

# LEASING POLICY



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DATE: 23/06/21.

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## TABLE OF CONTENTS

|   |   |
|---|---|
| 1. Purpose of Policy.....                 | 1 |
| 2. Objective of Policy.....               | 2 |
| 3. Scope.....                             | 2 |
| 4. Policy Definition.....                 | 2 |
| 5. Legislative Framework.....             | 2 |
| 6. Policy or Procedure Target.....        | 2 |
| 7. General policy provisions.....         | 2 |
| 8. Procedure for Implementing policy..... | 3 |
| 9. Policy governance.....                 | 4 |

## 1. PURPOSE OF POLICY

- (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 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;

## 2. OBJECTIVE OF POLICY

- 3. All MLM owned land is recorded in a Land Asset Register, which may be identified for economic, social, community, municipal and other uses.
- 4. 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 or short – term leases;
- 5. 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;

## 6. SCOPE

- (a) The right to use or control the property will only be after a written agreement is concluded between the parties
- (b) The lease agreement should comply with the provisions of Regulations 45(2) of the Regulations and must include, as a minimum:
  - (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.
- (ix) Notarial deed of lease should be encouraged so that leases to land can be registered in the deeds office as such.

## 7. POLICY DEFINITION

|                       |   |
|-----------------------|---|
| 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  |
| Medium term lease     | Period between three (3) months and 9 years.  |
| Short term lease      | Any period between an hour to three (3) months  |
| 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.   |
| SMME / Small Business | means a separate and distinct business entity, including cooperative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or subsector of the economy mentioned in column I of the Schedule (see schedule attached) and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule |
| Small Business        | means any entity, whether or not incorporated or  |

|              |  |
|--------------|--|
| Organisation | registered under any law, which consists mainly of persons carrying on small business concerns in any economic sector, or which has been established for the purpose of promoting the interests of or representing small business concerns, and includes any federation consisting wholly or partly of such association, and also any branch of such organisation. |
|--------------|--|

## 8. LEGISLATIVE FRAMEWORK

- Spatial Planning and Land Use Management Act no 16 of 2013
- Town Planning Ordinance No. 33 of 1934
- Local Government Municipal Systems Act
- Municipal Finance Management Act

## 9. POLICY PROCEDURE

### 1. 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.

### 2. 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.

### **3. 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.

### **4. 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.

### **5. 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.

## **10. GENERAL POLICY PROVISIONS**

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#### **11. PROCEDURES FOR IMPLEMENTING POLICY**

- (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.