

Drakenstein, South Africa

Improvement Areas

Legislation as at 9 February 2024

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Drakenstein South Africa

Improvement Areas By-law, 2024

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To provide for the establishment of improvement areas; to provide for additional rates; and to provide for matters incidental thereto.

BE IT ENACTED by Drakenstein Municipality as follows:—

Chapter 1 Establishment of improvement areas

1. Definitions

- 1.1 In this Bylaw, words or expressions shall bear the meaning assigned to them unless the context otherwise indicates:—
- 1.1.1 “**Additional rate**” means an additional rate contemplated in section 19(1)(d) and 22(1)(b) of the Property Rates Act and in section 12(2) of this Bylaw;
- 1.1.2 “**Applicant**” means any owner who makes an application for the determination of an improvement area in accordance with the provision of Chapter 1, or if a management, body is established in terms of section 11, any reference to “the applicant” means the management body;
- 1.1.3 “**Business plan**” means a motivation report, implementation plan and term budget as contemplated in section 6;
- 1.1.4 “**CFO**” means the Chief Financial Officer of the Drakenstein Municipality, or his or her nominee;
- 1.1.5 “**Municipality**” means the Drakenstein Municipality established by Provincial Notice No. 479 of 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- 1.1.6 “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);
- 1.1.7 “**Council**” means Council of Drakenstein Municipality;
- 1.1.8 “**Area**” means a special rating area approved by the Council in accordance with the provisions of section 22 of the Property Rates Act and section 8 of this Bylaw;
- 1.1.9 “**Limited improvement area**” means a limited improvement area approved by the Council in terms of section 9;
- 1.1.10 “**Majority**” means the majority of property owners contemplated in section 22 of the Property Rates Act and as may be amplified in the Policy;
- 1.1.11 “**Management body**” means the management body of an improvement area to be established in accordance with the provisions of section 11;

- 1.1.12 “**Motivation report**” means a report submitted to Council motivating the establishment of an improvement area;
- 1.1.13 “**Owner**” has the meaning assigned to it in section 1 of the Property Rates Act;
- 1.1.14 “**Policy**” means the Policy for the determination of improvement area, or any other policy adopted by the Council in relation to improvement areas, as in force from time to time;
- 1.1.15 “**Property Rates Act**” means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);
- 1.1.16 “**Rateable property**” has the meaning assigned to it in section 1 of the Property Rates Act;
- 1.1.17 “**Term budget**” means the budget of the management body contemplated in section 6 of this Bylaw.

2. Interpretation

In the event of any conflict with the Afrikaans or isiXhosa texts the English text prevails.

3. Determination of improvement areas

Drakenstein Municipality may by resolution of the Council determine improvement areas in accordance with the provisions of section 22 of the Property Rates Act.

4. Application

- 4.1 Any owner located within the area of jurisdiction of the Municipality and who owns a property may lodge an application to the Council for the determination of an improvement area.
- 4.2 All costs incurred by the applicant in respect of the establishment of an improvement area shall be for his or her own account, provided that after implementation of the business plan the management body may reimburse the applicant for some or all of those costs.
- 4.3 Any application contemplated in subsection (1) must—
 - (a) be in writing and be in the form as the CFO may determine;
 - (b) be submitted not more than nine months after the date on which the public meeting referred to in section 5 is held, or if a second public meeting is held as provided for in section 6(2), nine months after the date of the second public meeting;
 - (c) be accompanied by—
 - (i) the business plan;
 - (ii) the written consent of the majority of the property owners or any other person mandated by the property owner in writing in the proposed improvement area who will be liable for paying the additional rate, in a form determined by the CFO; and
 - (iii) payment of such fee as the Council may determine.

5. Public meetings

- 5.1 An application for the determination of an improvement area must be preceded by having a public meeting.
- 5.2 The purpose of the public meeting is to enable the applicant to consult with those owners within the proposed improvement area regarding the proposed boundaries of the area and the proposed improvement or upgrading of the area.

- 5.3 Prior to the public meeting, the applicant must—
- (a) give notice in a manner approved by the CFO in terms of this Bylaw to all owners of rateable properties, who will be liable for payment of the additional rate, of the applicant's intention to apply for the determination of an improvement area;
 - (b) in the notice referred to in subsection (3)(a), give notice of a public meeting, which notice must—
 - (i) state the purpose of such meeting; and
 - (ii) contain details of the place, date and time when such meeting is to be held.
- 5.4 The public meeting must be held not less than seven days and not more than 30 days after the date of the notice referred to in subsection (3)(a).
- 5.5 The public meeting must be held at such place, date and time as stated in the notice, provided that it must be held at a place which is within the boundaries of the proposed improvement area unless the CFO approves another venue in writing before the public meeting is held.
- 5.6 The public meeting must be chaired by a suitably qualified and experienced person appointed by the CFO.
- 5.7 Interested persons must, at the public meeting, be—
- (a) furnished with all relevant information relating to the proposed improvement area, including the information to be set out in the business plan; and
 - (b) given an opportunity to ask questions, express their views and make representations.

6. Business plan

- 6.1 Any application for the establishment of an improvement area must include a motivation report, an implementation plan and a term budget covering a period commencing on 1 July of a year and ending on 30 June of the fifth year, or covering such lesser period as may be determined by the CFO.
- 6.2 If the motivation report, the implementation plan or the term budget is materially amended, as determined by the CFO, after the public meeting referred to in section 5, the applicant must call a second public meeting for approval of the improvement area as amended.
- 6.3 The provisions of section 5 apply with the necessary changes to the second public meeting.

7. Advertising of application and objections

- 7.1 The applicant must within 14 days after the application is lodged in accordance with section 4, or within such further period which the CFO may approve—
- (a) cause a notice of the application to be published in a manner approved by the CFO; and
 - (b) either before or up to seven days after the date of publication of the notice referred to in subsection (1) (a), give written notice of the application to all owners within the proposed improvement area, who will be liable for payment of the additional rate, such notice to be given by pre-paid registered post, hand delivery or in any other manner approved of in writing by the CFO.
- 7.2 Every notice contemplated in terms of subsection (1) must state that written objections to the determination of an improvement area or the provisions of the business plan may be lodged with the Council by a date specified in the notice, which shall not be less than 30 days after the date of publication in terms of subsection (1)(a), and must state where the documentation specified in subsection (5) will be available for inspection.

- 7.3 Any owner of a rateable property who will be liable for paying the additional rate may submit written objections to the determination of the improvement area or business plan, which objections must be received by the Council not later than the date stipulated in the notice referred to in subsection (1).
- 7.4 An applicant and any objector to the application who owns property within the proposed improvement area may make oral representations which will be recorded in writing for submission to Council.
- 7.5 The application, including the business plan and all objections must be available for inspection at the offices of the Municipality and at a venue determined by the CFO within the proposed improvement area, for the period referred to in subsection (2).

8. Decision

- 8.1 After the provisions of sections 4 to 7 have been complied with, the Council must, at a meeting of the Council after the last date for the submission of objections in accordance with section 7(2), consider the application and—
 - (a) determine an improvement area which must be implemented in accordance with the business plan;
 - (b) determine an improvement area with such amendments or conditions as the Council considers to be in the public interest;
 - (c) determine an improvement area in respect of a limited area in terms of section 9;
 - (d) refuse the application, in which event the Council must, within 30 days, furnish the applicant with written reasons for not approving the determination of an improvement area or
 - (e) refer the application back to the applicant for amendment in such manner as the Council may direct.
- 8.2 If an application is refused by the Council in accordance with the provisions of subsection (1)(d) or referred back to the applicant in accordance with the provisions of subsection (1)(e), the applicant may, within six months of the Council's decision, re-apply to the Council for the determination of the improvement area, provided that such re-application has been appropriately amended in the light of the reasons for refusal or referral, as the case may be.
- 8.3 If the business plan is amended in any material respect at any time before the determination, the Council may require that the application be re-advertised in accordance with the provisions of section 7, with the necessary changes.

9. Determination of a limited improvement areas

- 9.1 If an application in terms of section 4 is not accompanied by the majority of the property owners or any other person mandated by the property owner in writing in the proposed improved are required by section 4(3)(c), but the applicant can demonstrate to the satisfaction of the Council, that—
 - (a) there are such confirmations from owners of rateable properties in a limited geographical area within the proposed improvement area that would meet the requirements of section 4(3)(c) if they were to be applied to that area;
 - (b) the level of services to be provided will not be reduced and the budget will be reduced accordingly as a result of the provision of those services in the limited area alone, as compared to the provision of those services in the whole of the proposed improvement area;
 - (c) then the Council may, subject to the other requirements of this Bylaw, determine a limited improvement area.

Chapter 2

Improvement areas - Structures and finances

10. Commencement with the business plan

Once the Council has approved the establishment of the improvement areas, the business plan may only be implemented after the management body has been established in accordance with section 11.

11. Establishment, composition, powers and duties of management body

- 11.1 The applicant must cause to be established a management body for the purposes of implementing the provisions of the business plan.
- 11.2 The management body must be a non-profit company incorporated in accordance with the provisions of the Companies Act.
- 11.3 The Municipality shall monitor compliance by the management body with the applicable provisions of this Bylaw, any guidelines or policies adopted by the Municipality and any agreements entered into with the management body and the Municipality.
- 11.4 Every ward, having full or partial jurisdiction over an improvement area, must, nominate one ward councillor as an observer and one other Councillor as an alternate observer of the management body.
- (a) The Executive Mayor of the Municipality shall, after receiving ward Councillor nominations, appoint one or two Councillor(s) and one alternate Councillor for each Councillor appointed as observer, to serve on the board of the management body.
 - (b) Any Councillor appointed by the Executive Mayor in terms of subsection 4(a) must—
 - (i) not have all the powers and duties of directors of companies as set out in the Companies Act and the memorandum of incorporation of the management body;
 - (ii) be deemed to have vacated their position should such observer no longer serve as a councillor and such observer shall be replaced in accordance with subsections 4 and 4(a); and
 - (iii) not chair the board of the management body or any committee or sub-committee of the board.
- 11.5 Employees of the Municipality may not serve on the management body as representatives of the Municipality in any capacity.
- 11.6 Within two months after receipt of the first payment of the additional rate, the management body must begin carrying out the provisions of the business plan.
- 11.7 Within two months of the end of each financial year, the management body must provide the CFO with—
- (a) its audited financial statements for the immediately preceding year;
 - (b) an annual report on its progress in carrying out the provisions of the business plan in the preceding year to improve and upgrade the improvement area;
- 11.8 Within three months after its Annual General Meeting, the management body must provide the council with—
- (a) its audited financial statements for the immediately preceding year; and
 - (b) an annual report on its progress in carrying out the provisions of the business plan in the preceding year to improve and upgrade the improvement area;

- 11.9 Within three months after its Special General Meeting, the management body of the newly established IA must provide the Mayoral Committee with a progress report.

12. Finances

- 12.1 The financial year of the management body must coincide with the financial year of the Council.
- 12.2 Where an improvement area has been determined, the Council must levy in accordance with the provisions of the Property Rates Act, a property rate in addition to the rates that it already charges on the owners of rateable property in the improvement area for the purposes of realising the business plan, provided that the Council may in terms of the Property Rates Act, Rates Policy, Credit Control and Debt Collection Bylaw and the Credit Control and Debt Collection Policy, exempt the indigent, senior citizens, disabled persons or any other category of residents.
- 12.3 When determining the additional rate referred to in subsection (2), the Council may give consideration to imposing differential additional rates on one or more of the categories set out in section 8 of the Property Rates Act.
- 12.4 The additional rate due in terms of this Bylaw is a debt due to the Council and is payable and must be collected in the same manner as other property rates imposed by the Council.
- 12.5 The Council may, for the purpose of carrying out the provisions of the business plan of the improvement area and subject to section 67 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), make payments to the management body of an improvement area.
- 12.6 The payments contemplated in subsection (5) are conditional upon the conclusion of a finance agreement to be entered into between the Council and the relevant management body, and such agreement must regulate, among other things—
- (a) the mechanisms and manner of payments; and
 - (b) terms on which payments to the relevant management body are to be made.
- 12.7 Subject to the provisions of its memorandum of incorporation, the management body is entitled to raise its own funds through commercial activities, donations or any other lawful means.
- 12.8 The Council may, for the purposes of this Bylaw, determine and impose on the management body an administrative charge.

13. The role of the CFO

- 13.1 In addition to the other responsibilities and obligations of the CFO as set out elsewhere in this Bylaw, the CFO must—
- (a) establish separate accounting and other record-keeping systems regarding the revenue generated by the additional rate and the improvement and upgrading of the improvement area;
 - (b) monitor compliance with the applicable legislation, including this Bylaw and the Policy.

Chapter 3

Amendment to the business plan and extension of the improvement areas term

14. Amendment to the business plan

- 14.1 The business plan, including the geographical boundaries of the improvement area, may be amended by the Council on written application by the management body at any time after the formation of the improvement area.

- 14.2 The Council may approve an application for an amendment referred to in subsection (1) where the Council considers it not likely to materially affect the rights or interests of any owner, provided that the Council may require the management body to cause a notice of the application for such amendment to be published as approved by the CFO.
- 14.3 The Council may only approve an amendment in terms of subsection (1), with the changes required by the context, in accordance with the provisions of Chapter 1, which the Council considers is likely to—
- (a) materially affect the rights or interests of any person;
 - (b) affect the approved budget for the improvement area; or
 - (c) change the boundaries of the improvement area.
- 14.4 The Council may, for good reason, on written application by the management body, exempt the management body from complying with the provisions, or condone any non-compliance with any provisions, of Chapter 1.

15. Extension of term

- 15.1 A management body must, if it elects to extend the term of the IA for a further period, submit an application to the Municipality for approval of extension of the term of the IA, provided that—
- (a) the extension of the IA term may only be approved by the Council in accordance with the provisions of Chapter 1. with the changes required by the context, and the Council may, for good reason, on written application by the management body, exempt the management body from complying, or condone any non-compliance, with any such provisions;
 - (b) the provisions of section 14 shall apply to any amendment of the business plan which has been extended in terms of this section.

Chapter 4 Dissolution of an improvement area

16. Dissolution

- 16.1 The Council may dissolve an improvement area—
- (a) upon written application signed by the majority of owners within the boundaries of the improvement area who are liable for paying the additional rate; or
 - (b) for any good cause, after prior consultation by the CFO with the management body or the community.
- 16.2 Upon the winding up of a management body, the entire net value of the management body, including its net assets remaining after the satisfaction of all its liabilities, shall be disposed of in terms of the relevant provisions of the Companies Act and the memorandum of incorporation of the management body.

Chapter 5 Miscellaneous provisions

17. Transitional provisions

- 17.1 Any Improvement Area determined or established, or deemed to have been determined or established in terms of the Bylaw referred to in section 18 shall be deemed to have been determined or established in terms of this Bylaw.

17.2 Any—

- (a) application initiated by an applicant, including a business plan prepared for such an application;
- (b) advertisement or public meeting in respect of such application;
- (c) application submitted to Council;
- (d) approval by the Council of any application,

17.3 Made, done or given prior to the date of this Bylaw, shall be governed by this Bylaw, provided that any business plan in force on the commencement date of this Bylaw shall, notwithstanding the provisions of section 6, terminate on the termination date of the relevant business plan.

18. Repeal of bylaws

The Drakenstein Municipality Establishment of Improvement Districts Bylaw, published in *Provincial Gazette* No. 5932 of 4 October 2002, is hereby repealed.

19. Short title and commencement

This Bylaw is called the Improvement Areas Bylaw, 2023 and comes into operation upon promulgation in the *Provincial Gazette*.