

MBHASHE LOCAL MUNICIPALITY



LEASE POLICY

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1. **DEFINITIONS**

In this Policy a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 56 of 2003 and/or the Municipal Systems Act, 32 of 2000 and/or any other Municipal legislation has the same meaning as in the said legislations and means:

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 danger public health or safety of the environment and for the purposes of this Policy included but not restricted to refuse collection, local roads, sanitation, storm water drainage, fire services and water services.
Capital Asset	Any immovable asset such as land, property or buildings
Competitive bidding process	A process whereby prospective bidders are invited through public media to submit bids and such bids are administered in a fair, transparent, competitive and cost effective manner
Community organizations	Non-profit organizations that work at local government level to improve the lives of individuals or society as a whole
Costs	The amount of cash or cash equivalent paid or the fair market value of the other consideration paid to acquire an asset at the time of its acquisition or construction
Council or municipal council	A municipal council referred to in Section 18 of the Local Government: Municipal Structures Act 117 of 1998 and for the purposes of this policy, the municipal council of the Mbashe Local Municipality including its nominee.
Integrated Development Plan	A process to facilitate economic development and integration of communities by utilizing resources of council to increase the participation of local people in the mainstream economy and improve the livelihoods without compromising the financial viability of the municipality.
Long term	In term of this policy, a contract with a duration period exceeding 9 years 11 months
Long term lease	For the purposes of this policy, a lease period of more than 9 (nine) years and 11 (eleven) months, which lease shall be registered against the title deed of the property concerned
Municipality	The Mbashe Local Municipality and / or (MLM)
Social care	Services provided by registered welfare, charitable and non-profit organisations, amateur sporting clubs, cultural or recreational organisations and religious organisations.

1. PURPOSE

- (a) All MLM owned land is recorded in a Land Asset Register, which may be identified for economic, social, community, municipal and other uses.
- (b) Provide a framework in terms of which MLM may, under specific circumstances, take a decision to grant rights to use, control or manage MLM land or interest therein through long – term, medium or short – term leases;
- (c) Ensure that irreplaceable land is not lost to MLM or the public, taking into consideration the principle that MLM land should not be sold, but should be rather be made available for use or development purposes by means of long – term and short – term leases;
- (d) ensure long – term recurring benefits to MLM,
- (e) ensure that the asset value of MLM's land is increased over time, as a result of the value to be added by improving the land made available by means of long – term and short – term leases on the basis that the land will revert to MLM on expiry of the lease period;
- (f) promote access to MLM land specifically to previously disadvantaged people;
- (g) uplift and promote private sector involvement;
- (h) strengthen relationships between MLM and the community by being sensitive towards the community needs and expediting the process to make MLM land available;

2. KEY PRINCIPLES IN THE DECISION MAKING PROCESS

The following key policy principles shall be considered when a decision is taken to lease MLM land or property:

- (a) MLM shall give preference to make land available through short – term, medium and long – term leases, taking into consideration the following:-
 - (i) the value of the development proposed in respect of the land,
 - (ii) a determination to be made by MLM whether the prevailing circumstances justifies a medium - term lease of a period between 3 months and 10 (ten) years;
 - (iii) The short and medium term leases are preferred over a long lease in general, on condition, however, that the value of the development to be completed by a lessee should be considered and a determination be made by Council as to whether the circumstances warrant a longer lease for a period of more than 10 (ten) years up to and including 50 (fifty) years depending on the value of investment.

3. CONDITIONS

The lease will cease to exist once the lessee:-

- (a) Become unable to render the service OR use the property for the purpose it was intended for
- (b) Failure to pay rentals as stipulated in the lease agreement

4. LEASE AGREEMENTS

- (a) The right to use or control the property will only be after a written agreement is concluded between the parties
 - (i) a sufficient description of the property in respect of which the right is granted, in order to identify the asset;
 - (ii) particulars of any subsidiary assets that are to be made available with the Capital Asset / property
 - (iii) the period for which the right is granted;
 - (iv) the amount of compensation payable to MLM for the granting of the right and the terms and conditions of payment;
 - (v) requirements for the private sector party or organ of state to whom the right is granted to maintain and safeguard the asset for its intended purpose, taking into account the condition of the asset and its estimated remaining life at the date of granting of the right;
 - (vi) the extent to which the lessee is permitted right to make improvements or enhancements to the property and the terms and conditions regulating such improvements or enhancements;
 - (vii) a clause disallowing the lessee in ceding or sub-contracting to another person; and
 - (viii) No leased immovable property shall be sub-let and no lease may be ceded or assigned by the Lessee without the prior written approval of the Municipality.

5. RENTAL AND RENTAL ESCALATION

Rental, unless otherwise stated shall be determined by the independent municipal valuer at all times.

Rental, except where decided otherwise by the Municipality , shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items) as determined by the Municipal Council.

6. ADDITIONAL COSTS BORNE BY LESSEE

A Lessee shall, in addition to the rental, be liable for the payment of:

- (a) Assessed rates on the property leased shall be made to form part of the rental amount as determined by the municipal valuer.
- (b) Service charges levied by the other organs of state such as water and electricity

7. INDEMNITY BY LESSEE

- (a) A Lessee shall indemnify the Municipality against all claims of whatever nature either to himself or any third party arising from the lease and/or his use of the leased immovable property.

8. USE OF LEASED PROPERTY

- (a) Except with the prior written approval of the Municipality, leased immovable property may only be used for the purpose for which it was let provided such purpose is permissible in terms of the zoning of the property concerned.
- (b) Where immovable property is leased for residential purposes, only the Lessee and his immediate family and such other persons as may be approved by the Municipality in writing, shall occupy such property.
- (c) No immovable property leased for residential purposes shall be used by the Lessee for the purpose of trade including the operation of a spaza shop and a tavern thereon.
- (d) Where immovable property is leased for residential purposes, the Lessee shall, in addition to the rental for the first month which shall be paid in advance, be required to pay an additional amount equal to one month's rental which amount shall be retained by the Municipality as a deposit which may be utilised by it as provided for in the Rental Housing Act 50 of 1999.

8. RIGHT OF INSPECTION OF LEASED PROPERTY

- (a) The Municipality shall, at all reasonable times, be entitled to enter and inspect leased immovable property with a view to determining whether or not the conditions of lease have been complied with.

9. MAINTENANCE OF LEASED PROPERTY

- (a) A lessee shall be responsible for maintaining leased immovable property including all improvements thereon and the surrounds thereof to the satisfaction of the Municipality
- (b) Upon termination of a lease, the property let shall be returned to the Municipality in the same condition prevailing at the date of commencement of the lease, fair wear and tear excepted.

10. IMPROVEMENTS MADE BY LESSEE

- (a) Improvements made by a Lessee to leased immovable property which the Municipality wishes to retain, shall revert, and free of charge, to the Municipality once the lease period has terminated and/or in the event of the lease being cancelled due to a breach of its conditions by the Lessee.
- (b) Alternatively, agreement may be reached to the effect that the Lessee may remove any improvements effected to the leased property by him with his own funds within one month of the termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge.
- (c) The Lessee shall be liable for the cost involved in the removal of all improvements effected by him and not required by the Municipality. The right of the Municipality to acquire improvements effected to leased property by a Lessee shall be fully described in the lease.

11. LEASING TO SOCIAL CARE / COMMUNITY ORGANISATIONS AND CHURCHES

Community Organisations including Social Care often request MLM for rights to use, control or manage available vacant land, or to lease such land and the Municipality reserves the right to entertain such unsolicited bids with the proviso that they abide by the Municipality's IDP objectives.

The rights to use a specific property must be obtained from the municipal office in the form of a permit upon payment of a stipulated amount of money as determined by council in its approved tariff structure.

12. SHORT TERM LEASE AGREEMENTS [Less Than 3 (Three) Months]

MLM is from time to time approached with requests to grant rights to use, manage or control land for a short term period, which for the purposes of this deviation will mean a period less than 3 (three) calendar months, to commercial entities or private sector persons for commercial purposes, such as the making of movies or advertisements, or such other purpose as MLM may allow from time to time in its sole discretion.

On condition that the commercial purpose would directly or indirectly promote the image of MLM; MLM shall be entitled to grant the right to use, control or manage through a fee as stipulated in the MLMs tariff structure.

Such rights to use the property shall be given in the form of a permit which may be obtained from the municipal offices upon payment of a levy as determined by the council in its tariff structure.

13. LONG TERM LEASES

MLM is the owner of a number of specific use facilities and it is not always practical to transfer or develop specific use facilities within the confines of the council approval process, and in such instances, MLM shall be entitled to embark on a proposal call bidding process (competitive bidding process), or a selective bidding process and as such all such long term leases falls outside this policy.

14. OUTDOOR AVERTISING

MLM shall be entitled to consider proposals regarding outdoor advertising (which includes cellular mast, billboards and antennas) without complying with the requirements of the council approval process.

This deviation is in the public interest and will stimulate the economy, promote Black Economic Empowerment and enhance competition by allowing new entrants into the market.

The deviations policy in this regard will only apply if an applicant identifies a site which does not appear on MLM lease register, in which event the MM shall approve the advertising board.

15. SMALL, MEDIUM AND MICRO-ENTERPRISES ("SMME")


These types of businesses require assistance in the form of positive action from the Municipality by increasing their access to amongst others, economic activities and infrastructure. These businesses contribute towards the creation of employment and have a potential to develop further.

In light thereof, SMME's that comply with the council's policy and which are in line with its IDP objectives shall be given a rental holiday of not more than six months from the date the lease agreement is signed.


Name and Commencement of Policy

This Policy shall be called the "Lease Policy" and shall come into operation on the day of its adoption by the Council.

APPROVED BY THE COUNCIL AND SIGNED BY:-


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NAKO M
ACTING MUNICIPAL MANAGER

07/08/2017
.....
DATE


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CLLR JANDA S N
MAYOR

07/08/2017
.....
DATE