



# CITY OF TSHWANE

## ADOPT-A-SPOT POLICY 2018

## DEFINITIONS

In this Policy, words or expressions shall bear the meaning assigned to them, unless the context otherwise dictates another interpretation: -

**“Adopt a spot”** means the process through which applicants approach the city to adopt a piece of City of Tshwane owned land for the purpose of maintenance and beautification within a specific timeframe at no cost to the city;

**“Applicant”** means any business, companies, organizations, co-operatives, academic institutions, government entities and members of the public who choose to engage with the Adopt-a-spot programme.

**“Application”** means the official City of Tshwane approved Adopt-a-spot application;

**“Constitution, 1996”** means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), as amended;

**“C9”** refers to the City of Tshwane’s internal reporting system;

**“Memorandum of Agreement (MoA)”** means the document entered into between the City of Tshwane and the applicant which outline *inter alia*, the project implementation plan, timelines, roles and responsibilities, key conditions, maintenance plan, handover to the City administration, dispute resolution mechanisms and termination;

**“Municipal property”** means property registered in the name of the municipality or vested under the control and management of the municipality in terms of section 63 of the Local Government Ordinance, 17 of 1939 or in terms of any other legislation which is held in trust for the inhabitants of the municipality but does not include dominium of the property;

**“Regional Operations and Co-ordination”** (ROC) is the name given to the department that coordinates basic service delivery in each of the City of Tshwane’s regions:

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# 1. INTRODUCTION

The City of Tshwane owns, controls and manages a huge portfolio of public open spaces across a vast municipality area. Some of these are developed into parks while others are undeveloped. All of them play a vital ecological function and should not be developed in ways that reduce or impede their natural functionality as public open spaces. However they all require continuous maintenance and upkeep.

The City of Tshwane has adopted a framework policy on immovable property asset transfer, disposal and the granting of a right to use, manage or control a property asset owned by the municipality.

In terms of this framework policy the City immovable property asset portfolio consists of both developed and undeveloped portions of land which include:

- business properties,
- residential properties,
- agricultural holdings and farm land,
- industrial properties,
- community facilities (including health clinics and community halls),
- infrastructure properties including public streets,
- road reserves and sites reserved for roads and road camp purposes,
- parks, nature reserves and open spaces,
- recreational facilities such as libraries, sports and cultural facilities,
- historical buildings and museums,
- properties utilized for municipal operational purposes (office accommodation, parking areas, training academies, laboratories, engineering workshops, warehouses, vehicle depots),

The framework policy is applicable to:

- the transfer (commonly referred to as sale) and disposal of immovable property assets owned and controlled by the Municipality and its Municipal Entities; as well as

- the granting of the right to use, control or manage immovable property assets commonly known as lease rights; and
- the granting of a servitude right.

The framework policy, referred to above, is primarily oriented towards giving rights to the development of the properties concerned in a manner that changes their functionality. In this context, the framework policy correctly excludes property assets required for greening, open space development, playground, waste management, cemetery and burial places, nature conservation, or biodiversity and ecological functions and services from being made available for any other development.

Therefore the Framework Policy does not address itself to cases where a person or associations of people in the form of organization, businesses or institutions may wish to use, control or manage an immovable property assets such as parks, nature reserves and open spaces, not for the purpose of developing them and changing their functionality but in order to maintain and enhance their functionality as a form of a contribution to the management and maintenance of such a property at no financial cost to the City.

## **2. PURPOSE**

Within the context of the policy framework on immovable property asset transfer, disposal and the granting of a right to use, manage or control a property asset owned by the municipality, the purpose of this policy is to:

- specifically address cases where members of the public (person or associations of people in the form of organizations, businesses or institutions) may wish to partner with the City in the form of making use, controlling or managing a public open spaces in order to maintain and enhance their functionality as a form of a contribution to the management and maintenance of such open spaces without being paid by the City.
- guide a program that aims to overcome the challenges that the of ecological degradation, illegal land use, illegal dumping, criminal activities and lack of safety in public open spaces.

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- Facilitate partnerships with active citizenry in enhancing the aesthetics and the ecological functionality of the City's public open spaces.
- Not to replace the Alienation policy of the City for leasing of property (Land Asset Disposal Framework).

### **3. LEGISLATIVE FRAMEWORK**

Constitution Of The Republic Of South Africa

Chapter 2 Section 24 of the Constitution states that

Everyone has the right –

- a) To an environment that is not harmful to their health or well-being; and
- b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
  - i. Prevent pollution and ecological degradation;
  - ii. Promote conservation; and
  - iii. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Section 152 (1) (d) of the Constitution states that the objects of local government are to promote a safe and healthy environment.

This policy seeks to contribute towards the achievement of these constitutional prescripts as well as those of legislation and regulations that govern local government and environmental management including the following:

- Municipal Systems Act, (Act 32 of 2000) and its Regulations.
- Local Government: Municipal Finance Management Act (Act No. 56 of 2003).
- Regulations in terms of Section 168 of the Local Government: Municipal Finance Management Act, 2003.
- Municipal Supply Chain Management Regulations, 2005.

- Municipal Asset Transfer Regulations, 2008.
- Local Government Ordinance No. 17 of 1939.
- Alienation of Land Act, 1981 as amended.
- Preferential Procurement Policy Framework Act, (Act 5 of 2000) and its Regulations.
- Spatial Planning and Land Use Management Act (Act 16 of 2013)
- National Environmental Management Act (NEMA), 1998 (Act 107 of 1998)

#### **4. APPLICATION AND SCOPE OF THE POLICY**

This policy is applicable to the undeveloped public open spaces which are being considered for the purposes of establishing a partnership between the City and the applicant for the purposes of making use of, controlling or managing a public open space in order to maintain and enhance its functionality as a form of a contribution to the management and maintenance of such an open space without being paid by the City.

It must be noted that what is envisaged in this policy does not amount to the use, control or management within the scope of the Municipal Asset Transfer (MAT) regulations. It does not grant rights of use, control or management over a specific area to the exclusion of others. Rather it grants permission to successful applicants to initiate certain activities and projects which would maintain and enhance the beauty of a specific area.

#### **5. LIMITATION**

This policy is not applicable to

- cases where the intention is to rezone, sell, donate and lease a public open space for the purposes of a social or economic development that is intended to change the functionality of the property to be anything other than a public open space.
- Case of applications for short term use of a public open for purposes of an event.

- Adopt- A-Spot excludes “agricultural use” due to complications that comes with agricultural land use such as “EIA requirements, Water use by-laws preventing use of tap water for agricultural purposes, huge and long-term investment, etc).
- This policy excludes properties that are worth R10 million or more.

## **6. CONDITIONS FOR THE ADOPT-A-SPOT PROGRAMME**

6.1 The following conditions must be noted when considering an Adopt-a-Spot application.

6.2 The programme is focused on under-developed, undeveloped or semi-developed municipal properties zoned as a “Public Open Space”. Only sites that are under control and management or owned by the City of Tshwane as municipal properties and which in the opinion are capable of being maintained through private funding will be considered for adoption, these include but are not limited to:

- Illegal dumping sites zoned public open space;
- Recreational parks and facilities;
- Rivers, wetlands, flood plains, ridges and mountains;
- Any dilapidated area zoned “public open space”,
- Unused road reserve and servitude
- Or such other properties as the municipality may identify from time to time.

6.3 The Applicant will not be remunerated, rewarded or reimbursed by the City as part of the implementation of the programme. The applicant will not be granted exclusive rights or any other right over the property and shall keep and maintain the property in good order for the use and benefit of the public as the case may be.

6.4 Applications for properties along roads, and at road intersections (usually with no ownership and zoning information) should follow the way-leave application process.

6.5 The successful applicant will be permitted to erect a sign at the identified site which indicates that they have “Adopted the spot” in line with this policy and in partnership with the City of Tshwane.

6.6 As the programme is focused on public amenities, the adopted spot must be accessible to all members of the public and at no point can any fee be charged to access the area.

### **Responsibilities of the Applicant**

6.7 Upon approval of the application it shall be made subject to the signing of the Memorandum of Agreement (MoA), in terms of which the obligations of the applicant shall be determined which may include that the applicant will also be responsible for clearing the site, remove alien vegetation, preserve indigenous vegetation, and possible water irrigation facilities. Where there are metered services on the property and the applicant has the use of the services, the MoA should include a consumer agreement.

6.8 The Applicant is encouraged to have public liability cover as the City will not be responsible and liable for injuries, death, vandalism and theft of infrastructure items, and natural disasters during the duration of the agreement

6.9 The Municipality should be indemnified against any claims for loss of life or injury arising out of the Adoptee maintaining the property and should a member of the public be injured as a result of the activities at the municipal property, the Adoptee will be liable.

6.10 The applicant will be expected to submit quarterly progress reports taking place on the adopted property to Environment and Agriculture Management Department.

6.11 The Applicant may be removed from the site within a three months’ notice by the City where a need arises. However, in the case of violation

of the agreement, the applicant may be requested to remedy or be removed with immediate effect. In such an event, the applicant will be liable to reinstate the property to its original state if in the opinion of the municipality, it may be to the benefit of the public.

### **Responsibilities of the City**

6.12 The City will put measures in place to ensure that that the Applicant adheres to all adopted and approved policies of Council in the execution of the applicant's responsibilities on municipal property, failing which, the municipality may take any actions it deems expedient, including the cancellation of the agreement and reinstatement of municipal property to its original state if in the opinion of the municipality, it may be to the benefit of the public.

6.13 The City will ensure that the Adopt-A-Spot programme has a project manager (PM) to assist with application process and form an Adopt-a-Spot Committee to evaluate applications. The Committee to be chaired by the Group Head: Environment and Agriculture Management or his or her delegated official. The committee is duly authorized to consider the applications and will have the necessary delegations e.g. for the approval of the site plan, the entering into the agreement, the enforcement of the agreement, monitoring, etc. This Committee should have multi-disciplinary representation from at least the following Departments:

- Environment and Agriculture Management
- Group Property Management
- Economic Development (Outdoor advertising)
- Office of the Executive Mayor
- Group Financial Services
- Group Legal and Secretariat Services
- Or any other department within the City which in the opinion of the Office of the Executive Mayor may contribute its expertise to the

evaluation of applications either as a permanent member of the committee or on an Ad Hoc basis.

- 6.14 The City will also issue invitations via media channels (newspapers, City's website and social platforms) to aspiring CoT citizens to submit written communication indicating their desire and interests to adopt Public Open Spaces and Parks to the Environment and Agriculture Management Department.
- 6.15 Once the City is satisfied that the application meets all the requirements, a Memorandum of Agreement will be entered into between parties which outlines *inter alia*, the project implementation plan, timelines, roles and responsibilities, key conditions, maintenance plan, handover to the City administration, dispute resolution mechanisms and termination.
- 6.16 The City will ensure that maintenance on the adopted spots is in accordance with the City's approved municipal standards including a horticultural maintenance plan.
- 6.17 The City will further support with clean-up efforts initiated by the Applicant, and will assist with efforts in doing law enforcement to prevent illegal activities on the Municipal properties in so far as its budget permits.
- 6.18 The City will ensure that that the Applicant complies with the EPWP (through engaging the EPWP office in the execution of the programme) as well as the Occupation Health and Safety requirements during the implementation of the project.
- 6.19 The City will be responsible for the overall monitoring of the project and provide technical expertise where required.
- 6.20 Upon completion of the project, the adopted spot will be handed over to the City for continuous maintenance and ownership by the ROC Department.

## **7. APPLICATION PROCESS**

7.1 The application forms that support this policy are publicly available on the City of Tshwane's website or can be sourced directly from the Environment and Agriculture Management Department. The full process of application is further detailed in Standard Operating Procedure for the Adopt-A-Spot Programme.

Environment and Agriculture Management Department in conjunction with Group Property Management Department will conduct an investigation on the status of the property and property description. This is to make sure that there are no pending agreements of lease or other rights of use on the property and whether the property is not earmarked for any other purpose. If Group Property Management Department gives a green light, the Applicant must go through the expense of preparing an application.

7.2 The applicant will be expected to also hand in an operational plan which details what they wish to do with the identified Adopt-a-Spot.

7.3 There is no set template for the operational plan, however it should outline the following as a minimum requirements:

- Description of the activities to be conducted at the adopted spot;
- Pictures of the site's current condition;
- Timelines and schedule for when activities will occur;
- Estimated amount that applicant will spend on the adopted spot;
- Plans regarding removal of any alien vegetation;
- Possible site upgrades (park benches, jungle gyms, art pieces, etc)
- A letter of support from the Ward Councillor will strengthen the application but is not a key requirement for its processing.

## **8. MEMORANDUM OF AGREEMENT**

Upon approval of the Adopt-A-Spot application, the City will draft a Memorandum of Agreement with the applicant. The contents of the agreement will include but will not be limited to the following aspects:

#### 7.4 Rights and limitations of the applicant

- Right to erect a sign indicating that they have “Adopted the spot” in partnership with the City and subject to outdoor advertising bylaws.
- Right to landscaping and beautification of the site subject to the City landscape design principles and Tshwane Open Space Framework (TOSF).
- The applicant may only erect structures on site that have been agreed upon in the Memorandum of Agreement.
- The Applicant may not deny or restrict access to the members of the public during the agreement period.
- The Applicant must report all security incidents to the City as and when they occur.
- Outdoor Advertising Section under the Economic Development Department will provide guidance on branding, marketing and advertising.
- The application and proposed activities on the site must be in compliance with all the City policies, procedures and by-laws and other relevant National, Provincial legislative and policy requirements.
- The application and proposed activities on the site must not have negative impacts on the environment and appropriate measures must be taken to prevent environmental damage.
- The application and proposed activities on the site must be in compliance with zoning requirements of the site.

## **9. EXTENSION AND TERMINATION**

9.1 The Adopt –A- Spot will be approved on a 2 year 11 months timeline.

9.2 Should an applicant wish to extend their Adopt-A-Spot project, they will need to re-apply through the procedures detailed in this policy. They will be expected to ensure that they submit an updated operational plan as part of the application. This application must be submitted at least three months before a particular project expires.

9.3 If at any point the municipality is of the opinion that the benefit obtained from the agreement is not in the public interest or the applicant contravenes any of the terms and conditions of the agreement or any applicable legislation, the municipality may cancel the approval and terminate the agreement and the applicant shall have no claims against the Council whatsoever arising out of the cancellation and or termination of the agreement.