



CITY OF CAPE TOWN
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STANDARD OPERATING PROCEDURE FOR THE NOTIFICATION OF LAND USE DEVELOPMENT APPLICATIONS IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015

September 2022

Development Management Department

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1 INTRODUCTION AND PURPOSE

The City must, in accordance with the requirements of Part 2 of Chapter 7 of the City of Cape Town Municipal Planning By-law, 2015 (MPBL), cause notice to be given of its intention to consider an application.

This standard operating procedure has been formulated to provide uniform, appropriate and adequate advertising guidelines for land use development applications.

This standard operating procedure intends to:

- state the minimum level of advertising as required by relevant planning law (it should be noted that some applications, because of its nature and potential wider impact, might require more than the minimum required advertising as is provided for in this standard operating procedure);
- assist applicants with what the advertising of their development applications will entail; and
- provide guidelines and a minimum level of advertising to authorised officials in exercising their discretion and in so doing ensure that uniform and consistent decisions are made relating to the level and extent of advertising of development applications.

This standard operating procedure must be read in conjunction with all other relevant advertising requirements in applicable planning law.

If there is an inconsistency in this standard operating procedure to a requirement in planning law, the planning law requirement will prevail.

2 LEGISLATIVE FRAMEWORK

The primary purpose for advertising is to notify a person whose rights or legitimate expectations may potentially be materially and adversely affected by a proposal if it is approved. The type of application determines the advertising procedure. It should also be noted that in terms of the provisions of the Constitution and the Municipal Systems Act it is the duty of the City to encourage involvement and build the capacity of the community it serves to enable it to participate in its affairs and to foster community participation.

The Constitution:

"152 Objects of local government

(1) The objects of local government are-

- (e) to encourage the involvement of communities and community organisations in the matters of local government."*

Municipal Systems Act:

"16(1) A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose-

- (a) encourage, and create conditions for, the local community to participate in the affairs of the municipality.....*
- (b) contribute to building the capacity of-*
 - (i) the local community to enable it to participate in the affairs of the municipality; and*
 - (ii) councillors and staff to foster community participation; and....."*

2.1 Spatial Planning and Land Use Management Act, 2013 (SPLUMA)

SPLUMA does not provide direct direction on how public participation should be conducted, but rather forms the enabling national legislation for provinces and local authorities to draft their own planning legislation and in such provide direction on advertising procedures required.

2.2 Western Cape Land Use Planning Act, 2014 (LUPA)

LUPA requires Western Cape Municipalities to advertise certain applications in a certain manner. This is also indicated in Table 1 in this document.

2.3 City of Cape Town Municipal Planning By-Law, 2015 (MPBL)

2.3.1 The MPBL provides the following definition for 'notification':

'notification' has the meaning contemplated in section 111 and includes the method by which the City may 'call for' or 'require' a person to do something, and **'notice'** and **'notify'** have corresponding meanings;

2.3.2 Section 79 of the MPBL states the following on a notice of an application:

- (1) The City must, in accordance with the requirements of this Part, cause notice to be given of its intention to consider an application.
- (2) Subject to sections 80, 81 and 82, the City may require the use of or use any one or a combination of these methods of notice –
 - (a) publish a notice in the media as contemplated in section 81;
 - (b) serve a notice to a person as contemplated in section 82;
 - (c) serve a notice of no objection as contemplated in section 84.
- (3) The City may, in addition to the methods contemplated in subsection (2), require the applicant to display a site notice which must –
 - (i) be laminated and of a size of at least 60 cm by 42 cm;
 - (ii) be displayed on every boundary of the land unit or units concerned which abut a street or at any other conspicuous place on the unit or units which the public is likely to see;
 - (iii) be displayed for a period and from a date set by the City Manager, which may not be less than 30 days; and
 - (iv) be replaced if it is damaged or removed during the notification period.
- (4) Where an applicant gives notice, the applicant must provide proof to the City within seven days of giving notice.
- (5) ...

2.3.3 Sections 81, 82, 83, 84, 86 and 87 of the MPBL elaborate on the requirements for a notice in the media, notice to a person, notice to a representative, notice of no objection, notice to the Provincial Government and notice to an organ of state other than the Provincial Government respectively. These requirements are listed in Table 1.

2.4 Promotion of Administrative Justice Act, No 3 of 2000 (PAJA)

- 2.4.1 In terms of the provisions of sections 3 and 4 of PAJA all administrative actions affecting a person or the public must be procedurally fair.
- 2.4.2 If an application will materially and adversely affect the rights or legitimate expectations of any person it must be procedurally fair.

PAJA section 3: *"Procedurally fair administrative action affecting any person"*

- (3) *In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to-*
- (a) *obtain assistance and, in serious or complex cases, legal representation;*
 - (b) *present and dispute information and arguments; and*
 - (c) *appear in person."*
- 2.4.3 If an application affects the public, Council may require a public inquiry or follow notice and comment procedure or both as contemplated in section 4(1) of PAJA. The procedures as stipulated in the regulations for fair administrative procedures will then have to apply when calling and conducting a public inquiry and public hearing or where an administrative action will materially or adversely affect the rights of the public.

PAJA section 4. *"Administrative action affecting public. —"*

In cases where an administrative action materially and adversely affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, must decide whether—

- (a) *to hold a public inquiry in terms of subsection (2);*
- (b) *to follow a notice and comment procedure in terms of subsection (3);*
- (c) *to follow the procedures in both subsections (2) and (3);*
- (d) *where the administrator is empowered by any empowering provision to follow a procedure which is fair but different, to follow that procedure; or*
- (e) *to follow another appropriate procedure which gives effect to section 3."*

3 ADVERTISING PROCESS

Development applications must go through an advertising process to notify a person whose rights or legitimate expectations are or are likely to be materially and adversely affected by an application if it is approved. The extent to which an application is advertised should depend on the type of application, the complexity of the application and the potential impact of the proposed development. **Careful consideration is necessary to determine this extent. Record must be kept on how the extent was determined and what factors were considered. If a determination is made that no person is materially and adversely affected, reasons must be recorded.**

For removal, suspension or amendment of restrictive conditions applications, further requirements are contained in section 48(3) of the MPBL on the extent of advertising required, which must be adhered to.

Notification of an application has a preparation phase and an actual advertising phase. It is considered important that a well-structured and complete application be submitted for advertising, as this will ensure better and quicker outcomes of the process for all parties concerned.

3.1 Informal and formal pre-application consultation

- 3.1.1 Before formally submitting an application to the City, it is recommended that the applicant first discuss the details of the proposed development with the authorised official in the relevant Land Use Management Office. For certain types of applications, the requirements for pre-application consultation are compulsory.
- 3.1.2 The purpose of this pre-application consultation is *inter alia* to enable the City to inform the applicant of the anticipated level and extent of advertising, and to make sure that the applicant knows what the process entails and what information and documentation is required for proper advertising.

3.2 Advertising process

- 3.2.1 The Department is actively supporting applicants conducting and administrating the advertising process with regards to:
- notice to a person; and
 - notices of no objection.
- 3.2.2 The City will provide the required notice to be used to the applicant, when the applicant is conducting the advertising process.
- 3.2.3 The City will provide the applicant with a complete list of names and addresses of people whose rights or legitimate expectations are or are likely to be materially and adversely affected, to be served a notice, which might include a locality plan. The City and the applicant must agree to a closing date to be given which must align with any other notices. Minimum requirements in terms of the number of days for a notification period must be adhered to.
- 3.2.4 When such notices are served in person, it must be served at the addressee's place of residence or business in the Republic with a person apparently over the age of 16. Such person must sign for the notice and also indicate in which capacity they are doing it.
- 3.2.5 Whenever the applicant advertises, proof of compliance must be submitted to the City within 7 days of giving notice [as required in terms of section 79(4) of the MPBL]. It must be made clear to the applicant that in the event that the City is not satisfied with the advertising conducted by the applicant, the City may require that the application be re-advertised. All expenses as a result of any re-advertising in such case will be for the account of the applicant.
- 3.2.6 If an applicant selects not to do the advertising it shall be conducted by the City.

- 3.2.7 The City may elect to undertake the advertising process (or part thereof), which might include the requirement for a notice in the media.
- 3.2.8 The cost of advertising is borne by the applicant.
- 3.2.9 The methods by which a notice may be served are listed in section 111 of the MPBL. These include, inter alia, by hand as well as email notifications.

3.3 Availability of information on submitted applications

All the minimum required information as well as further information as requested by other departments to an application must be available before advertising commences. It is therefore important that applicants be made aware at the beginning of the process to submit all necessary information before the application is advertised. The submission of information, specifically information material to the assessment of the application, after this point may trigger further advertising or circulation.

Information contained in applications and obtained during the process may be made available to the public and may be emailed to a requester, as long as POPIA is complied with.

3 LEVEL OF ADVERTISING

Table 1 indicates the level of informing parties for each type of application that requires advertising and should be read in conjunction with the remainder of the document and relevant law (which include requirements in LUPA, if applicable). Wider advertising may be required by the authorised official if the complexity and impact of the application warrants it.

Information regarding the advertising of applications not listed in Table 1 should be dealt with on advice from the Head: Land Use Management. Final advertising instructions should therefore only be issued by the authorised official after assessing the full impact of each particular application and any person whose rights or legitimate expectations are materially and adversely affected if the application is approved.

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x	Minimum level as required in law (no discretion – although this requirement cannot be deviated from, note that the authorised official may still consider that a person is not materially and adversely affected in respect of a notice or a 'no objection' letter)
p	Minimum level as prescribed by the City Manager (no discretion - requirement cannot be deviated from)
g	Minimum level as a Departmental Guideline (in accordance with section 79(2) of the MPBL) (the authorised official may still consider that a person is not materially and adversely affected in respect of a notice or a 'no objection' letter)
WC/PR/SC	Only when the ward councillor (WC), proportional representational (PR) councillor or sub-council (SC) has indicated in writing to the relevant District Manager that he/she/it should be notified. Where it is a minimum requirement that a WC councillor be notified a PR councillor may also indicate that he/she should be notified. In general PR councillors and SC's should only be notified where the development proposal may have a wider impact than the surrounding properties. Also see general note below Table 1.
Comorg	Registered (with council or sub-council) community organisation, only when it has indicated in writing to the District Manager that it should be notified and such development proposal may have a wider impact than the surrounding properties.

TABLE 1	MINIMUM LEVEL OF ADVERTISING								
Type of application	Notice in the media	Site notice	Notice to a person	Notice to a councillor	Notice to relevant sub-council (SC)	Notice to a registered community organisation	Notice to the Provincial Government	Notice of no objection	Specific notes (see end of table for descriptions)
Section in MPBL	81	79(3)	82	83		83	86	84	
42(a) - Rezoning of land, including rezoning to subdivisional area overlay zoning	x	g	x	p	g	p	x (for land zoned for agricultural or conservation purposes)		
42(b) - Permanent departure, relating to:									
Coverage ; Building lines		Advisable	g	p / WC/PR	g	p / Comorg		x	1
Floor factor ; Heights ; Parking ; Any other permanent departure		Advisable	g	p	g	p		x	1
A complete waiving (ie to 0m) of building lines / setbacks (on a particular boundary) on any floor above ground floor (ie first floor and upwards); or A height / coverage / floor factor increase of >25% over that permitted		g	g	p	g	p		x	1
42(c) - Temporary departure		Advisable	g	p	g	p		x	1
42(d) - Subdivision		Advisable							
Amendment of subdivision		g	x	p	g	p			4
Subdivision larger than 5 hectares inside the outer limit of urban expansion as reflected in the SDF	x	g	x	p / WC/PR	g	p / Comorg			4
Subdivision larger than 1	x	g	x	p / WC/PR	g	p / Comorg			4

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Section in MPBL	81	79(3)	82	83		83	86	84	
hectares outside the outer limit of urban expansion as reflected in the SDF									
Subdivision of land - consistent with policy		g	x	p / WC/PR	g	p / Comorg			4
Subdivision of land - inconsistent with policy	p	g	x	p / WC/PR	g	p / Comorg			4
42(f) - Consolidation of land		g	x	p / WC/PR	g	p / Comorg			
42(g) - Amendment, suspension or deletion of a restrictive condition	x	g	x	p / WC/PR	g	p / Comorg			3
42(h) - Consent or approval in terms of, or the relaxation of, a restrictive condition in a title deed where the restriction relates to use, subdivision, development rules or design criteria		Advisable	g	p / WC/PR	g	p / Comorg		x	1
42(i) - Consent, approval or any other permission or requirement in terms of the development management scheme		Advisable	g	p / WC/PR	g	p / Comorg		x	1
42(i) - Consent, approval or any other permission or requirement in terms of the development management scheme, where:		Advisable							
an impact assessment is required		g	g	p	g	p		x	1

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Section in MPBL	81	79(3)	82	83		83	86	84	
development in public open space or closure of public open space is proposed	p	g	g	p	g	p		x	1
Consent use will provide for sale of alcoholic beverages from a single residential zoned property		Advisable	g	p	g	p		x	1
42(j) - Amendment, deletion or addition of conditions in respect of an existing approval granted or deemed to be granted in terms of the MPBL		Advisable	x	p	g	p			
42(k) - Extension of the period of validity of an approval, where:		Advisable							
Policy has changed		Advisable	g	p	g	p / Comorg		x	1 ; 2
Policy has not changed but the reasons for supporting the development have changed due to service availability or new facts limiting the development of the property		Advisable	g	p	g	p / Comorg		x	1 ; 2
42(l) - Amendment or cancellation of an approved plan of subdivision or general plan			g (for an amendment)						2
42(m) - Permission required in terms of the conditions of approval of an application			g						
42(n) - Determination of a			x						

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Section in MPBL	81	79(3)	82	83		83	86	84	
zoning, a non-conforming use right or any other matter which the City may determine in terms of the By-Law									
42(o) - Correction of a zoning map			g						
42(q) - Alteration or amendment of a street name or number			g	p	g	p			

NOTES RELEVANT TO TABLE 1

Table 1 must be read in conjunction with the following notes:

Specific notes	
1	Notice of no objection may be served. Where a notice of no objection cannot be obtained, other levels of advertising listed must be adhered to for specific application type.
2	As a guideline, notice to previous objectors on the original application.
3	Notices also to be served on (see section 48(3) of the MPBL): - any provincial or national department if referred to in the title deed restriction; - any person mentioned in the title deed for whose benefit the restrictive condition was imposed.
4	No advertising for subdivisions are required when a rezoning to subdivisional area has already been advertised and such subdivision is in line with the proposals as was advertised during the rezoning process.
General notes applicable to all applications	
In cases where e-mail addresses are available for 'Notice to a person' purposes, notices must also be sent using such e-mail addresses, in addition to the other formal requirements and methods for this category. In such cases it is not necessary to first obtain the recipient's consent, as it will only be for courtesy purposes.	
In cases of multiple applications the level of advertising will be determined by the application with the highest required level of advertising.	
All applications involving impact assessments (excluding EIA Basic assessments, Impact statements and where impact assessment advertising already involved site notice) requires a site notice.	
Sub-council notification processes and procedures: • Sub-council Managers must indicate in writing to the relevant District Manager that they want to receive application notifications as per table 1. • The standard notification/advertisement will be forwarded by the District office by email to the Sub-council Manager for submission to the Sub-council. • Comments must be sent to the relevant District objection/comment email address as provided for in the notice/advertisement within the prescribed commenting period. • Comments received must be forwarded to the applicant to respond to as is required in terms of the MPBL. • If no comment is received during advertising, then it will be deemed that the Sub-council has no comment to offer. • The planning reports must reflect the Sub-councils comment, if any is received, and the applicant's responses thereto. • Councillors and Sub-councils may not appeal a decision taken in terms of the MPBL.	
If there is an inconsistency in this standard operating procedure to a requirement in planning law, the planning law requirement will prevail.	

5 GENERAL REQUIREMENTS

5.1 Time permitted for commenting/objecting

5.1.1 The time permitted for comments / objections will be specified in the advertisement and/or notice. Persons who are notified must be given at least 30 days, while the Provincial Government or an organ of state must be given at least 60 days to comment or object.

5.1.2 Notices of no objection will not be allowed to be served during the peak summer holiday period from **24 December to 2 January** (including both the 24th and the 2nd), which will be called "dead period". No notices of decisions will be forwarded to applicants and objectors within this "dead period".

For all other development applications as well as those that require advertisements in the press and provincial gazette the **"dead period"** will be **15 December until 15 January** of the following year, (including both the 15th December and the 15th January).

In circumstances where advertising of an application has already commenced and the 30-day period ends within the above "dead periods", the normal 30-day time period to comment/object shall be extended after the "dead period" by the number of days that the advertising period has fallen within the "dead period".

5.2 Cost of advertising

The cost of all advertising is borne by the applicant in terms of the City's approved tariffs.

5.3 Circulation to internal branches & departments

Applications must be circulated where relevant to relevant internal service departments and branches for technical and relevant comments. In cases where the relevant land use management office circulates applications to other service departments for comment, such office co-ordinates the circulation and assesses the application after the comments have been considered.

5.4 On-site display of notices

Where on-site display of notices is required as per Table 1, this is additional to any other form of advertising that might be required, including the signing of notices of no objection.

The applicant will be responsible to display the notice as per the relevant requirements and provide the land use management office with photographic proof thereof, with the date displayed on the photograph, which must be taken on the commencement date of the advertising period. The photograph must be kept on file for record purposes. All costs for the display of notices will have to be borne by the applicant. Notwithstanding the above and the requirement that it will be expected from the applicant to endeavour to keep the display in good condition during the advertising period, the fact remains that the display might be damaged or removed due to reasons beyond the control of the applicant. In such an event, it will not constitute grounds for non-compliance with this standard

operation procedure. However, where such an event or any other breach of this section or the above undertaking can indeed in the City's reasonable opinion be ascribed to the neglect or otherwise of the applicant or responsible person, the authorised official may in her/his discretion require that re- or further advertising be undertaken to ensure procedural compliance, the further cost of which will also be borne by the applicant.

5.5 Advertising of a "scaled down" development proposal

The City in general supports and encourages negotiations between objectors and an applicant to find an amicable solution to reasonable objections to mitigate the impact of a development proposal. An advantage of such an approach is that it can potentially remove objections against an application resulting in a decision that could be made under delegated powers (if the proposal is not in conflict with a policy or other conditions restricting such delegated powers) thereby removing the possibility of a lengthy appeal process. In cases where an application was advertised and during this process and after consultation with the objectors or commenting parties who have responded to the advertising (this include an internal service department or external government department), the applicant submits a scaled down ("scaled down" in this context means reducing the total impact of the development proposal and excludes the amendment of the proposal by for example moving, relocating or re-organising parts of a building/s and/or land uses) development proposal for the specific purpose to mitigate the impact on the surrounding properties and built environment, the authorised official may decide after careful consideration of the impacts of the scaled down development proposal that further advertising is not required. If the authorised official is of the opinion that the scaled down development proposal may impact on the rights of other parties or it has triggered a further application, then the development proposal or the further application or both, may have to be re-advertised. In the event that the applicant cannot obtain the written withdrawal of the objections against the original as well as the scaled down development proposal and wants to proceed with the scaled down development proposal, all standing objections will remain valid and the application will have to be processed in accordance with the directions of the approved System of Delegations. Note that the scaled down development proposal must be submitted by the applicant to the relevant district office together with a covering letter clearly stating that the original application has been replaced by the scaled down development proposal. No application fees will be payable except if the scaled down development proposal triggers a further application for which a fee must be charged. Normal advertising fees will be payable in the event that it is required to re-advertise the amended application. It should be further noted that an applicant may elect not to pursue this option and may request or inform the district office to continue processing the original application. Also refer to section 94 of the MPBL.