

# **DRAKENSTEIN** **MUNICIPALITY**

## **POLICY**

### **FOR THE MANAGEMENT AND ADMINISTRATION OF IMMOVABLE PROPERTY.**

<b><u>APPROVED/AMENDED</u></b>	<b><u>MEETING</u></b>	<b><u>DATE</u></b>
Approved	Council	27/02/07
Amended	Council	27/05/09

**POLICY FOR THE MANAGEMENT AND ADMINISTRATION OF IMMOVABLE  
PROPERTY.**

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## 1. PREAMBLE

1.1 To provide a policy framework for the management and administration of council's immovable property; to determine the various categories of immovable property in order to regulate its use, disposal and acquisition; to establish criteria for evaluation of applications for the purchase or lease of immovable property to distinguish and lay down procedures in respect of the various categories of transactions.

1.2 Council is the custodian of the immovable property of the municipality and is responsible for the administration thereof.

1.3 In the exercise of its powers, duties and functions, council has the right to acquire, hold, benefit and alienate immovable property.

1.4 Council realizes that immovable property held by it which is not envisaged for or already used for public purposes and/or in the public's interest, should be dealt with in a manner which will ensure the greatest benefit to the council and the community.

1.5 The requirements of the Municipal Finance Management Act (No 56 of 2003) and other applicable legislation must be adhered to at all times.

## 2. DEFINITIONS

2.1	"ATR"	<b>Means the Municipal Asset Transfer Regulations, promulgated in terms of the MFMA( GG 31346 dated 22 August 2008)</b>
2.1	"Black people"	is a generic term which means Africans, Coloureds and Indians.
2.2	"Church"	means a place of worship to the extent and for that portion of facility being used for spiritual gathering and/or social/pastoral/welfare caring.
2.3	"Constitution"	means the Constitution of the Republic of SA, Act 108 of 1996, as amended.

2.4	“Council”	means the municipal council of Drakenstein Municipality or any individual or Committee duly authorized to take decisions regarding the alienation/acquisition of immovable property.
2.5	“Designated Groups”	means black people, woman and people with disabilities.
2.6	“Immovable Property”	means vacant land and includes any structural improvements thereon.
<b>2.7</b>	<b>“Long term lease”</b>	<b>Lease longer than three years</b>
2.7	“Municipality”	has the same meaning as “Council”.
2.8	“MFMA”	means the Municipal Finance Management Act, Act 56 of 2003, as amended.
2.9	“Public Place”	has the meaning as defined in the Council’s by-law relating to Streets.

2.10	“Social care”	<p>is defined as</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• services provided by registered welfare, charitable, non-profit, cultural, organizations</li> <li>• Centres utilized as homes for the handicapped and disabled persons</li> <li>• Non-profit rehabilitation centres</li> <li>• Homes/centres for indigent, battered or destitute persons</li> <li>• Organizations for the homeless and elderly</li> <li>• Youth activity/culture centres and organizations</li> <li>• Facilities for accommodation, care and burial of animals</li> <li>• Community development organisations operating on a non-profit basis</li> </ul>
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### **3. POWERS AND GENERAL PRINCIPLES RE SALE, LETTING MANAGEMENT, USE, IMPROVEMENT AND CULTIVATION OF IMMOVABLE PROPERTY**

#### 3.1 Council may:-

- 3.1.1 Manage and reserve immovable property in its ownership for Municipal purposes aligned with its operational needs and strategic objectives and to use, enhance and improve such immovable property in a manner that supports such strategic objectives and permit such immovable property to be enclosed and cultivated.
- 3.1.2 Acquire immovable property and rights in property by way of private treaty, cession, donation and expropriation to support its strategic objectives.
- 3.1.3 Alienate immovable property and rights in property in its ownership by way of direct sale, public tender, auction and donation **or prescription.**
- 3.1.4 Let immovable property in its ownership on a long term or short term basis by way of direct negotiation or public tender.

- 3.2 When Council considers the alienation **or lease** of immovable property, the **following must be complied with:**
- (i) Consider the determinations as envisaged in terms of Section 14(2) of the MFMA must be made **in respect of alienation of land,**
  - (ii) **Take into account the issues as contained in Regulations 7 and 11 of the ATR in respect of the alienation of immovable property, and Regulations 36 and 40 of the ATR in respect of the lease of immovable property, and**
  - (iii) **Comply with the general procedures as laid down in Chapters 2 and 4 of the ATR.**

3.3 **Any transfer of ownership of a capital asset must be fair, equitable, transparent, competitive and consistent with the SCM policy of Council.** As a general principle, immovable property offered by council for sale or lease, shall be sold or leased by public competition. Council may however approve the direct lease or sale of property in circumstances set out in paragraph 5 hereof.

3.4 Immovable property will be sold or leased at a reasonable market value except when the public interest or the plight of the poor demands otherwise. Council may likewise determine subsidized selling prices or lease rates in respect of certain classes of property in order to promote Council's functions or goals as set out in the Constitution. **Should it be intended to transfer immovable property for less than its fair market value, the considerations listed under regulation 13(2) of the ATR, must be taken into account.**

3.5 Council supports the principle of land restitution and acknowledges that any land claim can only be processed in terms of the provisions of the Restitution of Land Rights Act No. 22 of 1994 and that any restitution granted can only be made by the Land Claims Court or the National Minister of Land Affairs in terms of the said Act. Council will support every request by the Land Claims Commission for participation in negotiations and the adjudication of land claims and will endeavor to assist the Land Claims Commission in its objectives.

3.6 Once a lease has been approved and final allocation made, the property must be inspected at regular time intervals to ensure compliance with the terms and conditions of the agreement of lease.

#### **4. SALE OR LEASE OF IMMOVABLE PROPERTY BY PUBLIC COMPETITION**

4.1 The alienation of public land shall take place by means of public competition which may include tender, auction or proposal call, except in the instances detailed in paragraph 5.

4.2 The adjudication of offers submitted by way of public competition shall be based on a

points system as set out in Annexure A. As a general rule, the offer scoring the highest points will be accepted provided all terms and conditions are complied with. Council may however decide to accept an offer scoring lower points if Council is of the opinion that it would be in Council's interest, in which case the full reasons shall be minuted.

4.3 **In compliance with Section 117 of the MFMA councillors may not serve on committees considering tenders. The Bid Adjudication Committee, as established by the Municipal Manager in terms of the Supply Chain Management Policy, is hereby authorized to consider tender evaluation reports and to submit recommendations to Council.**

4.4 Should tenders score identical points the successful tender must be determined by the lot.

4.5 The Valuation Section in the Department Planning & Economic Development and Council's independent Valuers shall determine the market value for the purpose of selling prices or rentals.

4.5 Failure by tenderers to complete the required tender documents and annexures and to submit the prescribed documentation, may lead to such tender being disqualified.

## **5. DIRECT SALE OR LEASE OF IMMOVABLE PROPERTY**

5.1 The direct sale or lease of immovable property to social care organizations is permitted where Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community or the poor. Such applications will be fully motivated in the report submitted to Council.

5.2 The direct sale or lease of redundant or non-viable strips of land such as closed streets, lanes, closed portions of public/open spaces etc. to adjoining owners is permitted. Such land shall be sold or leased at market value and/or such price or rental as determined by **an independent valuer**.

5.3 The direct lease of land for outdoor seating to adjoining restaurant owners is permitted and the rental charged shall be determined by an independent valuer.

5.4 Immovable property may be sold/let directly to other spheres of government and other local authorities. All such immovable property transactions must be considered on a **fair** market value basis.

5.5 Houses being rented to employees may be sold/let out of hand, on condition that

rentals comply with any policy applicable and that selling prices are market related, save in the circumstances set out in paragraph 6.5 hereof.

- 5.7 Immovable property may be sold/let directly in exceptional cases not provided for above, where the council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community and the poor, and where none of the provisions as set out in this policy provide for or regulate such exception. In such cases council is required to:
- record in the minutes of the meeting concerned their full reasons for preferring such out-of-hand sale or lease.
  - **allow the public to make counter offers in respect of the transaction proposed.**

## **6. SUBSIDIZED RATES**

In terms of the general principle as set out in paragraph 3.4 hereof, Council may determine subsidized lease rates or selling prices in respect of certain classes of property to be alienated to approved categories of applicants with the view to promote Council's functions and goals as set out in the Constitution. **When subsidized rates are proposed, the issues as listed in Regulation 13(2) of the ATR, must be considered.**

Subsidized rates may apply in respect of the following transactions:-

- 6.1 The sale of land to social care organizations. The rate payable by social care organisations in respect of the sale or lease of immovable property shall be fixed at between 5 and 20% of the market value, subject to, in the case of the sale of property, a reversionary clause being registered against the title of the property.
- 6.2 redundant strips of land may be leased for garden purposes, at a nominal tariff.
- 6.3 The selling of industrial land in approved industrial parks, at the prices as approved by Council from time to time.
- 6.4 Municipal worker houses situated in the area of low cost housing schemes, may be sold at prices below market value. The full reasons for such decision must be recorded in the minutes of the meeting of Council.

- 6.5 The rental in respect of the lease of land for commercial purposes shall be based on market value. Council may however consider a subsidized rental during the first 3 years of the lease period in the case of projects initiated by starter businesses for the purpose of Local Economic Development and Black Economic Empowerment.

## **7. CONDITIONS OF SALE**

- 7.1 Subject to paragraph 7.2 hereof, applicants are responsible for all costs, and where applicable, all action pertaining to a transaction e.g. survey, rezoning, subdivision, consolidation, advertisement, relocation or provision of services, and the obtaining of required statutory approval/s. Council may decide to waive its right to recover the above costs if the reason for the sale is to rid Council of a burden to maintain or exercise control there over.
- 7.2 In respect of social care organizations and churches, Council may initiate the processes to obtain any statutory approvals required. Any external costs in this regard shall be for the account of the applicant, save for the cost of advertisements of which 50% will be borne by Council.
- 7.3 Where applicable, existing services shall be secured by means of the registration of a servitude in favour of council and costs shall be for the account of the applicant.
- 7.4 Where applicable, a portion of immovable property which is sold to an adjacent owner, shall be rezoned, closed and consolidated with the applicant's property.
- 7.5 Development of vacant land sold by tender or development proposal must commence within one year from date of registration of the deed of sale by all parties and be completed within a period of three years from such date. The deed of sale must provide for forfeiture in the event that the development has not been commenced or completed within the required time period or if such forfeiture is not exercised, the payment of damages equal to the rates that would have been payable to Council in respect of the development proposed. Council furthermore reserves the right to impose such additional conditions as deemed necessary, without limiting its rights to liquidated damage.
- 7.6 The deed of sale must provide for the payment of occupational interest from date of occupation, as agreed upon, of the property until transfer of the property in the name of the purchaser, at a rate of 1% above the official interest rate published from time to time, and calculated on the outstanding portion of the purchase price.
- 7.7 A reversionary clause shall be applicable to immovable property transactions in those cases where it is sold below market value.

- 7.8 Council will enjoy a right of pre-emption in the instance of purchasers applying to re-sell undeveloped immovable property purchased from Council.
- 7.9 Immovable property may only be used for the purpose as approved by council and in accordance with the approved town planning scheme/s or spatial development framework.
- 7.10 All deeds of sale, where applicable, shall be signed within 60 days from date of official request by Council or its legal representatives to do so, or within such extended period as may be agreed to by the municipality, failing which the approval or allocation shall lapse. A suspensive condition shall be applicable to all transactions which are subject to the approval of land use rights, or approvals in terms of environment conservation legislation. **Additional suspensive conditions may be laid down in respect of any other matter if deemed appropriate by the Municipality.**
- 7.11 No transaction shall be processed unless the applicant has confirmed in writing that the applicant will bear all applicable costs as set out above **and also confirmed that all other conditions imposed by the Municipality will be complied with.**
- 7.12 A 10% deposit will be due and payable by the applicant/successful tenderer upon allocation of the land.
- 7.13 Interest on the purchase price may be charged by council should payment of transfer be delayed due to action or failure on the part of the applicant/successful tenderer.

## **8. CONDITIONS OF LEASE**

- 8.1 Subject to paragraph 8.2 hereof, applicants are responsible for all costs, and where applicable, all actions pertaining to a transaction e.g. survey, rezoning, subdivision, consolidation, advertisement, relocation or provision of services, and the obtaining of required statutory approval/s. Council may decide to waive its right to recover the above costs if the reason for the sale is to rid Council of a burden to maintain or exercise control thereover.
- 8.2 In respect of social care organizations and churches, Council may initiate the processes to obtain any statutory approvals required. Any external costs in this regard shall be for the account of the applicant, save for the cost of advertisements of which 50% will be borne by Council.

8.3 No transaction shall be processed unless the applicant has confirmed in writing that

- the applicant will bear all applicable costs as set out above **and**
- **all other conditions imposed by the Municipality will be complied with.**

8.4 The under-mentioned deposits and/or equivalent security/guarantee shall be applicable to leases where the rental is based on market value, and shall be due and payable on allocation to a successful lessee:-

8.4.1 a deposit equal to 2 months rental for commercial transactions;

8.4.2 a deposit equal to 1 month's rental for residential transactions provided that the credit rating is satisfactory, failing which the deposit may be increased; and

8.4.3 no deposit in respect of social care transactions as well as garden and parking leases other than commercial parking leases.

8.5 No immovable property shall be sub-let, ceded or assigned by the lessee, without the prior written approval of Council.

8.6 An owner of immovable property who leases an adjoining municipal property may be substituted by his successor in title for the duration of the remainder of the lease term as deemed necessary on the same terms and conditions and/or additional terms and conditions.

8.7 The lessee shall be liable for payment of rates and service charges unless exempted by council.

8.8 Rentals and other charges relating to the letting of immovable property shall be reviewed annually.

8.9 The letting of lanes, public places, road reserves shall be subject to the following:-

8.9.1 closing off/securing, if required by the council, shall be to its satisfaction;

8.9.2 costs for the relocation or installation of services where required shall be for the account of the lessee; and

8.9.3 securing of servitudes if deemed necessary.

8.10 Lessees shall indemnify council against any possible claims arising from the lease or use of the immovable property.

8.11 Where permission is granted for the erection of temporary or permanent structures or improvements on leased land, it will be granted subject to the

condition that such improvements will become Council property on expiry of the term of lease, or in the event the agreement has been cancelled due to breach of contract.

- 8.12 Save with prior approval, the property may only be used for the purpose for which it was let and purposes regularized by the town planning schemes.
- 8.13 The lease agreement, where applicable, shall be signed and concluded within 30 days from the date of council's official request. Failure to comply within 30 days from date of request the allocation shall be regarded as having lapsed and applicant shall forfeit his/her deposit and be held liable for costs exceeding the deposit amount.
- 8.14 Officials from council shall at all reasonable times be entitled to enter/inspect the immovable property.

## **9. TERM OF LEASE NOT EXCEEDING 1 MONTH**

- 9.1 The letting of vacant immovable property for periods not exceeding **ONE** month without an option to renew, may be approved by the Municipal Manager subject to the following conditions:-
  - 9.1.1 Where applicable the general lease conditions as per paragraph 8 above, shall apply.
  - 9.1.2 Immovable property let for short term events, i.e. 14 days for circuses, etc, shall be subject to at least the following:-
    - 9.1.2.1 where applicable, applicant to provide or arrange with council at the applicant's cost, for services, i.e. refuse, water, electricity, ablution facilities, etc;
    - 9.1.2.2 applicant shall return land in its original condition;
    - 9.1.2.3 rental as per the tariff as approved by Council;
    - 9.1.2.4 applicant shall indemnify council against any claims against council as a result of the lease; and
    - 9.1.2.5 applicant shall undertake in writing to compensate council for any damages caused to council property which may arise from any circumstances whatsoever.

## **10. EXTENSION OF LEASE CONTRACTS**

Lease contracts with existing tenants of immovable properties may be renewed without calling for tenders only if:-

- 10.1 the lessee has an option in terms of the existing contract, to extend the lease; or
- 10.2 if Council is of the opinion that it will not be in Council's interest to call for tenders or that renewal is aligned to Council's strategic objectives and in the interest of the community.

The reasons for such decision must be recorded in the minutes of such meeting.

## **11. SALE OF IMMOVABLE PROPERTY TO CHURCHES**

11.1 The sale of immovable property to churches shall be dealt with in terms of paragraphs 3.3 and 7 of this policy.

11.2 Additional factors to be taken into account for the allocation of immovable property to places of worship are the following:-

11.2.1 the size of the congregation/membership;

11.2.2 availability of finance to acquire the site and develop it within three years;

11.2.3 whether or not such a denomination is already represented in the area;

11.2.4 whether or not welfare type facilities/activities will be provided in addition to religious facilities; and

11.2.5 whether or not the congregation/membership is drawn from the area in which a site is being applied for.

11.3 Tender documents for the sale of land to churches shall include a prescribed application form which shall require applicants to supply inter alia the following details:-

- list of members

- a constitution
- details of the proposed use and development program as well as a letter of support from the local community.
- information as required in terms of paragraph 11.3 above.

## 12. **EXCLUSION**

This policy is not applicable to the sale of erven serviced as part of the National Housing Program.

## 13. **ADVERTISEMENT IN THE PRESS**

- 13.1 No immovable property may be transferred into the name of a buyer, or a lease contract with a lessee be signed unless:-
- 13.1.1 the proposed transaction has been advertised in the press for objections;  
and
  - 13.1.2 objections (if any) lodged in accordance with the advertisement, have been considered.
- 13.2 an objection period of at least thirty (30) days must be allowed.
- 13.3 The afore going provisions shall not apply where the proposed letting will be for a period not exceeding twelve (12) months without the option to renew.
- 13.4 In cases where erven are sold as part of a residential or industrial development, it will not be required to advertise each and every transaction in such development provided that:-
- 13.4.1 a notice advertising the initial development and proposed sale of erven, has been placed in the press prior to the sale of erven in that development; and
  - 13.4.2 all transactions take place in accordance with the arrangement and detail initially advertised and approved by Council.

## 14. SPORT FACILITIES

The letting of sports facilities to sports codes, clubs, federations and other similar bodies shall be in accordance with Council's policy on sports facilities.

## 15. PUBLIC AMENITIES

The letting of public amenities to individuals, organizations and other bodies shall be in accordance with council's policy on public amenities.

### ANNEXURE A

#### **ADJUDICATION OF TENDERS: SALE/LEASE OF IMMOVABLE PROPERTY: CALCULATION OF POINTS**

*(See paragraph 4.2)*

<b>COMMERCIAL / INDUSTRIAL TRANSACTIONS</b>			
<b>. Sale of Land (no development proposals)</b>			
<b>80/20 (Land value R500 000 and below)</b>		<b>90/10 (Land value R500 001 and above)</b>	
<b>Points</b>	<b>Description</b>	<b>Points</b>	<b>Description</b>
<b>80</b>	<b>Price</b>	<b>90</b>	<b>Price</b>
<b>11</b>	<b>Equity ownership by HDI's</b>	<b>5.5</b>	<b>Equity ownership by HDI's</b>
<b>2</b>	<b>Local labour</b>	<b>1</b>	<b>Local labour</b>
<b>5</b>	<b>Local enterprise</b>	<b>1</b>	<b>Equity ownership by woman</b>

1.5	Equity ownership by woman	2.5	Local Enterprise
0.5	Equity ownership by disabled		

<b>COMMERCIAL / INDUSTRIAL TRANSACTIONS</b>			
<b>Sale of Land (with development proposals)</b>			
<b>80/20 (Land value R500 000 and below)</b>		<b>90/10 (Land value R500 001 and above)</b>	
<b>Points</b>	<b>Description</b>	<b>Points</b>	<b>Description</b>
45	<b>Price</b>	50	<b>Price</b>
35	<b>Development proposals</b> The development concept will be scored according to the following criteria: - - <b>Estimated value of improvements (9)</b> (high value score proportionately higher) - <b>Feasibility and viability of project (9)</b> (Layout, aesthetics, fit in with surrounding area, design concept) - <b>Financial planning (9)</b> (business plan submitted, finances secured) - <b>Job opportunities (8)</b> (number of temporary and permanent job opportunities envisaged)	40	<b>Development proposals</b> The development concept will be scored according to the following criteria: - - <b>Estimated value of improvements (10)</b> (high value score proportionately higher) - <b>Feasibility and viability of project (10)</b> (Layout, aesthetics, fit in with surrounding area, design concept) - <b>Financial planning (10)</b> (business plan submitted, finances secured) - <b>Job opportunities (10)</b> (number of temporary and permanent job opportunities envisaged)
11	<b>Equity ownership by HDI's</b>	5.5	<b>Equity ownership by HDI's</b>
2	<b>Local labour</b>	1	<b>Local labour</b>
5	<b>Local enterprise</b>	2.5	<b>Local enterprise</b>
1.5	<b>Equity ownership by woman</b>	1	<b>Equity ownership by woman</b>
0.5	<b>Equity ownership by disabled</b>		

<b>RESIDENTIAL TRANSACTIONS</b>			
<b>80/20 (Land value R500 000 and below)</b>		<b>90/10 (Land value R500 001 and above)</b>	
<b>Points</b>	<b>Description</b>	<b>Points</b>	<b>Description</b>
80	<b>Price</b>	90	<b>Price</b>
8	<b>HDI status</b>	4	<b>HDI status</b>
10	<b>Local resident</b>	5	<b>Local resident</b>
1.5	<b>Woman</b>	1	<b>Woman</b>

0.5	Disabled		
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**NOTE: A point system differing from the above may be used should the above point allocation categories be inappropriate depending on the nature of the development/transaction being considered/proposed.**

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