



## THABAZIMBI LOCAL MUNICIPLAITY

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### **DRAFT POLICY:** **ALIENATION OF LAND** **2018**

## 1. DEFINITIONS

In this Alienation of Land Policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 2003(Act no 56 of 2003) has the meaning so assigned.

**“Broad Based Black Economic Empowerment”** refers to Act 53 of 2003

**“Capital Asset”** means the non-consumable movable and immovable property, including land of the Municipality.

**“Council”** refers to Thabazimbi Local Municipality’s decision making body, its legal successors in title and its delegates.

**“Constitution”** Means the constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

**“Disposal”** means a process of preparing, negotiating and concluding a written contract which involves the alienation of the capital asset no longer needed by the Municipality or rights in respect thereof, by means of a sale or a donation

**“Emerging Farmer”** Previously disadvantaged individual, group, community, tribes and association who have limited access to land who wish to have access to land for productive purposes except public servant

**“HID”** means a Historically Disadvantaged Individual that is a South African citizen.

**“Municipality”** means the Thabazimbi Local Municipality as determined by the Local Government: Municipal Demarcation Act, 1998(Act No 27 of 1998).

**“Multi-Residential development”** development of more than one residential development for commercial purpose.

**“Municipal Land”** Any piece of land registered by the deed office under Thabazimbi Municipality

**“Policy”** refers to the Alienation of Land Policy

**“Single Residential Development”** development of residential property for own use

**“Social/ Institutional Sites”** refer to land for purposes of early childhood development and social services needs

**“SPLUMA”** refers to the Spatial Planning and Land Use Management Act, Act 16 of 2013

**“SDF”** refers to the Thabazimbi Municipal Spatial Development Framework

**“Valuation”** A valuation is an estimated or an opinion of value for a particular object. Valuations can be both objective and subjective. The person who specializes in valuations is a valuer. For properties legal provisions have been made through Property Valuers Profession Act 47 of 2000 thereby making provisions for registration of persons serving as valuer.

## 2. PURPOSE

The purpose of this Policy is to:

- ✓ Guide council of the procedures to be followed on the alienation of Municipal land;
- ✓ Ensure compliance with the applicable legislations, regulations and ordinances;
- ✓ Ensure fairness, equitable, transparency, cost effectiveness and competitiveness;
- ✓ Ensure speedy availability of land to developers and the residents;
- ✓ Ensure that Historically Disadvantaged Individuals are economically empowered;
- ✓ Ensure that a racial composition of property ownership is substantially changed;
- ✓ Ensure that the economic transformation of the municipality is promoted; and
- ✓ Ensure the promotion of investment and development.

## 3. LEGISLATIVE FRAMEWORK

The alienation (Lease, Sale and Disposal) of the Thabazimbi Municipal Council land must be executed in terms of the applicable legislation. In this regard the following legislation must be taken into account:

- ✓ Constitution of the Republic Of South Africa. 1996 (Act 108 Of 1996)
- ✓ Local Government Municipal System Act 2000 (Act 32 Of 2000)
- ✓ Local Government: Municipal Finance Management Act 2003 (Act 56 Of 200)
- ✓ Broad-Based Black Economic Empowerment Act 2003 (Act 53 Of 2003)
- ✓ Preferential Procurement Policy Framework Act 2000 (Act No 5 Of 2000)
- ✓ Spatial Planning and Land Use Management Act 2013 (Act 16 of 2013)

## 4. EQUITY

This Policy shall uphold the principles of *equity* with the aim of advancing BEE standards and ensuring the advancement of previously disadvantaged communities.

## 5. STRATEGIC MUNICIPAL LAND

5.1 All land within the ownership of the Municipality must be valued annually. Council must determine which land parcels within its ownership are strategic in line with the Municipal SDF. Such sites shall be preserved for purposes as recommended by the SDF and shall not be disposed without special investigation by Council.

- 5.2 In the event that Council does approve the disposal of such sites, the disposal shall be offered through public competition either by public auction or tender as might be the preference of Council.
- 5.3 A request for proposal shall be made on the local and national newspapers for the strategic land. The proposal gets evaluated, and if necessary, the best applicants are called for presentations. The successful applicant gets awarded the right to purchase the property and develop it in line with the proposed business plan. The proposal shall, amongst others, include the type of development, time frames for implementation and guarantees (if necessary).
- 5.4 Rebates may be negotiated with potential purchasers with whom his/her investment will provide 50+ permanent employments, as part of incentives. All sales of commercial and industrial land shall be at the interests of Thabazimbi local economic development both in terms of sustainable job creation in terms of the municipal Local Economic Plan

## **6. CONDITIONS FOR WHICH LAND MAY BE ALIENATED**

- 6.1 Management (senior management and middle management) and Councilors and or their spouse, and immediate family members shall not received preferential advantage in the lease or sale of municipal owned land. Council may grant preferential advantages to lower ranking employees falling within the HDI category. Such employees may not benefit from spouse, and immediate family members.
- 6.2 Where land is transferred to the previously historically disadvantaged individuals, the purchaser will be restricted to change ownership of the application property within a period of seven to ten (7-10) years.
- 6.3 In terms of this Policy;
1. That the prices of land be reviewed annually before the commencement of the new financial year.
  2. It is the sole responsibility of the purchaser of municipal land to pay for all service connection fees.
  3. That no person may purchase more than three stands at a time unless there is special circumstances.
  4. The event that the purchaser has not developed the property within a period of one year from the date of purchase the penalty shall apply.

## **7. SUBMISSION OF RECOMMENDATIONS TO COUNCIL**

7.1 The Municipal Land Management Committee must investigate and recommend to the Municipal Manager the need and purpose for the alienation of land (lease, sale and transfer) to the Municipal Manager.

7.2 Before any land is alienated, the Municipal Manager must prepare a report to Council providing the following information

1. Erf number
2. Location
3. Size
4. Zoning
5. Services
6. Provisions of the SDF
7. Method of disposal
8. Value of the Property as per the supplementary valuation
9. Price value of similar and adjacent properties on the area
10. Adjudication criteria that will be used by the tender adjudication committee
11. Members of council will deliberate on merits and de merits of the case and determine the minimum price for the disposal of such land.

## **8. LEASE OF LAND**

8.1 All individual applications for lease, sale, or transfer of land either received by the Municipality from individuals persons, interest groups, business or community for residential, religious, commercial and or investment or community from public will be subject to land will be dealt with administratively, however, with applications that entails major development by nature of business or commercial orientation i.e. shopping malls, petrol station.etc will be subject to Council approval which will also be in line with the policy.

8.2 Applications for the social or institutional use shall be allocated on the basis of need and priority.

8.3 In the light thereof small medium and micro enterprises that comply with the Council policy can lease Council owned land at a nominal amount (for a short period) in the event that the property is available for sale or letting. No SMME shall have the rights to lease more than one property at a time.

8.4 All Applications for lease must be submitted in writing with supporting documents to the municipality for the approval of Council. An applicant shall prove beyond reasonable doubt their capacity to sustain the business and to create employment.

8.5 Contrast shall be drawn upon Council approval to be entered into for not more than one year

## **9. DISPOSAL OF LAND THROUGH SALE**

Municipal Council shall apply either of the three (3) options in the disposal of any given land parcel municipal through a competitive process.

### **9.1 Public Tender Method**

Council shall, in a case where there is an available piece of land to be alienated, place a notice on a local or national newspaper inviting for public to tender. Upon receipts of applications tenders received are then referred to the procurement Tender Committee for adjudication.

The Municipal Manager will recommend and motivate to Council as to why the selected candidate is found suitable for a final decision. A 10% deposit is payable by the successful tenderer upon signing of the Deed of Sale subject to the balance payable within a period of 30 days from the signing of the Deed of Sale.

In terms of the HDI status of tendering, the principles and formulae as stated in the Preferential Procurement Police Framework Act, be taken into consideration.

### **10.1 Public Auction Method**

The Public Auction Method will be implemented where there is a higher demand for specialized land use e.g. shopping malls, etc, or where the application property is strategically located in terms of the SDF of the municipality.

### **10.2 Database Registration**

An advert is placed on the Local Newspaper and Radio Station calling all interested residents of the municipality to enlist their names in the municipality database for consideration in sale of municipality sites. Sites then get services (if necessary), and get valued at market related price.

The sites then get sold on a first in first out bases using the data base. The sites get sold on cash basis, bank guarantee or 10% deposit plus three months period to settle the balance.

## **11. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS**

11.1 The procedures for the handling, opening and recording of bids, are as follows:

(a) Bids-

- (i) Must be opened only in public;
- (ii) Must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
- (iii) Received after the closing time should not be considered and returned unopened immediately.

(b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must read out and, if practical, also each bidder's total bidding price and

(c) That person who opened the bids shall forthwith place his/her initials against the total amount mentioned in the bid documents

(d) The Municipal Manager must-

- (i) Record in a register all bids received in time;
- (ii) Make the register available for public inspection; and
- (iii) Publish the entries in the register and the bid results on local newspaper

## **12. CONDITIONS OF SALE**

12.1 All cost pertaining to a transaction shall be borne by the purchaser, e.g. Survey, advertisement, valuation, rezoning, relocation or provision of services where necessary, etc. Council may, however, waive its right to claim the costs should it be to its advantage to bear the cost. Where necessary, a deposit to cover the costs may be required.

12.2 Where applicable, existing services must be relocated or secured by means of the registration of servitude in favor of the Municipality and costs shall be for the account of the purchaser.

12.3 Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the municipality, make such consolidation undesirable.

12.4 Where land is sold for development, a condition must be included in the Deed of Sale stipulating that such development must be completed within a year from date of purchase. Likewise a condition must be included in the agreement to provide for forfeiture in the event

that the development has not been completed within the required time period, unless an extension has been granted in writing by the municipality.

- 12.5 The property alienated may only be used for the purpose for which it was originally sold and purpose permitted by the Town Planning Scheme regulations
- 12.6 The Agreement of Sale shall be finalized and concluded within 60 days from the date of the municipality's official request; failure to comply shall cause the sale to lapse
- 12.7 The Agreement must contain a *suspensive condition* in respect of property, which is sold subject to municipal plans;
- 12.8 The purchaser is expected to have constructed the applicable structure within a period not exceeding twelve (12) month in line with building control standards.
- 12.9 Council has the power to repossess the application property should the purchaser fail to comply to the conditions of sale.

### **13. PURCHASER LIABILITY**

The purchaser will be responsible for all property transfer and registration costs in connection with the sale of the property including any costs associated with the possible relocation of services, rezoning, subdivision, consolidation, and survey, deed of sale, registration and transfer as included in the Deed of Sale.

### **14. NEGOTIATIONS WITH PREFERRED BIDDERS**

14.1 The Municipal Manager may negotiate favorable term of a contract with bidders identified though a competitive bidding process with a preferred bidder, provided that such negotiation-

1. Does not allow any preferred a second or unfair opportunity
2. Is not to the detriment of any bidder; and
3. Does not lead to higher price than the bid as submitted

14.2 Minutes of such negotiations must be kept for record purposes

### **15. UNSOLICITED PROPOSALS**

The Municipality may entertain unsolicited proposals. Such proposals may include property development proposals, land sales and leases. Proposal received will be analyzed and evaluated by the municipality in terms of the outlined objectives and vision of Municipality.



## **16. VALUATION OF COUNCIL PROPERTY**

### **16.1 Determination of Selling Price**

Land shall be sold at a market related selling price including VAT, as determined by the valuer unless Council resolved otherwise. Comments of the relevant departments of the Municipality including the Planning and Economic Development Department on the future development potential of the land shall be taken into consideration in determining a market related selling price.

### **16.2 Exceptions to the Market Related Prices**

Council may therefore in terms of section 14 of the Municipal Finance Management Act 2003, (Act 56 of 2003) read with section 79 18(e) of the Local Government Ordinance 1939, (Ordinance 17 of 1939) dispose of immovable land at a price below the market value through Council Resolution. The following categories are proposed in such circumstances.

## **15. VALUATION OF PROPERTY**

Council shall appoint a Professional Valuer who will determine the fair market value of all the identified properties, and this person must be an independent Professional Valuer or Professional associated Valuer registered in terms of the Property Professional Act, 2000 (Act 47 of 2000) or any ensuing act of the cost of the purchaser

## **16. DEVIATION FROM THE ZONING**

16.1 Alienated land shall be inspected regularly by officials of the Municipality to ensure compliance with the terms and conditions of the Agreement of Sale.

16.2 The Municipality shall at all times when considering the alienation of its land, take into consideration the municipality's obligation to, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial legislation and policy to identify and designate land for housing.

## **19. OVERSIGHT**

Council shall have oversight role on all land transactions in the Municipality and that:

19.1 The Council shall maintain oversight over the implementation of this Policy

19.2 For the purposes of such oversight over municipal land, the Municipal Manager at the start of every financial year shall submit an annual status report on the implementation of the Policy to Council of the past financial year.

**20. AMENDMENTS/REVIEW**

This Alienation of Land Policy is subject to amendment as and when required by the Municipal Council.

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Cllr. LJ Joubert  
The Speaker

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Date