

SWELLENDAM LOCAL MUNICIPALITY

BY-LAW RELATING TO THE MANAGEMENT AND ADMINISTRATION OF IMMOVABLE PROPERTY

To regulate the disposal of immovable property and to provide for matters connected therewith.

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PREAMBLE

WHEREAS section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

AND WHEREAS section 14 of the Municipal Financial Management Act, 2003 (Act 56 Of 2003) provides for the disposal of municipal capital assets and the Municipal Asset Transfer Regulations, 2008 support and give effect to the provisions of Section 14 of the Municipal Financial Management Act, 2003 (Act 56 Of 2003);

AND WHEREAS the Swellendam Municipality seeks to regulate the disposal of immovable property and activities related thereto;

BE IT ENACTED by the Council of the Swellendam Municipality, as follows:—

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1. DEFINITIONS,
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1. DEFINITIONS

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

“**advertise**” means the giving of adequate notice of the nature and purpose including the material substance of the proposed administrative actions, by publishing a notice in the press, and where deemed necessary by the Council , any additional form of notice, which may include:-

- (i) serving of a notice; or

(ii) displaying on a notice board; or

(iii) holding a public meeting.

“**alienate**” means to part with ownership of immovable property in favour of another person with the intention of transferring the ownership of the immovable property to the acquirer thereof;

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

“**council**” means the council of the Municipality of Swellendam and includes any political structure, political bearer, Councillor or official, acting under delegated authority;

“**material substance**” depending on the nature of transaction, means, including, but not limited to:-

- (i) description of the property which shall consist of an erf number, physical street address, street number, suburb and size of property in nr;
- (ii) zoning of property and proposed utilisation thereof;
- (iii) details/identification of purchaser or lessee;
- (iv) extent of property to be sold or leased;
- (v) details of transaction which shall consist of ~~purchase~~price, method of payment or duration of lease, monthly rental, annual escalation, if a renewal option is exercisable, agreement of lease to be notarially registered against title;
- (vi) details of location where deed of sale or agreement of lease is available for inspection.

“**municipal immovable property**” means:-

- (i) immovable property and real rights registered in the name of the municipality;
- (ii) immovable property and real rights the municipality is entitled to have registered in its name; and
- (iii) any other immovable property which, by law vests in municipality.

“**municipality**” means the municipality of Swellendam;

“**municipality area**” means the area under the jurisdiction and control of the municipality;

“**prescribe**” means a policy approved by council ~~and published in the Provincial Gazette;~~

“**public street**” means any land and portion thereof;

- (a) any street which has at any time been:-
 - (i) used without interruption by the public for a period of at least thirty years other than as a public street;
 - (ii) declared or rendered as such by the Council 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 ~~deagram~~ diagram approved by the Council 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.

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2. OWNERSHIP OF PUBLIC PLACES AND PUBLIC STREETS

The ownership of immovable property to which the community of the municipal area has or may acquire a common right and all public places and public streets and the immovable property comprised in such places and streets vest in the municipality.

3. ACQUISITION OF IMMOVABLE PROPERTY AND RIGHTS IN IMMOVABLE PROPERTY

- (1) The Council may acquire immovable property and rights in immovable property within or outside its municipal area by purchase, expropriation, exchange, donation, gift, lease or otherwise.
- (2) The Council may expropriate immovable property in terms of the Expropriation Act (Act 63 of 1975), or any other applicable legislation, provided that such expropriation shall be for public purposes or in the interest of the public.

4. ALIENATION AND LETTING

- (1) The Council may alienate or let municipal immovable property under such conditions, terms and circumstances as it may prescribe.
- (2) Unless permitted or prescribed otherwise, the Council shall not alienate or let municipal immovable property below market value.

(3) (a) The Council shall advertise its intention to alienate or let municipal immovable property and shall invite the public to lodge written comments.

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(b) The provisions of paragraph (a) shall not apply when municipal immovable property is let for a period not exceeding 12 (twelve) months without a renewal option.

(c) Where:-

- (i) no comments were lodged, the municipal immovable property may be alienated or let; or
- (ii) comments were lodged, the Council shall consider every comments and decide whether or not to alienate or let the municipal property.

(4) The Council shall record its reasons for the alienating or letting of municipal immovable property in terms of this ~~By-Law.~~ by-law.

(5) No lessee of municipal immovable property shall without the prior consent in writing of the council, sublet such property or any portion thereof or assign any right acquired by him in respect thereof and any such subletting or assignment without such consent shall, as against the council, be null and void.

5. SERVITUDES PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS

Subject to the stipulations of the land use planning by-law and the by law on municipal roads, traffic and parking and any other conditions as the Council may prescribe, the Council may grant servitudes and permit projection, projecting structures and ~~encroachments~~ encroachments in, on, over or under municipal immovable property at a tariff determined by the Council and on such terms and conditions as it may prescribe.

6. CLOSURE OF PUBLIC PLACES AND PUBLIC STREETS

- (1) Subject to the stipulations of the land use planning by-law and the by law on municipal roads, traffic and parking the Council may close public places and public streets or any portion of such places or streets only after it has:-
 - (a) advertised its intention to do so; and
 - (b) considered and rejected any objection lodged (if any) in accordance with such advert and recorded in writing its reasons therefore.
- (2) Notwithstanding the provisions of paragraph (a) of subsection (1) the council may temporarily close a public place or public street.

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7. CONFLICT WITH OTHER LEGISLATION

- (1) In the event of any conflict between any provision of this By-law and National and Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail subject to section 151(3) and 156(4) of the Constitution,
- (2) In the event of an inconsistency between the different texts The English text shall prevail.

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8. REPEAL OF BY-LAWS

The following by-laws and any other provision in any other by-law that is inconsistent with the provisions of this by-law are hereby revoked:

<u>BY LAWS REVOKED</u>	<u>PROVINCIAL NOTICE NUMBER</u>
<u>By-Law relating to the management and administration of immovable property,</u>	<u>PN 6320 of 9 December 2005,</u>

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97. SHORT TITLE AND COMMENCEMENT DATE OF ENACTMENT

This by-law is called the Swellendam By-law relating Immovable Property and will come into operation on the date of publication thereof in the Provincial Gazette, shall commence on the date of promulgation.

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