

CREDIT CONTROL & DEBT COLLECTION POLICY



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PART 1 OBJECTIVE: CONSTITUTIONAL OBLIGATIONS

The council of the municipality, in adopting this policy on credit control and debt collection, recognizes its constitutional obligations to develop the local economy and to provide acceptable services to its residents. It simultaneously acknowledges that it cannot fulfil these constitutional obligations unless it exacts payment for the services which provides and for the taxes which it legitimately levies – in full from those residents who can afford to pay, and in accordance with its indigency relief measures for those who have registered as indigents in terms of the council's approved indigency management policy.

PART 2 EXPECTED FUTURE PAYMENTS LEVELS

In terms of the budgets approved by council, and in accordance with commonly accepted best practice, this municipality will have to strive to its utmost to ensure that payment levels for the present and future financial years, in respect of all amounts legitimately owing to the municipality – that is, inclusive of the balance of the monthly accounts payable by registered indigents – are maintained at an annual average of at least 95%.

It is generally accepted by this council that payment levels averaging below 95% per month are untenable, and are a certain forerunner of financial disaster for this municipality. Even with payment levels of 95% it means that the council will annually have to provide on its expenses budget a contribution to bad debts of 5% of the aggregate revenues legitimately owing to this municipality – a contribution that is made at the direct cost of improved services delivery and developmental projects.

The only solution to the ongoing problem of non-payment by residents who can afford their monthly commitments to the municipality is to introduce a twofold approach: to promulgate credit control and debt collection by-laws which deal stringently with defaulters, but at the same time – through the formal political structures of the municipality, and in the administration's general dealings with the public – to make the community aware of its legal obligations towards the municipality, and to emphasize the negative consequences for all if non-payment continues. The municipality's ward committees are particularly with this responsibility.

PART 03 NOTICE OF DEFAULT AND INTENDED TERMINATION OR RESTRICTION OF SERVICES

Within 7 (seven) calendar days after each monthly due date for payment of municipal accounts for property rates and / or service charges, the municipal manager shall dispatch to every defaulting accountholder, that is, every accountholder who as the date of notice has not paid the monthly account in full or has not made an acceptable arrangement with the municipal manager for partial or late payment, a notice stating that they have defaulted and requesting them to pay urgently before any action is taken.

PART 4 ARRANGEMENTS FOR PAYMENT OF ARREAR ACCOUNTS

Allowing defaulting accountholders to make arrangements for the payment of arrear accounts shall be at the discretion of the municipal manager.

Each defaulting accountholder shall be allowed a maximum period of 3 (three) months within which to pay an arrear account, together with the interest raised (if applicable and resolved by Council to charge interest read in conjunction with the budget policy) on such account, and it shall be a condition for the conclusion of any arrangement that the accountholder is bound to pay every current municipal account in full and on time during the period over which such arrangement extends.

If an accountholder breaches any material term of arrangement, the balance of the arrear account, together with the balance of interest raised on such account, shall immediately become due and payable to the municipality, and if the accountholder defaults on such payment, the municipal manager shall terminate or restrict services to the property in question and shall forthwith hand such account over for collection as envisaged in part 8.

An accountholder who has breached an arrangement as set out above shall not be allowed to make any further arrangements for the payment of arrear accounts, but shall be proceeded against, after the dispatch of the initial notice of default as envisaged in part 3 and failure by the accountholder to pay the arrear account, together with the interest raised on such arrears as required in terms of such notice, as though such accountholder had breached a material term of an arrangement.

PART 5 ALLOCATION OF PART-PAYMENTS AND APPROPRIATION OF DEPOSITS

If an accountholder pays only part of any municipal account due, the municipal manager shall allocate such payment as follows:

- Firstly, to any unpaid charges levied by the municipality in respect of unacceptable cheques, notices, and legal expenses in respect of the account or property concerned;
- Secondly, to any unpaid interest raised on the account;

- Thirdly, to any unpaid property rates;

This sequence of allocation shall be followed notwithstanding any instructions to the contrary given by the accountholder.

PART 6 QUERIES BY ACCOUNTHOLDERS

In the event of an accountholder reasonably querying any item or items on the monthly municipal account, no action shall be taken against the accountholder as contemplated in part 3 provided the accountholder has paid by due date an amount equal to the monthly average monetary value of the three most recent unqueried accounts in respect of the service under query, as well as all unqueried balances on such account, and provided further such query is made in writing by the accountholder or is recorded in writing by the municipal manager on behalf of the accountholder on or before the due date for the payment of the relevant account. Any query raised by an accountholder in the circumstances contemplated in part 14 below shall not constitute a reasonable query for the purpose of the present paragraph.

PART 7 DISHONOURED AND OTHER UNACCEPTABLE CHEQUES

If an accountholder tenders a cheque which is subsequently dishonoured by or is found to be unacceptable to the accountholder's bankers, the municipality manager shall – in addition to taking the steps contemplated in this policy against defaulting accountholders – change such accountholder the penalty charge for unacceptable cheques, as determined by the council from time to time, and such charge shall rank equally with the costs and expenses incurred by the municipality for purposes of determining the sequence of allocations and appropriations contemplated in part 5.

PART 8 DELEGATION OF RESPONSIBILITIES BY MUNICIPAL MANAGER

The municipal manager, including any person acting in such capacity, shall be responsible to the council for the implementation of this policy and its attendant by-laws but – without in so doing being divested of such responsibility – may delegate in writing all or any of the duties and responsibilities referred to in these by-laws to any other official or officials of the municipality, any may from time to time in writing amend or withdraw such delegation(s).

PART 9 ROLE OF MUNICIPAL MANAGER

Section 100 of the Municipal Systems Act 2000 (see part 24 below) clearly assigns the legal responsibility for implementing the credit control and debt collection policies and by-laws to the municipal manager.

In practice, however, the municipal manager will inevitably delegate some or many of the responsibilities specifically assigned to this office in the by-laws, as it will be administratively impossible for the municipal manager to perform the numerous other functions of this office as well as attend to frequently recurring administrative responsibilities. However, such delegation does not absolve the municipal manager will therefore have to ensure that a proper internal reporting structure is established and consistently implemented so that the day-to-day actions of and resulting from the credit control and debt collection programme are properly monitored and supervised. It is also an integral feature of the present policy that the municipal manager shall report monthly to the executive mayor or the executive committee, as the case maybe and quarterly to the council on the actions taken in terms of by-laws, and on the payment levels for the period concerned. Such reports shall, as soon as practicably possible, provide the required information both in aggregate and by municipal ward.

In addition, such monthly report shall indicate any administrative shortcomings, the measures taken or recommended to address such shortcomings, and any actions by councillor's which could reasonably be interpreted as constituting interference in the application of the by-laws.

Notwithstanding all the foregoing references to the accountability of the municipal manager in regard to these by-laws, it is incumbent on all the officials of the municipality, certainly all those who are at management level, as well as more junior officials who are indirectly involved with the community and the municipality's general customer relations, to promote and support both this credit control and debt collection policy and the application of the attendant by-laws. The responsibilities of all officials include reporting to the municipal manager any evident breaches of these by-laws, whether by members of the community, other officials or councillors of the municipality.

PART 10 ROLE OF COUNCILLORS

Section 99 of the Systems Act 2000 places the important legal responsibility on the executive mayor or executive committee, as the case may be, of monitoring and supervising the application of the present policy and the attendant by-laws, and of reporting to the council on the extent and success of credit control actions.

The present policy further recommends that the municipality's ward committees be actively involved in implementing the credit control and debt collection programme and should therefore receive monthly reports on the status of the municipal manager's credit control actions. The ward committees must also actively promote the present policy, and ensure at the same time that the municipality's customer relations are of a standard acceptable to the community.

In order to maintain the credibility of the municipality in the implementation of the present policy and the attendant by-laws, it is essential that councillors' should lead by example. Councillors', by adopting this policy, thereafter pledge, not only their unqualified support for the policy, but their commitment to ensuring that their own accounts will at no age stage fall into arrears.

PART 11 INTEREST ON ARREARS AND OTHER PENALTY CHARGES

Council may decide to charge interest and penalties on arrear accounts based on factors of realistic and practical recovery, area dynamics as well as incentives offered to recover outstanding debt, taking into consideration the budget policy and reflected in the budget as interest on overdue accounts.

Interest may be charged on all arrear accounts at the prevailing overdraft rate offered by the municipality's bankers plus 2 (two) percentage points.

If the municipality uses more than one banking institution it shall for purposes of determining the interest on arrear accounts apply the overdraft rate offered by the institution which its primary bank account is placed.

Interest shall be calculated on a daily basis. For purposes of determining arrear amounts, all amounts unpaid including interest previously raised and penalty charges, but excluding value added tax shall be taken into account.

PART 12 INDIGENCY MANAGEMENT

In regard to the payments expected from registered indigents, and the credit control and debt collection actions contemplated in respect of such residents, this policy must be read in conjunction with the municipality's approved policy on indigency management.

PART 13 UNCOLLECTABLE ARREARS

The effective implementation of the present policy also implies a realistic review of the municipality's debtor's book at the conclusion of each financial year. The municipal manager shall as soon as possible after 30 June each year present to the council a report indicating the amount of the arrears which it is believed is uncollectable, together with the reasons for this conclusion. The council shall then approve the write off of such arrears, if it is satisfied with the reasons provided.

Appropriate allowances for estimated irrecoverable amounts are recognised in surplus or deficit when there is objective evidence that the asset is impaired. Significant financial difficulties of the debtor, risk classes (households, business and government), probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 30 days overdue) are considered indicators that the trade receivable is impaired. The allowance recognised is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition. Where the initial credit period granted is not in line with practices or legislation in the public sector, the effect of discounting is considered if it is material.

PART 14 BY-LAWS TO BE ADOPTED

By-laws shall be adopted to give effect to the council's credit control and debt collection policy. These by-laws deal severally with defaulters, and their application requires a considerable degree of commitment from the municipal manager and his or her administration, as well as from the municipality's political structures. For these by-laws to ensure the avoidance of financial misfortunes for the municipality, and to lead sustained financial stability, their application will have to receive the constant attention of all the municipality's key role players and decision makers. If these by-laws are not constantly and consistently applied, from month to month and from year to year, the municipality's political and administrative credibility will be severely

impaired, and it may be able to avert financial collapse in the long run. Although these by-laws envisage even the termination of basic services for defaulting accountholders this will not in itself – no matter how harsh it may seem to those councillors and officials who are disposed to greater leniency – prevent the accumulation of arrears. The monthly billing property rates will continue in respect of defaulting accountholders, even though their consumption of electricity and water may have been terminated or restricted. The termination or restriction of services must therefore be seen merely as a vital first step in the credit control programme, and the commitment by the municipality to follow up such actions with the full force of the law at the municipality's disposal is an essential further step if the accumulation of debts is to be meaningfully curtailed. The by-laws comply with the requirements of the Municipal Systems Act 2000, the Water Services Act 1997 and the Municipal Finance Management Act 2003.

The by-laws also deal with the determination and payment of consumer deposits, and accordance with part 11 of the present policy effectively differentiate in this respect between accountholders who are both the owners and occupiers of the fixed property concerned, on the one hand, and accountholders who are tenants of such properties, on the other. This differentiation is essential if the municipality wishes to protect its interest in so far as tenants are concerned, but – in any event – it is not believed that a degree of differentiation imposes an unreasonable financial burden on such tenants (effectively the deposit required from owners / occupiers represents three months average consumption whereas the deposit in the case of tenants represents four months consumption) It is not proposed that accountholders who have currently not lodged deposits should be required to do so forthwith, but only within a two-year period, but that accountholders who default at any future date should be immediately obliged both to sign proper service contractors and to lodge the deposits required in terms of both such contract and by-laws.

PART 15 ANNEXURE: LEGAL REQUIREMENT

It is essential for the protection of the municipality's interests that the provisions of particularly the Municipal Systems Act 2000 and the Property Rates Act 2004, in so far as they provide additional debt collection mechanisms for municipalities, be diligently enforced. At the same time, both the council and the administration must note the obligations, which the municipality has towards the community in respect of customer care and relations.

For ease of reference a paraphrase of the relevant extracts from the Municipal Systems Act, specifically Sections 95 to 103 and Section 118, are therefore appended to this policy, as are Section 28 and 29 of the Property Rates Act. The immediately relevant extracts from the Water Services Act 1997 and the Municipal Finance Management Act are also included in the annexure.

ANNEXURE

SECTION II: LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT NO. 32 OF 2000

SECTION 95: CUSTOMER CARE AND MANAGEMENT

A municipality must, in relation to the levying of rates and rates other taxes, and the charging of fees for municipal services, with its financial and administrative capacity, do the following:

- Establish a sound customer management system which aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality itself or (where applicable) a service provider;
- Establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider with regard to the quality of the services and the performance of the service provider;
- Take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which moneys raised from the service are utilized;
- Where the consumption of services is measured, take reasonable steps to ensure that the consumption by individual consumers of services is measured through accurate and verifiable metering services;
- Ensure that persons liable for payments receive regular and accurate accounts which indicate the basics for calculating the amounts due,
- Provide accessible mechanisms for those persons to query or verify accounts and metered consumption, as well as appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- Provide accessible mechanisms for dealing with complains from such persons, together with prompt replies and corrective action by the municipality;
- Provide mechanisms to monitor the response time and efficiency in complying with the aforementioned requirements; and
- Provide accessible pay points mechanisms for settling accounts or for making prepayments for services.

SECTION 96: DEBT COLLECTION RESPONSIBILITY OF MUNICIPALITY

A municipality must collect all moneys that are due and payable to it, subject to requirements of the present Act and any other applicable legislation. For this purpose, the municipality must adopt, maintain and implement a credit control and debt collection policy which its rates and tariff policies and which complies with the provisions of the present Act.

SECTION 97: CONTENTS OF POLICY

The municipality's credit control and debt collection must provide for all of the following:

- Credit control procedures and mechanisms;
- Debt collection procedures and mechanisms;
- Provision for indigent debtors in a manner consistent with its rates and tariff policies and any national policy indigents;
- Realistic targets consistent with generally recognized accounting practices and collection ratios, and the estimates of income set in the budget less an acceptable provision for bad debts;
- Interest on arrears (where appropriate);
- Extensions of time for payment of amounts;
- Termination of services or the restriction of the provision of services when payments are in arrears;
- Matters relating to unauthorized consumption of services, theft and damages; and
- Any other matters that may be prescribed by regulation in terms of the present Act.

The municipality, within its discretionary powers, may differentiate in its credit control and debt collection policy between different categories of ratepayers. Users of services, debtors, taxes, service standards and other matters, and, if so, must ensure that such differentiation does not amount to unfair discrimination.

SECTION 98: BY-LAWS TO GIVE EFFECT TO POLICY

The council of the municipality must adopt by-laws to give effect to the municipality's credit control and collection policy, its implementation and enforcement.

Such by-laws may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters, and if so, must ensure that such differentiation does not amount to unfair discrimination.

SECTION 99: SUPERVISORY AUTHORITY

A municipality's executive mayor or executive committee, as the case may be, or – if the municipality does not have an executive committee or executive mayor – the council of the municipality itself, or a committee appointed by the council as the supervisory authority, must do all of the following:

- Oversee and monitor the implementation and enforcement of the municipality's credit control and debt collection policies and any by-laws enacted in terms of the foregoing requirements, and the performance of the municipal manager in implementing policies and by-laws;

- Where necessary, evaluate or review the policies and by-laws, and the implementation of such policies and by-laws, in order to improve the efficiency of its credit control and debt collection mechanism, processes and procedures; and
- At such intervals as may be determined by council, report to a meeting of the council, except when the council itself performs the duties of the supervisory authority.

SECTION 100: IMPLEMENTING AUTHORITY

The Municipal manager, or – where applicable – the service provider must:

- Implement and enforce the municipality's credit control and debt collection policies and by-laws enacted in terms of the foregoing requirements;
- In accordance with the credit control and debt policies and any by-laws, establish effective administrative mechanisms, processes and procedures to collect moneys due and payable to the municipality; and
- At such intervals as may be determined by council, report the prescribed particulars to a meeting of the supervisory authority referred to previously.

SECTION 101: MUNICIPALITY'S RIGHT OF ACCESS TO PREMISES

The occupier of premises in a municipality must give an authorized representative of the municipality or of the municipality or of a service provider access at all reasonable times to the premises in order to read, inspect, install or repair any meter or service connexion for reticulation, or to disconnect, stop or restrict the provision of any service.

SECTION 102: ACCOUNTS

Except where there is a dispute between the municipality and the person from whom the municipality has claimed any specific amount, a municipality may:

- Consolidate any separate account of such person;
- Credit payment by such person against any account of that person;
- And implement any of the debt collection and credit control measures provided for in the present Act in relation to any arrears on any of the accounts of such person.

SECTION 103: AGREEMENTS WITH EMPLOYEES

A municipality may, within its discretionary powers, but with the consent of any person liable to the municipality to the municipality for the payment of rates or other taxes or fees for municipal services, enter into an agreement with such person's employer to deduct from the salary or wages of such person's any outstanding amounts due by such person to the municipality or such regular monthly amounts as may be agreed to.

The municipality may further, within its discretionary powers, provide special incentives for employers to enter into such agreements and for employees to consent to such agreements.

SECTION 118: RESTRAINT OF TRANSFER OF PROPERTY

The registrar of deeds or any other registration officer of immovable property may not register the transfer of any property other than on the production to such registration officer of a prescribed certificate issued by the municipality in which such property is situated, and which certificate certifies that all amounts due in connexion with such property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

A municipality may recover, as far as is practicable, all amounts due to it for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties, in preference to any mortgage bonds against any property which is to be transferred.

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

Paragraph 10 of this Code of Conduct stipulates that if any staff member of a municipality is in arrears to the municipality for rates and service charges for a period of longer than 3 months, the municipality may deduct any outstanding amounts from such member's salary after this period.

CODE OF CONDUCT FOR COUNCILLORS

Section 6A of this code requires councillor's to pay all rates, tariffs, rents and other moneys due to the municipality promptly and diligently.

The municipal manager is further required to notify the speaker of the council and the MEC for Local Government, in writing, whenever a councillor has been in arrears with any of these payments for a period exceeding 30 days.

SECTION III LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003
SECTION 64: REVENUE MANAGEMENT

The accounting officer of the municipality is responsible for the management of the municipality's revenues, and must, for this purpose, take all reasonable steps to ensure:

- That the municipality has effective revenue collection systems consistent with Section 95 of the Municipal Finance Act 2000 at the municipality's credit control and debt collection policies;
- That revenues due to the municipality are calculated on a monthly basis;
- That accounts for municipality taxes and charges for municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
- That all moneys received are promptly deposited in accordance with the requirements of the present Act, into the municipality's primary and other bank accounts;
- That the municipality has and maintains a management, accounting and information system which recognizes revenues when they are due, accounts for debtors, and accounts for receipts of revenues;
- That the municipality has and maintains a system of internal control in respect of debtors and revenues, as may be prescribed;
- That the municipality charges interest on arrears, except where the council has granted exemptions in accordance with its budget related policies and within a prescribed framework; and
- That all revenues received by the municipality, including revenues received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

The accounting officer must immediately inform the national treasury of any payments due by an organ of state to the municipality in respect of municipal taxes or for municipal services, if such payments are regularly in arrears for periods of more than 30 days.

NOTE: SECTION 164: FORBIDDEN ACTIVITIES

Section 164(1) c lists as a forbidden activity the making by a municipality of loans to councillors or officials of a municipality, directors or officials of any municipal entity, and members of the public. It has been assumed for purposes of compiling the credit control and debt collection policy that allowing any party to pay off arrears and municipal service charges is not tantamount to the making of a loan in terms of Section 164.)

SECTION IV: LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO. 6 OF 2004 SECTION 28: RECOVERY OF RATES IN ARREARS FROM TENANTS AND OCCUPIES

If the rates owed by a property owner are unpaid by due date, the municipality may recover such rates, either in whole or in part, from any tenant or occupier of the property concerned.

However, the tenant or occupier of the property must first be given written notice of the municipality's intentions, and the amount which the municipality may recover is limited to the amount of rent and other moneys due and unpaid by the tenant or occupier to the property owner concerned.

SECTION 29: RECOVERY OF RATES FROM AGENTS

It is more convenient for the municipality to do so, it may recover the rates due on a property, either in whole or in part, from the agent of the property owner concerned.

However, the agent must first be given written notice of the municipality's intention, and the amount the municipality may recover is limited to the amount of any rent and other moneys received by the agent on behalf of such property owner, less any commission due to the agent.