
MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS

MUNICIPAL NOTICE 104 OF 2019**UGU DISTRICT MUNICIPALITY
CREDIT CONTROL AND DEBT COLLECTION BY-LAW****Statement**

To provide for credit control and the collection of all monies due and payable to the Municipality; to provide for the requirements for registration of municipal services.

Preamble

Whereas the Municipality is entitled in terms of section 229 of the Constitution of the Republic of South Africa to impose surcharges on fee for services provided by or on its behalf within its area of jurisdiction;

WHEREAS the Municipality is entitled in terms of section 75A of the Local Government Municipal Systems, Act 32 of 2000 to levy and recover fees, charges or tariffs in respect of any function or services of the Municipality and to recover collection charges and interest on any outstanding amount;

WHEREAS the Municipality is obliged in terms of section 96 of the Local Government Municipal Systems, Act 32 of 2000 to collect all monies that is due and payable to it subject to the provisions of the Act and any other applicable legislation;

AND WHEREAS the Municipality in terms of section 98 of the Local Government Systems, Act 32 of 2000 to adopt By Laws to give effect to the Municipality's credit control and debt collection policy, its implementation and enforcement;

NOW THEREFORE the municipal council of Ugu District Municipality hereby makes the following By-Law.

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CHAPTER 1

DEFINITIONS AND APPLICATIONS

Definitions

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

"account" means written notification of municipal services, sundry charges and other charges due to the Municipality, and addressed to a person liable for payment thereof;

"acknowledgement of debt" means an admission of liability and written undertaking by a debtor to repay an amount owing to the Municipality, and includes a consent to judgement contemplated in section 58 of the Magistrates Court Act, 1944 (Act No. 32 of 1944);

"agent" means a person authorised by the customer to act on his or her behalf;

"arrears" means any amount which is due, owing and payable and which remains unpaid by the due date;

"authorised official" means any official or agent of the Council who has been authorised by the Council to administer, implement and enforce the provisions of these Bylaws;

"basic charge" means a charge as determined in terms of the Municipality's Tariff By-law and Tariff Policy;

"CFO" means a person employed by the Municipality in terms of section 56 of the Systems Act as the Chief Financial Officer of the Municipality, and includes any person to whom the Chief Financial Officer has delegated or sub-delegated a power, function or duty in accordance with the system of delegation developed by the municipal manager in terms of section 79 of the Municipal Finance Management Act and section 59 of the Systems Act;

"collection charges" means the charges which the Municipality is entitled to recover in terms of section 75A (1) of the Systems Act, and includes the administrative cost—

- (a) of reminding any customer of arrears;
- (b) for the termination, restriction or reinstatement of any municipal service to a defaulting customer;
- (c) of any notice rendered, sent, delivered or published to a customer in terms of this By-law or any other law;
- (d) in respect of any other charge which the Municipality is by law entitled to recover;

"Constitution" means the Constitution of the Republic of South Africa as amended;

"customer" means any person or their agent with whom the Municipality has entered into an agreement with for the provision of any municipal service to the property;

"deposit" means a monetary amount raised by the Municipality in relation to the consumption of a municipal service and mitigation of credit risk to the Municipality, irrespective of the existence of an agreement;

"disconnection" means a termination or restriction of a municipal service supplied to a meter;

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

"fee" means a prescribed amount charged by the Municipality to a customer for the provision of any municipal service;

"illegal connection" means any connection or reconnection to a system through which municipal services are provided, where such connection or reconnection was/is not authorised or approved by the Municipality;

"Juristic person" includes a partnership, a proprietor, association or other body of persons, corporate or unincorporated and includes a trust and organ of state;

"municipal council" or **"council"** means the Ugu District Municipality Council, a municipal council referred to in section 157(1) of the Constitution;

"Municipal Finance Management Act" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"Municipality" means the Ugu District Municipality;

"municipal manager" means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

"municipal service" means a service provided by the Municipality in terms of its powers and functions to or for the benefit of the local community, irrespective of whether or not—
(a) such service is provided by the Municipality itself or by engaging an external mechanism contemplated in section 76 of the Systems Act; or
(b) any fees, charges or tariffs are levied in respect thereof;

"occupier" means any person who occupies any property or part thereof, without regard to the title under which such person occupies the property concerned;

"Owner" means —

- (a) a person in whom is vested the legal title to the premises or property;
- (b) in a case where the person in whom the legal title to premises is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- (c) in any case where the authority or authorised provider is unable to determine the identity of such person, a person who is entitled to the benefit of the use of such premises or a building or buildings thereon, including a person who receives the rent or profits of such premises or any

part thereof from any tenant or occupier or who would receive such rent or profits if the premises or and part thereof were let, whether for his own account or as agent for any person entitled thereto or having an interest therein;

(d) in the case of premises for which a lease agreement of 30 years or longer has been entered, the lessee thereunder;

(e) in relation to -

(i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 95 of 1986, the developer or the body corporate in respect of the common property, or a section as defined in such Act, the person in whose name such section is registered under a sectional title deed and includes the lawfully appointed provider of such person;

"person" means a natural person or Juristic Person;

"person in charge" for the purposes of the definition of 'consumer' shall include the registered owner (or his/her legally authorized representative) of the premises to which water and sanitation services are provided;

"Policy" means the Credit Control and Debt Collection Policy adopted by the Council, as amended from time to time;

"property" means—

- (a) immovable property registered in the name of a person, including, in the case of sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in the name of a person;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation, or
- (d) public service infrastructure;

"publicly controlled" means owned by or otherwise under the control of an organ of state, including a—

- (a) public entity listed in the Public Finance Management Act, 1999 (Act 1 of 1999);
- (b) municipality; or
- (c) municipal entity as defined in the Systems Act;

"sundry charge" means an amount charged to a customer which is not directly linked to a property and which includes but is not limited to—

- (a) charges arising from damages to municipal property and equipment;
- (b) monies owed for municipal services other than water and sanitation;
- (c) monies awarded to the Municipality through court orders and judgments;
- (d) fines; and
- (e) monies owed to the Municipality by municipal staff;

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

2000); and

"tenderer" means a contractor, service provider or supplier who has submitted a tender for the provision of services or the delivery of goods to the Municipality.

Interpretation of By-law

2. (1) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.
- (2) This By-law must be read in conjunction with the Policy.
- (3) Where there is a conflict between this By-law and another By-law of the Municipality, this Bylaw prevails over the affected provision of the other By-law in respect of any credit control and debt collection matter.

Objects of By-law

3. The objects of this By-law are to—
 - (a) give effect to the Municipality's Policy, and its implementation and enforcement in terms of section 156(2) of the Constitution read with sections 96 and 98 of the Systems Act;
 - (b) provide for the collection of monies due and payable to the Municipality; and
 - (c) provide for matters incidental thereto.

Application of the By-laws

4. (1) These By-laws only apply in respect of amounts of money due and payable to the Council for—
 - (a) Fees, surcharges on fees in respect of the following municipal services:
 - i. The provision of water and any charges thereof;
 - ii. Sewerage and any charges thereof;
 - iii. Any other sundry charges thereof; and
 - (b) Interest which has or will accrue in respect of any amount of money due and payable or which will become due and payable to the Council regarding any charges
 - (c) Collection charges.
- (2) These By-laws also apply to any municipal service provided through prepaid services, in so far as the By-laws may be relevant.

CHAPTER 2**SERVICE AGREEMENTS AND GENERAL TERMS AND CONDITIONS OF PROVISION OF MUNICIPAL SERVICES****Registration for the provision of municipal services**

- 5 (1) An applicant for a municipal service must comply with the registration process determined by the Municipality in the policy for the provision of service-
- (a) Application for the service has been made in writing on a prescribed form as determined by the Municipality;
 - (b) Furnishing any information or documentation required by the Municipality for the purposes of registering for such service;
 - (c) Entering into a service agreement with the Municipality; and
 - (d) The payment of a deposit of an amount prescribed by Council to be held by the Municipality as consolidated security in respect of municipal services provided by the Municipality to the applicant.
- (2) If an applicant is an existing customer of the Municipality in respect of any other municipal service on premises in respect of which any amount is in arrears, such applicant must –
- (a) pay the arrears in full; or
 - (b) at the discretion of the Municipality, make the suitable arrangements with the Municipality for the payment of such arrears,
- before an application for a new service in terms of this By-law may be considered.
- (3) A consumer shall be liable for all the prescribed tariffs and or charges in respect of water and sanitation services rendered to him or her by the authority or an authorised provider, until the agreement contemplated herein has been terminated in accordance with these by-laws, or until all or any water, sewer or sanitation services arrears owing by such consumer have been paid, which ever shall be the later date.
- (4) If a consumer absconds, dies or is incapacitated and:
- (a) despite search cannot be located, or
 - (b) the next of kin of such consumer fail or neglect to cause an executor, representative or curator, to be appointed within twelve months after such death or incapacity to comply with the obligations of the consumer under any agreement concluded under this section or section 5(3),

then the authority, or the authorised provider, may serve notice in terms of section 11 of this By-Law on any occupier or person in charge of the premises to which any agreement as aforesaid applies and in such notice the authority or the authorised provider, may notify such occupier or person in charge, that with effect from a date 14 days after the delivery of such notice to such occupier or person in charge, he or she shall be deemed to be the consumer under the aforesaid agreement and liable to comply with all the duties and obligations of the consumer in respect of water and sanitation services supplied to such premises under the said agreement.

(5) Any occupier or person in charge on whom a notice in terms of subsection 5(4) is served may, during the period of 14 days referred to in that subsection, provide the authority or the authorised provider, with the name and address of the immediate next of kin of the deceased or incapacitated consumer, and, provided that such information is found on investigation by the authority or the authorised provider, to be accurate and provided further that such next of kin is, in fact, a consumer of the water and sanitation services supplied under the agreement, such next of kin shall, instead of the occupier or person in charge, be deemed to be the consumer under the aforesaid agreement and liable to comply with all the duties and obligations of the consumer in respect of water and sanitation services supplied to such premises under the said agreement.

Deposits

- 6 (1) The payment of a deposit mentioned in subsection 5(1)(d) is subject to the criteria determined by Council in accordance with the Policy and is due and payable at-
- (a) the time of application for municipal services; and
 - (b) any other time deemed necessary by the Municipality.
- (2) Payment of a deposit must be made in cash unless otherwise provided for in terms of the Policy.
- (3) Deposits paid by the customer to the Municipality shall be held as a consolidated deposit and used as security for any or all the charges or amounts owed by the customer as included in the account.
- (4) Deposits shall be returned to the customer upon termination of the service agreement whereby the account of the customer is fully paid.
- (5) the Municipality may in its discretion by due notice to a customer, require a customer to increase the deposit furnished in terms of subsection 5(1)(d).
- (6) No interest on cash deposits held by the Municipality shall accrue to the customer.

Services Agreement between the Municipality and the customer

- 7 (1) The Municipality may not approve an application for provision of municipal services unless the applicant has signed an agreement on a form prescribed by the Municipality for that purpose accepting the terms and conditions for the provision of such service all of which are deemed to be incorporated into this By-law.

(2) Where the purpose for or extent to which any municipal service used has changed, the onus and obligation rests on the customer to advise the municipality of such change.

(3) Where there are more than one municipal meters on a property, municipality will have a separate account linked to each meter.

Measurement of consumption

8 (1) The Municipality must conduct or cause to be conducted an accurate measurement of the municipal services consumed by a customer at intervals determined by the Municipality: Provided that nothing in this section prevents the Municipality from making an estimate of the consumption of municipal services for any relevant period if–

(a) the reading of the meter could not be obtained in respect of the period in question;

(b) for any other reason the meter could not be accessed to be read; or

(c) as a result of an illegal connection, a reading could not be obtained.

(2) Irrespective of the fee payable for the consumption of municipal services being based on measured or estimated consumption, the customer concerned remains liable for the payment of the prescribed fee in respect thereof.

Review of existing service Agreements

9 (1) The municipality may review the terms and conditions of any existing service agreement with a customer to take into account–

(a) any change in law:-

(b) any change in the circumstances of the customer: or

(c) any change in the circumstances surrounding the provision of any municipal service by the Municipality,

and require such customer to enter into a new service agreement with the Municipality based on the resultant changes in law or circumstances.

(2) Sub section 6 (3) and 6 (5) apply to any deposit payable by a customer in respect of a new service agreement referred to in subsection 9 (1)

Termination of Service Agreement

10 (1) Subject to section 17 and section 22

(a) a customer may terminate an agreement for municipal services by giving at least 7 (seven) working days written notice to the municipality of such intention to do so; or

(b) the Municipality has given written notice of not less than 14 (fourteen) working days to the customer, if the customer concerned has breached or failed to comply with any specific term or condition of the service agreement, and has

- failed to remedy such breach or rectify such failure after service on such customer of a notice to do so in terms of section 11 of this By-law.
- (c) a customer shall remain liable for all arrears and applicable charges that are payable for municipal services rendered prior to the termination of an agreement.

Notices of compliance

- 11 A written notice of compliance must be served on a customer-
- (a) in order to avoid the service agreement to which the non-compliance relate being terminated in terms of subsection 10 (1)(b); or
 - (b) where there has been a breach of a provision of the By-law and the Municipality is of the opinion that it is necessary to serve such notice.

CHAPTER 3

ACCOUNT ADMINISTRATION

Accounts

- 12 (1) The Municipality must maintain proper and accurate accounts which must be rendered and administered by it in accordance with the Policy, this By Law, as well as any applicable law.
- (2) Failure by the Municipality to render an account does not relieve a customer of the obligation to pay any amount that is due and payable by such customer in terms of the Policy and this By-law.
- (3) The Municipality shall provide every customer who is liable in terms of a signed agreement for services charges in respect of Municipal Services, with an account in respect of every property for which that customer is liable and all services rendered in respect of
- (4) The Municipality may, in accordance with section 102 of the Systems Act –
- (a) consolidate any separate accounts of a customer liable for payments to the Municipality;
 - (b) credit any payment by such customer against any account of that customer; or
 - (c) implement any of the debt collection and credit control measures provided for in this By-law or Policy in relation to any arrears on any of the accounts of the customer.
- (5) In the event of separate accounts being consolidated as contemplated in subsection 12(4)(a), the total amount due and payable by a customer shall constitute a consolidated debt, and any payment made by a customer of an amount less than the total amount due

will, subject to section 25 be allocated in a reduction of the consolidated debt in the order prescribed by the municipality.

- (6) Any amount paid by the customer in excess of an existing debt may be-
 - (a) held in credit for the customer in anticipation of future charges for municipal services or for the purposes contemplated in subsection 19, without any interest accruing on such amount.
 - (b) Refunded either as a whole or a portion thereof to the customer concerned, subject to the right of the Municipality to withhold payment until it is satisfied that payment of such refund is not in contravention of any law; or
 - (c) Refunded to the conveyancing attorney if the property in question has been transferred
- (7) Should the Municipality become aware that the customer has since vacated the premises supplied as his or her address in terms of this By-law, the Municipality must, after deducting any outstanding amounts due to it from the deposit of such customer, place the balance thereof in an account retained for such customer for a period of time determined in the Policy from the date on which the customer's disappearance became known to the Municipality.
- (8) After the expiry of the period mentioned in subsection (8), the balance of the deposit, together with interest thereon that may have accrued in terms of repealed credit control and debt collection By-laws or previously adopted policies, will be forfeited to the Municipality, unless the Municipality is not satisfied that this is just and equitable to do so.

Account Information

- 13 Without limiting the amount of information which may be included by the Municipality in a customer's account, any account rendered by the Municipality to a customer must contain at least the following information:
 - (a) the consumption or estimated consumption as determined for the relevant consumption period;
 - (b) the period to which the consumption or estimated consumption relates;
 - (c) the amount due based on the consumption or estimated consumption;
 - (d) the amount due and payable for any sundry charge;
 - (e) the amount in arrears, if any;
 - (f) the interest payable on any arrears, if any;
 - (g) collection charges insofar as they may be relevant;
 - (h) the final date for payment; and
 - (i) the methods, places and approved agents where payments may be made.

Account administration and monitoring

- 14 The Municipality must, subject to section 8, implement reasonable measures to ensure—
- (a) accurate metering of consumption at fixed intervals;
 - (b) limited delay between service connection and the first and subsequent rendering of accounts;
 - (c) accurate and up-to-date information contained in accounts rendered to customers;
 - (d) accurate monthly accounts with the application of the appropriate and correct prescribed charges and other related amounts due and payable;
 - (e) timely dispatch of accounts to correct address furnished by a customer;
 - (f) adequate provision and the efficient operation of facilities for payment throughout the Municipality's area of jurisdiction;
 - (g) where necessary, the appointment of agents to accept payments on behalf of the Municipality; and
 - (h) appropriate and reasonable hours of business to facilitate account payments.

Responsibility for payment of Account

- 15 (1) It is the responsibility of the customer to ensure that his /her account is paid timeously and that such account does not fall into arrears.
- (2) Where a customer is a tenant of the property concerned, the owner of the property shall be held jointly and severally liable with the tenant for the debts of the property.

Disputes in respect of accounts rendered by the Municipality

- 16 (1) A customer must lodge a written dispute with the Municipality to challenge the correctness or accuracy of any amount due and payable by such customer reflected in an account rendered by the Municipality in terms of this By-law: Provided that such dispute must be lodged with the Municipality before or on the due date for payment specified in the account concerned.
- (2) A customer must, pending resolution of the dispute, continue to make regular monthly payments in respect of charges, if applicable, or in respect of any municipal service based on the average monthly charges for the preceding three months prior to the dispute arising, plus interest if applicable, until the dispute is resolved.
- (3) Where a customer fails to lodge a dispute within the period mentioned in subsection (1), any correspondence received from the customer after such period concerning the correctness or accuracy of an account, will be treated as an enquiry and—
- (a) the account will not be suspended; and
 - (b) such enquiry must be accompanied by the payment of at least an amount equal to the average amount per month that was due and payable in respect of the service concerned during the preceding three months.
- (4) Any amount not in dispute must be paid in full by the customer and municipal services may be disconnected or restricted where such amounts remain unpaid.

(5) The Municipality must register the dispute or enquiry and take reasonable steps to ensure that the dispute or enquiry is addressed within a reasonable period.

(6) The Municipality may–

- (a) investigate or cause the dispute to be investigated within 30 days, or as soon as possible after such dispute is received; and
- (b) inform the customer, in writing, of his or her finding as soon as possible after conclusion of the investigation, instructing that either such customer's account will be credited with an amount found to have been overpaid or, alternatively, that any amount found to be due and payable must, subject to section 25, be paid within a reasonable period from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of section 16 (7).

(7) Except for instances where the right of appeal is specifically afforded to a customer in terms of any other law, a customer may, subject to section 37, lodge an appeal in writing with the municipal manager in terms of section 62 of the Systems Act against a decision referred to in section 16 (6), within 21 days of the date of notification of the decision.

(8) The Municipality must inform the customer concerned in writing of the decision on the appeal, instructing that any amount found to be overpaid will be credited to such customer's account or, alternatively, that any amount found to be due and payable must be paid within seven days from the date on which the customer is notified thereof.

(9) The Municipality will only supply records of documents to the customer for the last 5 years.

Failure to pay to account on the due date

- 17 (1) The Municipality must take the necessary steps to recover payment of any accounts which remain unpaid after the due date for the payment thereof as detailed in the Policy and this By-law.
- (2) Should the customer fail or refuse to pay over any monies to the Municipality in terms of this section, the municipal services of the customer may be restricted or disconnected.
- (3) Before resorting to litigation for the recovery of arrears, the Municipality may send a final demand notice, which may appear on the account addressed to the defaulting customer, calling upon such customer to make payment within a stipulated period, failing which legal steps may be taken for the recovery thereof.
- (4) Failure by the Municipality to send a final demand notice does not relieve a customer from paying the arrears.

Interest Charges

- 18 (1) The Municipality may charge interest and recover interest in respect of any arrear debt, as prescribed in this By Law, the Policy or any applicable legislation.
- (2) Interest calculated on arrears may only be reversed as determined by the municipality in terms of the policy.

Municipal service charges upon the property

- 19 (1) The municipal service charges are a charge upon the property, and the Municipality may take any of the following actions to secure payment thereof:
- (a) terminate or restrict the provision of any municipal service in terms of section 20;
 - (b) allocate the whole or a portion of any payment of an account, or the whole or a portion of a pre-payment for future accounts as contemplated in paragraph 10(5)(a), as payment for arrear municipal service fees or rates;
 - (c) subject to section 118(1) of the Systems Act, withhold the issuing of a prescribed clearance certificate until all amounts due in connection with the property concerned for municipal service charges and other municipal charges for the period contemplated in paragraph 118(1)(b) of the Systems Act have been fully paid;
 - (d) Where there is no consumption of services on premises, a basic charge as determined by the Municipality may be raised in respect of the premises concerned.

Termination or restriction of a municipal service

- 20 (1) The Council shall have a written policy on credit control and debt collection which provides for:
- (a) credit control procedures and mechanisms;
 - (b) debt collection procedures and mechanisms;
 - (c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents;
 - (d) interest on arrears;
 - (e) extensions of time for payment of accounts;
 - (f) termination of services or the restriction of the provision of services when payments are in arrears;
 - (g) in determining its policy the Council may differentiate between categories of persons, clients, debtors and owners as it may deem appropriate.

(2) The Municipality may terminate or restrict the provision of services in terms of the prescribed termination and restriction procedures set out the credit control and debt collection policy or any other applicable law to any premises of the customer in respect of municipal service –

- (a) fails to make full payment of arrears on or before the final date for the payment thereof, and the customer fails to sign an acknowledgement of debt in terms of section 20 in respect of the arrears concerned before termination or restriction;
- (b) fails to pay any instalment payable in terms of an agreement referred to in paragraph(a) before or on the due date;
- (c) fails to comply with any condition of provision imposed by the Municipality in respect of the service concerned;
- (d) obstructs the efficient provision of the service concerned to another customer;
- (e) provides the service concerned to a person who is not entitled thereto or permits such provision to continue;
- (f) causes a situation relating to any service which, in the opinion of the Municipality, is dangerous or constitutes a contravention of any applicable law, including the common law;
- (g) tampers with a water meter or in any way reinstates without the Municipality's knowledge or consent the provision of a previously disconnected or restricted service;
- (i) fails to notify the Municipality within 30 days from date of death of the customer.

(3) The Municipality must notify a customer of a disconnection by informing such customer–
(a) that the provision of the service concerned will be, or has been disconnected on the date specified in such notification; and
(b) of the steps which can be taken to have the service reinstated.

(4) The notice of disconnection may be included on the bill or any other notice issued in terms of this By-law.

(5) If a customer intends to terminate or restrict an account for municipal services, the customer must provide the Municipality with notice of such intention within the time period provided for in the Policy.

Reinstatement of the supply of municipal services

21 (1) Where the supply of a municipal service to a customer has been terminated or restricted by the Municipality in terms of section 20, the supply of such service to the customer concerned may not be reinstated either fully or partially until–

- (a) the full amount of arrears, including interest and collection charges, if any, have been paid;
- (b) an agreement for payment of arrears contemplated in paragraph (a) has been entered into in terms of section 22;
- (c) the full amount of arrears in respect of any agreement referred to in paragraph (b), including interest and collection charges, if any, and any increased deposit, where required, have been paid; or
- (d) any other condition considered by the Municipality to be appropriate, including payment of an additional deposit security, has been complied with.

(2) Once all the conditions stipulated in subsection 21 (1) have been met, a reconnection order must be issued by the Municipality to the effect that every applicable condition contemplated in subsection 21 (1) has been complied with and that the municipal service concerned may be reconnected.

(3) The Municipality may remove an entire water connection in the event of an illegal connection.

Acknowledgement of debt

22 (1) Any customer who is indebted to the Municipality may be required to sign a written acknowledgement of debt on a form prescribed by the Municipality for that purpose setting out the terms which are agreeable to the Municipality for the recovery of such debt.

- (2) If the amount payable by a customer in terms of an acknowledgement of debt contemplated in subsection 22 (1) is payable in instalments, any payment received shall be allocated in reduction of the debt of such customer in the order prescribed in the Policy
- (3) A customer may be required to arrange a debit order for the payment of arrears in respect of which an acknowledgement of debt contemplated in subsection 22 (1) has been signed by the customer concerned.
- (4) Subject to subsection 22(5), no acknowledgement of debt may provide for payment over a period longer than 12 months.
- (5) (a) An acknowledgement of debt providing for payment over a period in excess of 12 months, may be accepted by the Municipality in terms of delegated authority, if special circumstances which the customer could not reasonably have prevented or avoided, prevail and which, in the opinion of the Municipality, warrant a longer period of payment; and

(b) Documentary proof of any special circumstances as contemplated in paragraph (a) must be furnished by a customer on request by the Municipality.

- (6) If a customer fails to comply with the terms of an acknowledgement of debt contemplated in subsection 22(1), the total outstanding amount, including the arrears, any interest thereon, any collection charges, and payment of a higher deposit if required by the Municipality, will immediately become due and payable, and the additional higher deposit, if so required, must be provided, without further notice.
- (7) If a customer fails to comply with the terms of an acknowledgement of debt contemplated in subsection 22(1) that was signed after receipt of a disconnection notice for water or electricity services, or both as the case may be, the municipal service concerned may be disconnected without further notice, in addition to any other action taken against or which may be taken by the Municipality against the customer concerned.
- (8) The Municipality may not grant or accept an acknowledgement of debt by a customer if—
- (a) that customer has failed to honour a previous acknowledgement of debt for the payment of arrears to the Municipality, unless the CFO otherwise decides on good cause shown;
 - (b) arrears have arisen due to dishonoured cheques or direct debit reversals;
 - (c) instances of repeated illegal connections have been identified;
 - (d) municipal services connections have been removed; or
 - (e) any other relevant factor exists as provided for in the Policy.
- (9) Once an acknowledgement of debt contemplated in subsection 22(1) is signed, the amount in arrears must be reflected as a current amount.

Agreement with Employer

23 Subject to section 103 of the Systems Act, the Municipality may, with the consent of the customer, enter into an agreement with the customer's employer to deduct from the salary or wages of the customer—

- (a) any outstanding amount due by that customer to the Municipality; or
- (b) regular monthly amounts as may be agreed upon.

Administration charges

- 24 A prescribed administration charge may be levied by the Municipality against the account of a customer in respect of any legal action taken by or on behalf of the Municipality in terms of this By-law or the Policy.

Municipality's discretion in appropriation of payments received

- 25 (1) Subject to subsection 12(3), the Municipality may appropriate monies received in respect of any debt contemplated in this By-law at its sole discretion, irrespective of any instruction issued by the customer directing how such monies are to be appropriated.
- (2) If any amount due and payable to the Municipality in terms of this By-law has not been paid in full, any lesser amount tendered to and accepted by the Municipality does not constitute payment in full and final settlement of the full amount due, unless the lesser amount was accepted in full and final settlement in writing under a power delegated or sub-delegated to such employee in terms of section 59 of the Systems Act.

Recovery of Debt

- 26 (1) The Municipality may with regards to any debt:
- (a) by Legal Action recover any debt from its customer.
 - (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 and may refer a debtor to a third party debt collecting agencies and have such a debtor placed on the National Credit Rating list.
 - (c) The Municipality may, in order to recover debt, and as a last resort, approach a competent court for an order to attach a debtor's movable or immovable property.

Recovery of Costs

- 27 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) restrictions and reconnections fees, where any services has been restricted as a result of non-compliance with this By-law;
- (d) any losses the Municipality may suffer as a result of tampering with municipal equipment or meters; and
- (e) any collection commission incurred.

Full and Final Settlement Payments

- 28 (1) Any amount tendered in defrayment of a debt, will be accepted at any cash receiving office of the Municipality.
- (2) The Accounting Officer shall be at liberty to appropriate monies received in respect of any municipal services rendered by the Municipality in accordance with the Policy of the Council.
- (3) No offer of payment in full and final settlement of a debt, when such amount is less than the outstanding amount, must be accepted, unless confirmed in writing by the delegated authority.
- (4) Notwithstanding section 28(2) the payment so offered must nevertheless be credited against the debtor's account, without prejudice to the Municipality's rights.

CHAPTER 4

ASSISTANCE TO THE POOR AND IRRECOVERABLE DEBTS

Registration as indigent person

- 29 (1) A person who wishes to receive assistance in terms of the Municipality's Indigent Support Policy for the provision of municipal services to indigent persons, must make application for registration as an indigent person on a prescribed form at any of the Municipality's offices.
- (2) An application in terms of subsection 29(1), must be considered by the Municipality which must adhere to the principles of transparency, equity, consistency, non-discrimination, accessibility, empathy, integrity, confidentiality and objectivity during the evaluation process.
- (3) An applicant, contemplated in subsection 29(1), must, at the request of the Municipality, furnish any further information to enable the Municipality to arrive at a decision and the Municipality may, for the purpose of properly evaluating the application, also conduct any investigation which it considers appropriate.
- (4) An applicant must be informed that he or she will automatically be disqualified from receiving any assistance contemplated in subsection 29(1), and be liable to-

a) refund the amount of any such assistance received from the Municipality, if the application or information contemplated in subsection 29(3), contains any false information; and

(b) prosecution if any false information as contemplated in paragraph (a) is furnished by the applicant.

(5) If the Municipality finds an applicant to be indigent, such applicant is entitled to assistance in terms of the Policy referred to in subsection (1), and his or her personal particulars must be recorded in a prescribed register of indigent persons.

(6) The position of every indigent person so recorded, must be reviewed annually by an authorised official in accordance with the directives of the Municipality.

(7) A successful applicant must be informed in writing that he or she must immediately notify the Municipality when his or her indigent status has changed.

Irrecoverable debts

30 (1) Where a debt owing to the Municipality is considered irrecoverable in terms of the criteria set out in the Policy, and provided that there is sufficient provision to cover bad debts due to the Municipality, the CFO must write off such debt in accordance with the Policy.

(2) The CFO must report to the council at its next meeting all amounts that have been written off as irrecoverable in terms of subsection 30(1), and all such information must also be included in the monthly budget statements which must be rendered by the municipal manager in terms of section 71 of the Municipal Finance Management Act.

CHAPTER 5

MISCELLANEOUS

Municipality's right of access to premises

31 (1) In accordance with the Policy and section 101 of the Systems Act, an authorised official may access any premises at any reasonable time in order to read, inspect, install or repair any meter or service connection, or to disconnect, stop or restrict the provision of any service.

(2) Should access to the premises be unreasonably denied or prevented for the purposes of effecting a disconnection, a disconnection penalty fee may be raised in the account, over and above any penalty which may be imposed in terms of section 38.

Transmission of documents

32 Where any account, notice or other document issued by the Municipality in terms of this By-law is required to be given or delivered by the Municipality to any person, such communication may be-

- (a) posted by ordinary mail to the last known address of the customer;
- (b) e-mailed to the customers e-mail account provided;

- (c) messaged (sms'd) to the customers cell phone number; or
- (d) be given or delivered in terms of Section 115 of the Systems Act or the Electronic Communications Act, 2005 (Act 36 of 2005).

***Prima facie* evidence of information**

- 33 For the purposes of the recovery of any amount due and payable to the Municipality in terms of this By-law—
- (a) a copy of any relevant account; and
 - (b) a certificate issued by the Municipality confirming the amount,
- shall constitute *prima facie* evidence of the information contained in such documents.

Update of customer details

- 34 A customer must furnish the Municipality with updated information details of the customer when a change of such information occurs, or on request by the Municipality, which includes but is not limited to—
- (a) contact details of the customer;
 - (b) details of executors or administrators of deceased estates;
 - (c) deregistration or termination of a company, close corporation or trust if the company, close corporation or trust is the account holder;
 - (d) details of deceased—
 - (i) company directors;
 - (ii) members of close corporations; or
 - (iii) trustees of Trusts;
 - (e) notice of a company or close corporation placed under business rescue or liquidation; or
 - (f) any change of members, or directors or trustees of a juristic person.

Illegal connections

- 35 (1) An owner is responsible for taking measures to secure his or her water meter.
- (2) No person may—
- (a) reconnect, attempt to reconnect or cause or permit a reconnection to any municipal service where the Municipality has restricted or disconnected such supply;
 - (b) tamper, break or interfere with any municipal equipment or unlawfully use or interfere with municipal services provided by the Municipality; or
 - (c) knowingly consume, use or distribute any municipal service which has been obtained in an unlawful manner.
- (3) A person must notify the Municipality if he or she becomes aware of an illegal connection.
- (4) Where there is evidence of an illegal connection, or reconnection it shall be presumed that the owner caused or allowed such illegal connection. tampered or illegally connected, unless such owner proves otherwise.

(5) Where prima facie evidence of an illegal connection, tampering, or interference referred to in subsection 35(2) exists, the Municipality has the right to disconnect the supply immediately without prior notice to the owner and the owner is liable for all fees and charges levied by the Municipality for the disconnection and subsequent reconnection.

CHAPTER 6

PROCUREMENT OF GOODS AND SERVICES BY THE MUNICIPALITY

Procurement of goods and services by the Municipality

- 36 (1) When submitting a tender for the provision of goods or services to the Municipality, every tenderer must prove to the satisfaction of the Municipality that all accounts for municipal services for which the tenderer and each of its directors, members, owners, partners or trustees are liable, have been paid in accordance with the requirements contained in the Policy and the Municipality's Supply Chain Policy.
- (2) The Municipality may at its sole discretion check whether all the municipal accounts of its supplier of goods or services are up to date and if found to be in arrears, any amount payable to the supplier may be set off against the arrear amount.
- (3) Where a contractor's place of business is out of the jurisdiction of the Municipality, a Clearance Certificate from the relevant Municipality must be produced.
- (4) Where a contractor, or its directors, members, owners, partners or trustees, is indebted to the Municipality for any service charges and payments are due to that contractor in respect of goods or services provided to the Municipality, or in terms of any contractual arrangement with the Municipality, the arrear amount owing may be set off against such payments.

CHAPTER 7

GENERAL

Appeals

- 37 (1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against the decision in terms of the Appeals provision contained in Section 62 of the Systems Act by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.
- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority.
- (3) All appeals lodged are done so in terms of the Systems Act and not in terms of this By-law.

Offences and penalties

- 38 A person commits an offence if he or she-

- (a) obstructs, hinders, or in any manner interferes with an authorised official who is acting or who is entitled to act in terms of this By-law;
- (b) fails to comply with any lawful instruction or notices given in terms of this By-law or Policy;
- (c) deliberately furnishes false or misleading information to an authorised official;
- (d) tampers, breaks, or interferes with any equipment owned by or municipal services provided by the Municipality;
- (e) makes any misrepresentation in order to qualify for any benefit or relief in terms of this By-law or Policy; or
- (f) contravenes any provision of this By-law; and

is liable on conviction—

- (i) in the case of an individual, to a fine not exceeding R10 000, or such higher amount as is determined from time to time by the Minister of Justice as contemplated in section 1(1) of the Adjustment of Fines Act, (Act 101 of 1991), or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;*
- (ii) in the case of a business or other organisation, to a fine not exceeding R20 000 or an amount determined by the Minister from time to time by notice in the Gazette.*

Compliance and Enforcement

- 39 (1) Violation of or non-compliance with this By-law will give a just cause of disciplinary steps to be taken.

- (2) It will be the responsibility of Accounting Officer to enforce compliance with this Policy.

Short title and commencement

- 40 This By-Law is called the Credit Control and Debt Collection By-Law, 2018 and takes effect on the date of publication thereof in the Provincial Gazette or otherwise indicated in the notice thereto.