

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 September 2020  
(Also the agenda for the Mayoral Committee Meeting : 30 September 2020)**

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**7.  
COVID-19 FINANCIAL RELIEF ARRANGEMENTS  
EXEMPTION FROM PAYMENT OF RENTAL FOR THE MONTHS OF JULY 2020,  
AUGUST 2020 AND SEPTEMBER 2020 – SPECIFIC TENANTS**

7/2/3/1

A Le Roux

Manager: Property Administration

17 August 2020

(028) 316-3724

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**1. Executive Summary**

The purpose of the report is to present Council with a recommendation to exempt the following tenants from the payment of rental for the months of July 2020, August 2020 and September 2020:

- 1) tenants of the Overstrand Municipality who are leasing the municipal property for restaurant purposes;
- 2) the tenant of the Hermanus Market Square Stalls as the tenant cannot make substantial use of the Hermanus Market Square Stalls;
- 3) the tenant of Erf 9515 Zwelihle (also known as the “Zwelihle Mall”);
- 4) the tenant of the kiosk at the Onrus Caravan Park; and
- 5) tenants of the Overstrand Municipality who are leasing the municipal property for the purpose of operating an early childhood development centre;

as indicated on the attached spreadsheet marked Annexure A.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Directorate Finance  
Department Revenue

**3. Compliance with Strategic Priority/ies**

Provision of democratic, accountable and ethical governance  
Promotion of tourism, economic and social development

**4. Delegated Authority**

None

**5. Legal Requirements**

Administration of Immovable Property Policy of the Overstrand Municipality, as amended  
Local Government: Municipal Finance Management Act, Act 56 of 2003 (“MFMA”)

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## **6. Background/Discussion/Evaluation/Conclusion**

### **Background**

The widespread and commonly known Covid-19 virus, declared as a pandemic by the World Health Organisation has wreaked havoc on the world, South-Africa and the Overstrand region.

Furthermore, Dr Nkosazana Dlamini Zuma, Minister of Cooperative Governance and Traditional Affairs, designated under section 3 of the Disaster Management Act (Act No. 57 of 2002) (the "DMA"), following a declaration of a national state of disaster, published regulations in terms of section 27(2) of the DMA, after consultation with the relevant Cabinet members (the "Regulations"). The Regulations are amended from time to time and the state of disaster is still continuing until 15 September 2020 as per the last national government amendment.

Guidelines issued by the World Health Organisation to individuals in mitigating the potentially fatal risk posed by the Covid-19 virus include staying home, avoiding gatherings and the regular washing of hands.

The Regulations in turn impose strict legal obligations on all citizens and business within the Republic of South Africa. The main applicable restrictions currently in effect under Alert Level 2 (as from 18 August 2020) are the limitation of numbers visiting restaurants and the curfew.

### **Discussion**

A: EXEMPTION

#### **1. Restaurants**

The Overstrand Municipality has numerous lessees who have concluded lease agreements for restaurant purposes.

The Regulations placed South Africa into a hard lockdown, which included the suspension of the operation of restaurants with the effect that no restaurant could trade from 25 March 2020. All restaurants were closed and they could initially only resume trade as a take-away institution from 29 April 2020. Taking this into consideration, Council approved an exemption from the payment of rental for, amongst others, restaurants for the months of April, May and June 2020. Restaurants were so restricted until 25 June 2020 when they could resume sit-down trade, but with a limitation on the amount of sit-down customers and the hours they may trade as a curfew was announced. This had the effect

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that restaurants had to close early in order for all employees to be home at 21:00, noting that the curfew was recently extended to 22:00.

However, even with the sit-in trade of restaurants resuming, they were not allowed to sell liquor for consumption on their premises until the most recent move to Alert Level 2 where the ban of sale of liquor was lifted effectively from 18 August 2020. Furthermore, following directions issued by the World Health Organisation, it is recommended that people avoid gatherings at places such as restaurants.

The Regulations also prevent and prohibit the movement of persons. International travellers as well as citizens from provinces outside of the Western-Cape were not permitted to travel to South Africa for leisure purposes. Only from 31 July 2020 were people resident within South Africa allowed to travel for leisure purposes and even then, such travel was still restricted to only within their own province. This was further lifted, as to allow for inter-provincial travel, as from 18 August 2020, however, international travel for leisure purposes remains prohibited.

All the restaurants are experiencing earning capacity limitations. They are experiencing substantially less foot traffic as people are generally advised to stay at home as much as possible. The problem is intensified for them in the Overstrand area as we are a region heavily populated with elderly residents with a large degree of reliance on visitors from all over to the Overstrand area. Elderly people are regarded in the high risk category of contracting severe cases of Covid-19.

The Overstrand area is generally regarded as a tourist destination where international and national visitors frequent our facilities such as restaurants. The Regulations prohibit leisure travel (except for the recently allowed inter-provincial travel from 18 August 2020) which, together with the closure of most tourist facilities, results in substantially fewer visitors to restaurants. The latest and hopefully final blow to the tourism sector is the latest announcement that the Whale Festival will not proceed this year.

Alcohol sales by restaurants were banned in terms of the Regulations until the recent lift of the ban as from 18 August 2020. Restaurants make substantial profit from wine and alcohol sales, which are currently non-existent. This has in itself caused restaurants not to open at all in an attempt not to trade at a loss.

The Property Administration Department has been in contact with restaurant owners in order to gain their insight on the impact the Covid-19 pandemic and the resulting Regulations have had on their trading and earning capacities. All of the restaurateurs have commented that:

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- Their demand as well as operating capacity have decreased;
- Their turnover have decreased;
- Even whilst they may now operate, the demand have decreased as the risk of attending a public place deters potential customers;
- The full rental amount will most likely not be payable by all the lessees at this moment in time.

2. Hermanus Market Square Stalls, Zwelihle Mall and Onrus Caravan Park

Following a competitive bidding process, a lease for the Hermanus Market Square stalls was entered into for the lease, management, sub-letting, supervision and maintenance of the Hermanus Market Square stalls.

As a result of the Regulations, the tenant of the Hermanus Market Square stalls could not use the lease agreement for its intended purpose.

The Hermanus Market Square stalls have been hard hit as the traders' customer base consists primarily of tourists to the Overstrand area. Travel for leisure purposes was severely restricted in terms of the Regulations and the traders have no viable customer base. As also mentioned above, the Regulations prevented and albeit to a lesser extent recently, still prohibit the movement of persons. Only from 31 July 2020 were people resident within South Africa allowed to travel for leisure purposes and even then, such travel was still restricted to only within their own province. This was further lifted, as to allow for inter-provincial travel, as from 18 August 2020. International travellers are still not permitted to travel to South Africa for leisure purposes.

The main tenant of the Hermanus Market Square stalls who then sub-leases the stalls to traders report that for the month of July only two stalls traded and for the month of August only 4 stalls will be trading. The lease agreement provides that the tenant has 36 stalls which may be sub-leased to traders. The low number of traders at the Hermanus Market Square stalls is as a result of either the Regulations or the Covid-19 disease or a combination of the two. He has also informed us that most of the traders he sub-leases to have indicated that they do not have the financial means now to pay rental in order to open their respective stalls. This has the effect that the main tenant will not be able to pay the full rental to the municipality and in order to encourage traders to start trading, they have to be exempted from paying rental – thus the main tenant has to be exempted also as he will not have an income to pay the rental for the management of the 36 stalls. With only four stalls open, the main tenant will not be able to pay rental as he must still upkeep the ablution facilities and make sure all Covid-19 precautions are in place.

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Following a competitive bidding process for the lease of erf 9515 Zwelihle, commonly known as and referred to as the 'Zwelihle Mall', a lease was entered into with Pemzo Construction CC for business purposes to use the municipal property for the management, leasing, sub-letting, supervision and maintenance of the Zwelihle Mall.

Similar to the situation that arose at the Hermanus Market Square stalls, the Zwelihle Mall has been impacted by the Regulations to such an extent that the tenant is unable to use the municipal property to the full extent that is leased from the municipality. The sub-tenants are struggling to make ends meet as sales have dropped considerably and are subsequently struggling to pay their respective rentals.

Following a competitive bidding process for the lease of a kiosk at the Onrus Caravan Park, a lease was entered into with Mr Andrew Sales. With the Caravan Park being closed during especially the high season, Mr Sales was not able to earn an income to pay the rental.

3. Early Childhood Development Centres

During the initial 'hard lockdown' required by the Regulations, early childhood development centres ("ECDS") were not able to operate and earn an income. ECDS are now incurring additional costs in ensuring that their premises are Covid-19 compliant, as required by the Regulations.

ECDS generally obtain their operating income from social grants, donations and the minimal fees they require from parents. Covid-19 has wreaked havoc on the economy. ECDS play an important role in the community and as a vulnerable group they should be afforded relief and protection from the devastating effects of Covid-19 where possible. Although ECD's are permitted to open, most of the ECD's as tenants of the Municipality do not have the means to apply the strict Covid-19 precautions they have to adhere to before opening. Most of these ECD's are also in the most vulnerable areas within the Overstrand.

B: EFFECT IF NO EXEMPTION IS GRANTED

Should the payment of rental exemption as sought in this report, there is a reasonable prospect that the detrimental consequences may materialise.

1. Consequences of termination of lease agreements

It is a standard term of all lease agreements that the Municipality may cancel a lease agreement where the tenant has failed to pay the rental

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amount and proceed with any collections. Should rental remain unpaid, the Municipality may be left with no alternative but to enforce these lease cancellation provisions leaving the properties vacant.

Vacant properties can become a huge administrative burden to the Municipality as from past experience it is known that vacant properties are usually targets for vandalism and theft. Having tenants in premises eases the burden of protecting and securing the leased property of the Municipality.

Section 63 of the MFMA stipulates as follows:

*“63.(1) The accounting officer of a municipality is responsible for the management of  
(a) the assets of the municipality, including the safeguarding and the maintenance of those assets; and  
(b) the liabilities of the municipality.”*

The properties are assets of the Overstrand Municipality and the accounting officer will be obligated to incur costs in safeguarding these assets if they are left vacant.

It is required by the Administration of Immovable Property Policy of the Municipality as well as the lease agreements entered into, that tenants are responsible for the maintenance and upkeep of the properties they lease. Should the lease agreements be cancelled the Overstrand Municipality will have to resume the maintenance obligations of those properties. This will result in substantial administrative duties and maintenance costs and expenses.

2. Closing of businesses

Should they remain liable to pay their rental amounts at this time and stage of economic uncertainty in the South African nation at large, this may be the tipping point for many businesses that are already standing on the proverbial edge of closure. It is a reality faced by many businesses that have not been able to generate an income sufficient to keep them afloat. It should be noted that the pandemic and the resulting Regulations are the reasons for the businesses' dismal income, as these businesses have been trading profitably for the most part of their lease durations and where they have not made their payments, they have usually been able to recover in the next busy month or so. These are circumstances beyond the normal and expected slow trading months.

The detrimental effects the closure of businesses will have are almost self-explanatory. Restaurants are an integral part of the tourism industry

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of the Overstrand region. The ripple effect restaurant closures will have will negate the efforts made by the other stakeholders in the tourism industry. Furthermore, restaurant closures may result in a decrease of visitors to the Overstrand region, which would have resulted in a decrease of spending within the Overstrand region.

The closure of businesses, regardless of how big or small, includes job losses. Unemployment is a major threat to the economy and state of South Africa and must be prevented where possible. An increase in crime is a well-known effect of unemployment within an area. An increase in hunger and crime is not something that the Municipality can afford. A job loss can result in families being placed into poverty, where they previously lived beyond the so-called bread line.

The impact job losses have on a community must not be understated, the ripple effects of crime, poverty, increased need for subsidised living and the decrease in spending within a community can eradicate years of socio-economic advancement within less than a couple of months. Higher unemployment places a larger burden on the Overstrand Municipality as it will need to subsidise the poor and at the same time it diminishes the amount of revenue it can collect for rates and services in the long term.

### **Evaluation**

#### Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply to this report:

**Paragraph 25(a): *The Municipality, as a rule, bearing in mind the provisions of paragraph 23 and save for those cases mentioned in paragraphs 21, 25, 26 and 58 to 62, shall not (a) let immovable property at a lower rental than market related rental or the rental approved in the tariffs except in cases when the public interest or the plight of the poor demands otherwise and taking into account the provisions of Regulation 13(2) of the MATR, the latter in circumstances of an alienation.***

In this event, the public interest and the plight of the poor (insofar the employees/traders) demand and justify the request for an exemption from the payment of rental for a limited time-period, being the months of July, August and September 2020. After the mentioned time, the normal rental as agreed upon in each lease agreement will be applicable. This is not an alienation / transfer of a municipal asset and therefore the reference to Regulation 13(2) is not applicable here.

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**Paragraph 26: “In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.”**

The monthly rental amount for the leases of property to Early Childhood Development Centres is approved in the annual budget of the Overstrand Municipality, hence a request that there be deviated from this tariff insofar ECD's for the months of July, August and September 2020.

### **Conclusion**

Taking into consideration the above and the loss of income suffered by the restaurants, the tenant of the Hermanus Market Square Stalls, the tenant of Erf 9515 Zwelihle, the tenant of the kiosk at the Onrus Caravan Park and all Early Childhood Development Centres and related facilities of the Municipality, it is recommended that they are exempted from having to pay rental for the months of July 2020, August 2020 and September 2020. It is in the interest of the Overstrand Municipality that, bearing sustainable revenue generation models in mind, the restaurant lessees who are paying market related rental be offered relief.

As Early Childhood Development Centres are of particular community interest and forms part of a very vulnerable group of society it is recommended that they are exempted from having to pay rental for the months of July 2020, August 2020 and September 2020.

## **7. Financial Implications**

A total loss in rental income for the period 1 July 2020 to 30 September 2020 will amount to approximately R862,269.24 (eight hundred and sixty two thousand two hundred and sixty nine rand and twenty four cents) (VAT excluded), which consists of the following:

- 1) R481,694.76 (four hundred eighty-one thousand six hundred ninety-four Rand and seventy-six Cents) (VAT excluded) in relation to leases for restaurant purposes;
- 2) R368,605,38 (three hundred and sixty eight thousand six hundred and five rand and thirty eight cents) (VAT excluded) in relation to the Hermanus Market Square Stalls, Zwelihle Mall and Onrus Kiosk at the Caravan Park rental for the months of July 2020; and
- 3) Approximately R11,696.10 (eleven thousand six hundred ninety-six rand and ten cents) (VAT excluded) in relation to Early Childhood Development Centres (the rental varies depending on when the lease agreement was entered into).

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**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

Annexure A: List of tenants to be exempted

**RECOMMENDATION TO THE COUNCIL:**

that the exemption from the payment of rental for the months July 2020, August 2020 and September 2020 in relation to the tenants of the Municipality as indicated on Annexure A hereto, **be approved.**

**RESPONSIBLE OFFICIAL :**

**R MARINUS  
E HOONEBERG**

**TARGET DATE FOR IMPLEMENTATION :**

**31 OCTOBER 2020**

**TARGET DATE TO INFORM APPLICANT :**

**9 OCTOBER 2020**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

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**7/2/3/1**

**A Le Roux**

**17 August 2020**

**Manager: Property Administration**

**(028) 316-3724**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
22 SEPTEMBER 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

that the exemption from the payment of rental for the months July 2020, August 2020 and September 2020 in relation to the tenants of the Municipality as indicated on Annexure A to the item, **be approved.**

**RESPONSIBLE OFFICIAL :**

**R MARINUS  
E HOONEBERG**

**TARGET DATE FOR IMPLEMENTATION :**

**31 OCTOBER 2020**

**TARGET DATE TO INFORM APPLICANT :**

**9 OCTOBER 2020**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

## ANNEXURE A

Nr	Name	Account Number
<b>Restaurants</b>		
1	BIENTANG'S CAVE CC	200261190014
2	CJ & JC PARTNERSHIP	900000356197
3	VINCENZO ROMANO	200208130008
4	TASOCLOX (PTY) LTD	900000503681
5	TASOCLOX (PTY) LTD	900000539189
6	INGWESEC (PTY) LTD	900000550700
7	KEE PROPERTY INVESTMENTS (PTY) LTD	900000447031
8	KEE PROPERTY INVESTMENTS (PTY) LTD	900000447567
9	ROUTE 44 RESERVATIONS (PTY) LTD	318550400000
10	SHOPRITE CHECKERS PTY LTD	900000158267
11	JOSHGRO INVESTMENTS 9 PTY LTD	900000206157
12	STONEWATER HOLDINGS PTY LTD	900000535257
13	VAN NIEKERK, SHAWN	900000478864
<b>Market Square &amp; Zwelihle Mall</b>		
14	MACHIEL ADRIAAN DE KLERK	900000362271
15	PEMZO CONSTRUCTION CC	900000369395
<b>Early Childhood Development Centres</b>		
16	HERMANUS PRE-PRIMARY AND BABEL & KRABEL AFTERCARE	200312531418
17	SIYAKHA EDUCARE CENTRE	900000100783
18	NOMZAMO EDUCARE CENTRE	201000760002
19	CHILD WELFARE (VROLIKE VINKIES)	200802570015
20	MASIBULELE EDUCARE CENTRE	900000267107
21	YOMELELANI PRE & AFTER SCHOOL CARE CENTRE	900000313349
22	THE HERMANUS RAINBOW TRUST	900000427136
23	MASIZAKHE EDUCARE CENTRE	201004900107
24	KHANYA EDUCARE CENTRE	201006390009
25	CHILD WELFARE SOUTH AFRICA (KLEINMOND) (FOR BAMBANANI)	318734900003
26	CHILD WELFARE SOUTH AFRICA KLEINMOND (PREVIOUSLY KLEINMOND CHILD & FAM CARE SOCIETY)	318546203006
27	CHILD WELFARE SOUTH AFRICA (SIYABULELA)	318769500003
28	CHILD WELFARE SOUTH AFRICA (KLEINMOND) (KIDS CAN)	318576800008
29	CHILD WELFARE SOUTH AFRICA KLEINMOND (HEIDELAND CRêCHE)	385462030007
30	CHILD WELFARE PIKKEWYNTJIES	352551408001
31	CHILD WELFARE SOUTH AFRICA KLEINMOND (PIKKEWYNTJIES PRE-PRIMARY)	352551408001
32	CHILD WELFARE SOUTH ARICA (SIYABULELA)	317744200204
33	PRINGLE HOUSE ECO SCHOOL NPC	361003960303
34	STRANDLOPERTJIE BEWAARSKOOL	144009470085
35	MASAKHANE PRE-SCHOOL	149020440002
36	BLOMPARK IKAMVA JEUGONTWIKKELING EN REKENAARSENTRUM	144009660011
37	FLOWER VALLEY CONSERVATION TRUST (DOLFYNTJIES)	146019690006
38	GROOTBOS GREEN FUTURES FOUNDATION	149020370019
39	GOOD HOPE EARLY CHILDHOOD DEVELOPMENT CENTRE	149020220079
40	GOOD HOPE EARLY CHILDHOOD DEVELOPMENT CENTRE	149019330064
41	FOOD FOUR THOUGHT COMMUNITY PROJECTS NPC	451000006947
<b>Onrus Caravanpark Kiosk</b>		
42	ANDREW SALES	900000376391
<b>Other</b>		
43	SIYAZAMA SERVICE CENTRE	201000880007