Drakenstein, South Africa

Establishment of Improvement Districts By-law, 2002

Legislation as at 4 October 2002

Note: By-law **repealed** on 2024-02-09 by Improvement Areas.

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Establishment of Improvement Districts By-law, 2002
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Repealed

Drakenstein
South Africa

Establishment of Improvement Districts By-law, 2002

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Drakenstein Municipality, by virtue of the powers vested in it by section 156(2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), as amended, read with section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), as amended, has made the by-law set out in the schedule below:

1. Interpretation

In this by-law, unless the context clearly otherwise indicates—

1.1 "**applicant**" means any owner who makes an application for the establishment of any improvement district in accordance with the provisions of 2;

1.2 "**improvement district**" means a geographic district approved in accordance with the provisions of 6;

1.3 "**improvement district plan**" means an improvement district plan as contemplated in 2.2.2.2;

1.4 "**levy**" when used as a noun in connection with the implementation of an improvement district plan, means a surcharge on fees for services provided by the management body on behalf of the council as contemplated in 9.1;

1.5 "**management body**" means the management body of the improvement district to be incorporated or established in accordance with the provisions of 7;

1.6 "**owner**" means any registered owner of rateable property within the improvement district concerned;

1.7 "**rateable property**" means immovable property on which a rate or rates be levied in accordance with the Constitution of the Republic of South Africa, 1996, the Local Government Transition Act, No 209 of 1993 or any other relevant legislation;

1.8 "**rates base in value**" means the total value of all immovable property within the boundaries of an improvement district established or proposed to be established in terms of this by-law as appears from the valuation roll prepared in accordance with the relevant legislation; and

1.9 "**the Council**" means the Council of Drakenstein Municiality.

2. Application

2.1 Any owner of rateable property located within the area of jurisdiction of the Council may apply to the Council for the approval of the establishment of an improvement district.

2.2 Any application in terms of 2.1 must—

2.2.1 be in writing

2.2.2 be accompanied by -

2.2.2.1 written confirmation from owners owning not less than 25% (twenty-five percent) in number and representing not less than 25% (twenty-five percent) of the rates base in value of the rateable properties within the boundaries of the proposed improvement district that they support the establishment of an improvement district in that area;

2.2.2.2 an improvement district plan covering a three (3) year period substantially in such form as the Council may approve;

2.2.2.3 proof that the provisions of 3 and 4 have been complied with; and

2.2.2.4 payment of such fee (if any) as the Council may determine.

3. Advertising of intention to hold public meeting

An applicant must not earlier than thirty (30) days before submitting an application in terms of 2 —

3.1 cause to be published once in at least two (2) daily newspapers circulating in or near the vicinity of the proposed improvement district, notice of his or her intention to apply for the approval of an area therein as an improvement district; and

3.2 in the advertisement referred to in 3.1 give notice of a public meeting to be held in accordance with the provisions of 4, which notice shall state the purpose of such meeting and shall contain details of the place, date and time when such meeting is to be held.

4. Public meeting

4.1 A public meeting must be held at such place, date and time as is advertised in terms of 3 at which meeting interested persons shall be —

4.1.1 furnished with all relevant information relating to the proposed improvement district including the practical implications thereof; and

4.1.2 given an opportunity to ask questions and express their views.

4.2 The place, date and time where the public meeting is held shall be subject to the prior approval of the Council.

4.3 The public meeting must be chaired by a suitably qualified person who shall be approved by the Council.

4.4 The applicant must bear all costs of and incidental to the public meeting.

5. Advertising of application and objections

5.1 The applicant must—

5.1.1 within fourteen (14) days after the application is lodged in accordance with 2 cause to be published a notice of the application once in the *Provincial Gazette* and once in two (2) daily newspapers circulating in or near the vicinity of the proposed improvement district; and

5.1.2 give written notice of the application by registered post or by hand delivery to all owners of rateable property within the proposed improvement district.

5.2 Every notice contemplated in terms of 5.1 must state that written objections to the establishment of an improvement district and/or the provisions of the improvement district plan may be lodged with the Council within fourteen (14) days or such extended period as the notice may stipulate of the date of such notice.

5.3 Any owner of rateable property within the proposed improvement district or other interested person may submit written objections to the establishment of the improvement district, which

objections must be received by the Council not later than the date stipulated in the notice in accordance with 5.2.

5.4 The Council may allow the applicant, any objector and any other interested person or body to make oral presentation to it.

5.5 The application and all comments and objections from objectors or interested persons or bodies with regard thereto shall be available for inspection at the offices of the Council.

6. Decision

6.1 After the provisions of sections 2, 3, 4 and 5 have been complied with, the Council must, within thirty (30) days after the last date for submission of objections in accordance with 5.3—

6.1.1 approve the establishment of an improvement district accordance with the improvement district plan; or

6.1.2 approve the establishment of an improvement district and an improvement district plan with such amendments or conditions as the Council considers to be in the public interest; or

6.1.3 refuse the application with written reasons for not approving the establishment of an improvement district or the improvement district plan; or

6.1.4 refer the application back to the applicant for amendment on such manner as the Council may direct; or

6.1.5 give such directions with regard to the application as the Council considers to be appropriate.

6.2 If any applicant is refused by the Council in accordance with the provisions of 6.1.3 the applicant may at any time thereafter re-apply to the Council for the establishment of the improvement district. Provided that such re-application has been appropriately amended in the light of the reasons for refusal by the Council.

6.3 If an improvement district plan is at any time before the approval thereof amended in any material respect, the Council may require that the application be re-advertised *mutatis mutandis* in accordance with the provisions of 5.

7. Establishment of an improvement district and management body

7.1 After an application is approved in terms of 6 the improvement district plan may be implemented only after—

7.1.1 notice of approval of the improvement plan has been published by the applicant once in a daily newspaper circulating in or near the vicinity of the proposed improved district; and

7.1.2 written proof is provided to the Council by the applicant that not less than 50% (fifty percent) of the owners of rateable property who represent not less than 50% (fifty percent) of the rates base in value of the properties in the improvement district, approve the formation of the improvement district plan as approved by the Council.

7.2 The applicant shall, before the improvement district plan is implemented in accordance with the provisions of 7.1 cause to be established a management body for the purpose of managing and controlling the implementation of the improvement district plan. Such management body shall be a company incorporated in accordance with the provisions of section 21 of the Companies Act (No. 61 of 1973, as amended) or such other legal entity as may be approved by the Council. The articles of association or other founding documents of the management body shall be subject to the prior approval of the Council.

7.3 Owners of rateable property and tenants within the boundaries of the improvement district shall be entitled to be members of the management body; provided that—

7.3.1 the votes of members who are owners must be weighted in proportion to the levies to them;

7.3.2 the weighting accorded to any one member may not exceed one third of the total number of votes which may be cast;

7.3.3 members who are tenants may attend meetings and participate in the debate, but may not vote; and

7.3.4 votes to which the Council member is entitled must be determined by the founding documents of the management body.

7.4 The Council shall be entitled to appoint one (1) person to the board of directors or other executive (as the case may be) of the management body.

8. Powers and duties of management body

8.1 Within one (1) month after receipt of the first levy and in accordance with the budget of the improvement district plan, the management body shall commence to provide such services as are provided for in the improvement district plan.

8.2 Services provided for in the improvement district plan and financed by the levy charged to the owners of the rateable property shall be in addition to or an enhancement of those provided by the Council.

8.3 The levy due in terms hereof shall be a debt due to the Council; provided that the Council may cede to the management body its rights to payment thereof whereafter the management body may sue for and recover the amount by action in any competent court.

8.4 The management body must within three (3) months of every financial year end provide the council with—

8.4.1 its audited financial statements for the immediately preceding financial year; and

8.4.2 a written report with regard to the implementation of the improvement district plan.

9. Powers and duties of Council

9.1 When an improvement district has been established the Council will levy in accordance with the provisions of the Local Government Transition Act, 1993 or other relevant legislation a surcharge on fees for services provided by the management body on behalf of the Council from the owners of rateable property in the improvement district substantially in accordance with the approved improvement district plan.

9.2 Such amount must be levied in addition to other amounts which the Council may levy from the owners of rateable property in respect of rates, levies, fees, taxes, duties and tariffs and the surcharge must be indicated as a separate item from other amounts levied by the Council.

9.3 Levies collected by the Council for the city improvement district shall be paid to the management body monthly in advance on or before the 7th (seventh) day of each and every month, free of any deductions or set-off for the purpose of implementing the improvement district plan.

9.4 All amounts received from an owner of rateable property in respect of rates, levies, fees, taxes, duties or tariffs due in law to the council and/or any levies due to the Council in terms of this by-law, shall be applied first to rates and taxes and other amounts payable to the Council and thereafter to the payment of levies due in terms hereof.

Repealed

10. Amendment of an improvement district plan

10.1 An improvement district plan may be amended by the Council on written application by the management body at any time after the formation of the improvement district.

10.2 An amendment in terms of 10.1 which the Council in its sole and absolute discretion considers is not likely to materially affect the rights of interests of any person may be approved forthwith by the Council. Provided that the Council may in its sole discretion require the management body to cause notice of the application for such amendment to be published in a daily newspaper circulating in or near the vicinity of the improvement district.

10.3 An amendment in terms of 10.1 which the Council in its sole and absolute discretion considers is likely to materially affect the rights or interests of any person, and/or which affects the levy to be charged in respect of the improvement district, and/or which changes the boundaries of the improvement district, may only be approved by the Council *mutatis mutandis* in accordance with the provisions of 3, 4, 5 and 6. Provided that the Council may, for good reason, which it must record, exempt the management body from complying with any of such provisions.

11. Dissolution of an improvement district

11.1 The Council may dissolve an improvement district—

11.1.1 upon written application signed by not less than 50% (fifty percent) of the owners of rateable property and who represents not less than 50% (fifty percent) of the rates base in value within the boundaries of the improvement district; or

11.1.2 on any other cause,

whereupon the Council cause the management body to be wound up.

11.2 Upon an improvement district dissolved and/or management body being wound up, subject to any applicable laws relating to insolvency, the nett assets remaining after satisfying the creditors of the management body shall accrue and be transferred to the Council.

12. Delegation of powers

The Council may delegate to any of its committees all or any of the powers, duties or functions which it is permitted or required to exercise or perform in terms of this By-law.