

# OVERSTRAND MUNICIPALITY



## Administration of Immovable Property Policy

This policy was drawn up in terms of:  
LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003  
MUNICIPAL ASSET TRANSFER REGULATIONS  
("The Regulations")

*Approved by Council  
25 November 2015*

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1 December 2015*

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## INTRODUCTION

**WHEREAS** the Municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in Section 151(3) of the Constitution and Section 4(1)(a) of the Systems Act.

**AND WHEREAS** the Municipality has executive and legislative authority in respect of, and has the right to administer the matters provided for in Sections 156(1) and 229 of the Constitution, Sections 8(1) and 11(1) of the Systems Act and Section 83(1) of the Structures Act.

**AND WHEREAS** the municipal council makes decisions concerning the exercise of all the powers and the performance of all the functions of the Municipality, save for those matters excluded by legislation in accordance with Section 160(1)(a) of the Constitution;

**AND WHEREAS** the Municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers in terms of Section 156(5) of the Constitution and Section 8(2) of the Systems Act;

**AND WHEREAS** the municipal council, within the Municipality's financial and administrative capacity and having regard to practical considerations, has the duty to use the resources of the Municipality in the best interests of the local community in terms of Section 4(2)(a) of the Systems Act; and

**AND WHEREAS** there is a need to provide a policy framework for the management of the Municipality's immovable property, to establish criteria for determining various categories of immovable property in order to regulate the use, sale and lease thereof and to establish criteria within which property transactions may be regulated;

**NOW THEREFORE** this policy provides as follows:

## **DEFINITIONS**

In this Policy a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act (nr 56 of 2003) has the same meaning as in the Act, and means:

### ***“Accounting Officer”***

The Municipal Manager appointed in terms of Section 54A of the Local Government: Municipal Systems Act (nr 32 of 2000) and being the Head of Administration and Accounting Officer in terms of Section 55 of the Local Government: Municipal Systems Act (nr 32 of 2000) and includes any person:

- (a) acting in such position, and
- (b) to whom the Municipal Manager has delegated a power, function or duty in respect of such a delegated power, function or duty.

### ***“Basic municipal service”***

The amount or level of any municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety of the environment and for the purposes of this Policy includes but is not restricted to electricity, refuse collection, sanitation, local roads, storm water drainage, fire services and water services.

### ***“Bid adjudication committee”***

A committee as provided for in the Municipality’s Supply Chain Management Policy.

### ***“Capital asset”***

Any immovable asset such as land and buildings, also referred to as immovable property.

### ***“Chief Financial Officer”***

An officer of the Municipality appointed as the Head of the Finance Department and includes any person:

- (a) acting in such position, and
- (b) to whom the Chief Financial Officer has delegated a power, function or duty in respect of such a delegated power, function or duty.

### ***“Community value”***

The extent of benefit or gain generated when resources, input, processes or policies are combined to improve the lives of individuals or society as a whole.

### ***“Competitive process”***

A call for proposals, a closed tender, a public tender or a public auction.

### ***“Council” or “Municipal Council”***

A municipal council referred to in Section 18 of the Local Government: Municipal Structures Act (nr 117 of 1998) and for the purpose of this Policy, the municipal council of the Overstrand Municipality, including its duly authorised nominee.

### ***“Disposal”***

Includes the demolition, dismantling or destruction of the immovable property or any other process applied which results in the loss of ownership of the asset otherwise than by way of transfer of ownership.

**“Encroachment”**

Any use of or physical object which intrudes on or over municipal property or property which vests in the municipality, or property the Council has control over or other property in respect of which a servitude or other property right has been registered in favour of the municipality;

**“Exempted capital asset”**

A Municipal capital asset (immovable property) which is exempted by section 14(6) of the MFMA from the provisions of section 14 of the mentioned Act.

**“Fair market value”**

The value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the asset in an arm’s length transaction.

**“High value”**

When the fair market value of the capital asset exceeds any of the following amounts:

- (a) R50 million;
- (b) One percent of the total value of the capital assets of the municipality as determined from the latest available audited annual financial statements of the municipality; or
- (c) An amount determined by resolution of the Council of the municipality which is less than (a) or (b).

**“Informal trading”**

Refers to the sale of legal goods and/or services by individuals and/or groups in areas demarcated for informal trading.

**“Landlocked”**

When a property has no legal means of access. And without access, except perhaps by boat or helicopter, the property is rendered virtually unusable.

**“Long term”**

A period longer than 3 years.

**“MATR”**

The Municipal Asset Transfer Regulations published under GN R878 in GG31346 of 22 August 2008 with effect from 1 September 2008.

**“MFMA”**

The Local Government: Municipal Finance Management Act (nr 56 of 2003).

**“Municipality”**

The Overstrand Municipality.

**“National Treasury’s Guidelines”**

The official guidelines on supply chain management issued by the Minister in terms of Section 168 of the MFMA.

**“Non-viable immovable property”**

A property that, owing to urban planning, physical constraints or extent, cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property.

**“Notice boards”**

The official notice boards at the municipal offices and municipal libraries.

**“Organ of state”**

Includes a national department or national entity, a provincial department or provincial public entity, a municipality or municipal entity or any other organ of state within the meaning assigned to “organ of state” in section 239 of the Constitution.

**“Preference”**

The local residents of a specific area will be afforded preference in respect of the letting of immovable properties within that demarcated/designated area.

**“Public facilities”**

Facilities providing services to the community which cannot be supplied directly to the individual residential dwelling unit satisfying specific individual and/or community needs including safety; security; communication, recreation; sport; education; health; public administration; cultural and social needs generally regarded as the responsibility of the Government but also provided privately when it is perceived that the government provided services are inadequate.

**“Public property”**

All land owned by any organ of state and public property not registered in the name of the Overstrand Municipality that is used, managed, protected, conserved and enhanced in the interests of the whole community, e.g. road reserves, open space and state land that vests in the Municipality or is proclaimed by any other organ of state.

**“Public Road”**

Any road, street or thoroughfare or any Public Place (whether a thoroughfare or not) which is commonly used by the general public or to which the public has a right of access, and includes:

- (a) any services servitude and public passage on public land;
- (b) the side-walk or verge of any such road, street or thoroughfare;
- (c) any bridge, structure or drift traversed by any such road, street or thoroughfare; and
- (d) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare.

**“Real Rights”**

The rights to traverse privately owned property with servitudes which are notarially registered in the Deeds Office or contained in Title Deed Conditions.

**“Right to use, control, manage”**

A right to use, control or manage the asset for a period exceeding one calendar month without ceding legal ownership in the asset.

**“Social care”**

Defined as child care facilities in so far as it contributes to the functioning of a multi-use child care facility and is operated on a non-profit basis; services provided by registered welfare, charitable, non-profit, cultural organisations; centres utilised as homes for the handicapped and disabled persons; non-profit rehabilitation centres; homes or centres for indigent, battered or destitute people; organisations for the homeless and elderly; youth activity or culture centres and organisations; community development organisations operating on a non-profit basis or amateur sporting, cultural or recreational organisations.

**“Structures Act”**

The Local Government: Municipal Structures Act (nr 117 of 1998).

**“Supply Chain Management Policy”**

The Supply Chain Management Policy of the Overstrand Municipality approved and adopted by Council as amended from time to time.

**“Systems Act”**

The Local Government: Municipal Systems Act (nr 32 of 2000).

**“the Constitution”**

The Constitution of the Republic of South Africa, 1996.

**“the Ordinance”**

The Local Government: Municipal Ordinance, 1974 (Ordinance 20 of 1974).

**“The Regulations”**

Local Government: Municipal Finance Management Act (nr 56 of 2003) Municipal Asset Transfer Regulations (MATR).

**“Transfer”**

Transfer of ownership as a result of sale or other transaction (e.g. exchange, donation, ect).

**APPLICATION OF THE POLICY**

1. This policy applies to:
  - (a) the transfer or disposal of immovable property by the Municipality;
  - (b) the acquisition of immovable property by the Municipality;
  - (c) the registration of servitudes over municipal immovable property; and
  - (d) the granting by the Municipality of rights to use, control or manage immovable property.
  
2. This Policy does not apply to:
  - (a) immovable property that falls within the area of responsibility of the Municipality’s Housing Department;
  - (b) immovable property owned by the Municipality which is subject to a Public-Private Partnership; and
  - (c) the grant of a right to lease, use control or manage the Municipality’s immovable property for a period of a calendar month or less.

**GENERAL PRINCIPLES**

3. The Municipality may:
  - (a) alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;
  - (b) grant a servitude, way leave, encroachment or other rights on any immovable property of which the Municipality is the owner
    - (i) subject to this policy document and the provisions of applicable legislation; or
    - (ii) unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.

- (c) enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and
  - (d) enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Public-Private Partnership Regulations.
4. No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including - but not limited to - legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

#### **DISPOSAL OR TRANSFER OF IMMOVABLE PROPERTY**

5. The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.
6. A decision by the municipal council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that immovable property has been sold, transferred or otherwise disposed of in accordance with Section 14(3) of the MFMA.
7. The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.
8. Transfer or disposal of a non-exempted high value immovable property
- 8.1 The Municipality may transfer ownership or otherwise dispose of a non-exempted high value immovable property only after:
- (a) the Accounting Officer, through the Property Administration Department, has conducted a public participation process to facilitate the determinations the municipal council must make in terms of sections 14(2)(a) and (b) of the MFMA; and
  - (b) the municipal council has, in terms of sections 14(2)(a) and (b) of the MFMA,;
    - (i) decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;
    - (ii) considered the fair market value of the immovable property and the economic and community value to be received in exchange for



the immovable property in accordance with Section 14(2) of the MFMA, and

- (iii) has as a consequence to 8.1(b)(i) and (ii) above approved in principle that the immovable property asset may be transferred or disposed of.

8.2 The public participation process in terms of paragraph 8.1(a) may only be authorised by the Municipal Council. A request to the Municipal Council for authorisation of a public participation process must be accompanied by:

- (a) a valuation and the method used to determine the value of the immovable property to be transferred or disposed of;
- (b) the reasons for the proposed transfer or disposal of the immovable property;
- (c) any expected benefits to the Municipality as a result of the proposed transfer or disposal;
- (d) any expected proceeds to be received by the Municipality from the proposed transfer or disposal, and
- (e) any expected gain or loss to be realised or incurred by the Municipality arising from the proposed transfer or disposal.

8.3 If the public participation is authorised, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 8.1(b)(i) and (ii) above are considered –

- (a) make public the proposal to transfer or dispose of the immovable property;
- (b) invite the local community and other interested parties to submit comments or representations in respect of the proposed transfer or disposal of the immovable property;
- (c) solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.

9. Transfer or disposal of a non-exempted immovable property (not high value)

9.1 The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:

- (a) decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;
- (b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and
- (c) has as a consequence to 9.1(a) and (b) above approved in principle that the immovable property may be transferred or disposed of, and the method of disposal or transfer.

9.2 The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:

- (a) decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;
  - (b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and
  - (c) has as a consequence to 9.2(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in principle approval, it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.
- 10. The Municipality shall not act in terms of paragraphs 8.1, 9.1 and 9.2 above, unless it has:
  - 10.1 advertised its intention so to act by causing a notice to that effect to be:
    - (a) affixed to the public notice boards of the Municipality;
    - (b) published in a newspaper that is circulated within the area of the town where the relevant property is situated;
    - (c) published on the official website of the Municipality, and
    - (d) in the case of immovable property valued at R2,5 million or higher, published in regional newspapers that are circulated within the province of the town where the relevant immovable property is situated unless a property valued less than R2,5 million at the sole discretion of the Municipality warrants publication in these newspapers, in accordance with Section 21A of the Systems Act,  
in which any person who wishes to object to the exercise of any such intention, is called upon to lodge his/her comments, objection or representations in respect of such intention in writing with the Municipal Manager within a period of not less than thirty days from the date of the publication of the notice in the newspaper;
  - 10.2 considered the objections or counter offers (if any) lodged in accordance with the advertisement contemplated by paragraph 10.1.
- 11. Approval in terms of 9.1(c) and 9.2(c) may be given subject to any conditions, including:
  - (a) the way in which the immovable property is to be sold or disposed of;
  - (b) a reserve price or minimum compensation for the immovable property;
  - (c) whether the immovable property may be transferred or disposed of for less than its fair market value, in which case the criteria set out in clause 9 must be considered, and
  - (d) a framework within which direct negotiations for the transfer or disposal of the immovable property must be conducted with another person, if transfer or disposal is subject to direct negotiations.
- 12. Transfer or disposal of an exempted immovable property
  - 12.1 Paragraphs 7 and 10 above do not apply to the transfer of immovable property to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury in Regulation 20 of the MATR, provided that such transfers are in accordance with a prescribed framework contained in Chapter 3 of the MATR.

- 12.2 Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding fact that the transfer or disposal may be in respect of immovable property which is required to provide the minimum level of basic services, such disposals need not be at market related value and do not require a public participation process described in the MATR in respect of non-exempted disposals.
13. The Municipal Council must, when considering any proposed transfer or disposal of immovable property, take into account the aspects listed in Regulation 7 and 20(1)(f)(ii) of the MATR.
14. Sections 14(1) to (5) of the MFMA and Chapter 2 of the MATR must be applied if a municipality transfers a immovable property to an organ of state where none of the circumstances mentioned in regulation 20 apply, including when the immovable property is transferred in the course of an ordinary commercial transaction between the municipality and the organ of state.
15. Alienation of immovable property by means of a competitive process
- 15.1 The transfer of immovable property must, except in the case of non-viable immovable property, be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.
- 15.2 The upset price for immovable property to be alienated by means of a competitive process will be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs.
- 15.3 In assessing tenders, the Municipality will take cognisance of the total cash value of the packages offered by the bidders, where such packages are permissible in terms of the conditions of tender. In other words, where the actual amounts tendered are roughly similar, but a particular bidder, for example, also offers to make improvements to the immovable property, the cash value of such improvements, which proposed improvements may not be deviated from, may also be taken into consideration to determine the highest tender.
- 15.4. Should the Municipality consider it desirable not to accept the highest tender or offer or decide to accept a particular development proposal in which the amount tendered is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the bid adjudication committee meeting in question and if applicable the minutes of the appeal tribunal.
- 15.5. In cases where tenders are according to the findings of the bid adjudication committee identical and the provisions of paragraphs 15.4 are not applicable, the successful bidder may be determined by the drawing of lots in the presence of the involved parties.
16. The Municipality shall at all times when considering the alienation of its immovable property, take into consideration the Municipality's obligation to, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to identify and designate land for housing development in terms of the Housing Act, 1997 (Act 107 of 1997).

**LEASING OF MUNICIPAL IMMOVABLE PROPERTY**

17. Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:
  - 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or
  - 17.2 a direct lease.
18. A competitive process must at all times be followed in circumstances where:
  - 18.1 the lease is for a long term with an income value in excess of R10 million;
  - 18.2 the lease is for a formal business premises with a market related rental;
  - 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or
  - 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.
19. Long term lease of municipal immovable property with an income value in excess of R10 million:
  - 19.1 The Municipality may grant a long term lease of municipal immovable property with an income value in excess of R10 million only after:
    - (a) the Accounting Officer has, through the Property Administration Department, conducted a public participation process; and
    - (b) the Municipal Council has approved in principle that the right may be granted.
  - 19.2 The public participation process in terms of paragraph 19.1(a) may only be authorised by the Municipal Council. A request to the Municipal Council for authorisation of a public participation process must be accompanied by:
    - (a) the reasons for the proposal to grant the long term lease;
    - (b) any expected benefits to the Municipality as a result of the lease;
    - (d) any expected proceeds to be received by the Municipality from the proposed lease, and
    - (e) any expected gain or loss to be realised or incurred by the Municipality arising from the lease.
  - 19.3 If the public participation is authorised, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 19.1(b)(i) and (ii) above are considered
    - (a) make public the proposal to lease the asset;
    - (b) invite the local community and other interested parties to submit comments or representations in respect of the proposed lease of the asset;
    - (c) solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.

- 19.4 The Municipal Council must, when considering any proposed lease of municipal immovable property with a value in excess of R10 million, take into account the aspects listed in Regulation 36 of the MATR.
20. Long term lease of municipal immovable property with an income value less than R10 million:
- 20.1 The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:
- (a) the Accounting Officer has approved the lease in principle;
  - (b) in the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and
  - (b) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.
21. Short term lease of municipal immovable property:
- 21.1. The Municipality may grant a short term lease of municipal immovable property up to three years without the option of renewal only after the Accounting Officer has approved the lease in principle.
- 21.2 Immovable property let according to paragraph 21.1 above need not be advertised in terms of paragraph 10.1 and 10.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:
- (a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;
  - (b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;
  - (c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;
  - (d) the lessee shall indemnify the Municipality against any claims; and
  - (e) the Municipality may request proof of financial viability to honour the lease.
22. The in principle approval of the Accounting Officer must be obtained with any request for the renewal of a lease agreement.
23. The Municipality may:
- 23.1 enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and
- 23.2 enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Municipal Public-Private Partnership Regulations.

**COMPENSATION**

24. The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude).
25. The Municipality, as a rule, bearing in mind the provisions of paragraph 23 and save for those cases mentioned in paragraphs 21, 25, 26 and 58 to 62, shall not:
- (a) let immovable property at a lower rental than market related rental or the rental approved in the tariffs;
  - (b) sell, alienate or dispose of immovable property, grant a servitude or alienate a right at a lower amount than the amount at which it has been valued;

except in cases when the public interest or the plight of the poor demands otherwise and taking into account the provisions of Regulation 13(2) of the MATR, the latter in circumstances of an alienation.

26. In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.
27. In the case of a direct lease of immovable property to registered social care organisations/institutions, sports/public facilities or registered non profit organisations, the rental shall be determined by the Accounting Officer taking into consideration the community value of the lease.

**CONDITIONS OF SALE**

28. All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.
29. Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.
30. Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.
31. Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.

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32. Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.
33. The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.
34. A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality.
35. Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.

**CONDITIONS OF LEASE**

36. All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.
37. An agreement for the lease of municipal immovable property shall be in writing, stipulating the terms and conditions of the contract or agreement, which shall include provisions providing for:
  - (a) the termination of the contract or agreement in the case of non- or underperformance;
  - (b) dispute resolution mechanisms to settle disputes between the parties;
  - (c) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;
  - (d) any other matters that may be prescribed, and
  - (e) escalation in terms of paragraph 40 of this policy.
38. No immovable property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality.
39. An owner of immovable property who leases adjoining municipal property may be substituted by his successor in title for the duration of the remainder of the lease term.
40. Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).
41. The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the Rates Policy of the Municipality.
42. The letting of lanes, public open spaces, road reserves and the like can be approved, subject to the following:

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- (a) closing off/securing by the lessee of the leased area to the satisfaction and discretion of the Municipality;
  - (b) the Lessee shall be responsible for the cost of relocation or installation of services where required and for the securing of servitudes, and
  - (c) the closure of the lanes, public open spaces and road in terms of the applicable legislation shall be done at the cost of the Lessee.
43. The lessee shall indemnify the Municipality against any possible claims arising from the lease or use of the immovable property.
44. Where land is leased for development, a condition, taking into consideration the nature of the development, may be included in the lease agreement stipulating that such development must be completed within two years from date of conclusion of the lease agreement. Likewise a suspensive condition may be included in the lease agreement to provide for cancellation in the event that the development has not been completed, unless a written extension has been granted by the Municipality.
45. Save with prior written approval of the Municipality the property may only be used for the purpose for which it was let.
46. The Municipality shall at all reasonable times be entitled to enter and inspect the immovable property.
47. Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.
48. The lessee shall be responsible for maintaining the leased property including all improvements thereon to the satisfaction of the Municipality.
49. Improvements provided by the Lessee and which the Council wishes to retain, shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled. Alternatively, agreement may be reached to the effect that the Lessee may remove any improvements erected from its own funds within three months of termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge without damage and if provided for in the agreement. The Lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.
50. The Municipality reserves the right, where necessary, to resume immovable property let, or portion thereof, and to cancel an existing lease in its entirety where such immovable property is required for operational purpose or in the interest of the community or for any reason necessitating the cancellation thereof.

**ACQUISITION OF IMMOVABLE PROPERTY**

51. The municipality may acquire by purchase immovable property within- or outside the municipal boundary provided it complies with the requirements of the MFMA and subject thereto that the cost of the purchase has been budgeted for and approved by Council.



52. The Municipality will not continue with the purchase of any immovable property where the price is in excess of the market value thereof as assessed by a registered valuer. If different market related values are obtained, but similar in nature, the Municipality may negotiate the purchase price taking into consideration the purpose of the acquisition.
53. The Municipality may accept a donation of immovable property.

### **SERVITUDES**

54. A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable property. Servitudes result in a burden on the immovable property for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset.
55. If the proposed servitude will result in the immovable property, in discretion of the municipality, being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude might not be granted.
56. Subject to paragraph 55 above, servitudes may be granted to any person (private or state organ) subject to payment of an appropriate market related compensation by such person provided that in certain circumstances, e.g. where another organ of state requires a servitude for the benefit of the general public or in cases of so called “land locked” property, and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived.
57. The party requiring the servitude on municipal immovable property is responsible for all costs relating to the granting and registration of the servitude.

### **LEASE TO INFORMAL TRADERS**

58. The more formalised informal trading from municipal immovable property, in particular buildings/structures will be from the demarcated areas as gazetted from time to time.
59. The leasing of municipal immovable property to informal traders may be affected by means of a direct lease on a “first come first serve basis”, subject to availability of immovable property, the nature of the trade envisaged, the rental payable and the area the immovable property is situated in.
60. The Municipality may at any time formulate and implement criteria for the leasing of immovable property for informal trading. In this regard, the Municipality may, amongst others, take the following criteria in consideration:
  - (a) The nature of the trading envisaged on the property;
  - (b) The Applicant must be in possession of a valid permit to trade;
  - (c) Where structures are continuously available, informal traders operating four days per week for at least 45 weeks a year will get preference over occasional / casual informal traders;

- (d) Preference will be given to local residents of the area where the structure is situated;
  - (e) Only one stall will be allocated per household;
  - (f) Informal traders who do not already operate in other informal markets within the jurisdiction of the Municipality will get preference; and/or
  - (g) Unemployed people will get preference including those traders who demonstrate employment opportunities.
61. The Municipality will reserve the right to withdraw summarily the allocation of a municipal immovable property in the event of evidence proving that:
- (a) an informal trader has wilfully supplied incorrect information;
  - (b) an informal trader has failed to update his/her information annually;
  - (c) the informal trader has subleased to a third party without the approval of the Municipality;
  - (d) the informal trader is contravening the conditions of the lease agreement and/or any other legislation.
62. The rental payable for the leasing of immovable property situated in the demarcated areas will be determined taking into account the location, structure, services available, products or services rendered and any other diverse circumstances relevant to the lease.

### **PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS**

63. All costs pertaining to an encroachment shall be borne by the encroacher, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the costs may be required.
64. The Municipality may, subject to such conditions as it may deem fit –
- 64.1 permit encroachments on road reserves and public thoroughfares in order to encourage adjoining owners to maintain the road reserves adjoining their properties provided inter alia that:
- (a) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects within 1,5 metres measured from the tarred or gravel surface of the road, are not permitted;
  - (b) the 1,5 meter area referred to in paragraph 64.1(a) may be planted with lawn of a type approved by the relevant directorate of the Municipality or paved at own costs to the satisfaction of the Municipality and subject to the owner of the adjoining property allowing at all times the free movement of pedestrians in those encroached areas;
  - (c) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the encroacher; and
  - (d) no encroachment fee shall be charged by the Municipality and no formal agreement need to be entered into in respect of the above encroachment; and
  - (e) the Municipality shall have the right of free access to the encroachment at all times for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services in which case

the Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation, or

64.2 permit the erection or retention of a veranda, balcony, sign, sign-board or similar structure, device or contrivance which projects or extends into, under or over or on any public place, public street or public thoroughfare, provided inter alia that:

- (a) the erection or retention thereof shall not be permitted on the level of more than one floor;
- (b) no such projection or structure shall be partially enclosed to a height of more than 1,5 metres measured from the floor level thereof except with the prior written approval of the municipality and subject to such conditions as it may impose,
- (c) an annual encroachment fee, determined by the municipality, be levied on successful applicants municipal account for the right obtained to encroach and a formal agreement be entered into in respect of the above encroachment;
- (d) the Municipality shall have the right of free access to the encroachment at all times for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services in which case the Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation; or

64.3 permit encroachments onto commonage, public open spaces or conservation areas provided inter alia that:

- (a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;
- (b) the delegated authority, through the Property Administration Department, shall:
  - (i) obtain the comments of the relevant municipal directorates/departments;
  - (ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;
  - (iii) where objections against the said application are received, submit it to the applicant for his/her comment;
  - (iv) submit the application and all relevant documents to Executive Mayor;
  - (v) notify the applicant of the Executive Mayor's decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or its nominee; and
  - (vi) issue a permit (to the successful applicant to give effect to the approval of the application.
- (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted;
- (d) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner; and
- (e) an annual encroachment fee, determined by Council, be levied on successful applicants municipal account for the right obtained to encroach.

- 64.4 permit the enclosure or exclusive use of portions of the commonage, public open spaces, public thoroughfares or any municipal owned immovable property for gardening purposes, provided inter alia that:
- (a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;
  - (b) the delegated authority, through the Property Administration Department, shall:
    - (i) obtain the comments of the relevant municipal directorate/departments;
    - (ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;
    - (iii) where objections against the said application are received, submit it to the applicant for his/her comment;
    - (iv) submit the application and all relevant documents to the Executive Mayor for approval;
    - (v) notify the applicant of the Executive Mayor's decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or its nominee; and
    - (vi) issue a permit (to the successful applicant to give effect to the approval of the application;
  - (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted.
  - (d) a monthly encroachment fee, determined by council, be levied on successful applicants municipal account for the right obtained to encroach.
- 64.5 permit the use of municipal land for outdoor seating adjoining a restaurant or for parking of vehicles, provided inter alia that this will be dealt with as a formal lease agreement and the procedure for a lease agreement be followed
65. The Municipality may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater extent as may, in its opinion, be desirable.

**SHORT TITLE AND COMMENCEMENT**

This policy is called the **ADMINISTRATION OF IMMOVABLE PROPERTY POLICY**.

<b>POLICY SECTION:</b>	<b>PROPERTY ADMINISTRATION</b>
<b>CURRENT UPDATE:</b>	25 NOVEMBER 2015
<b>PREVIOUS REVIEW:</b>	23 SEPTEMBER 2014
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