

Bitou Municipality
Draft Special Rating Areas By-Law

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

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BE IT ENACTED by the Bitou Municipality as follows:

Chapter 1: Establishment of Special Rating Areas

1. Definitions

In this by-law words or expressions shall bear the meaning assigned to them and words used in the masculine gender include the feminine, the singular includes the plural and vice versa. The English text prevails in the event of an inconsistency between the different texts and unless the context otherwise indicates:

“additional rate” means an additional rate contemplated in sections 19(1)(d) and 22(1)(b) of the Municipal Property Rates Act, 2004 (Act No. 6 of 2004) in section 11(2) of this by-law;

“applicant” means any owner who makes an application for the determination of a special rating area in accordance with provisions of Chapter 1, or if a management body is established in terms of section 10 any reference to “the Applicant” means the management body;

“CFO” means the Chief Financial Officer of Bitou Municipality, or his or her nominee.

“Companies Act” means the Companies Act, 2008 (Act 71 of 2008), as amended or replaced;

“Council” means Council of Bitou Municipality;

“implementation plan” means an Implementation Plan as contemplated in section 6;

“business plan” means a motivation report, implementation plan and term budget as contemplated in section 6;

“limited special rating area” means a limited special rating area approved by the Council in terms of section 8;

“majority” means the majority of property owners as contemplated in section 22 of the Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

“management body” means the management body of a special rating area to be establishment in accordance with the provision of section 10;

“motivation report” means a motivation report as contemplated in section 5;

“owner” has the meaning assigned to it in section 1 of the Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

“Policy” means the Policy for the determination of special rating areas, or any other policy adopted by the Council in relation to special rating areas, as in force from time to time;

“Municipal Property Rates Act” means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

“rateable property” has the meaning assigned to it in section 1 of the Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

“special rating area” means a special rating area approved by the Council in accordance with the provisions of section 22 of the Municipal Property Rates Act, 2004 (Act No. 6 of 2004) and section 7 of this by-law.

2. Determination of Special Rating Areas

Bitou Municipality may by resolution of the Council determine special rating areas in accordance with the provisions of section 22 of the Property Rates Act.

3. Application

- 1) Any owner located within the area of jurisdiction of Bitou Municipality and who owns property within the proposed special rating area, may lodge an application to the Council for the determination of a special rating area.
- 2) All costs incurred by the applicant in respect of the establishment of a special rating area shall be for his or her own account, provided that after implementation of the implementation plan / business plan the management body may reimburse the applicant for some or all of those costs.
- 3) An 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 4 is held, or if a second public meeting is held as provided for in section 5(2), nine months after the date of the second public meeting;
 - c) be accompanied by:
 - (i) a motivation report and an implementation plan;
 - (ii) the written consent of at least 50 percent plus 1 of the members of the local community in the proposed special rating area who will be liable for paying the additional rate, in a form determined by the CFO;
 - (iii) payment of such fee as the Council may determine.

4. Public Meetings

- 1) An application for the determination of a special rating area must be preceded by the holding of a public meeting.
- 2) The purpose of the public meeting is to enable the applicant to consult with those owners within the proposed special rating area with regard to the proposed boundaries of the area and the proposed improvement or upgrading of the area.
- 3) Prior to the holding of the public meeting, the applicant must:
 - a) give notice in writing and through public advertisements in the local media and any other additional manner approved by the CFO in terms of this by-law to owners of rateable property, who will be liable for payment of the additional rate, of the applicant's intention to apply for the determination of a special rating 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.
- 4) The public meeting must be held not less than seven days and not more than 30 days after the date of the notice.
- 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 special rating area unless the CFO approves another venue in writing before the public meeting is held.
- 6) The public meeting must be chaired by a suitable qualified and experienced person.

- 7) Interested persons must, at the public meeting, be:
 - a) furnished with all relevant information relating to the proposed special rating area, including the information to be set out in the motivation report and implementation plan; and
 - b) given an opportunity to ask questions, express their views and make representations.

5. Motivation Report and Implementation Plan / Business Plan

- 1) Any application for the establishment of a special rating area must include a motivation report and an implementation plan covering a period commencing 12 months starting on 1 July of a year and ending on 30 June.
- 2) If the motivation report or the implementation plan are materially amended, as determined by the CFO, after the public meeting referred to in section 4, the applicant must call a second public meeting for approval of the special rating area as amended.
- 3) The provision of section 4 applies with the necessary changes to the second public meeting.

6. Advertising of Application and Objections

- 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, give written notice of the application to all owners within the proposed special rating area, who will be liable for payment of the additional rate, such notice to be given by prepaid registered post, hand delivery, appropriate electronic means or in any other manner approved of in writing by the CFO.
- 2) Every notice contemplated in terms of subsection (1) must state that written objections to the determination of a special rating area or the provisions of the motivation report and implementation 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.
- 3) Any owner of rateable property who will be liable for paying the additional rate may submit written objections to the determination of the special rating area, which objections must be received by the Council not later than the date stipulated in the notice referred to in subsection (1).
- 4) An application and any objector to the application who owns property within the proposed special rating area may make oral representation to Council.
- 5) The application, including the motivation report and the implementation plan, and all objections must be available for inspection at the offices of Bitou Municipality and at a venue determined by the CFO within the proposed special rating area, for the period referred to in subsection (2).

7. Decision

- 1) After the provision of section 3 to 6 have been complied with, the Council must, at a formal Council meeting held no more than 90 days after the last date for the submission of objections in accordance with section 6(2), consider the application and:
 - a) determine a special rating area which must be implemented in accordance with the motivation report and implementation plan;
 - b) determine a special rating area with such amendments or conditions as the Council considers to be in public interest;
 - c) determine a special rating area in respect of a limited area in terms of section 8;
 - 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 a special rating area; or
 - e) refer the application back to the applicant for amendments in such manner as the Council may direct.
- 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 special rating 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.
- 3) If the motivation report or implementation 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 provision of section 6, with the necessary changes.

8. Determination of a Limited Special Rating Area

If an application in terms of section 3 is not accompanied by a majority of at least 50 percent plus 1 of the members of the local community in the proposed special rating area required by section 4(3)(c), but the applicant can demonstrate to the satisfaction of the Council, that:

- 1) there are such confirmations from owners of rateable properties in a limited geographical area within the proposed special rating area that would meet the requirements of section 3(3)(c) if they were to be applied to that area; and
- 2) 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 special rating area, then the Council may, subject to the other requirements of this by-law, determine a limited special rating area.

Chapter 2: Special Rating Areas – Structures and Finances

9. Commencement of the Implementation Plan / Business Plan

Once the Council has approved the establishment of the special rating area, the implementation plan may only be implemented after the management body has been established in accordance with section 10.

10. Establishment, composition, powers and duties of Management Body

- 1) The applicant must establish a management body for the purposes of implementing the provisions of the implementation plan.
- 2) The management body must be a company incorporated in accordance with the provisions of section 21 of the Companies Act, 1973 (Act No. 61 of 1973).
- 3) Bitou Municipality shall monitor compliance by the management body with the applicable provisions of this by-law, any guidelines or policies adopted by Bitou Municipality and any agreements entered into with the management body and Bitou Municipality.
- 4) The Council must nominate the relevant ward councillor and one other person, as representatives to attend and participate, but not vote, at the meetings of the management body.
- 5) Within two months after receipt of the first payment of the additional rate, the management body must begin carrying out the provisions of the implementation plan.
- 6) 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; and
 - b) an annual report on its progress in carrying out the provisions of the implementation plan in the preceding year to improve and upgrade the special rating area.
- 7) Within two months after the Annual General Meeting, the management body must provide the Finance Portfolio Committee 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 implementation plan in the preceding year to improve and upgrade the special rating area.

11. Finances

- 1) The financial year of the management body must coincide with the financial year of the Council.
- 2) Where a special rating area has been determined, the Council must levy in accordance with the provisions of the Municipal Property Rates Act, 2004 (Act No. 6 of 2004), a property rate in addition to the rates that it already charges on the owners of rateable property in the special rating area for the purposes of realizing the implementation plan, provided that the Council may in terms of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), Rates Policy, Credit Control and Debt Collection By-Law and the Credit Control and Debt Collection Policy, exempt the indigent, senior citizens, disabled persons or any other category or residents.
- 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 Municipal Property Rates Act, 2004 (Act No. 6 of 2004).
- 4) The additional rate due in terms of this by-law 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.
- 5) The Council may, for the purpose of carrying out the provisions of the implementation plan of special rating area and subject to section 67 of the Local Government: Municipal Finance

Management Act, 2003 (Act No. 56 of 2003), make payment to the management body of a special rating area.

- 6) The payment contemplated in subsection (5) is 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 payment; and
 - b) terms on which payment to the relevant management body is to be made.
- 7) Subject to the provisions of its memorandum and articles of association, the management body is entitled to raise its own funds through commercial activities, donations or any other lawful means.
- 8) The Council, may for the purposes of this by-law, determine and impose on the management body an administrative charge.

12. The Role of the CFO

In addition to the other responsibilities and obligations of the CFO as set out elsewhere in this by-law, the CFO must:

- 1) establish separate ring-fenced budget votes and other record-keeping systems regarding the revenue generated by the additional rate and the improvement and upgrading of the special rating area;
- 2) monitor compliance with the applicable legislation, including this by-law and the Policy, by:
 - a) receiving and considering the audited financial statements and reports regarding the carrying out of duties laid out in the implementation plan;
 - b) if he or she elects to do so, nomination of representatives to attend and participate but not vote at meetings of the management body.

Chapter 3: Amendment and Extension of Implementation Plans

13. Amendment to Implementation Plans

- 1) An implementation plan, including the geographical boundaries of the special rating area, may be amended by the Council in writing through an application by the management body at any time after the formation of the special rating area.
- 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 amendments to be published as approved by the CFO.
- 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 special rating area; and
 - c) change the boundaries of the special rating area.

- 4) The Council may, for good reason, on written application by the management body, exempt the management body from complying with specified provisions, or accept a motivation in writing for any reasons of noncompliance with any provisions of Chapter 1.

14. Extension of Implementation Plans

A management body must, if it elects to extend the term of the implementation plan for a further period, on or before January in the year in which the implementation plan is due to terminate, submit an application to Bitou Municipality for approval of extension of the term of the implementation plan, provided that:

- 1) the extension of the implementation plan 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;
- 2) the provisions of section 13 shall apply to any amendment of an implementation plan which has been extended in terms of this section.

Chapter 4: Dissolution of a Special Rating Area

15. Dissolution

- 1) The Council may dissolve a special rating area:
 - a) upon written application signed by the majority of owners within the boundaries of the special rating area who are liable for paying the additional rate; or
 - b) after prior consultation by the CFO with the management body or the community, for any good cause, whereupon he or she may cause the management body to be wound up.
- 2) Upon the winding up of a management body, the assets remaining after the satisfaction of all its liabilities shall be utilized by the Council to provide additional municipal services in accordance with the provisions of the implementation plan for such areas.

Chapter 5: Miscellaneous Provisions

16. Title and Commencement

- 1) This by-law is called the Bitou Municipality: Special Rating Areas By-Law and comes into operation on date of promulgation thereof in the Western Cape Government Gazette.