

MAKHADO MUNICIPALITY

DRAFT CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

To give effect to the Municipality's credit control and debt collection policy, its implementation and enforcement in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996 and section 96 and 98 of the Municipal Systems Act, 2000; to provide for the collection of all monies due and payable to the Municipality; and to provide for matters incidental thereto.

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1. Definitions

In this By-law, unless the context indicates otherwise—

"arrangement" means a written agreement entered into between the Municipality and a debtor where specific terms and conditions for the payment of a debt are agreed to;

"arrears" means any amount due and payable to the Municipality and not paid by the due date;

"Council" means the council of the Municipality;

"Councillor" means a member of the Council;

"debt" means any monies owing to the Municipality and includes monies owing in regard to property rates, housing, motor vehicle registration and licensing, leases, and any other outstanding amounts, inclusive of any interest thereon, owing to the Municipality;

"debtor" means any person who owes a debt to the Municipality;

"due date" means the final date on which a payment, as shown on the debtor's municipal account or in terms of a contract is due and payable;

"indigent debtor" means a debtor who meets certain criteria, as determined by the Municipality from time to time;

"interest" means a rate of interest, charged on overdue accounts which is one percent higher than the prime rate, which is obtainable from the Municipality's banker on request; .

"Municipality" means the Makhado Municipality and includes any duly delegated official or service provider of the Municipality;

"official" means an "official" as defined in section 1 of the Local Government: Finance Management Act, No. 56 of 2003;

"policy" means the Municipality's credit control and debt collection policy;

"service" means "municipal service" as defined in section 1 of the Systems Act, and includes a function listed in Schedules 4B and 5B of the Constitution of the Republic of South Africa, 1996 and any other service rendered by the Municipality;

"Systems Act" means the Local Government: Municipal Systems Act, No. 32 of 2000;

"third party debt collector" means any person or persons authorised to collect monies or institute legal proceedings against debtors, on behalf of the Municipality;

"this By-law" includes the Credit Control and Debt Collection Policy;

"user" means a person who has applied for and entered into an agreement with the Municipality for the supply of a service.

2. Duty to collect debt

All debt owing to the Municipality must be collected in accordance with this By-law and the policy.

3. Provision of services

New applications for services and the provision of new services must be dealt with as prescribed in this By-law and the policy.

4. Service agreement

Except as otherwise determined in terms of this By-law and the policy, no services may be supplied until an agreement has been entered into between the Municipality and the user for the supply of a service.

5. Deposits

The Municipality may determine and require the payment of deposits for the provision of new services and the reconnection of services and may adjust the amount of any existing deposit.

6. Interest charges

The Municipality may charge and recover interest in respect of any arrear debt as prescribed in this By-law and policy. Where a debt is overdue for part of a month, interest will be calculated for a full month.

7. Arrangements to pay arrears

- (1) The Municipality may make arrangements with a debtor to pay any arrear debt under conditions as prescribed in terms of this By-law and the policy.
- (2) Should any dispute arise as to the amount of the arrear debt, the debtor must nevertheless continue to make regular payments, in terms of the arrangement, until such time as the dispute has been resolved.

8. Agreements with a debtor's employer

- (1) The Municipality may—
 - (a) with the consent of a debtor, enter into an agreement with that person's employer to deduct from the salary or wages of that debtor—
 - (i) any outstanding amounts due by the debtor to the Municipality, or
 - (ii) regular monthly amounts as may be agreed; and
 - (b) provide special incentives for—
 - (i) employers to enter into such agreements; and
 - (ii) debtors to consent to such agreements.
- (2) The municipal debt of officials or councillors of the Municipality may by agreement be deducted from their salaries if such official or councillor is more than one month in arrears.

9. Power to restrict or disconnect supply of service

- (1) The Municipality may restrict or disconnect the supply of any service to the premises of any user whenever such user of a service—
 - (a) fails to make payment on the due date;
 - (b) fails to comply with an arrangement; or
 - (c) fails to comply with a condition of supply imposed by the Municipality;
 - (d) tenders a negotiable instrument which is dishonoured by the bank, when presented for payment;

- (e) damages the infrastructure of the Municipality for the supply of such service or tampers with any meters used regarding that service.
- (2) The Municipality may reconnect the restricted or discontinued services only—
 - (a) after the arrear debt, including the costs of disconnection or reconnection, if any, has been paid in full and any other conditions have been complied with; or
 - (b) after an arrangement with the debtor has been concluded.
- (3) The Municipality may restrict, disconnect or discontinue any service in respect of any arrear debt.

10. Recovery of debt

Subject to section 9, the Municipality must, with regards to rates, and may, with regard to other debt-

- (a) by legal action recover any debt from any person; and
- (b) recover debt from any organ of state with due consideration of the provisions of Chapter 3 of the Constitution of the Republic of South Africa, 1996; and

may refer a debtor to third party debt collection agencies and have such debtor places on the National Credit Rating list.

11. Recovery of costs

The Municipality may recover the following costs, in instances where such costs are incurred by or on behalf of the Municipality:

- (a) costs and administration fees where payments made to the Municipality by negotiable instruments are dishonoured by banks when presented for payment;
- (b) legal and administration costs, including attorney-and-client costs and tracing fees incurred in the recovery of debts;
- (c) restriction, disconnection and reconnection fees, where any service has been restricted or disconnected as a result of non-compliance with these By-laws;

- (d) any losses the Municipality may suffer as a result of tampering with municipal equipment or meters; and
- (e) any collection commission incurred.

12. Attachment

The Municipality may, in order to recover debt approach a competent court for an order to attach a debtor's movable or immovable property.

13. Claim on rental for outstanding debt

The Municipality may in terms of section 28 of the Municipal Property Rates Act, 2004 (Act No 6 of 2004), attach any rent due in respect of any rateable property, to cover in part or in full any amount in respect of outstanding rates after the due date.

14. Full and final settlement payments

Where an account is not settled in full, any lesser amount tendered to, and accepted by, the municipality shall not be a full and final settlement of such an account despite the fact that the payment was tendered, in full and final settlement, unless the municipal manager or the manager of the municipality's authorised agent, expressly accepts it in writing as being in full and final settlement of the account in question.

15. Consolidation of debtor's accounts

The Municipality may-

- (a) consolidate any separate accounts of a debtor;
- (b) credit a payment by a debtor against any account of the debtor; and
- (c) implement any measures provided for in these By-laws and the policy; in relation to any arrears on any of the accounts of such debtor.

16. Indigents

A debtor, who can prove indigence, will be dealt with as prescribed in the policy.

17. Delegation

The Municipality may delegate its powers in terms of the By-law or the policy to any official or service provider of the Municipality.

18. Offences and penalties

Any person who—

- (a) obstructs or hinders any councillor or official of the Municipality in the execution of his or her duties under these By-laws or the policy;
- (b) unlawfully uses or interferes with Municipal equipment or consumption of services supplied;
- (c) tampers with any Municipal equipment or breaks any seal on a meter;
- (d) fails to comply with a notice served in terms of this By-law or the policy;
- (e) supplies false information regarding the supply of services or with regard to an application for assistance as an indigent,

shall be guilty of an offence and on conviction liable to the payment of a fine not exceeding one thousand rand or imprisonment for a period not exceeding 3 months or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

19. Indemnification from Liability

Neither an employee of the municipality nor any person, body, organisation or corporation acting on behalf of the municipality are liable for any damage arising from any omission or act done in good faith in the course of his or its duties.

20. Operative clause

These by-laws will commence on publication thereof in the Provincial Gazette.

21. Repeal of By-Laws

The provisions of any by-laws relating to credit control and debt collection by the municipality are hereby repealed insofar as they relate to matters provided for in these by-laws and policy.

22. Short title

These By-laws is called the Credit Control and Debt Collection By-laws of the Makhado Municipality, 2010.