

NOTICE 76 OF 2017



CITY OF MBOMBELA

CREDIT CONTROL AND DEBT COLLECTION BY-LAW

[COUNCIL RESOLUTION: A (1) OF 28 JUNE 2017]

CREDIT CONTROL AND DEBT COLLECTION BY LAW

CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

In terms of Section 13 of the Local Government: Municipal Systems Act 32 of 2000, the Mbombela Local Municipality ("the municipality") hereby publishes the Credit Control and Debt Collection by-laws set forth hereinafter, which have been made by the municipality in terms of Section 98 of the Local Government: Municipal Systems Act 32 of 2000.

INDEX

CHAPTER 1 GENERAL PROVISIONS

Section:

1. Definitions
2. Purpose of By-law

CHAPTER 2

CUSTOMER CARE AND MANAGEMENT

3. Communication
4. Service Agreements
5. Screening
6. Accounts
7. Metering
8. Complaints and appeals
9. Customer assistance

CHAPTER 3

INDIGENT SUPPORT

1

10 - 25

1

CREDIT CONTROL AND DEBT COLLECTION BY LAW

CHAPTER 4**CREDIT CONTROL AND DEBT COLLECTION****26. Enforcement Mechanisms**

- (1) Water /electricity and other services
- (2) Theft, Tampering & Fraud
- (3) Collection costs
- (4) Magistrate Court jurisdiction
- (5) Irrecoverable debt
- (6) Clearance certificates

CHAPTER 5**MISCELLANEOUS PROVISIONS****27. Offences****28. Commencement date****CHAPTER 1****GENERAL PROVISIONS****1. DEFINITIONS**

- (1) For the purpose of this By-law, any word or expression to which a meaning has been assigned in the Local Government: Municipal Systems Act 32 of 2000 shall bear the meaning so assigned to it and, unless the context otherwise indicates:

“**apparatus**” means any equipment, tool, device, meter, connection, system or network, service connection, service protection device, articulation network or supply mains, part thereof supplied or used in the supply, distribution or conveyance of services or the measurement or consumption of services;

“authorized personnel” means any employee, agent, sub-contractor, or representative of a Service Provider or any person duly authorised by a Service Provider to perform any function under this By-law;

“debtor” means a person owing an amount of money to the municipality for a reason other than through the provision of municipal services;

“charges” means surcharges on fees, penalties, property rates, taxes, levies and duties;

“community” means persons who are obliged to pay for services and/or charges and include interested parties.

“customer” means the owner of any premises upon which charges are levied as well as a person to whom a Service Provider supplies with services, and the occupier thereof, where applicable;

“council” means the Council of the municipality;

“household” means the total number of people who occupy a property for residential purposes whether permanently or on a temporary basis, but excludes persons employed by the household;

“indigent” means a household who cannot afford to make a full monetary contribution towards charges and refuse removal services as determined by council;

“interested parties” means a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom, law or interest;

“the municipality” means Mbombela Local Municipality, a municipality established in terms of the Local Government: Municipal Structures Act 117 of 1998.

“occupier” in relation to any premises means-

- a) any person in actual occupation of such premises;
- b) a person indicated as such in the service agreement;
- c) any person legally entitled to occupy such premises;
- d) in the case of such premises being subdivided and let to boarders or tenants, the person receiving the rent payable by such boarders or tenants, whether for his/her own account or as agent for any person entitled thereto or , or entitled to receive such rent;

e) any person in charge of such premises or responsible for the management thereof, and includes the agent of any such person when he is absent from the Republic of South Africa or his/her whereabouts are unknown;

f) any person appearing as such on the records of the Municipality.

“owner” means the owner of land in terms of the common law and includes:

- a) a lessee or other person who controls the land in question in terms of a contract, testamentary document, law or order of court;
- b) in relation to land controlled by a community, the executive body of the community in terms of its constitution or any law or custom;
- c) in relation to state land not controlled by a person contemplated in par (a) or a community –
 - (i) the Minister of the Government department or the Member of the Executive Council of the provincial administration exercising control over that state land; or
 - (ii) a person authorised by him or her; and
- d) in relation to a local authority, the municipal manager of the local authority or a person authorised by him or her;

And “own” shall have a corresponding meaning

“person” includes a juristic person, voluntary association, trustee, curator and liquidator;

“property” means –

- a) immovable property registered in the name of a person, and includes a unit as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1996); or
- b) a right registered against immovable property in the name of a person; ,

And **“premises”** shall have a corresponding meaning.

“reside” means the occupation of residential purposes;

“services” mean the provision of municipal services, including water, electricity, sanitation, sewerage and refuse removal;

“ service contribution” means a contribution towards bulk services and facilities levied in terms of the Local Government Ordinance, No 17 of 1939, the Local Authorities Rating Ordinance, No 11 of 1977 and the Town-planning and Townships Ordinance, No 15 of 1986, as the case may be;

“service provider” means the Municipality as well as any entity who provides services to customers pursuant to a service delivery agreement entered into with the Municipality in terms of Section 80 of the Local Government: Municipal Systems Act 32 of 2000.

“sundry and housing accounts” mean an account where a person owes an amount to the municipality for a reason other than through the provision of municipal services;

“tamper” means the interference with, damage to, alteration of, connection to or removal of any apparatus and includes the consumption or use of any service not in accordance with this By-law.

- (2) Words derived from the words defined have corresponding meanings, unless the context indicates otherwise.
- (3) A reasonable interpretation of a provision which is consistent with the purpose of this By-law must be preferred over an alternative interpretation which is not.
- (4) If there is any contradiction or inconsistency between this By-law and the Drainage and Sanitation Services By-laws, the Water Services By-laws or the Electricity Supply By-laws, this By-law shall take preference.
- (5) Neither –
 - (I) a reference to a duty to consult, nor
 - (II) the absence of any reference to a duty to consult

in this By-law exempts a Service Provider or its authorised personnel to act fairly in respect of all persons entitled to be heard.

2. PURPOSE OF BY-LAW

The purpose of this By-law is to:

- (1) Ensure that all monies due and payable to a Service Provider are collected;
- (2) Outline the procedures that will ensure that the members of the community are afforded an opportunity to contribute in the decision-making processes of the municipality and that they are informed thereof;

-
- (3) Outline credit control and debt collection policy procedures and mechanisms;
 - (4) Provide for conditions pertaining to the supply of services and the discontinuation thereof;
 - (5) Provide for mechanisms whereby accounts or meter able services are queried or verified and for written objections;
 - (6) To make provision for indigent support;
 - (7) To provide for mechanisms where irrecoverable debt are written off;
 - (8) To provide for penalties for non-compliance with this By-laws.

CHAPTER 2

GENERAL PROVISIONS

3. COMMUNITY PARTICIPATION IN BUDGETARY PROCESS

- (1) The municipality, through its Financial Committee, shall hold an annual budget meeting during January (to be called the first budget meeting) where budget priorities, principles and a budget frame work will be considered.
- (2) Before the end of February of each year at least one public meeting shall be held where the local community and interest groups will be able to participate in the discussion and debating of budget priorities, budget principles and a budget framework.
- (3) At least 14 days notice shall be given of such public meeting by posting it on the designated notice board at the municipal offices and by publication thereof at least once in two local newspapers.
- (4) Before the end of March of each year a workshop shall be held in each ward, in order to:
 - Identify the needs of each ward;
 - Involve the community in prioritising those needs;
 - Provide information regarding the budgetary process, levels of payment and non-payment and to devise strategies regarding non-payment;
- (5) Before the end of April:
 - (I) A council workshop shall be held to reconcile the results of the first budget meeting, the public meeting and the ward workshops with council's integrated development plan.
 - (II) Council's mayoral committee shall create a draft budget.
- (6) Before the end of May of each year the draft budget shall be discussed at a second round of at least one public meeting, to be held and convened in the same manner as the first round of public meetings;
- (7) Council shall approve the final budget before the end of June of each year;
- (8) a. Council shall levy the fees, charges and tariffs in respect of services and charges by way of Council Resolution.

- b. The tariffs and charges so payable and the date of its implementation shall be published as prescribed in the Local Government: Municipal Systems Act No. 32 of 2000, as amended.
 - c. Such tariffs and charges may differentiate between different categories of customers, services and service standards as well as geographical areas.
- (9) The dates and procedure mentioned in this section are indicative only and are further subject to the financial and administrative capacity of the municipality.

4. SERVICE AGREEMENTS

- (1) No municipal services shall be provided to any property unless a written agreement governing the supply and cost thereof has been entered into with a Service Provider subject to its administrative, logistical and financial capability.
- (2) Such agreement shall be entered into by both the owner and occupier, where applicable. The owner shall bind himself/herself as surety and co- principal debtor in favour of the Service Provider for the fulfilment of the obligations of the occupier towards the Service Provider;
- (3) The owner and occupier shall be jointly and severally liable for payment of all municipal services and charges.

It is the duty of the owner to ensure that at all times that the occupier of the premises are not in arrears with payments, but the Municipality shall, where it is the Service Provider, and within financial and human resource constraints, endeavour to inform the owner of the performance by the occupier in terms of the agreement.

- (5) A Service Provider may require that service applications for business entities, including but not limited to trusts, companies, close corporations, partnerships, sole proprietors and voluntary associations be accompanied by any one or more or all of the following:
 - i. A resolution whereby authority to enter into the agreement is delegated to the signatory;
 - ii. The business entity's registration number or IT number, if applicable;

- iii. The names, addresses and all relevant contact particulars of all the businesses' directors or members or trustees or proprietors or partners or executive members;
 - iv. That any one or more or all partners/members/directors/trustees must sign as surety and co-principal debtor for the due fulfilment of all the obligations of the business entity;
 - v. That the signatory to the agreement warrants that he/she is duly authorised to do so, that all information supplied is true and correct and shall further warrant that the business is not trading in insolvent circumstances.
- (6) Upon application for municipal services, and if so required by the Municipality, customers emanating from other municipalities shall submit the particulars of the municipal account of such municipality and shall agree in writing that such other municipality may indicate whether all amounts due in respect of municipal services, surcharges on fees, property rates and other municipal taxes, levies and duties have been paid by the customer. The municipality may refuse to render any municipal services to such customer in the event of the previous account not being fully paid up or arrangements with such other municipality have been made for the payment thereof.
- (7) In the agreement customers shall warrant that all information supplied are correct and that liability is accepted for all municipal services and charges, costs of collection and interest on overdue accounts in the event of accounts being in arrears;
- (8) The address furnished in the service agreement shall constitute the domicilium citandi et executandi of the customer for the purpose of service of any process, notice, document or account.
- 9) The municipality shall provide a customer with a copy of the service agreement upon signature thereof by the municipality;
- (10) The applicant for services may be referred for a credit check as contemplated in Sections 5 (1) – 5 (2) prior to signature thereof by the Service Provider. ;
- (11) The application for services will only become an agreement upon signature thereof by the Service Provider.

5 SCREENING

- (1) If required by a Service Provider, an application for service agreements shall be accompanied with banking details, previous municipal account, particulars of trade creditors , and an applicant shall give in the application for services permission and authority to the Service Provider

to verify such information in order to assess the credit risk of the applicant;

- (2) Apart from the above, a Service Provider may also make the necessary enquiries with credit bureaus and similar institutions in order to assess the credit risk.

6. DEPOSITS

- (1) Prior to signature of a service agreement a security deposit shall be paid by the customer.
- (2) Such security deposit shall be paid either in cash or any other means of payment acceptable to the Service Provider. .
- (3) Security deposits may vary according to the credit risk of the customer as assessed by the Service Provider. ;
- (4) The municipality shall from time to time by resolution determine the criteria for the categories in terms whereof customers shall be graded as well as the amount of the deposit payable in each risk category, where the Municipality is the Service Provider.
- (5) The municipality shall only after consultation with the community periodically increase or decrease the deposits payable and date of implementation thereof, where it is the Service Provider.;
- (6) Upon termination of the service agreement the amount of the deposit less any outstanding amounts due will be refunded to the customer.
- (7) No interest shall be payable to the customer on deposits held by the municipality.

7. ACCOUNTS AND NOTIFICATION OF ADDRESS

- (1) In the absence of an agreement to the contrary, a Service Provider shall, within its administrative capacity and subject thereto, endeavour to render monthly accounts to the customer in respect of municipal services, and in the case of the Municipality, of charges.
- (2) Such accounts shall be posted to the address as indicated in the service agreement or to the address appearing in the records of the Service Provider as that of the customer, as the case may be.
- (3) It is the duty of the customer to ensure that accounts are received and payment effected notwithstanding the fact that it may not have been

received. It shall be presumed unless proven otherwise that any such account has been timeously received by the customer.

- (4) In the absence to an agreement to the contrary, accounts shall be as nearly as practically possible to a period of 30 days, shall be produced in accordance with the meter reading cycle and due date shall be linked to the statement date.
- (5) Payment of an account shall be effected within 7 days of the statement date, but where the Municipality is the Service Provider, and in the event of monthly payment of charges, payment must be made on or before the 7th day of each month .
- (6) Where an account is not settled in full, any lesser amount tendered and accepted shall not be deemed to be in full and final settlement of such an account, even where the customer is in dispute with a Service Provider regarding an amount due.
- (7) A customer shall inform a Service Provider in writing of any change of his/her postal and physical address within 7 days of date thereof, failure of which shall render the customer liable for all tracing costs and fees and wasted costs incurred as a result of such failure.
- (8) Every owner of property shall, within 60 (sixty) days after date of promulgation of this By-Law, inform the Municipality in writing of his/her postal and physical address and furthermore of any change thereof within 7 days of such change and every purchaser of property shall within 7 days after date of registration of that property into his/her name, inform the Municipality in writing of such fact and of his/her postal and physical address. Failure to do any of the above shall constitute an offence and such owner shall furthermore be liable for all tracing fees and costs and wasted fees incurred as a result of such failure.
- (9) The address of a customer as it appears in the records of the Municipality shall constitute the domicilium citandi et executandi of the customer for the purpose of the service of any process, notice, document or account.
- (10) Where any payment is made to a Service Provider by negotiable instrument such as cheque or promissory note and is dishonoured, the Service Provider:
 - (i) may recover the average bank charges incurred relating to dishonoured negotiable instruments and debit such amount against the account of the customer;
 - (ii) shall regard such an event as default on payment;
 - (iii) may refuse to accept further negotiable instruments from the drawer or customer;

- (iv) may place such incident on the national adverse credit listing;
 - (v) and may institute legal action which may include criminal charges against the drawer.
- (11) When municipal services are discontinued and the customer applies for services at a different address, the Service Provider shall be entitled to debit the customer's new account with any outstanding amount and the customer shall be obliged to pay same.
- (12) The municipality shall, within its administrative capacity and subject thereto, where it is the Service Provider, ensure that customers will receive an understandable and accurate account consolidated with all municipal service costs and charges for that property, where applicable.
- (13) A Service Provider, if administratively possible, issues a duplicate account to a customer on request, against payment of the prescribed fee.
- (14) A Service Provider shall operate and maintain suitable banking and cash facilities which facilities must be reasonably accessible to all customers, subject to the municipality's administrative and financial capability of that Service Provider;
- (15) A Service Provider may allocate all payments received to any debit entry on the account and a customer who has overdue debt may not specify that the payment is for a specific portion of the account or for a specific service or charge;
- (16) A Service Provider may, with the consent of a customer, approach an employer to deduct an agreed amount from the employee's weekly or monthly wage/salary to pay towards arrear municipal accounts.
- (17) The use by the customer of agents to effect payment to the municipality is at the sole risk of the customer. The (customer shall be liable for payment of all additional costs which is levied by the customer's agent.

8. METERING

- (1) A Service Provider shall provide, subject to practical and financial constraints, meters to all premises, for all meter able services;
- (2) In the absence of an agreement to the contrary, and subject to practical and financial constraints all meters will be read monthly. Where a meter has not been read the Service Provider must average the consumption by debiting the account with the average monthly reading for the preceding three months, if the history of the account is available.

Where no such history exists, the customer shall pay an estimate provided by the Service Provider.

- (4) When a meter is replaced, the customer shall be informed thereof in writing;
- (5) In the event of a service being metered but cannot be read due to practical, financial or human resource constraints or circumstances out of the control of the Service Provider, and the customer is then charged for an average consumption as contemplated in paragraph 8.2, the account following the reading of the meter consumption shall articulate the difference between the actual consumption and the average consumption and the resulting credit or debit adjustment.
- (6) Every customer shall give an authorised representative of the a Service Provider access at all reasonable hours to the property in order to read, inspect, install, repair or replace any meter or service connection for reticulation, or in order to disconnect, stop, restrict or reconnect the provision of any service;
- (7) In the event of access not being reasonably possible the Service Provider may relocate a meter and the customer shall be responsible for payment of the costs of such relocation;
- (8) In the event of reasonable access not being possible the Service Provider may:
 - (i) by written notice require the customer to restore access at his/her own cost within a specified period; or
 - (ii) restore access without prior notice and recover the costs thereof from the customer.

9. COMPLAINTS AND APPEALS

- (1) A Service Provider shall, within practical and financial constraints establish:
 - (i) a central complaints/feedback office;
 - (ii) a centralised database in order to enhance co-ordination of complaints and the resolution thereof as well as effective communication with customers;
- (2) A customer may lodge a written request with the Service Provider for recalculation of an account, or testing of a meter if such customer is of the opinion that the account rendered is inaccurate or such meter is defective.

- (3) Such a request must contain full personal and/or business particulars of the customer, the relevant account number, direct contact number, address and any other particulars required by the Service Provider.
- (4) Pending the outcome of the request, the customer must pay an amount equal to the average of the monthly total of the preceding three months' accounts where history of such an account is available. Where no such history is available the customer shall pay an estimate provided by the Service Provider, not later than the date due for payment thereof;
- (5) Failure to make interim payments as contemplated herein will render the customer liable for disconnection of the services.
- (6) Upon receipt of the request, the relevant Service Provider shall give a written acknowledgment thereof, investigate the matter and inform the customer in writing of the outcome of such investigation, and shall give reasons for its decision.
- (7) Any adjustment to the customer's account as a result of the investigation shall be made within one month.
- (8) Upon receipt of the decision of the Service Provider the customer may lodge an appeal against the decision by furnishing it, together with reasons, within 21 days after communication of the decision to the Service Provider, and in the case of the Municipality, to the municipal manager. The Service Provider or the municipal manager, as the case may be, shall commence with the appeal within six weeks and shall decide the appeal within a reasonable period. The decision of the Service Provider shall be final and it may proceed with credit control and debt collection measures provided for in this By-law after the customer has been notified of the outcome of the appeal.
- (9) No dispute, enquiry or complaint will be reconsidered after the outcome thereof has been communicated to the customer.
- (10) If the customer is not satisfied with the outcome of the complaint, the customer must first pay the amount in dispute under protest before approaching a court of law for the necessary relief.
- (11) Under no circumstances may the payment of any amount be withheld as a result of any dispute or perceived dispute and the Service Provider may in such an event proceed with debt collection mechanisms as provided for in this By-Law.

10. CUSTOMER ASSISTANCE

(1) Incentives

- (i) A Service Provider may from time to time implement incentives to promote prompt payment of accounts.

(2) Rate rebate

- (i) Properties used exclusively for residential purposes may qualify for a property rate rebate as determined annually by the municipality by resolution subject to the following:
 - (a) only customers receiving old-age pensions or state disability grants are eligible for a rebate;
 - (b) application for a rebate must be made in writing annually to reach the chief financial officer on/or before 30th June;
 - (c) The applicant must be the registered owner of and residing on the property;
 - (d) The subletting of any portion of the premises, the taking in of boarders or tenants or any children or family members being employed and living on the property shall disqualify the applicant for a rebate;
 - (e) The applicant should not own any other immovable property;
 - (f) The property must be readily accessible to municipal staff for purpose of carrying of inspections during reasonable hours.

(3) Settlement arrangements

- 3.1 Notwithstanding any arrangement for payment as contemplated herein, a Service Provider may restrict and/or discontinue the provision of services as provided for in this By- Law.
- 3.2 A Service Provider may enter into an arrangement with a customer if such customer is unable to, on good cause shown, to pay his/her account, and may require that the customer shall:
 - (a) sign an acknowledgement of debt;
 - (b) sign consent to civil judgment;
 - (c) consent to a garnishee order/emolument order/stop order (if he/she is in employment)
 - (d) acknowledge that interest will be charged at the prescribed rate and in a manner determined by the Service Provider from time to time;
 - (e) not fall into arrears with payment of the current portion of the account.

- (f) sign an acknowledgment that, if the arrangement is defaulted on, the full outstanding balance will then immediately become due and payable, that no further arrangements will be entered into and that disconnection of water and/or electricity will continue and that legal proceedings will be instituted for recovery of all arrear amounts and
 - (g) the owner or his/her agent consents to such arrangement in writing.
- 3.3 In the event of a customer being in arrears pertaining to an account and seeking an arrangement for the payment thereof, the Service Provider may in its discretion convert the electricity meter to a prepayment meter and the cost of such conversion together with such arrears, shall be paid off either by:
 - (a) adding it to the arrears account and repaying it over the period agreed upon; or
 - (b) adding it as a surcharge to the prepaid electricity costs and repaying it within the agreed period with each purchase of services until the debt is liquidated.
- 3.4 The Service Provider may raise the security deposit payable in the event of an arrangement being sought or where a customer is in default in terms of such an arrangement;
- 3.5 The customer must prove levels of income, if the Service Provider requests same, and all arrangements shall be made subject to periodic review.

(4) Instalments

Customers and property developers will be given the opportunity to pay property rates and service contributions in instalments, as determined by the municipality from time to time subject thereto that such period shall not exceed 12 months.

(5) Tenders

It shall be a condition of the awarding of all tenders for the provision of services or delivery of goods that the tenderer, its directors, owners, trustees, members or partners have paid all accounts pertaining to each and every such tenderer, director, owner, trustee, member or partner or that suitable arrangements for payment thereof have been made, which arrangement shall include the right to set-off in the event of non compliance of such arrangement.

CHAPTER 3

INDIGENT SUPPORT

10. The municipality shall render support to indigent owners of property, who, due to a number of socio-economic factors are unable to make a full monetary contribution towards services provided by the municipality;
11. For an owner to qualify to be indigent, such owner must comply with the following requirements:
 1. the applicant must be over 18 years of age;
 2. the total household income of all occupants must be less than an amount determined by the municipality, which amount shall be annually adjusted by the municipality;
 3. the applicant must have an active account with the municipality;
 4. the applicant may not own more than one immovable property.
 5. The applicant must reside on the property.
12. The applicant must apply on the prescribed application form only at service centres designated as such and situated within his/her respective area, together with the following documentary proof:
 - (1) applicant's identity document;
 - (2) latest municipal account and proof of ownership;
 - (3) documentary proof of total monthly income of the household to the satisfaction of the municipality, including, but not limited to UIF card, salary advice, letter from an employer and bank statements.
 - (4) an affidavit to the effect that all the information supplied is true and correct and that the total income of the household from all sources has been declared;
 - (5) Recommendation by the applicant's ward councillor.
13. The municipality may appoint inspectors who shall be entitled to visit the applicant's premises in order to verify the correctness of the information provided in the application form, to record any changes in circumstances and make recommendations for approval, disapproval or disqualification of an application.

14. The application together with the inspector's recommendation shall be submitted to an indigent committee. Such indigent committee shall be a sub-committee of the finance committee of the municipality;
15. The indigent committee shall approve, disapprove or disqualify the application and in the event of an application being approved, determine the subsidy amount to be granted;
16. The indigent committee's decision shall be final and binding;
17. An applicant must reapply for indigent support on an annual basis;
18. The reapplication for indigent support shall not be approved if the account pertaining to the use of water and/or electricity in excess of the free water and electricity consumption is not paid up to date;
19. The municipality shall inform all applicants in writing about the outcome of the application. In the event of the application being approved, the applicant shall be informed of the date of commencement and date of termination of the subsidy, with no guarantee of renewal;
20. An owner who receives indigent support shall immediately request the cessation of the subsidy if his/her circumstances have changed to the extent that he/she no longer complies with the requirements for indigent support.
21. Subsidies shall only be granted in respect of property rates and refuse removal. Water, sanitation and electricity consumption shall not be subsidised.
22. Indigent customers may be required to revert to prepayment meters. In such an event the municipality may, in its sole discretion decide that the cost thereof shall be met either by:
 - (1) a surcharge on the coupon cost;
 - (2) cash payment by the indigent customer; or
 - (3) be regarded as part of the subsidy grant.
23. The municipality may differentiate between the amount of subsidies granted and may categorise indigent customers into various categories, but may not unfairly discriminate against customers.
24. If an indigent customer's consumption or use of a municipal service is less than the subsidised service or free basic service the unused portion may not be accrued by the customer and the customer shall not be entitled to cash or a rebate in respect of the unused portion.

25. Indigent support shall automatically terminate:
- (1) upon death of the indigent customer;
 - (2) when the indigent customer disposes of his/her immovable property;
 - (3) when the indigent customer's circumstances change or indigent criteria for approval changes to the extent that the indigent customer no longer qualifies for indigent support;
 - (4) when the indigent customer no longer resides on the property
 - (5) If an indigent customer fails to pay the account in excess of the subsidy service pertaining to water and/or electricity or fails to honour any arrangements made by him/her for payment of the outstanding account; and
 - (6) It is discovered that the information supplied by the indigent customer was false, in which event all subsidies granted to the indigent customer shall reversed retrospectively.

CHAPTER 4

CREDIT CONTROL AND DEBT COLLECTION

26. ENFORCEMENT MECHANISMS

- (1) **Water/electricity and other services**
- (i) If a municipal account is not paid on the due date shown on the account, and unless permission for deferment of a payment has been granted, a written warning of possible disconnection of water and/or electricity supply will be forwarded to the customer and in which notice the date of such disconnection shall be stipulated, which date shall not be less than 14 days, calculated from date of receipt of such notice.
 - (ii) The customer will be deemed to have received such notice on the same day if delivered by hand, e-mail or telefax transmission, on the 3rd day after day of posting, if posted by ordinary mail and on the 4th day after date of posting, if posted by registered mail.
 - (iii) A Service Provider shall be entitled to disconnect or restrict the supply of water and/or electricity without any further notice if payment in full had not been made on the date stipulated in the notice.

- (iv) upon disconnection of the supply of water and/or electricity, the Service Provider shall post a notice in a conspicuous place on the property wherein the customer is informed that the supply has been disconnected, that all electric points should be considered live and that all water outlets should be closed. The said notice shall also advise that the supply will only be reconnected upon payment of the total amount specified in the notice together with the prescribed reconnection fee. Such notice shall also warn the customer of the consequences of unauthorised reconnection or use.
- (v) Business entities shall not have the option to make arrangements for deferred payment but shall be obliged to pay all arrears and prescribed fees before services will be restored.
- (vi) the Service Provider shall restore services within a reasonable time after submission of proof of payment of the required amount, subject to logistical capacity. Services shall only be restored during official business hours except in instances deemed to be emergencies, and an additional after-hours fee shall then be charged.
- (vii) In the event of a customer being in arrears with property rates or any other municipal charges, the municipality shall have the right to deny or to restrict the sale and supply of electricity or water, where the Municipality is the Service Provider.
- (viii) The cost of restriction or disconnection and reconnection of services shall be determined by the municipality from time to time, and such costs shall be paid by the customer.

(2) Rates, charges and levies

It shall constitute an offence if charges are not paid on due date as stipulated on the account.

(2.1) Annual rates and other annual levies

- (i) If the account is not paid by due date as indicated on the account, a letter of demand shall be forwarded to the customer showing the total amount owed to the municipality and requesting the customer to pay the full amount owing within a prescribed period which shall not be less than 14 days after date of receipt of the notice.

- (ii) The customer will be deemed to have received such notice on the same day if delivered by hand, e-mail or telefax transmission, on the 3rd day after date of posting if posted by ordinary mail and on the 4th day after date of posting if posted by registered mail.
- (iii) If such notice is posted, it shall constitute due notice if forwarded to the postal address supplied by the customer in the service agreement.
- (iv) If the account has not been settled or acceptable arrangements have been made on or the date mentioned in the letter of demand, the municipality may issue summons and the due legal process as contemplated herein shall be followed.
- (v) Where the arrear rates is in respect of a municipal property sold by the municipality in terms of a suspensive sale agreement or lease agreement, the collection thereof may be done in terms of the Deed of Sale, lease agreement or any subsequent applicable written agreement between the municipality and the customer.

(2.2) Monthly rates

- (i) Interest will be charged on overdue accounts at an interest rate that shall be determined by the municipality from time to time by resolution;
- (ii) If the customer's account is in arrears for a period of 30 days or more, a letter of demand shall be forwarded to a customer, demanding payment of the arrear amount, and in which notice the amount is stipulated and the date for payment thereof is indicated, which date shall not be less than 14 days after date of dispatch of the said notice;
- (iii) The customer shall be deemed to have received the notice on the same day if delivered by hand, e-mail or telefax transmission, on the 3rd day after date of posting if posted by ordinary mail and on the 4th day after date of posting if posted by registered mail;
- (iv) If such notice is posted, it shall constitute due notice if forwarded to the postal address supplied by the customer in the service agreement.
- (v) Should a customer fail to pay the arrears on the due date stipulated in the notice, the full outstanding balance of the annual rates shall immediately become due and payable and

the municipality shall then be entitled to institute legal action for the recovery thereof.

(V1) The provisions of section 26 (2.1) (v) shall be mutatis mutandis applicable to this par. (2.2).

(3) Sundry and housing accounts

- (i) If a debtor's account is in arrears for a period of 30 days or more, a letter of demand shall be forwarded to a debtor, demanding payment of the arrear amount, and in which notice the amount is stipulated and the date for payment thereof is indicated, which date shall not be less than 14 days after date of dispatch of the said notice;
- (ii) The debtor will be deemed to have received a notice on the same day if delivered by hand, e-mail or telefax transmission, on the 3rd day after date of posting if posted by ordinary mail and on the 4th day after date of posting if posted by registered mail.
- (iii) The municipality may thereafter institute legal action for recovery of the amount owing.
- (iv) Property purchased from the municipality sold by a suspensive sale agreement shall be repossessed in terms of the written agreement between the debtor and the municipality if payment of the purchase price is in arrears for more than 30 days.
- (v) Once a property has been repossessed, the debtor will not be eligible for reinstatement of the agreement and may not purchase any other property from the municipality by way of suspensive sale agreement.

(5) Interest on overdue accounts

Interest will be charged on all accounts not paid by due date in accordance with applicable legislation and as determined by the Service Provider from time to time. Such interest will be levied and capitalised monthly in arrears on the monthly outstanding balance from due date and will be calculated for a full month irrespective of when payment is made. Such interest charged shall appear on the following month's account.

(6) Legal process

- (i) Where the service of outside parties are utilized for debt collection, inclusive of debt collection agencies and/or attorneys, such entities shall comply with such code of conduct as may be prescribed by their respective professional bodies.
- (ii) A Service Provider may release the credit information regarding a customer's account to credit bureaus or any other statutory institution as may be lawfully entitled to it. Apart from the above, such information shall remain confidential and may not be released or divulged to any person or entity without the prior written consent of the customer.
- (iii) A customer's particulars shall only be removed from an adverse credit listing after payment of the full account outstanding together with interest and penalties as prescribed has been paid by means of cash or a bank guaranteed cheque.
- (iv) In the case of default judgments entered into against a customer or debtor, such customer or debtor shall at his/her own cost appoint an attorney to rescind the judgment and the Service Provider shall not oppose same, on condition that the full outstanding balance of the account together with interest and other charges as prescribed have been paid.

(7) Theft, tampering and fraud

- (1) No person shall in any manner or for any reason whatsoever tamper or interferes with any apparatus;
- (2) A Service Provider shall have the right to immediately terminate the supply of services of a customer where prima facie evidence of tampering, theft or wilful damage to any apparatus, without prior notice to the customer;
- (3) In cases where the tampering has resulted in the meter recording less than the true consumption, the Service Provider shall have the right to recover from the customer the full cost of his/her estimated consumption;
- (4) The total amount owing, including interest, charges, assessment of unauthorised consumption, damages and discontinuation and reconnection fees as well as increased deposits as determined by the Service Provider, if applicable, shall be due and payable before any service shall be reconnected;
- (5) No person shall fail to provide information reasonably required regarding investigation into or enquiries in connection with tampering, theft or wilful damage to property of a Service Provider or used in connection with the provision of services or provide false information in connection therewith;

- (6) A Service Provider may, where prima facie evidence exists regarding the withholding of information or provision of false information, immediately and without notice to the customer disconnect or restrict services and the provision of this paragraph regarding the reconnection of services shall mutatis mutandis apply;

(8) Cost of collection

All costs and charges, interest, administration and collection costs, all penalties, surcharges, damages, service discontinuation and reconnection costs, assessment costs and all legal costs, fees and disbursements incurred in the collection of a debt shall be for the account of the customer or debtor as the case may be and the customer or debtor as the case may be shall be liable to pay legal costs on an attorney and client basis.

(9) Magistrate Court jurisdiction

The Magistrate's Court shall have jurisdiction to adjudicate any action, notice of motion or application in terms of this By-law, notwithstanding the amount involved.

(10) Irrecoverable debt

- (1) The municipality, in the case of charges due or where it is the Service Provider, shall only abandon recovery of a debt owed to it in one or more of the following circumstances:
- (i) Insolvency or demise of the customer or debtor as the case may be, if proven that his or her estate has insufficient funds to make payment;
 - (ii) A balance being too small to recover for economic reasons considering the costs of recovery;
 - (iii) where the claim has become prescribed;
 - (iv) when the customer or debtor as the case may be relocate and three tracing agents are unable to trace the current whereabouts of such person;
 - (v) All reasonable notifications and cost-effective legal avenues to recover the outstanding amount have been exhausted.

- (vi) The amount outstanding is the residue of the payment of a dividend from an insolvent estate or where there is a danger of contribution in proving a claim against the insolvent estate.
 - (vii) If the debt outstanding cannot be proved;
 - (viii) The outstanding amount is due to an administrative error by the municipality.
 - (ix) by Council resolution on good cause shown. .
- (2) Notwithstanding the above the municipality shall be under no obligation to write off any particular debt.

CHAPTER 5

MISCELLANEOUS PROVISIONS

27. OFFENCES

- (1) Any person contravening or failing to comply with any provision of Sections 5(3) and Section 26(8) of this By-law shall be guilty of an offence and liable on conviction to a fine not exceeding R40 000,00, or in default of payment, to imprisonment for a period not exceeding 2 years.
- (2) Any person who contravenes or fails to comply with any other provision of these By-laws or who remain to be in default in complying therewith shall be guilty of an offence and shall be liable, on first conviction, to a fine not exceeding R10 000,00, or in default of payment to imprisonment for a period not exceeding 6 months, and on any subsequent conviction to a fine not exceeding R20 000,00, or in default of payment, to imprisonment for a period not exceeding 12 months.
- (3) Any person who fails to comply in any respect with any notice served on him by the municipality in terms of these By-laws directing him to do or not to do anything, shall be guilty of an offence and shall in addition be guilty of a further offence for every day or part of a day during which non-compliance continues and shall be liable in respect of each offence as aforesaid to a fine not exceeding R375,00 or in default of payment, to imprisonment for a period not exceeding 7 days for each day of contravention.

28. COMMENCEMENT DATE

These By-laws take effect on the date of proclamation in the Provincial Gazette

