



LOCAL LAW MAKING IN CAPE TOWN: A CASE STUDY OF THE MUNICIPAL PLANNING BY-LAW PROCESS

URBAN LEGAL CASE STUDIES | VOLUME 4

UN HABITAT
FOR A BETTER URBAN FUTURE



URBAN LEGAL NETWORK

LOCAL LAW MAKING IN CAPE TOWN: A CASE STUDY OF THE MUNICIPAL PLANNING BY-LAW PROCESS

URBAN LEGAL CASE STUDIES | VOLUME 4

Local Law Making in Cape Town: A Case Study of the Municipal Planning By-Law Process

First published in Nairobi in 2015 by UN-Habitat

Copyright © United Nations Human Settlements Programme 2015

All rights reserved

United Nations Human Settlements Programme (UN-Habitat)

P.O. Box 30030, GPO Nairobi 00100 Kenya

Telephone number : +254 20 762 5518

Email: infohabitat@unhabitat.org

HS Number: HS/066/15E

ISBN Number (Series): 978-92-1-133365-7

ISBN Number (Volume): 978-92-1-132678-9

Disclaimer:

The designations employed and the presentation of the material in this guide do not imply the expression of any opinion whatsoever on the part of Secretariat of the United Nations concerning the legal status of any country, territory, city or area of its authorities, or concerning the delimitation of its frontiers or boundaries. Views expressed in this publication do not necessarily reflect those of the United Nations Human Settlements Programme, the United Nations, or United Nations Member States.

Acknowledgements:

Principal author: Prof. Jaap de Visser

Team Leader: Robert Lewis-Lettington

Design and Layout: Peter Cheseret

Editor: Robert Lewis-Lettington

Jaap de Visser

jdevisser@uwc.ac.za

"I started this process with such big ideas. I was going to come up with all these innovative procedures to reduce red tape, it was going to be plain English, it was not going to be another Ordinance. One by one, these bright, enthusiastic ideas got squashed..."

"The scope to be radically different, is simply not there..."

CONTENTS

1. INTRODUCTION	1
2. METHODOLOGY.....	3
3. LEGAL AND POLICY FRAMEWORK FOR LOCAL GOVERNMENT	5
Introduction.....	5
National government, provinces and their powers.....	5
Municipalities.....	5
History and transformation of local government	6
Legal and constitutional space for municipalities to make law	8
General limitations on local law making	10
4. THE EMERGING LAW MAKING POWER FOR CITIES IN PLANNING.....	13
Introduction.....	13
Constitutional position	14
5. CITY OF CAPE TOWN AND THE WESTERN CAPE GOVERNMENT	19
City of Cape Town	19
Western Cape Provincial Government.....	19
6. THE MUNICIPAL BY-LAW.....	23
7. OPPORTUNITIES AND CONSTRAINTS	27
Introduction.....	27
Opportunity: locally designed tribunal system	28
Is local legislation is appropriate?.....	29
Limitations in the regulatory framework.....	32
Ever-changing goal posts	35
8. INSTITUTIONAL CONSTRAINTS.....	39
Introduction.....	39
Pre-occupation with implementation	41
Context of municipal capacity.....	43
Whether or not to challenge national law.....	44
9. INFORMALITY, CUSTOM AND CLIMATE CHANGE	47
Dealing with informality	47
Tradition and custom.....	52
Climate Change.....	53
10. PUBLIC PARTICIPATION AND EVALUATION.....	55
Public participation	55
Evaluation.....	56
11. CONCLUSION	61



01 INTRODUCTION

This report examines municipal law making surrounding land use planning in the City of Cape Town. It investigates the extent to which the City of Cape Town has powers to make by-laws on land use planning and how much of that power is circumscribed by other state organs and levels. It also examines the institutional and practical context in which municipal law making takes place in order to assess the actual relevance of the city's power to make law.

The assumption, underlying the interest in city law making in planning is that cities are best placed to design local legal frameworks to address urban infrastructure challenges. The research question in the report thus becomes: *What is the legal and practical space for the City of Cape Town to use municipal law making in land use planning to realise policy ambitions such as the acceleration of housing development, progressive tenure rights and dealing with climate change?*

The Report commences with an overview of the legal and policy framework for law making after which an assessment of the City's institutional and practical context is conducted.

It concludes that municipal law making in land use planning is uncharted territory, not only in South Africa but even internationally. The reality that emerges from the research is that the space for city innovation in planning has been gradually closed down by recently adopted national and provincial legislation. Despite this, the City of Cape Town's municipal planning by-law critically deals with matters left open by national and provincial planning laws and will fulfil an important role in improving the City's ability to administer land use management.



预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_18557

