Swartland, South Africa

Transfer of Municipal Capital Assets

Legislation as at 22 May 2015

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Swartland
South Africa

Transfer of Municipal Capital Assets By-law, 2015

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1. Definitions

In this by-law, unless inconsistent with the context—

"**alienate**" means to part with ownership of a capital asset in favour of another person with the intention of transferring the ownership of the capital asset to the procurer thereof;

"**capital asset**" means

(a) any immovable asset such as land, property or buildings; or

(b) any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future economic or social benefit can be derived, such as plant, machinery and equipment;

"**close**" in relation to a public street or public place, means to close for all purposes or to vehicular or pedestrian traffic only;

"**immovable asset**" includes, but is not limited to—

(a) immovable property or any share therein registered in the name of a person or entity, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person or entity;

(b) a right to an exclusive use area held in terms of a notarial deed or cession;

(c) a real right registered against immovable property in the name of a person or entity, excluding a mortgage bond registered against the property;

(d) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act 59 of 1980);

(e) a public place or public street as defined in this by-law;

(f) immovable property as defined in section 107 of the Deeds Registries Act, 1937 (Act 47 of 1937);

(g) property consisting of land, buildings, or other improvements or structures attached to the land;

"**MATR**" means the Municipal Asset Transfer Regulations promulgated in terms of the Municipal Finance Management Act, 2003 (Act 56. of 2003) (GG 31346 of 22 August 2008);

"**MFMA**" means the Municipal Finance Management Act, 2003 (Act 56. of 2003) and any regulations promulgated in terms thereof;

"**municipality**" means the Municipality of Swartland established in terms of section 12 of the Local Government: Municipal Structures Act, 1998. (Act 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub delegated to such political structure, political office bearer, councillor, agent or employee;

"**municipal area**" means the area under the jurisdiction and control of the municipality;

"**public place**" means any land or portion thereof indicated on an approved plan, diagram or map as a public place and of which ownership as such vests in the municipality, and

"**public street**" means

(a) any street which has at any time been—

(i) used without interruption by the public for a period of at least thirty years;

(ii) declared or rendered such by the municipality or other competent authority;

(iii) constructed by the municipality, or

(iv) constructed by someone other than the municipality and which vests in the municipality;

(b) any land, with or without buildings or structures thereon, which is shown as a street on—

(i) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon, or

(ii) any plan or diagram as defined in section 15 of the Land Survey Act, 1997 (Act 8 of 1997), registered or filed in the office of the Registrar of Deeds or the Surveyor-General's office, unless such land is on such plan or diagram described as a private street.

2. Purpose and objectives

(1) The purpose and objectives of this by-law are—

(a) to give effect to the municipality's Municipal Asset Transfer Policy;

(b) to provide a legislative framework for the management and administration of the municipality's capital assets;

(c) to determine the various categories of capital assets in order to regulate its use, disposal and acquisition; and

(d) to lay down procedures in respect of the various categories of transactions.

(2) In achieving the purposes and objectives as contemplated in subsection (1), the municipality recognises and supports the principles of Land Reform and Land Restitution and that land in its custody should be dealt with in a manner which will ensure the greatest benefit to the municipality and the community.

Chapter 1
OWNERSHIP OF PUBLIC PLACES AND PUBLIC STREETS

3. Ownership of public places and public streets

The ownership of all public places and public streets and the land comprised in such places and streets vests in the municipality.

Chapter 2
GENERAL PROVISIONS RELATING TO MANAGEMENT, ACQUISITION, ALIENATION AND LETTING OF CAPITAL ASSETS

4. Powers of municipality

The municipality may, in achieving its operational needs and strategic objectives—

(a) use, improve, benefit there from, dispose, let or allow its capital assets to be developed or occupied or to permit it to be enclosed and cultivated;

(b) acquire immovable property and rights in property by way of private treaty, cession, donation or expropriation;

(c) dispose of capital assets and rights in capital assets by way of direct sale, public tender, auction or direct negotiation;

(d) let capital assets on a long term or short term basis by way of direct negotiation or public tender;

(e) subject to the provisions of MATR determine subsidised selling prices or lease tariffs in respect of capital assets;

(f) acquire or dispose of assets by means of exchange or donation;

(g) lease assets for own purposes where necessary; and

(h) exercise such other competencies as may be reasonably necessary, or incidental to the effective performance of the municipality's functions.

5. Alienation and letting of capital assets

The alienation or letting of capital assets of the municipality shall be dealt with in terms of section 14 of the MFMA and the MATR as well as the provisions of the municipality's Municipal Asset Transfer Policy.

6. Out of hand selling and letting of capital assets

(1) Notwithstanding the provisions of section 5, the municipality may sell or let capital assets out of hand as contemplated in the municipality's Municipal Asset Transfer Policy.

(2) In all transactions contemplated in subsection (1) the municipality must record in the minutes of the meeting concerned its full reasons for preferring such out-of-hand sale or lease.

7. Subsidised prices and rentals

In terms of the general principle as set out in section 2(2), the municipality may determine subsidised selling prices and rentals in respect of certain classes of capital assets to be sold or let to approved categories of applicants with the view to promote the municipality's functions and objectives as set out in the Constitution.

8. Servitudes

The municipality may grant servitudes over or under municipal immovable property at a tariff determined by the municipality and on such terms and conditions as it may prescribe.

9. Encroachments

(1) The municipality may on such conditions as it deems necessary, by agreement permit encroachment on municipal property or the erection or maintenance of a verandah, balcony, sign, projecting sign or similar structure which projects in or over any street or public place.

(2) When any immovable property of the municipality or under the control or management of the municipality is encroached upon without permission, the municipality may serve a written notice on the person responsible for such encroachment requesting him or her to remove the said encroachment or to take the necessary steps to regulate it.

(3) Where the person served with a notice in terms of subsection (2) fails to comply with such notice the municipality may, subject to obtaining the necessary court order, demolish, remove or fill in the projection or projecting structure concerned at the cost of such person.

(4) The municipality may reduce the extent of a public place or street which is encroached upon by the extent of the encroachment or by such greater extent as may be desirable.

(5) A person who wishes to obtain the permission of the municipality as contemplated in subsection (1) must apply on the prescribed form.

(6) The provisions of section 11 of the Roads and Streets By-law apply with the necessary changes.

10. Closure of public places and public streets

Subject to the provisions of the By-law relating to Roads and Streets, the municipality may close any public street or public place or portion thereof.

11. Prescriptive claims

The municipality may, upon written proof that a person has—

(a) prior to the expiration of the period of ten years contemplated by section 1 of the Prescription Ordinance, 1964 (Ordinance 16 of 1964), by prescription acquired ownership of immovable property owned by the municipality; or

(b) acquired a right in or over such property;

admit or concede any claim to that effect by such person.

12. Exclusion

This by-law does not apply to the sale of erven serviced as part of the National Housing Programme.

13. Repeal of by-laws

The By-law Relating to the Management and Administration of Immovable Property published by Swartland Municipality in Provincial Gazettte 6067 of 19 September 2003 is hereby repealed.

14. Short title and commencement

This by-law shall be known as the By-law relating to Transfer of Municipal Capital Assets and shall come into operation on the date of publication thereof in the Provincial Gazette.