Drakenstein, South Africa

# Transfer of Municipal Capital Assets By-law, 2018

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# Drakenstein
# South Africa

# Transfer of Municipal Capital Assets By-law, 2018

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**Commenced on 7 September 2018**

*[This is the version of this document from 7 September 2018 and includes any amendments published up to 4 September 2026.]*

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, Drakenstein Municipality enacts as follows:—

## 1. Definitions

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

"**capital asset**" for the purpose of this by-law, means any immovable asset such as land, property or buildings;

"**close**" in relation to a public street or public place, means to close for any purposes or to vehicular or pedestrian traffic only;

"**dispose**" means to part with ownership of a capital asset in favor of another person with the intention of transferring the ownership of the capital asset to the procurer thereof and "disposal" has the same meaning;

"**immovable asset**" includes, but is not limited to—

(a) immovable assets or any share therein registered in the name of a person or entity, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person or entity;

(b) a right to an exclusive use area held in terms of a notarial deed or cession;

(c) a real right registered against immovable assets in the name of a person or entity, excluding a mortgage bond registered against assets;

(d) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act 59 of 1980);

(e) a public place or public street as defined in this by-law;

(f) immovable assets as defined in section 107 of the Deeds Registries Act, 1937 (Act 47 of 1937); and

(g) assets consisting of land, buildings, or other improvements or structures attached to the land.

"**MATR**" means the Municipal Asset Transfer Regulations promulgated in terms of the Municipal Finance Management Act, 2003 (Act 56 of 2003) (GG 31346 of 22 August 2008);

"**MFMA**" means the Municipal Finance Management Act, 2003 (Act 56 of 2003) and any regulations promulgated in terms thereof;

"**municipality**" means the Drakenstein Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub delegated to such political structure, political office bearer, councillor, agent or employee;

"**municipal area**" means the area under the jurisdiction and control of the municipality;

"**public place**" means any land or portion thereof indicated on an approved plan, diagram or map as a public place and of which ownership as such vests in the municipality;

"**public street**" means:

(a) any street which has at any time been—

(i) used without interruption by the public for a period of at least thirty years;

(ii) declared or rendered such by the municipality 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 diagram approved by the municipality 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;

(c) notwithstanding the indication of land as a street as contemplated in sub paragraphs (i) and (ii), the decision as to when such street shall be constructed, rests with the municipality.

"**structure**"

(a) any building or structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with-

(i) the accommodation or convenience of human beings or animals;

(ii) the manufacture, processing, storage, display or sale of any goods;

(iii) the rendering of any service;

(iv) the destruction or treatment of refuse or other waste materials;

(v) the cultivation or growing of any plant or crop;

(b) any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith;

(c) any fuel pump or any tank used in connection therewith;

(d) any part of a building, including a building as defined in paragraph (a), (b) or (c); or

(e) any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, storm water disposal, electricity supply or other similar service in respect of the building;

## 2. Purpose and objectives

(1) The purpose and objectives of this by-law are—

(a) to give effect to the municipality's Asset Transfer Policy; and

(b) to provide a legislative framework for the transfer of the municipality's capital assets in order to regulate the use, disposal and acquisition thereof;

(2) In achieving the purposes and objectives as contemplated in subsection (1), the municipality recognises and supports the principles of land reform and land restitution and that land in its custody should be dealt with in a manner which will ensure the greatest benefit to the municipality and the community.

## Chapter 1
## Ownership of public places and public streets

### 3. Ownership of public places and public streets

The ownership of land and rights in land registered in the name of the municipality or which has been legally obtained by the municipality, and all public places and public streets, vests in the municipality irrespective whether registered in its name or not.

## Chapter 2
## General provisions relating to acquisition, disposal and letting of capital assets

### 4. Powers of municipality

The municipality may, for the effective administration and exercise of functions assigned to it in terms of the Constitution of the Republic of South Africa 1996, or any other applicable law, and in achieving its operational needs and strategic objectives—

(a) use, improve, benefit there from, dispose, let or allow its capital assets to be developed or occupied or to permit it to be enclosed and cultivated;

(b) acquire immovable assets or rights therein by way of purchase, lease, exchange, cession, donation, expropriation, acquisitive prescription or any other legal manner;

(c) dispose of capital assets and grant rights in capital assets in accordance with its Asset Transfer Policy by way of—

(i) public auction;

(ii) competitive bidding;

(iii) closed bidding;

(iv) call for applications;

(v) call for proposals;

(vi) out-of-hand or direct negotiation; or

(vii) any other method provided for in the Asset Transfer Policy of the municipality.

(d) let capital assets on a long term or short term basis by way of direct negotiation or competitive process;

(e) subject to the provisions of MATR determine subsidised selling prices, rental or fees in respect of capital assets;

(f) acquire or dispose of assets by means of exchange or donation;

(g) lease assets for own purposes where necessary;

(h) exercise such other competencies as may be reasonably necessary, or incidental to the effective performance of the municipality's functions; and

(i) grant rights to use in respect of capital assets.

### 5. Expropriation

The municipality may, in the interest of the public and for the effective administration and exercise of its functions, expropriate immovable property subject to the provisions of applicable national legislation.

## 6. Disposal and letting of capital assets

The disposal or letting of capital assets of the municipality shall be dealt with in terms of section 14 of the MFMA and the MATR as well as the provisions of the municipality's Asset Transfer Policy.

## 7. Out-of-hand selling and letting of capital assets and granting of rights to use

(1) Notwithstanding the provisions of section 6, the municipality may—

(a) sell or let capital assets out-of-hand;

(b) grant rights to use capital assets; or

(c) dispose of capital assets as contemplated in the Asset Transfer Policy.

(2) In all transactions contemplated in subsection (1) the municipality must record in the minutes of the meeting concerned its full reasons for preferring such out-of-hand sale, lease or granting of rights to use.

## 8. Subsidised prices, rental and rights to use

With the view to promote the municipality's functions and objectives as set out in the Constitution, and in terms of the general principles as set out in section 2(2), as well as the municipality's Asset Transfer Policy, the municipality may determine subsidised selling prices and rentals in respect of certain classes of capital assets and, where appropriate, grant free use of rights.

## 9. Servitudes

The municipality may grant servitudes over or under municipal immovable assets at a tariff determined by it and on such terms and conditions as it may prescribe.

## 10. Rights to use

(1) Notwithstanding the provisions of section 8, the municipality may, on the conditions it may consider necessary, by agreement, and upon payment of the fees determined by it, grant rights of use on municipal assets for purposes as provided for in the Asset Transfer Policy.

(2) When any immovable assets of the municipality or under the control or management of the municipality is used or encroached upon without permission, the municipality may serve a written notice on the person responsible for such use or encroachment requesting him or her to cease such use or to remove the said encroachment or to take the necessary steps to formalise it.

(3) Where the person served with a notice in terms of sub section (2) fails to comply with such notice the municipality may remove any structure or terminate any other form of use and, where applicable, subject to an order by a competent court, demolish or remove any encroachment, or to cease any use, where applicable.

(4) The municipality may reduce the extent of a public place or street which is used or encroached upon by the extent of the use or encroachment or by such greater extent as may be desirable.

(5) A person who wishes to obtain the permission of the municipality as contemplated in subsection (1) must apply in the prescribed manner or otherwise in accordance with applicable legislation.

## 11. Prescriptive claims

The municipality may, upon written proof that a person has—

(a) prior to the expiration of the period of ten years contemplated by section 1 of the Prescription Ordinance, 1964 (Ordinance 16 of 1964), by prescription acquired ownership of immovable assets owned by the municipality; or

(b) acquired a right in or over such assets; admit or concede any claim to that effect by such person.

## 12. Exclusion

This by-law does not apply to the sale of land as part of the National Housing Programme.

## 13. Appeal

A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000) to the City Manager within 21 days of the date of the notification of the decision.

## 14. Short title and commencement

This by-law shall be known as the Drakenstein Municipality By-law Relating to The Transfer of Municipal Capital Assets and shall come into operation on the date of publication thereof in the Provincial Gazette.