

DRAFT DISPOSAL OF MUNICIPAL PROPERTY POLICY



EMAKHAZENI LOCAL MUNICIPALITY

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DISPOSAL OF IMMOVABLE MUNICIPAL PROPERTY POLICY

1. OBJECTIVE

This policy aims to

- (a) provide for uniform procedures and processes to be embarked upon in the process of alienation of immovable municipal property within Emakhazeni Local Municipal area.
- (b) promote investment and development.

2. METHODS OF DISPOSAL

The disposal of immovable property must be by one of the following methods:

- a) Transferring the asset to another organ of state in terms of a provision of the Municipal Finance Management Act and relevant regulation enabling the transfer of assets.
- b) Transferring the assets to another organ of state at market related value or, when appropriate for a lesser amount or free of charge;
- c) Selling the asset;
- d) Destroying the asset;
- e) By donating the asset;
- f) By auctioning the asset;
- g) By inviting tenders for the alienation of the asset;
- h) By leasing the asset for short/long term by means of a lease agreement.

Immovable property may only be alienated/let at market related prices except when the public interest, the plight of the poor or unique innovation demands otherwise as determined in terms of the Local Government Municipal Finance Management Act 56 of 2003, through public auction or over the counter on the first come first serve basis.

The highest acceptable tender will be considered when Council's assets are disposed.

The decision to dispose of immovable property is reserved for the Council.

When alienating immovable property, the Council may from time to time by way of the resolution determine the following:

- (a) the criteria and conditions in terms of which such property will be alienated.
- (b) the percentage/s in terms of which the stands will be reserved for the previously disadvantaged communities.

- (c) that there be an automatic rescission of Council Resolution should the applicant fail to accept the Council Resolution alienating the immovable property to the applicant within 60 (sixty) days from the date of Council Resolution.

3. PROCEDURE FOR SALE

3.1 Residential Erven

- (a) residential erven should be advertised for sale in accordance with Section 79 (18) of the Local Government Ordinance, 17 of 1939 as amended, read with Section 21 of the Municipal Systems Act 32 of 2000, as amended together with the Municipal Finance Management Act 56 of 2003 and the Council's Supply Chain Management Policy and
- (b) sold on a first come first served basis to natural adult persons over the counter.

3.2 Business / Industrial Erven

- (a) Industrial/ Business Erven will be sold either by public bidding process or auction at a market related price.
- (b) The property may not be sold or subdivided until it has been developed with a permanent structure within 36 months of the date of sale.
- (c) The property may only be subdivided after the full purchase price has been paid and it has been confirmed by the Technical and Facilities Department that the necessary services are in place.
- (d) The erf sold as above shall not be transferred to a third party without the express approval in writing by the Municipality.

3.3 Church Even

- (a) Due to the high demand for church erven the alienation thereof will be done by way of a public bidding process unless Council resolved otherwise.
- (b) When the deed of sale for the church erf is concluded, the following conditions shall be made applicable:
 - (1) The erf must be developed with a permanent structure of

church building within 24 months of the signing of the deed of sale.

- (2) If the above mentioned condition is not complied with, the erf shall revert back to Council to be alienated to another prospective buyer.
 - (3) No houses or shacks may be erected on a church stand except if the house, which must be constructed in accordance with an approved building plan, serves as a house for the minister of the church.
 - (4) A 25% rebate on the purchase price will be granted after a final inspection on the church building was conducted by the Town Planning Services and an occupation certificate has been issued.
 - (5) The church will be responsible for the payment of all service connection fees.
 - (6) No rezoning and subdivision of the church erf shall be allowed at any stage.
- (c) If an application is received from a church wishing to develop a public open space/park the following further conditions shall be made applicable:
- (1) due to high demand for church sites the alienation thereof will be done through a competitive bidding process and the bid will be awarded to the highest acceptable tender unless the Council resolved otherwise.
 - (2) The decision whether the land may be alienated shall be made by the Council.
 - (3) The church will be responsible for all town planning costs, costs of installation of services as well as service connection costs.
 - (4) The church will bear costs for town planning process, where these must be undertaken.
 - (5) The following documents should be submitted to the

Municipality for the alienation of a church erf:

- (6) Constitution of the church/similar establishment document;
- (7) Six months bank statements of the church;
- (8) Proof of registration (optional) of the church.
- (9) Proof that they have consistently accumulated funds of about R10 000,00 for the past twenty-four (24) months;
- (10) Proof that the church has been in existence in Emakhazeni Local Municipality for more than 36 months.
- (11) Proof that it has a membership of not less than 300 and more for a period of thirty six months.

3.4 Park Erven

- (a) Whenever an application for disposal of a park erf or portion thereof is submitted the comments of the Town Planning Services must always be obtained and considered by Council.
- (b) All prospective purchasers of any Park Erven shall perform an Environmental Impact Assessment before any applications to purchase Park Erven are considered. This impact assessment must make provision to include the following:
 - (1) The locality and size of the park area in question.
 - (2) The soil conditions prevailing in the park.
 - (3) The locality of any flood lines on and/or near the park.
 - (4) The status of the park in terms of being developed with recreational facilities.
 - (5) Whether the park is used as access to other land used.
 - (6) Possible future plans to develop the park as a recreational facility.
 - (7) Possible value of the park as a recreational facility in terms of locality and size.
 - (8) Sufficiency of park areas within the area where the park is located.

- (9) The possibility of servicing the park if developed with another use.
 - (10) Consideration should be given to existing green belt concepts and any planned green belt concepts.
 - (11) The ecological status of the area in question as well as the environmental impact of any such developments, should they take place, should also be considered.
 - (12) The natural biodiversity that occurs or may occur naturally in the park.
 - (13) Any historical significance that could be associated with certain areas.
- (c) Park closure and alienation and procedures specified in the Local Government Ordinance 17 of 1939, as amended must be adhered to.
- (d) Upon approval of the application the following processes should be embarked upon
- (1) prior to concluding the agreement of sale the proposed permanent closure of the park erf or portion thereof be advertised in terms of Section 68 of the Local Government Ordinance, 17 of 1939, as amended, at the cost of the applicant.
 - (2) the proposed sale should be advertised in terms of Section 21 of the Municipal Systems Act, as amended, at the cost of the applicant.
 - (3) if no objections are received an agreement of sale should be concluded.
 - (4) if only a portion of the erf is to be alienated, the applicant will be responsible for the costs of subdivision and registration of the subdivision.
 - (5) the applicant will be responsible for all town planning costs, the costs of installation of services as well as the service connection costs.

Comment [t1]:

- (6) the sale of green space must be avoided and only considered in the interest of the community and where the community will be benefited.

3.5 Single Property Developments

- (a) When an application for a single property development is received, a report will be compiled to be submitted to the Council for approval. Each application for such development will be evaluated upon its own merit and if approved in terms of the provisions of Section 44 of the Council's Supply Chain Management Policy read with Section 113 of the Municipal Finance Management Act 56 of 2003 and the application can be considered if:
 - (1) the person who made the proposal will be prejudiced if a competitive bidding process is followed.
 - (2) the proposed development offered in terms of the bid is a demonstrably (one of its kind) or proven unique innovative concept.
 - (3) the proposed development will be exceptionally beneficial to the Council, or have exceptional local economic advantages.
 - (4) the development will be in the interest of the community of the Council's area of jurisdiction.
 - (5) the person who made the proposal for the Council's land is the sole provider of the services to be provided on the land.
 - (6) the person who made the proposal for the Council's land is the innovative designer of the proposed development.
 - (7) if it is impractical for the Council to make use of the land but it is only the owner/s of the adjacent land who can best make use of the Council's land.
 - (8) the reasons for not going through the normal bidding process are found to be sound by the accounting officer.
- (b) If Council decides to consider an unsolicited bid in terms of the Council's Supply Chain Management Policy, the decision must be made public in accordance with Section

Comment [t2]: Unsolicited bids – LM's are not obliged to consider an unsolicited bid received outside its normal bidding process. If it does consider such, it may do so in accordance with a prescribed framework. (beneficial to the municipality)

21A of the Municipal Systems Act, together with -

Comment [t3]: Should an unsolicited bid be considered.

- (1) reasons as to why the bid should not be open to other competitors;
 - (2) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (3) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (c) The proposed sale will be advertised in accordance with Section 79 (18) of the Local Government Ordinance, 17 of 1939, as amended and Section 21 of the Municipal Systems Act as amended read together with Section 113 of the Municipal Finance Management Act 56 of 2003 and Section 44 of the Council's Supply Chain Management Policy at the cost of the developer and the Bid Adjudication meeting opened to the public will be held to confirm/approve the sale of land as unsolicited bid.
- (d) if the land forms part of a park, the permanent closure of such park will be advertised in accordance with Section 68 of the Local Government Ordinance, 17 of 1939, as amended, at the cost of the developer.
- (e) an agreement of sale will be concluded prior to the successful completion of the abovementioned processes.
- (f) the developer will be responsible for the costs in respect of installation of services as well as the service connection fees.
- (g) the fact that the person has identified the Council's product or service and make an offer for Council's land does not guarantee that person that the land will be alienated to him as unsolicited bid.
- (h) the sale of the portion of the road reserve will be made subject to the Council resolution.
- (i) the developer will be responsible for the costs of rezoning of the property and the payment of main service contribution fees.
- (j) the developer will be responsible for costs of other town planning processes such as township establishment, subdivision, registration & Environmental Impact Assessment

that might be embarked upon.

- (k) whenever single properties are divided (through subdivision or township establishment) into 10 or more full title units and all services, inclusive of water, sewerage, electricity and roads are installed by the developer at own cost, an 85% remission of assessment rates in respect of the newly created units be granted to such developers for a period of 2 years from the date of the registration of the subdivision or the proclamation of the township provided that, if any of the newly created units are sold off or improved before the expiry of the 2 year period, full assessment rates will be payable by the purchaser from the date on which the unit is transferred.

4. RENTAL PROPERTY

All immovable property must be let at market related rates except when the public interest or plight of the poor demands otherwise.

The rental amount for the letting of immovable property must be annually reviewed taking into account the escalation.

All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed.

In the event of peculiar circumstances prevailing in respect of a specific transaction, the terms and conditions to be applied in such event shall be determined by the Council and incorporated in the agreement of lease.

The short term lease agreement shall be concluded between the Municipality and the third parties based on the Council's resolution approving such lease agreement. The lease agreement entered into pursuant to the Council's resolution shall incorporate the conditions of approval.

With respect to the short term lease agreement exceeding 3 years, the Section 33 of the MFMA must be complied with if the lease agreement has financial obligations for the Council, for example loan agreement.

The long terms lease agreement shall be concluded between the Municipality and the third party/parties based on the Council's resolution approving such lease agreement. The lease agreement entered into pursuant to the Council's resolution shall incorporate the conditions of approval.

Where a long term lease agreement is for a period of 10 (ten) years or more, such agreement must be notarially registered in compliance with the relevant

legislations.

All proposed agreements of lease shall be subject to the following terms and conditions:

- (a) The **PROPERTY** is to be fenced by the **LESSEE** at his own cost.
- (b) That all electrical cable and connection costs will be for the account of the applicant.
- (c) The **LESSEE** shall enter into a consumer agreement with the Council and shall pay the necessary deposits on signing of this consumer agreement. Services rendered in terms of this consumer agreement shall be paid monthly by the **LESSEE** in accordance with the tariffs as determined from time to time and as promulgated in terms of the Council's By-Laws and Section 80(B) of the Local Government Ordinance No. 17 of 1939. Assessment Rates and Service Levies shall be payable by the **LESSEE** from the date of commencement of the lease agreement.
- (d) No permanent structure(s) may be erected on the **PROPERTY**.
- (e) The **LESSEE** shall be responsible for maintenance of the **PROPERTY** at own costs.
- (f) The **LESSEE** shall be obliged to comply with all statutory provisions including By-Laws, Ordinances and Regulations applicable to the use exercised on the **PROPERTY**.
- (g) The **PROPERTY** is to be fenced by the **LESSEE** at his own cost.
- (h) Should the **PROPERTY** not be utilized by the **LESSEE** within the period of 6 months from the date of the resolution, the lease contract shall automatically come to an end and the **PROPERTY** shall revert to **COUNCIL**.
- (i) That all electrical cable and connection costs will be for the account of the applicant.
- (j) The **LESSEE** may not cede or transfer any of his rights or obligations in terms of this agreement without the prior written approval of the **COUNCIL**.
- (k) The **LESSEE** shall be responsible for the supply and installation of water and electricity to the premises at own cost as well as for the installation of sanitary services and ensure the proper disposal of waste products as

required to the satisfaction of the Senior Manager Health Services where applicable.

- (l) Should the **LESSEE** fail to pay rental or any other amount which is owed by him to the **COUNCIL** upon the date when such amount is payable, or;
- (m) Should the **LESSEE** fail to comply with any of the terms of the lease agreement, and neglect to rectify any act or omission within 14 (fourteen) days after notice to do so has been served by the **COUNCIL** on the **LESSEE**; the **COUNCIL** shall have the right:
 - To collect overdue amounts and interest thereon calculated at the prime bank interest rate; or in accordance with any statutory prescriptions.
- (n) The **LESSEE** shall indemnify the **COUNCIL** against any loss, damage, claim, injury, death, etc arising out of the use of the **PROPERTY**.

5. DISPOSAL OF RENTAL PROPERTY

Where land/property is presently leased to a Sport Club/NGO registered as a Section 21 company/Non Profit - Making Organization/ community co-operatives such land if in the best interest of the Council, shall be sold by public auction or tender at market related purchase prices.

The right of first refusal shall be granted to the current lessee provided that:

- (a) The land or property shall be used only for the purposes that it was originally leased for these uses shall be listed and registered as part of the restrictive conditions against the Title Deed.
- (b) No bond shall be registered against the property without the written consent of the Council.
- (c) In the event that the Council gives consent for the registration of a bond over the property, the proceeds of such bond shall only be used for erecting improvements on the property. The purchaser shall be obliged to furnish written proof under the signature of the bond holder of compliance with this condition.
- (d) The purchaser (sports club or similar body) shall not alienate, encumber or transfer the property in any manner whatsoever, without the prior written consent of the Council.

- (e) In the event that the purchaser is in breach of any of the above obligations, the Council shall have the right to retransfer ownership of the property to the Council, against repayment of the original selling price paid by the Purchaser, without any interest. In the event that a bond has since been registered over the property the purchaser shall at its own cost, be obliged to cancel such bond before the property is transferred back to the Council.
- (f) In the event of the cancellation of the contract of sale and a retransfer of ownership of the property to the Council, the purchaser shall have no claim for compensation in respect of all or any improvements of whatsoever nature to the property, against the Council.
- (g) In the event of the cancellation of the contract of sale and retransfer of ownership of the property to the Council, the purchaser shall have no claim for damages against the Council.

6. DONATION

The Municipality's property shall be donated to the third/parties based on the Council's resolution. The deed of donation entered into pursuant to the Council's resolution shall incorporate the conditions of approval.

The donation of property shall be subject to the following conditions:

- (a) The **PROPERTY** is donated "voetstoots".
- (b) The date of donation shall be the date of signing by the last party of this deed and the **DONEE** shall take occupation of the property on this date.
- (c) The **DONEE** shall be responsible for the payment of rates and taxes from the date of donation of the **PROPERTY** to the **DONEE**.
- (d) The **DONEE** shall be responsible for service connections on the **PROPERTY**.
- (e) The **DONEE** will be responsible for the submission of building plans for approval before a building can be constructed.

[1] The development of the **PROPERTY** shall be subject to all applicable provisions of the municipal By-laws and the Emakhazeni Local Municipality Town Planning Scheme (and as may be amended). The **DONEE** shall submit a properly drawn plans to the **DONOR** for approval before any development is commenced with.

[2] The **DONEE** hereby acknowledges that it accepts the **PROPERTY**

made available subject to all title conditions, any encumbering conditions, limitations and servitudes which may exist in respect of the **PROPERTY** and that it shall comply with and execute such conditions. No guarantees or representations whatsoever which has not been described and included herein, are made or given by the **DONOR** and the **PROPERTY** is made available and donated *voetstoots*.

[3] Acceptable recommendations to counteract possible detrimental soil conditions, done on the **PROPERTY**, must be included in the building plans submitted to the **DONOR** for approval, and all buildings must be constructed in accordance with the plans submitted and approved.

- (f) Transfer of the property shall be registered by the **DONOR'S** attorneys and all costs of transfer to be paid by the **DONEE**.
- (g) The **DONEE** acknowledges that in terms of Section 79 (18) of the Local Government Ordinance 17 of 1939 as amended, the **DONOR** has advertised the alienation of the **PROPERTY** at the costs of the **DONEE**.
- (h) In the event of breach of agreement by either party, the aggrieved party shall be entitled to:
 - (1) Claim specific performance of the contract.
 - (2) Terminate the agreement and claim damages.
 - (3) Any other remedy available at common law in the discretion of the aggrieved party.
- (i) The **DONEE** shall not cede or sell its rights herein without written consent of the **DONOR**.
- (j) The parties agree to the jurisdiction of the Belfast Magistrate's Court in respect of the settlement of any dispute which may arise between them in regard to this agreement or the cancellation thereof notwithstanding that such dispute may fall outside the jurisdiction of the said Court.

7. EXCHANGE

Where exchange takes place, the general conditions are to be included in the title deed and no transaction without prior written consent of the Municipality shall be allowed.

8. INCENTIVES TO THE PREVIOUSLY DISADVANTAGED INDIVIDUALS

- (a) That a discount may be granted to Previously Disadvantaged Individuals (PDI's) provided that if the individual to whom the discount was granted wish to sell the property within a period of 5 years, the discount should be refunded to Council.

9. SALE / DONATION TO CHARITABLE ORGANIZATIONS

Sale to third parties are not allowed at all, should the purchase not need property anymore, the property will revert back to Council to be made available to either similar body/ies.

10. OBTAINING RELEVANT LAND USE RIGHTS BY THE DEVELOPERS

- (a) Council land or property being disposed of in terms of public tender above shall be suitably rezoned by the successful tenderer depending on the specific tender conditions on behalf of Council at the costs of the successful tenderer.
- (b) Council land or property being disposed of by means of public tender in event of specific zoning which includes an Environmental Impact Study or Assessment shall be rezoned by the prospective purchaser/developer at his/her own cost (including the cost for bulk services) after having been given the necessary power of attorney at the costs of the successful tenderer.
- (c) Whenever land or property is to be rezoned or if a township is to be established by the Council and objections are received in respect of such rezoning or township establishment, the prospective purchaser shall, at his/her own costs, attend and address the Mayoral Committee and the Mpumalanga Townships Board.

11. COST OF TOWN PLANNING SERVICES

- (a) In the event that the property needs to be rezoned or in the instance where township development is a requirement prior to the transfer thereof, the purchaser shall be responsible for bulk services contributions and any other services required in terms of the applicable legislation.
- (b) In the event of it being necessary to remove or relocate existing municipal services, when disposing of Council land or property on which such services are located, such removal/relocation shall be done by the Council and the costs in respect thereof shall be derived from the purchase price.

12. UNREGISTERED AND UNSERVICED ERVEN AS WELL AS LAND/ PROPERTY UNDERFLOODLINE

- (a) The alienation of land/property under the floodline shall take place only after Council has considered the Engineers report submitted in the application on measures taken to prevent flooding.

13. PAYMENT METHODS

- (a) The purchaser of immovable property may elect the following two methods of payment:
1. Payment of the full purchase price in cash; or
 2. Payment of the full purchase price by a bank guaranteed cheque.
 3. No deposit shall be accepted by the Council as part of the payment of the purchase price.
 4. All costs (advertising, rezoning, obtaining of a valuation, etc) pertaining to the transaction shall be borne by the purchaser. The purchaser will deposit an amount of equal to an estimate of the total cost to secure his obligations in this regard and undertake to pay any unforeseen excess costs. The municipality will be liable to refund the balance of the unexpended costs, should the alienation not be finalized within reasonable time within the time limit referred to in the bidder document or deed of sale, or should the actual deposit be less than the expenditure occurred, the purchaser shall pay the outstanding costs.
 5. All costs (advertising, rezoning, obtaining of a valuation, etc.) pertaining to the transaction shall be borne by the purchaser. The Council will send an account to the person to recover the costs.
 6. The proceeds of the sale shall be received as revenue and be paid to the vote number specified by the Manager: Finance.

14. NATIONAL PROGRAMMES

- (a) Any sale of immovable assets by the municipality which is to be utilised for purposes of housing to be funded and/or subsidized from National and/or Provincial Housing funds shall be done in compliance with the principles, policies and procedures as contained in National and Provincial Housing legislation and any Housing code and/or Land Procurement Procedure

prescribed under such legislation.

- (b) The extent, to which the intended disposal of the immovable property will promote the principles of integration, densification, regeneration and compact developments, shall be considered in deciding whether to dispose of the property.

15. CONDITIONS

- (a) To ensure that development of the erven/land sold indeed take place and to discourage speculation with these properties, the sale of such properties shall be subject to the following standard conditions pertaining to serviced stands within proclaimed townships which will be registered against the title deeds in a format that is acceptable to the Council and the Registrar of Deeds:
 - (1) The purchaser shall develop the property with a permanent structure within a period of 24 (twenty-four) months from the date of sale, failing which, upon the expiry of the 24 (twenty-four) months, the purchaser shall be levied business rates in respect of the municipal rates and taxes on the property. The development requirements specific to each transaction shall be included as part of the restrictive conditions to be registered against the Title Deed of the property.
 - (2) The Council may, at its own discretion, upon written application by the purchaser received within 3 (three) months before the expiry of the 24(twenty-four) months period, extend the period of development by a period not exceeding a maximum of a further 24(twenty-four) months.
 - (3) In order to comply with the requirements of the Deeds Office as set out in Circular No. 152 dated 1997.07.03 by the Registrar of Deeds, the above conditions imposed shall not be embodied in the Title Deed to be issued to the purchaser, but instead the following conditions shall be inserted in such deed "The property shall not be transferred without the written approval of the Emakhazeni Local Municipality". This condition shall be removed from the title deed upon transfer from the original purchaser to a subsequent owner upon proof that all the conditions in terms of the contract have been complied with and upon written consent by the Municipality.
 - (4) Should the purchaser decide to sell the property to the third person

- the development period of 24(twenty-four) months in terms of clause (1) and (2) above shall remain the same.
- (5) In the event that a bond has since been registered over the property, the purchaser shall at his own cost, be obliged to cancel such bond before the property is transferred back to the Council.
 - (6) The purchaser unconditionally accepts the risk of completing the agreed development of the property within the prescribed period.
 - (7) No stands will be reserved for any person (natural and unnatural person).
 - (8) No natural person/individual who is not 18 (eighteen) years old on the date of sale will be allowed to purchase a stand.
 - (9) Under no circumstances will the erf/stand be sold by the purchaser before the Council's prior written permission is obtained.
 - (10) Transfer shall be passed by the Council's attorneys within 180 (one hundred and eighty) days after signing the deed of sale, failing which the property shall revert to the Council.
 - (11) Should the purchaser fail to sign the transfer documents within 3 (three) months of the date of the letter from the Council's attorneys, the purchaser shall be levied business rates in respect of the municipal rates and taxes on the property.
 - (12) Transfer costs and all other costs incurred shall be borne by the purchaser/s on demand by the transferring attorneys.
 - (13) The property sold by Council shall be subject to all the Conditions of Establishment and Conditions of Title of the relevant townships as well as applicable provisions of the municipal By-Laws and the Emakhazeni Local Municipality Town Planning Scheme, 2004.
 - (14) The purchaser shall sign the contract of sale within 60 (sixty) days of the date of the Council resolution failing which the resolution of Council shall be automatically rescinded and the stand will be made available to the other person.

16. SHORT TITLE AND DATE OF OPERATION

This policy is called the Emakhazeni Local Municipality: Alienation of Immovable

Property Policy and shall come into operation on the date of its approval by the Council.