

# **MSUNDUZI MUNICIPALITY LEASING POLICY FOR MUNICIPAL OWNED IMMOVABLE PROPERTY 2025**



## Table of Contents

|                                                                                                 |      |
|-------------------------------------------------------------------------------------------------|------|
| 1. Purpose of the Policy .....                                                                  | 4    |
| 2. Objectives and High Level Principles .....                                                   | 4    |
| 3. Definition of Terms .....                                                                    | 4 4. |
| Legislative and Governance Framework .....                                                      | 7    |
| 5. Responsibilities .....                                                                       | 8    |
| 6. Scope .....                                                                                  | 8    |
| 7. Exclusions .....                                                                             | 8    |
| 8. Alignment with the Real Estate Department .....                                              | 8    |
| 9. Segmentation of Leasing Portfolio .....                                                      | 9    |
| Segmentation Criteria .....                                                                     | 9    |
| Usage Segmentation.....                                                                         | 9    |
| 10. The Rights to Use, Control or Manage Municipal Owned Immoveable Assets .....                | 10   |
| 10.1 General principles and guidelines pertaining to the letting of Immoveable<br>Property..... | 10   |
| 10.2 Municipal Asset Transfer Regulations (MATR) .....                                          | 10   |
| 10.3 Public participation .....                                                                 | 10   |
| 10.4 Methods of awarding leases: .....                                                          | 11   |
| 10.4.1. Competitive bidding .....                                                               | 11   |
| 10.4.2. Non-Competitive Process / Private Treaty.....                                           | 12   |
| 10.4.3. Unsolicited bids (only for mega i.e. high value projects) .....                         | 12   |
| Committee System for Competitive Bids: .....                                                    | 14   |
| Compensation and Fair Market Value .....                                                        | 14   |
| 11. Framework for Lease Processing .....                                                        | 14   |
| Elements of a Lease .....                                                                       | 14   |
| Generic detailed Lease Process .....                                                            | 15   |
| Renewal of Leases .....                                                                         | 15   |
| Specific Lease Processes .....                                                                  | 16   |
| Additional Requirements and Considerations .....                                                | 18   |

|                                                                                                            |    |
|------------------------------------------------------------------------------------------------------------|----|
| 11.5.1. Lease Commencement Date and the collection of rentals past the Lease Expiry Date .                 | 18 |
| 11.5.2. Sub-Letting                                                                                        | 19 |
| 11.5.3. Maintenance                                                                                        | 19 |
| 11.5.4. Provision to waive rental in lieu of maintenance/upgrading                                         | 19 |
| 11.5.5. Determination of market related rentals                                                            | 20 |
| 11.5.6. Determination of out of home advertising rentals                                                   | 20 |
| 11.5.7. Annual escalation of rental amounts                                                                | 21 |
| 11.5.8. Non-Payment of Rental                                                                              | 21 |
| 11.5.9. Payment of Costs Incurred                                                                          | 21 |
| 11.5.10. Payment of interest on outstanding rental balances                                                | 21 |
| 11.5.11. Payment for the consumption of municipal services                                                 | 22 |
| 11.5.12. Payment of a rental deposit                                                                       | 22 |
| 11.5.13. Improvements to Msunduzi Municipality Property and buildings by the Lessee                        | 22 |
| 11.5.14. Re-instatement of the Leased Property                                                             | 23 |
| 11.5.15. Insurance of Leased Property                                                                      | 23 |
| 11.5.16. Letting of Immovable Property required by Municipal                                               | 23 |
| 11.5.17. Authority to decline applications or to terminate Lease Agreements prior to the lease expiry date | 23 |
| 11.1.18. Sports and Recreational Facilities and other public amenities                                     | 23 |

|                                                           |    |
|-----------------------------------------------------------|----|
| 11.1.19. Permission to Occupy/Beneficial Occupation ..... | 24 |
| 11.1.20. Organs of State .....                            | 25 |
| Site inspections .....                                    | 25 |
| Records management.....                                   | 25 |
| Payment and evictions .....                               | 25 |
| Lease expiry and re-applications .....                    | 25 |
| Payment of an Application Fee .....                       | 26 |
| 12. Short Title and Effective Date .....                  | 26 |
| 13. Lease Management strategy.....                        | 26 |

## **1. Purpose of the Policy**

The purpose of this Policy is to provide a procedural and management framework for leasing of all municipally owned real estate assets in accordance with the Msunduzi Municipality's Supply Chain Management Policy, Local Government: Municipal Financial Management Act 2003 and associated regulations (Municipal Asset Transfer Regulations, Municipal Supply Chain Management Regulations). In the event that any provision of this Policy is found to be contradictory to any law, such law shall take precedence over such provision.

## **2. Objectives and High Level Principles**

The Leasing Policy will:

2.1.1. Facilitate equitable access to the City's immovable assets by applying the contents of section 217 of the Constitution of South Africa (which states that government procurement must be in accordance with a system which is fair, equitable, transparent, competitive and cost-effective).

2.1.2. Enable lease transactions and leases to be processed in a legislatively compliant yet efficient manner.

2.1.3. Secure future financial gains for the City.

2.1.4. Support the City's social and environmental agendas by making provision for residents pursuing social and environmental activities to be granted access to real estate assets e.g. management of Sports, Recreation, Arts and Culture and Health and Social Development Department leases at affordable rates.

2.1.5. Support the City's economic development imperatives by:

(a) Facilitating the expedited processing of leases with developmental impact.

(b) Aligning development with the strategic plans of the City.

2.1.6. Assist with the upkeep of properties in the portfolio insofar as maintenance requirements may be stipulated in rental agreements.

2.1.7. Provide a practical framework for the managing and letting of the Municipality's Immoveable Property.

### **3. Definition of Terms**

3.1.1. **Beneficial Occupation** refers to that period where the City Manager or his delegatee has given the Lessee occupation of the Property, or portion thereof, prior to the signing of a Lease Agreement or Property Transfer. During this time the Lessee shall not be required to pay rental. The beneficial occupation period will be restricted to 6 (six) months.

3.1.2. **Bid** means an offer to lease a property from Municipality at a specified rental.

3.1.3. **Bidder** means any person offering to lease a property owned by Municipality

3.1.4. **City** shall mean Msunduzi Municipality.

3.1.5. **City Manager** shall mean the Municipal Manager of the City or his or her delegate.

3.1.6. **Council** shall mean the Council of the City.

3.1.7. **Competitive Process** means a call for alternative proposals, closed/selective/targeted group tender, or a public tender.

3.1.8. **Custodian Department** shall mean the Departments within the Municipality that are accountable for the optimal management, deployment and maintenance of the assets under its control in accordance with applicable legislation and policy.

3.1.9. **Msunduzi** shall mean the Municipality.

3.1.10. **Expense Lease Agreements** shall mean Lease Agreements entered into between the Municipality and owners of privately owned land or buildings where Municipality is the Lessee.

3.1.11. **In principle approval** shall mean a decision taken by the Council, or if the decision making powers have been delegated to the City Manager or delegatee, in terms of Regulation 34 of the MATR to grant the rights to use, control or manage an Msunduzi Municipality owned immoveable asset.

3.1.12. **Lease Agreement** shall mean a contract between a Lessor and Lessee that allows the Lessee rights to the use of a property owned or managed by the Lessor for a period of time. The agreement does not provide ownership rights to the Lessee; however, the Lessor may grant certain allowances to modify, change or otherwise adapt the property to suit the needs of the Lessee.

3.1.13. **Lease Commencement Date** shall mean the first day of the month following the final signature of the Lease Agreement by both Parties or any other date as may be agreed between the City and the lessee.

3.1.14. **Lease End Date** shall mean the last day of the Lease Period as stipulated in the Lease Agreement or the Lease Termination Date whichever comes first.

3.1.15. **Lease Period** shall mean the period of months/ years stipulated in the Lease Agreement commencing on the Commencement Date and expiring at either the Lease End Date or the Lease Termination Date, whichever comes first. The Lease period shall be a continuous period not linked to Municipality's financial periods.

3.1.16. **Lease Termination Date** shall mean the date on which the Lease Agreement has been cancelled prior to the Lease End Date.

3.1.17. **Lessor** shall mean the Msunduzi Municipality

3.1.18. **Lessee** shall mean the user of the Municipality's immovable property.

3.1.19. **Local newspaper** means a weekly newspaper circulating within the Msunduzi Municipal barough

3.1.20. **Long Term Lease** shall mean a Lease Agreement entered into between the Municipality and a Lessee of which the lease period is longer than three (3) years but less than 30 years, excluding the renewal period.

3.1.21. **MATR** means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in Government Gazette No. 31346 of 22 August 2008, as amended from time to time.

3.1.22. **MFMA** means the Local Government Municipal Finance Management Act, Act 56 of 2003 including any Regulations promulgated in terms thereof, as amended from time to time.

3.1.23. **Option to Renew** shall mean the opportunity provided to an existing Lessee to renew a Lease Agreement for a further period to be negotiated between the Lessor and Lessee.

3.1.24. **Permission to Occupy** shall mean permission granted by the City Manager or his delegatee in the prescribed form to any person or organization or organ of state to occupy a specified Property or portion thereof for a specific purpose and for a predefined period.

3.1.25. **Policy** shall mean the Leasing Policy for Municipally Owned Immoveable Property.

3.1.26. **Property** shall mean any immoveable asset acquired or owned by Msunduzi Municipality and is further described as land and any immoveable improvement on that land, and which have enduring value and consists of assets or residential, non-residential or infrastructure nature and include machinery and equipment that have been installed and are an integral part of the immoveable assets. The following types of assets listed hereunder will be construed to be immoveable assets for the purposes of this policy:

- (a) land including but limited to developed, undeveloped, vacant, cultivated, non- useable or inaccessible land;
- (b) buildings including but not limited to office accommodation, residential buildings, police stations, courts, schools, hospitals and community facilities;
- (c) rights in land including servitudes, "rights to use" or leases;
- (d) infrastructure including but not limited to roads, railway lines/sidings, airports, transmission lines, dams, road reserves, pipelines, bridges, reservoirs; and

(e) conservation, cultural and heritage assets including but not limited to historical sites, conservation areas and sites of scientific significance.

3.1.27. **Property Transaction** means the granting of a Property Right.

3.1.28. **Property Right** means a right to use, control or manage municipal owned immovable property for a period exceeding one calendar month without ceding ownership thereof.

3.1.29. **Rental** shall mean the applicable rental payable by a Lessee as determined by a Valuer on a monthly or annual basis including any rental discounts (if applicable).

3.1.30. **Rental for out of home advertising** shall mean a monthly rental payable in arrears per advertisement area determined by whichever is greater of the fixed rental for media owners or the percentage income as prescribed in the annual tariff or alternatively, a tendered rate payable.

3.1.31. **Rental Discount** shall mean the percentage with which the calculated market related rental tariff (valuation) will be discounted.

3.1.32. **Short Term Lease** shall mean a Lease Agreement entered into between Msunduzi Municipality and a Lessee whereof the total lease period shall not exceed three (3) years.

3.1.33 **Right to use, control or manage** in relation to a capital asset, means a right to use, control or manage the capital asset for a period exceeding one calendar month, without ceding legal ownership of the asset.

3.1.34. **Termination** shall mean the termination of the Lease Agreement by either party (i.e. the Lessee or Lessor).

3.1.35. **Turnover Rental** shall mean a rent that is calculated as a percentage of the gross revenue or total sales of a Lessee's business in addition to the calculated market related rental e.g. the Lessee of a filling station shall be required to pay a monthly amount to Msunduzi Municipality in respect of the number of litres fuel pumped during the preceding month.

3.1.36. **Uitval grond** (remnant) shall mean a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics.

3.1.37. **User Agreements** shall mean agreements entered into in respect of facilities occupied by multiple users for short periods of time who will be charged the promulgated Msunduzi Municipality tariffs applicable at that time for the usage of the facility.

3.1.38. **Valuation** shall mean the determination of the value of municipal immovable property (or portion thereof) and the applicable rental.

3.1.39. **Valuer** shall mean a professional person registered, in terms of the Property Valuers Profession Act, 2000, with the South African Council for the Property Valuers Profession.

All other terms shall have the same meaning as defined in standing legislation and associated regulations, as amended from time to time.

#### **4. Legislative and Governance Framework**

This policy must be read in conjunction with the latest versions (including amendments) of the following legislation and regulations.

4.1 Constitution of RSA, 1996, as amended.

4.2 Msunduzi Municipality Supply Chain Management Policy

4.3 Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003, Sections 14, 90 and 33 (MFMA)).

4.4 Municipal Assets Transfer Regulations, 2008 (MATR).

4.5 Municipal Supply Chain Management Regulations, 2005- Regulation 40 (MFMA SCMR).

4.6 Local Government: Municipal Systems Act, 2000.

4.7 Any other applicable legislation, regulations and policies that may govern the disposal, letting or transfer of ownership of municipal land and related activities that are not in contradiction with the primary legislation referred to above.

#### **5. Responsibilities**

5.1 The Real Estate Department is the custodian of this policy. The Manager: Real Estate & Valuations in conjunction with the relevant officials in the real estate section shall be responsible for the implementation of the policy as well as the monitoring of adherence thereof. Said department is to be contacted for clarification of the content of the policy if such a need exists.

5.2 The afore-mentioned officials shall also be responsible for the revision of the policy, as and when required, to ensure that the policy addresses the challenges it was designed to remedy.

#### **6. Scope**

6.1 The policy is applicable to all Msunduzi Municipality owned Immovable Properties and must be complied with in all instances where the letting of Municipal owned Immoveable Properties is concerned and includes all existing leases in respect of Municipal owned Immovable Properties. Examples of leases covered by this policy are for land, buildings, cellmasts telecommunications, airspace, and any other immovable property belonging to council.

6.2 The lease portfolio will consist of a variety of different types of leases based on both the usage and value of a particular asset as well as the term of the lease. Lease types are grouped into segments (see Section 9.2). The policy also includes an overall lease management framework (see Section 11) that will apply to all leases.

#### **7. Exclusions**

7.1 Section 14 of the MFMA and the MATR apply to capital assets which are defined in the MATR to include Immoveable Property, as well as certain moveable assets. This policy only applies to Immoveable Property. In addition, the policy does not apply in the following instances:

- (a) Expense Lease Agreements;
- (b) Leases administered by the Msunduzi Municipality Human Settlements Department; and
- (c) User Agreements that are administered other Municipal departments, e.g, adopt a spot, rental housing stock.

## **8. Segmentation of Leasing Portfolio**

### **Segmentation Criteria**

Legislation implies important segmenting dimensions, some of which have been further divided to generate additional benefits for the City.

8.1.1 The term of a lease directly affects what processes have to be followed from both national and municipal legislative perspectives. According to the MFMA ATR, a long term lease is defined as a lease with a lease period greater than 3 years. A long term lease of a high value asset (asset valued at or above R10 million) requires a public participation process. In addition, lease terms are a determinant of relevant delegations and also used for GRAP reporting on the City's assets. Segmenting leases by lease periods enables the municipality to forecast the future financial revenue for the City as well as conduct age analyses of the lease portfolio. All leases must have definite terms in order to forecast the value of the contract in terms of GRAP asset reporting. An upper limit of 30 years will apply for all Long Term Leases, and that may be subject to renewal.

8.1.2 The value of the leased asset is also a critical segmenting dimension insofar as it dictates, in conjunction with the lease period (see 1 above) whether or not a public participation process is required, as well as what delegations apply. The asset value assists with the determination of market related rentals and therefore the valuation of the lease portfolio. The value of the capital asset will be determined on a pro-rata basis in the event that the entire immoveable asset i.e. immoveable property is not let to a single tenant.

### **Usage Segmentation**

Leases will be classified into the following usage segments:

8.2.1 Long Term Lease (lease longer than 3 years)

8.2.2 Developmental impact leases defined as:

- Any Lease Agreement in excess of nine (9) years and eleven (11) months),
- Having an estimated value of capital outlay for the development and related operations that represent a significant capital injection to Msunduzi Municipality,
- Containing a design concept that is aligned to the Growth and Development Strategy, Spatial Development Frameworks and other Msunduzi Municipality spatial, environmental and/or economic plans , and
- Leases anticipated to create a number of temporary and/or permanent jobs.

8.2.3 Other commercial use (Telecommunications, SMMEs, industrial, agricultural, etc.)

## 1 MSCM Regulation 40 (c) (i)

8.2.4 Social use (e.g. church grounds, crèches, NGOs, old age homes, cultural societies, sports and recreational facilities, federations/bodies/clubs etc.)

8.2.5 Private use (e.g. parking, gardening, security and includes encroachments into road reserves for the purposes of parking, security, landscaping or gardening). This type of agreement also includes Lease Agreements where consent is granted to a user in respect of remnants (uitval grond), small portions of land, sanitary or pedestrian lanes and properties which place maintenance burdens on Msunduzi Municipality.

8.2.6 The above classification only serves as a guide and some segments may be consolidated or split.

## 9. The Rights to Use, Control or Manage Msunduzi Municipality Owned Immoveable Assets

### 9.1 General principles and guidelines pertaining to the letting by Council of Immovable Property

9.1.1 Where possible, Council's Immovable Property should be managed as a sustainable resource by leveraging environmental, social and economic returns on such Immovable Property while Council retains ownership thereof.

9.1.2 Immovable Properties that have been let shall be inspected at reasonable time periods to ensure compliance with the terms and conditions of the agreement of lease.

### 10.1 Municipal Asset Transfer Regulations (MATR)

10.1.1 Chapter 4 of the Municipal Asset Transfer Regulations (MATR) governs the granting of a right to use control or manage an immoveable capital asset.

10.1.2 In terms of Regulation 34, only the Council of a municipality may grant an in-principle approval to grant the rights to use, control or manage an immoveable capital asset if the lease period exceeds three years and the value of the asset exceeds R10 million.

10.1.3 Regulation 34(4) of the MATR does however allow for the Council of a municipality to delegate its authority to grant an in-principle approval to the Accounting Officer i.e. the City Manager in instances where the:

- (a) Property Value is less than R10 million and the Property Right exceeds 3 years;
- (b) Property Value is more than R10 million and the Property Right does not exceed 3 years;
- (c) Property Value is less than R10 million and the Property Right does not exceed 3 years.

10.1.4 In terms of this Policy, Council is hereby delegating its authority to grant an approval to the Accounting Officer i.e. the City Manager, where the above-mentioned lease conditions are met.

### 10.2 Methods of awarding leases:

Once an in-principle decision has been obtained that the rights to use, control or manage a Municipal owned immoveable asset may be granted, any of the following methods may be used to conclude a property transaction to ensure that the principles of fairness and transparency are given effect to:

### **10.2.1. Bidding (Tender/Auction process)**

It is noteworthy that the MFMA does not regulate leasing of council-owned immovable property. However, leasing was later regulated by promulgation of the MATR. Although MFMA explicitly states that disposal of council-owned property must be competitive, the MATR do not make such a requirement in case of leasing. In the absence of such express requirement, it is imperative that Msunduzi Municipality has a lease framework that embodies a transparent bidding process under some circumstances. This is to ensure fairness and transparency in land management. Bidding may either be by public tender or auction.

10.2.1.1 Bidding process may be applicable where:-

- (a) the property is required by more than one person; and/or
- (b) the project is a mega or priority project and it is therefore deemed in the interest of the Municipality that the lease follows a bidding process, and/or
- (c) Economic benefits are likely to accrue to the Municipality and it is deemed to be in the best interest of the community if the specific land parcel is to be leased by public tender, with approval of a Bid Specification Committee

10.2.1.2 The nature of the competitive process is that a legally binding relationship is formed between the parties when Council accepts a tender in writing. It is essential therefore, that key aspects of the lease are specified in the bid documents. The bid documents may include a contract for sale or lease which could be completed with the bidder's details, the bidding price and be signed by the bidder. A binding legal agreement is created upon the acceptance in writing of a bid by the City.

10.2.1.3 Such a process may, depending on the nature of the transaction, include a one- stage, two stage or two-envelope bidding process (proposal call) in terms of which only those bidders that meet the pre-qualification criteria specified in the first stage are entitled to participate in the second stage.

10.2.1.4 bidding process may also be qualified, with the following as examples:-

- (a) bidders from Pietermaritzburg, or
- (b) Previously disadvantaged bidders, or
- (c) only disabled bidders, or
- (d) orphanages registered with the National department, etc.

provided that the above do not contradict any legislation pertaining to supply chain issues. The above is sometimes referred to as a closed tender.

10.2.1.5 Process to be followed for bidding process

- (a) Council process is undertaken to obtain an in-principle determination that the property may be leased
- (b) Where required, a public participation process shall have been undertaken
- (c) A bidding process is initiated;

- (d) Award made to the bidder in terms of supply chain processes
- (e) Lease Agreement is concluded with the assistance of the Msunduzi Municipality Corporate Legal Services.
- (f) Where a bidding process is initiated before an in-principle determination in (a) above is obtained, the Lease agreement shall not be signed until such determination is made

### **10.2.2. Outright lease / Private Treaty**

10.2.2.1 Outright lease / private treaty shall be applicable under any one or more of the following:-

- (a) the property is required by only one person; and/or
- (b) the property may only be utilised by one adjacent land owner; and/or
- (c) where there are more than one potential users, the other potential users were given opportunity to make comments and representations; and/or
- (d) the property is a road reserve, sanitary or pedestrian lane, uitval grond (remnant), irregular-shaped land; and/or
- (e) in the case of a lease renewal where the Lessee conducted the account in a manner acceptable to the department and the departments wants to sign a new lease or renew with the same lessee; and/or
- (f) for the purposes of expanding the current operations of an existing commercial entity
- (g) the applicant is an SMME and wants to develop an entity which has a potential to create jobs and alleviate poverty (subject to approval by the accounting officer)
- (g) any circumstances where the City Manager or delegatee may consider to qualify for this form of leasing, which would be in the interest of Msunduzi Municipality and its community provided that the lease period shall not exceed 9 years 11 months and that permanent structures may not be allowed. Where the lessee decides to construct permanent structures at his own will, the lessee must undertake to remove them at his own cost at the end of the lease, or where the structures are acceptable to Msunduzi Municipality (at its own discretion), ownership of such structures shall revert to Msunduzi Municipality without reimbursement to the lessee. The department may require a refundable deposit that will cover demolition costs at the end of the lease.

### **10.2.3. Unsolicited bids (only for mega / high value projects)**

10.2.3.1 Msunduzi Municipality is in terms of Section 113 of the MFMA not obliged to consider unsolicited bids received outside a normal bidding process. However, s113 is applicable for acquisition and not disposal. This paragraph is specifically introduced to regulate unsolicited bids for disposal of land. It is, however, important that the municipality is in a position to entertain unsolicited proposals in exceptional circumstances. Such proposals may inter alia include property development proposals and leases. In this regard the following principles will apply:

10.2.3.2 Proposals received will be analysed and assessed by Real estate unit and comments may be solicited from other departments ;

10.2.3.3 The City Manager shall have the discretion (on recommendation by the real estate unit) to accept or decline applications that do not meet the criteria of an unsolicited bid outlined hereunder even before the process in Section 10.4.4 is followed;

The minimum criteria for an unsolicited bid will be as follows:

- (a) Only long term development leases will be considered
- (b) Market related price (or above) to be offered for the lease of the property;
- (c) Significant capital injection to the city Economy in a form of the estimated value of capital outlay for the development and related operations;
- (d) Details on feasibility and viability of the project;
- (e) Design concept fit in terms of aesthetics with the surrounding area, layout, and alignment to existing LSDF/Local Integrated Development Plans.
- (f) A clear financial plan with evidence of finances secured for the development;
- (g) The number of temporary and permanent jobs envisaged in the development; and
- (h) BBBEE status

10.2.3.4 The lease period for unsolicited bids shall be from 10 years up to a maximum of 30 years. Renewal shall be at the discretion of the City Manager for any period up to a maximum of a further 30 years (subject to applicable legislation). The period of lease shall depend on both the size of capital injection and benefits accruing to the community.

#### **10.4.4 Process to follow for unsolicited bids**

If the Real Estate Department is of the view that the application meets the above framework requirements and therefore decides to consider an unsolicited bid, it shall do so in the following manner:

10.4.4.1 If the application meets the criteria of an unsolicited bid, the matter shall be referred to the Local Economic Development unit. The latter shall be required to comment on the desirability of the investment in the chosen area and advise Real Estate of such an opinion in writing.

10.4.4.2 Should the Economic Development unit recommend that the investment is required in the chosen area, Real Estate will proceed to get comments from other departments in terms of Section 14 of MFMA.

10.4.4.3 Should departmental comments support the lease, the application shall be sent to the asset disposal committee, strategic management committee and the executive committee, respectively, for the approval of the application to lease municipal owned property. On approval the real estate unit shall place an advert in the local newspaper requesting for comments in respect of the lease application.

10.4.4.4 The public shall have 30 days from the date of notice to make comments, raise objections or submit counter bids

10.4.4.5 All written comments, objections, representations or counter bids shall be assessed and consolidated by Real Estate and sent to both the provincial and national treasury for further comments. These two treasuries shall be given 30 days to comment.

10.4.4.6 All comments (if any) received from the treasuries shall be aggregated and a recommendation shall be made to the full council committee to make a decision and authorize the City manager to sign the lease agreement between the City and the applicant.

10.4.4.7 When considering the matter, the full council committee shall take into account (not limited to):

(a) any comments submitted by the public; and

(b) any written comments and recommendations of the National and Provincial Treasury Departments (if any).

(c) comments from Real Estate and all relevant departments within the Municipality.

10.4.4.8 If any recommendations of the National Treasury or Provincial Treasury Departments are rejected or not followed, the City Manager must:

(a) submit to the Auditor General, the relevant National and Provincial Treasury Departments the reasons for rejecting or not following those recommendations.

(b) the above Treasuries shall be given 14 days to reply to the City Manager's rejection decision (if any).

10.4.4.9 The above process may be done simultaneous, before or after an in-principle approval by Council (or a delegated official/committee) that the land may be leased. However, the lease agreement shall not be signed until Council (or a delegated official/committee) has approved in-principle that the land can be leased.

10.4.4.10 The above process shall not preclude compliance with Regulation 34 (2) (a) of the MATR for public participation.

#### **Committee System for Competitive Bids:**

10.5.1 Where the City Manager deems appropriate, taking into account the nature of the proposed property transaction, the City Manager may establish special committees to assist in this process. The composition of such committee is to be at the discretion of the City Manager, but may not include any councillor.

#### **Compensation and Fair Market Value:**

10.6.1 Property may be let only at market-related prices, except when the plight of the poor or other public interest factors which impact on the economic and community value to be received by the City demand otherwise. The discretion to charge below market rates may be exercised by the Real Estate unit (subject to delegations existing at the time).

10.6.2 The Local Government Municipal Property Rates Act of 2004 permits exemptions, rebates or reductions in basic service tariffs for indigent owners income and owners dependent on pensions or social grants for their livelihood. These are some of the basic criteria for invoking the plight of the poor, however, the decision to ease such service charges rests with Finance Department.

10.6.3 The real estate unit shall furthermore have the discretion to appoint a Valuer to determine rentals in respect of the subject property.

10.6.4 Such rental shall escalate from time to time. A Valuer shall however be requested, every 3 years during the lease period to review the market relatedness of the afore-mentioned rentals.

## **11. Framework for Lease Processing**

### **Elements of a Lease**

All the essential requirements listed below must exist simultaneously to constitute a valid lease of an immovable asset owned by the Municipality.

11.1.1 The parties to the agreement i.e. the Lessor and the Lessee;

11.1.2 The correct legal description of the subject immovable property and its locality; and

11.1.3 Applicable rental which must be market related unless the lease is in the public interest or the plight of the poor demands otherwise, or an outdoor / out of home advertising lease;

11.1.4 The duration of the lease; and

11.1.5 Annual rental escalation percentage which must be agreed upon and noted in the Lease Agreement and must be in line with market related rental escalations.

### **Generic detailed Lease Process**

A lease application follows the ensuing steps from receipt to conclusion (not necessarily in any order) (this are only guidelines):

11.2.1 Application and supporting documents are received and verified for correctness;

11.2.2 Property description of proposed lease premises and ownership status verified as Msunduzi Municipality owned;

11.2.3 Conduct site inspection to establish condition of premises;

11.2.4 Credit check conducted to verify applicant's ability to fulfil rental commitments (where required);

11.2.5 Item drafted and circulated for comments from departments and affected ward councilors and any other relevant government departments.

11.2.6 Valuation performed by a registered Valuer instructed by Msunduzi Municipality;

11.2.7 The department will advertise the intention to lease the property on the local newspaper, calling for interested parties to make comments.

11.2.7 Final item drafted and submitted for approval to the relevant delegated Msunduzi Municipality authority.

11.2.8 Applications that require Council approval may follow the following route, which may be amended from time to time (not necessarily in any order):

- (a) Asset disposal Committee
- (b) strategic management Committee
- (c) Finance portfolio committee
- (d) Executive committee
- (e) If required, the relevant Oversight Committee
- (f) Full Council Committee

### **Renewal of Leases**

11.3.1 Where the lease has the option to renew and the lessee is exercising his option to renew, Msunduzi Municipality shall assess whether the lessee conducted the account satisfactory. If so, the lease may be renewed to a set maximum period.

- (a) Where the lease **DOES NOT** have an option to renew but the lessee has applied to extend or continue the lease, the department will advertise the intention to renew on the local newspaper, calling for interested parties to make comments.
- (b) A comments window of 14 days will apply during which time complete comments must be submitted. Any late or incomplete comments will be disregarded.
- (c) Should there be no acceptable objection to the afore-mentioned advertisement, the Real Estate unit will continue to conclude the Lease Agreement with the current Lessee.
- (d) The renewal of a Lease Agreement may only be done for a set maximum period. Such renewal shall only be done once. Should the Lessee request renewal for the second time, the department will treat the application as new and follow all the processes relevant for the new lease.
- (e) Where timeous and complete objections are received, a closed tender process may be followed wherein only those parties that applied for the land parcel / building will be invited to submit detailed documentation in support of their bid.
- (f) Approval/Rejection of counter applications will be decided by the City manager or his delegatee (or as per delegations”.

### **Specific Lease Processes**

The full application process (see Sections 11.2 and 11.3 for details) culminates in the signing of the Lease Agreement between the applicant and Msunduzi Municipality. There are five distinct high-level procedures that apply under different circumstances that may first have to be finalised before the above-mentioned lease processes can be attended to. These procedures are elaborated upon hereunder.

#### **11.4.1 Local Government Ordinance 17 of 1939 (Public Notice)**

11.4.1.1 This requirement applies to all leases of which the lease period exceeds nine (9) years and eleven (11) months. Section 79 (18) of the Local Government Ordinance 17 of 1939 states that Council must issue a notice of the proposed lease which must be: *“(bi) Affixed to the public notice board of the Council; and*

*(bii) Published in a newspaper in accordance with section 91 of the Republic of South Africa Constitution Act, 1983*

*[And to] which any person who wishes to object, is called upon to lodge his objection in writing with the Town clerk within a stated period of not less than fourteen days from the date of the publication of the notice in the newspaper.” 2*

##### **11.4.1.2 Process to be followed for the Public Notice**

(a) If applicable, Council’s intent to enter into a Lease Agreement that exceeds a nine (9) years and eleven (11) months lease period needs to be publicised in terms of Section 79 (18) (b) of the Local Government Ordinance, 17 of 1939 for a period of 14 days. Leases not exceeding a nine (9) years and eleven (11) months lease period do not, in terms of the afore-mentioned legislation, need to be advertised;

(b) Should objections to the proposed Lease Agreements be received within the objection period, such objections will be submitted to the Asset Disposal committee to consider the objections brought against the proposed conclusion of the long term lease Agreement;

##### **2 Local Government Ordinance 17 of 1939, section 79**

(c) After the objections have been heard and the committee referred to in (b) above has decided to recommend the Lease, the item shall be sent to Council (or a delegated official/structure) for an in principle approval / determination that the land may be leased; and

(d) After the above determination, a supply chain process may follow (where required).

#### **11.4.2 Deeds Office Registration**

11.4.2.1 Although the Formalities in respect of Leases of Land Act, Act 18 of 1969 does not specifically require the registration of Lease Agreements that exceed Lease Periods of 9 years and 11 months against the deed of title of a Property, the Real Estate Department may nonetheless proceed to register all such Lease Agreements against the title deed of the Property to ensure good governance.

#### **11.4.3 Single Stage Competitive Bidding**

Competitive bidding is used to evaluate multiple applications to lease a particular real estate asset. The following process is a guideline:

##### **11.4.3.1 Compilation of bidding documentation**

##### **11.4.3.2 Public invitation of bids**

11.4.3.3 Site meetings or briefing sessions, if applicable

11.4.3.4 Handling of bids submitted in response to public invitation

11.4.3.5 Evaluation and rejection of bids

11.4.3.6 Award of contracts

11.4.3.7 Administration of contracts

11.4.3.8 Records Management

Msunduzi Municipality reserves the right to invite competitive bids for any lease; this includes leases that originate from unsolicited bids that may contain a unique concept.

#### **11.4.4 Two Stage Competitive Bidding**

11.4.4.1 Process and guidelines are established in the Msunduzi Municipality SCMP as per single phase bidding however, the first stage is used to establish inter alia, capacity and acceptability while the second stage is generally used to evaluate the financial value of the bids. According to the MFMA SCM Regulations, Section 25:

Two Stage Bidding may be allowed for:

- (a) large complex projects,
- (b) projects where it may be undesirable to prepare complete detailed technical specification, and/or
- (c) long term projects with a duration period exceeding three years.

11.4.4.2 In the first stage, technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments, while in the second stage final technical proposals and priced bids are invited. This process is required for high value contracts that require a high level of technical specification however, a single stage process can be followed for these contracts at the discretion of the City Manager or his delegatee.

#### **11.4.5 Public Participation Requirement**

11.4.5.1 In the event that Council intends to enter into a Lease Agreement that has a lease period of more than three (3) years **and** a capital asset value exceeding R10 million, Council must be requested to authorise the City Manager to conduct a public participation process. This process is described in Regulation 35 of the MATR and includes the required details for the information statement in Regulation 34 (3) (b).

Regulation 35: Public participation process for granting long-term rights to municipal capital assets with value in excess of R10 million reads as follows:

*"If the municipal council has in terms of regulation 34 (3) (a) authorised the accounting officer to conduct a public participation process in connection with any proposed granting of a long term right to use, control or manage a capital asset with a value in excess of R10 million, the accounting officer must at least 60 days before the meeting of the municipal council at which the decision referred to in regulation 34 (1) (b) is to be considered-*

*a) In accordance with section 21A of the Municipal Systems Act-*

*i) make public the proposal to grant the relevant right together with the information statement referred to in regulation 34 (3) (b); and*

*ii) invite local community and other interested persons to submit to the municipality comments or representations in respect of the proposed granting of the right; and*

*b) solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.”*

Regulation 34 (3):

*“a) Only the municipal council may authorise the public participation process referred to in subregulation (1) (a)*

*b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating-*

*i) the reasons for the proposal to grant a long-term right to use, control or manage the relevant capital asset; ii) any expected benefits to the municipality that may result from the granting of the right;*

*iii) any expected proceeds to be received by the municipality from the granting of the right; and*

*iv) any expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right.”*

### **Additional Requirements and Considerations**

#### **11.5.1. Lease Commencement Date and the collection of rentals past the Lease Expiry Date**

11.5.1.1 The Lease Commencement Date is defined in the Section 3 “Definitions” of this Policy.

11.5.1.2 There may, however, be instances where a new Lease Agreement in respect of current Lessees of Msunduzi Municipality cannot be concluded prior to the Lease Expiry Date. In such instances, the current Rental payable as at the Lease Expiry Date shall be escalated as per the stated annual escalation percentage of the expired Lease Agreement. The escalated Rental shall become payable by the 7th (seventh) day of the first month following the Lease Expiry Date.

11.5.1.3 The Lessee shall be required to pay the escalated Rental until such time that a new Lease Agreement has been concluded, i.e. the signing of the new Lease Agreement by both Parties.

11.5.1.4 The Lessee shall however, once provided with the new Lease Agreement, be required to sign such agreement within two months from the date the Lease Agreement was submitted to the Lessee. Failure by the Lessee to sign the new Lease Agreement will result in the Lessee being given one month’s notice to vacate the Property.

11.5.1.5 The City Manager or his delegatee will in such instances decide the manner in which the vacated Property will be made available for rental purposes.

### **11.5.2. Sub-Letting**

11.5.2.1 The Lessee shall not be entitled to sub-let the Property or any part thereof nor assign, cede or transfer its interest under the Lease Agreement nor part with possession of the premises to any other party or body without the written consent of the City Manager having been first obtained.

11.5.2.2 In the event of the City Manager consenting to the sub-letting of the Property or a portion thereof, the Lessee shall in no way be relieved of its obligations to Msunduzi Municipality under the main Lease Agreement by reason of any sub-lease.

### **11.5.3. Maintenance**

11.5.3.1 Each immovable property owned by Msunduzi Municipality is unique and the maintenance responsibilities of the Lessor (Msunduzi Municipality) and the Lessee will differ depending on the nature of the maintenance that needs to be undertaken by both parties.

11.5.3.2 In general, for council owned buildings, the maintenance responsibilities of the Lessor (Msunduzi Municipality) will be to maintain in good order and repair all structural portions of the premises, including the roof and exterior walls, pipes and conduits, central air-conditioning equipment, escalators and utility installations. The Lessor shall also make all repairs to the interior of the premises which may be of a structural nature or which are caused by structural failures or movement, repairs to the interior of the premises made necessary by leakage of the roof, or by leakage of any utility installation; provided, however, that Lessor shall not be obligated to make such repairs for any structural damage caused by Lessee, its agents or employees or in instances where the Lease Agreement stipulates that the Lessee is responsible for all maintenance..

11.5.3.3 The Lessee accepts the premises "as is" and shall keep the interior of the premises in good condition and repair including the water heating units, related plumbing, air-conditioning equipment, at its expense. The Lessee shall however not be responsible for ordinary wear and tear, obsolescence and damage by fire, act of God. Msunduzi Municipality may issue written notice calling on the Lessee to carry out any remedy to ensure that Lessee meets its maintenance responsibilities.

11.5.3.4 The Real Estate unit shall have the discretion to determine the maintenance responsibilities of a Lessee in the event that:

- (a) the leased property is legally occupied by multiple Lessees; or
- (b) the Lessee is performing the total maintenance of the leased premises on behalf of Council (specific reference is made to Sports Clubs, Federations or similar bodies); or
- (c) consideration is granted in relation to the plight of the poor.

11.5.3.5 All Lease Agreements shall clearly state the maintenance responsibilities of both the Landlord (Msunduzi Municipality) and the Lessee.

### **11.5.4. Provision to waive rental in lieu of maintenance/upgrading**

11.5.4.1 In cases where the asset to be leased is in poor condition or in need of urgent upgrading, a portion of rental may be waived in exchange for effecting such repairs or installations as may be required. In some instances occupation can be delayed until the repair and/or installation is complete

i.e. the period of the lease would begin after the repairs are completed. In other instances, a portion of rental could be discounted for an agreed number of months. An inspection at the end of the agreed repair period must be conducted to ensure that the Lessee has fulfilled his/ her commitments in terms of this arrangement, failing which, he/she becomes liable for the full rental amount i.e. the waiver is invalidated. Such waiver may only be authorised by the City Manager or his/ her delegatee.

#### **11.5.5. Determination of market related rentals**

11.5.5.1 Valuers within the Municipality will be requested to provide an objective estimation of the rental valuation in respect of the Property or portion thereof. Such valuation shall be used as the point of departure in all rental negotiations and any rebates or discounts to be granted shall be calculated against the said market valuation. The calculated market related rental may be made payable either on a monthly or annual basis.

11.5.5.2 The Real Estate unit shall have the discretion to decide when Turnover Rental shall be payable in respect of the activities conducted on the leased property.

11.5.5.3 In the event that the current land use rights do not permit the proposed land use, the prospective Lessee shall be required to apply to Msunduzi Municipality for such land use rights. Should any suspensive conditions be imposed by the Lessor on the prospective Lessee, the prospective Lessee shall be required to, within three (3) months from being notified by the Real Estate Department to do so, accept in writing to undertake all steps or actions necessary at his/her own costs to ensure that such suspensive conditions will be initiated within three (3) months from the date of notification by the Real Estate Department. No Lease Agreement shall be concluded unless the prospective Lessee has submitted proof to the effect that all suspensive conditions have been complied with to the satisfaction of the Lessor.

11.5.5.4 Any prospective Lessee who does not initiate the required actions to comply with the suspensive condition(s) within the three (3) months mentioned above will be notified by the Real Estate Department that the process to conclude the Lease Agreement will be terminated unless the prospective Lessee can substantiate reasons for non-compliance.

11.5.5.5 Since the acquisition of land use rights may be prolonged process, the City Manager or his delegatee shall adjust the rental payable by the prospective Lessee to be market related at such time the Lease Agreement is to be concluded i.e. after the land use rights have been approved by Msunduzi Municipality. In such instances, the lease period shall only commence once the Lessee has met all the suspensive conditions and no occupation of the said land shall be permitted prior to finalisation of any such processes.

11.5.5.6 Furthermore, if a valuation is older than fifteen (15) months at the time of signature of the Lease Agreement, the rental value may be adjusted upwards administratively by the department. Valuations older than 24 months shall have to be re-done.

11.5.5.7 All rentals to be payable in advance on signing of the agreement and thereafter on the first day of the month, but not later than the 7th day of the said month for leases payable monthly, or annually in advance for those cases to be paid annually.

This Section must be read in conjunction with Section 10.6 above.

#### **11.5.6. Annual escalation of rental amounts**

11.5.7.1 Unless expressly otherwise indicated, all Lease Agreements shall be subject to an annual escalation to be determined by the City Manager or his delegatee. Such rate shall be determined prior to the conclusion of the Lease Agreement at a fixed percentage for the duration of the lease period.

11.5.7.2 The Real Estate unit shall however, have the discretion to review the annual escalation percentage in respect of long term Lease Agreements at three (3) yearly intervals during the lease period.

#### **11.5.8. Non-Payment of Rental**

11.5.8.1 All Lessees who are in default with regards to the payment of their monthly or annual rental will be dealt with in terms of the Council's Credit Control and Debt Collection processes.

11.5.8.2 The Real Estate Department will in instances where an Organ of State does not honour its rental obligations address such non-performance in terms of the Intergovernmental Relations Framework Act, Act 13 of 2005.

#### **11.5.9. Payment of Costs Incurred**

Lease Agreements entered into requires the Municipality to incur costs in respect of:

Valuations to determine market related rental tariffs, where necessary and advertising costs.

11.5.9.1 In instances where the Municipality takes the initiative to advertise identified land parcels for letting purposes, the Municipality shall be responsible for all costs pertaining to the advertisement and valuation of such land parcels.

11.5.9.2 The applicant may be required to pay application fees as per tariffs

11.5.9.3 Should it be required that the permissible land use rights need to be amended to accommodate the proposed land use/s, the Lessee shall be responsible to appoint the necessary consultants to finalise all the relevant applications to acquire the land use rights at their own cost, which the Municipality will not reimburse.

11.5.9.4 In such instances the lease shall commence only after the Lessee has met all the applicable suspensive conditions imposed by any of the Municipality's user departments with the understanding that the Property is **NOT** occupied or used by the Lessee until the necessary approvals have been granted.

11.5.9.5 All Lessees shall (if required) be responsible for the payment of connection fees in respect of any municipal services required.

#### **11.5.10. Payment of interest on outstanding rental balances**

11.5.10.1 The Lessee shall be responsible for the payment of all outstanding rental balances. The applicable interest shall be calculated at a rate specified in the applicable schedule - Tariffs for Financial Services and will be charged per month or part thereof on all arrear balances.

11.5.10.2 No Lease Agreement shall be entered into unless the Lessee has submitted proof to the effect that his/her current municipal account in respect of municipal services as well as rental charges pertaining to any property leased from Msunduzi Municipality, are up to date.

#### **11.5.11. Payment for the consumption of municipal services**

11.5.11.1 Lessees in respect of single leased properties shall be required to pay for the consumption of municipal services, i.e. electricity, water, sewerage, refuse removal etc. Copies of all Lease Agreements entered into by the Real Estate Department will be provided to the Finance Department to open services accounts in name of Lessees. The Relevant units within the Municipality shall be responsible for the reading of the relevant meters, the invoicing and collection of outstanding monies from the Lessee in respect of the services consumed.

11.5.11.2 In instances where multiple Lessees occupy the same leased premises, the Finance Department may in conjunction with the relevant engineering services departments calculate a pro-rata amount in respect of the consumption of municipal services which each Lessee shall be required to pay in addition to the calculated monthly or annual rental. Where separate meters can be installed, such may be provided for each tenant.

#### **11.5.12. Payment of a rental deposit**

11.5.12.1 The Lessee shall be responsible for the payment of a deposit that will be determined by the valuers within the real estates and valuations section.

11.5.12.2 Every deposit paid shall be placed in a non-interest bearing account and shall be refunded when the Lease Agreement has reached its natural expiry date or in the event that the Lease Agreement was terminated at an earlier date.

11.5.12.3 Any Lessee who has breached any clause contained in the relevant Lease Agreement, shall forfeit the deposit or such proportionate part thereof taking into consideration the costs incurred by the Municipality to rectify the breach.

#### **11.5.13. Improvements to Municipal Property and buildings by the Lessee**

11.5.13.1 No improvements may be made to Municipal immovable property unless permission for such improvements has been obtained from the accounting officer or his delegatee as the duly delegated authority of the Landlord. All proposed improvements shall be submitted to and considered by the building control sub unit and all relevant departments for approval.

11.5.13.2 Apart from the above, all improvements may only be made once the relevant building plans have been approved by the building control unit in terms of the National Building Regulations and Building Standards Act, 103 of 1977.

11.5.13.3 Any improvements to the Municipality's immovable property effected by the Lessee and which Council wishes to retain shall revert to Council free of compensation at the expiry of the Lease Period or on the termination of the Lease Agreement. Where such improvements are not required by Council, the Lessee shall at its own cost remove such improvements to the satisfaction of the Council, unless agreed otherwise by both parties.

#### **11.5.14. Re-instatement of the Leased Property**

11.5.14.1 Lessees may be required, at their cost, to re-instate the Property, or the portion thereof leased, to the condition it was at the time of occupation, fair wear and tear excepted. Msunduzi reserves the right to re-instate the leased Property and recover all costs incurred from the Lessee.

#### **11.5.15. Insurance of Leased Property**

11.5.15.1 By default, Municipality shall be responsible for the insurance of all leased premises and any improvements thereon, although exceptions may be negotiated, for example long term leases. Insurance premiums may be recovered from the Lessee either in full if the Lessee is the only occupant of the Property, or on a pro- rata basis if multiple Lessees occupy the same Property. The insurance costs may be added to the determined Rental.

11.5.15.2 Unless where the lease specifies otherwise, the Municipality shall be responsible for the insurance of all immovable assets in its possession but may recoup such insurance amounts from the lessee.

11.5.15.3 In addition thereto, the Lessee may be responsible for Public Liability Insurance.

#### **11.5.16. Letting of Immovable Property required by business units within the Municipality**

11.5.16.1 The Real Estate Department May assist in reserving those immovable assets required by any business unit to render the minimum levels of municipal services. In the event that a property is not immediately required by any Business unit within the Municipality, the Real Estate unit may negotiate short term Lease Agreements in respect of such immovable property.

11.5.16.2 Any Lease Agreement entered into in respect of immovable assets required by any Municipal department shall include an early termination clause, which will allow the termination of the Lease Agreement following three months' written notice to the Lessee.

#### **11.5.17. Authority to decline applications or to terminate Lease Agreements prior to the lease expiry date**

11.5.17.1 The City Manager or his delegatee is in terms of this Policy duly authorised to decline lease applications that do not fulfil requirements laid out in this Policy.

11.5.17.2 In the event that a Lessee has not met his/her/its contractual obligations in terms of the relevant Lease Agreement and therefore is in breach of contract, City Manager shall have the mandate to terminate such Lease Agreement prior to the lease expiry date.

#### **11.5.18. Sports and Recreational Facilities and other public amenities**

11.5.18.1 Sports and recreational facilities and other public amenities may be let by private treaty to Sports Boards, Sports Federations, cultural clubs and other similar bodies subject to a full council Committee resolution.

11.5.18.2 Community based organizations/clubs and non-professional sporting bodies may be charged a nominal rental as approved by the Full Council Committee. The standard nominal lease for Community

based organizations will be set at R1000.00 per annum, excluding rates and R5000.00 excluding Rates per annum for clubs and non-professional sporting bodies.

11.5.18.3 Professional sports bodies and bodies operating for profit shall be charged a fair market related rental based on the market value of the property to be leased. The City Manager or his delegatee may however, at his discretion, offset any maintenance costs incurred by the Lessee against the rental tariff.

#### **11.5.19. Permission to Occupy/Beneficial Occupation**

11.5.19.1 The accounting officer shall have the discretion to, under certain circumstances, to permit an applicant of municipal owned Property to occupy the said Property prior to the Lease Commencement Date. Such permission shall only be granted in the following instances:

- (a) In the case of an emergency where the safety and security of the residents of the City will be negatively affected should the applicant not gain immediate occupancy of the Property, the City Manager or his delegatee may issue a Permission to Occupy Certificate to the applicant. No rental shall be payable in such instances but municipal services e.g. electricity, water, sewerage and refuse removal will be for the account of the occupant.
- (b) Where the Municipality has appointed a contractor to render a specific service e.g. the installation of water pipelines and the contractor needs to establish a construction yard or base camp from where his activities will be performed, the accounting officer may grant such contractor Permission to Occupy the Property for a period not exceeding 6 (six) months, following which the contractor will have to re-apply for continued occupation of the Property. The Real Estate Department or the accounting officer has a discretion to charge rental to the applicant. Where no rental is payable, municipal services, e.g. electricity, water, sewerage and refuse removal will be for the account of the occupant.
- (c) Where Council has already resolved to permanently dispose of an municipal owned immoveable property and the purchaser requires occupation of the property prior to the transfer and registration of the Property in the name of the purchaser, the accounting officer may grant beneficial occupation to the purchaser subject to the payment of a market related monthly occupational rental to be determined. Should the transfer/registration of the Property be delayed as a result of a delay on the side of the purchaser, the accounting officer may cancel the proposed sale agreement (subject to any council resolution where applicable).
- (d) Development Leases where Council has already taken an in-principle decision that a Property may be let and the applicant/prospective Lessee requires occupation of the Property, prior to the signing of the Lease Agreement, to conduct professional studies e.g. environmental impact assessments, geotechnical surveys, traffic studies etc. to expedite the development of the Property. In such instances the accounting officer may grant the prospective Lessee beneficial occupation rights for a period not exceeding 3 (three) months during which no rental is payable but municipal services e.g. electricity, water, sewerage and refuse removal will be for the account of the prospective Lessee. However, Real Estate or the accounting officer shall have a discretion to charge a rental where it deems fit to do so.
- (e) Where the property is required for use on ad-hoc basis. E.g use of vacant land for running promotions on a product, congregational purposes, etc. occupation of the municipal property shall be

capped at 30 days and will not be renewable. A daily rate, derived from the market related rental per month of the property, will be charged.

(f) The accounting officer may approve leases for gardening and / or security purposes. Such Applications must be accompanied by documents that prove security/nuisance threats. The rental charged at a nominal rate of R2000 per annum for properties above 200 square metres.

(g) Under any circumstances where the department deems fit to be in the interest of the Municipality for Permission to occupy to be granted.

#### **11.5.20. Organs of State**

11.5.20.1 In terms of Section 239 of the Constitution of the Republic of South Africa, 1996 (Act 106 of 1996), an Organ of State is defined as follows:

*“Organ of state means-*

*(a) any department of state or administration in the national, provincial or local sphere of government; or*

*(b) any other functionary or institution-*

*(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or*

*(ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;”*

11.5.20.2 Services rendered by Organs of State cannot be provided by any other service provider e.g. South African Police Services, Social Security Services etc.

11.5.20.3 To ensure the uninterrupted services rendered by any Organs of State, all Lease Agreements concluded in respect of Msunduzi immovable property where any Organ of State is a Lessee or prospective Lessee shall be exempted from the competitive bidding processes as mentioned in Section 11.4.3 above. Such exemption will adhere to the requirements of Regulation 41 (3) of the MATR which permits direct negotiations between the Council and any Organ of State.

11.5.20.4 All Organs of State shall be required to pay a market related rental.

#### **Site inspections**

11.6.1 All properties leased must be inspected by the Real Estate Department or the relevant custodian department to ensure compliance with the terms and conditions of the Lease Agreement. Over and above this, the Municipality reserves the right to gain access to and inspect the premises at any point in during the period of the lease.

#### **Records management**

11.7.1 The original Lease Agreement shall be scanned into the Property Information Management System at the Real Estate Department or be kept in the relevant file for that particular property by the records sub-unit of the custodian department.

### **Payment and evictions**

11.8.1 Payment of rental fees shall be in accordance with the signed Lease Agreement and in the event of non-payment, appropriate measures shall be taken. Action taken by the Municipality ranges from letters of demand to notice to vacate. Should the Lessee refuse or fail to vacate, or lodge a dispute or a notice to object, an application to evict may be lodged.

### **Lease expiry and re-applications**

11.9.1 Lease Agreements with existing Lessees of Immovable Properties may be re- negotiated where the City Manager or his delegatee is of the opinion that public competition would not serve a useful purpose. In such instances, a new lease with new lease terms may be entered into between the Lessor and Lessee and the applicable rental payable will be determined by way of a market valuation. The process to enter into a new lease agreement shall commence during a reasonable period prior to the Lease End Date.

11.9.2 No new Lease Agreement(s) shall be entered into unless all fees payable in respect of the leased property are paid up to date.

### **Payment of an Application Fee**

11.10.1 All persons, companies, organisations, clubs etc. who apply to lease any immovable property or portion thereof owned by the City may be required to pay a predetermined application fee determined by Council by means of tariffs, which fee would be adjusted annually.

## **12. Short Title and Effective Date**

12.1 This document shall be called the “LEASING POLICY FOR MSUNDUZI MUNICIPAL OWNED IMMOVABLE PROPERTY 2025” and will take effect from the date of its approval by Council.