateable property, as set out in the property rates policy.” The same applies to exemptions, reductions and rebates: “[T]he municipality will grant exemptions from, rebates on or reductions in rates, as set out in the policy.”

Incorporation by indirect reference does not make the policy an effective legal instrument. There is no certainty about the content of the policy, and it may be changed at any time. Can such a policy determine an owner’s rate liability? It is argued that it cannot. If an owner is sued for payment of rates, there must (a) be a legal provision setting out the method of calculating the amount due, and (b) an actual rate adopted by resolution.

Writing policy in a by-law

While it is clearly a problem to have too little law in the by-law, problems also arise when too much policy is included. General policy principles are often included, which are really not appropriate for a by-law. When operationalising a policy, it is not necessary to include that policy’s objectives. One municipality has the following provisions in its by-law, for example:

- (8) Property rates will be used to finance community services.
- (9) Profits on trading and economic services can be used to subsidize community services.
- (11) The income base of the municipality will be protected at all costs by limiting reductions, exemptions and rebates.

The difficulty is that these legal provisions, which are essentially intended to reflect broad guiding principles, can be used to challenge the way a budget has been put together.

*Resolutions*

The final financial instrument, setting the rate (or rates), builds on the validity of the policy and the by-law. If there is no policy, operationalised by an appropriate by-law, then the resolution may be equally defective. One municipality’s resolution setting the rates for differentiated categories of properties for the 2008/09 financial year also gives a further reduction of R85 000 on residential properties. This introduces the following problems: First, the resolution refers to “the municipality’s draft rates policy” – that is, the resolution is based on a rates policy that has not yet been adopted. Second, key aspects of the draft policy have not been operationalised in the municipality’s by-law. For example, the resolution refers to categories of properties (referred to as “institutional” and “special purpose” properties) that will get a rate lower than residential property. The problem is that there is no mention in the by-law of these categories. The result is that the rates burden of some owners will be eased, and others not, on the basis of a policy that has yet to be adopted. Third, the by-law exempts residential properties of a value of up to R30 000 from paying rates. This adds a further R15 000 to the statutory exemption of R15 000. However, the resolution increases the reduction to R85 000. Consequently the resolution is in conflict with its own by-law.

Comment

This confusion and lack of alignment between the three financial instruments hold considerable financial risks for municipalities. If rates are not imposed on a solid legal basis, their collection may be opposed in court for want of compliance with the basic principles of the rule of law and with the Property Rates Act.

As the Property Rates Act has to be implemented by 1 July 2009, municipalities must urgently ensure that their financial instruments are in order so that revenue can be collected. If valid revenue-raising measures are not in place, the possibility of an intervention in terms of section 139 of the Constitution looms large.