

MOSES KOTANE LOCAL MUNICIPALITY



CREDIT CONTROL AND DEBT COLLECTION BY-LAW

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This By-Law is made in terms of Section 98 of the Local Government: Municipal Systems Act, Act No. 32 of 2000, to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement and the following are hereby enacted:

DEFINITIONS

For the purpose of these by-laws, unless the context indicates otherwise –

“Arrears” means amounts due for levies on the municipal account for which no payments are reflected after the due date on the municipal account.

“Chief Financial Officer” means a person appointed by the Municipality to manage, inter alia, the financial administration and collection of the debt of the Municipality's debtors.

“Client Management” means the focusing on the client's needs in a responsive and proactive way to encourage payment, thereby limiting the need for enforcement.

“Credit Control” means the limiting of further service delivery (and thus lowering current accounts and arrears growth) to defaulters and the negotiation for payment before normalizing service delivery again.

“Debt Collection” means the administrative and legal processes, which are necessary to collect unpaid income of the Municipality from its debtors.

“Debtor” means a person or entity to whom or to which a municipal account has been submitted. The Municipality is at liberty to submit one municipal account for all levies/charges in respect of a property, to the owner of that property and to distinguish between types of properties in this regard.

“Defaulter” means a debtor whose municipal account is in arrears for a period of more than 30 (thirty) days from date of account.

“Indigent” means debtors who are poor private households as defined by the Municipality's policy regarding such people, who receive benefits in terms of the Social Package of tariffs and arrears included in the policy.

“Interest” constitutes a levy equal to service levies and is calculated at a rate determined by the Municipality on amounts in arrears.

“Municipal Services” are those services, rates and taxes reflected on the municipal account for which payments is required by the Municipality.

“Municipal Account” shall include levies or charges in respect of the following services and/or taxes:

- (a) Electricity consumption
- (b) Water consumption
- (c) Refuse removal
- (d) Sewerage services
- (e) Property taxes charged in relation to the value of the premises in terms of the relevant legislation, including but not limited to the Property Rates Act
- (f) Interest on amounts in arrears
- (g) Value added tax on ratable municipal services
- (h) Rent levies for housing and municipal properties
- (i) Any other taxes levies or charges appropriate to local Government or any delictual, contractual or other claims against debtors.

“Municipality” means the Moses Kotane Local Municipality and the area under its jurisdiction.

“Occupier” means any person who occupies any premises or part thereof, without regard to the title under which he or she so occupies.

“Owner” means-

- (a) the registered owner of premises in terms of the Deeds Registries Act, 1937(Act 47 of 1937) or the person in whom from time to time is vested the legal title to premises or where the Municipality is unable to determine the identity of such person, then that person who is benefiting or who is likely to benefit from such premises or a building thereon;
- (b) in the case of any right in land, the lessee or the holder of the right in land concerned;
- (c) where the person in whom the legal title is vested is insolvent or deceased, or is under any form of legal disability whatsoever, then that person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- (d) in relation to –
 - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 1986, (Act 95 of 1986) and without restricting the above, the developer or the body corporate in respect of the common property, or
 - (ii) a section as determined by such Act, the person in whose name such section is registered under a sectional title deed and includes the lawfully appointed agent of such a person;

“Person” means-

(a) any legal person including but not limited to:

(i) a company registered in terms of the Companies Act, 1973 (Act 61 of 1973), Trust inter vivos, Trust mortis causa, a Closed Corporation registered in terms of the Closed Corporations Act, 1984 (Act 69 of 1984), a Voluntary Association.

(ii) any Department of State.

(iii) any Council or Board established in terms of any legislation applicable to the Republic of South Africa.

(iv) any Embassy or other foreign entity.

“Premises” includes any piece of land, the external surface boundaries of which are delineated on-

(a) a general plan or diagram registered in terms of the Land Survey Act, 9 of 1927) or in terms of the Deeds Registry Act, 47 of 1937;or

(b) a sectional plan registered in terms of the Sectional Titles Act, 95 of 1986, which is situated within the area of jurisdiction of the Council.

“Property” means:

(a) immovable property and any building, whether moveable or immovable and any other immovable structure in or on the property or under the surface of the property, which are registered in the name of a person or entity;

(b) a right registered against immovable property in the name of a person or entity;

(c) a land tenure right registered in the name of a person or entity, or granted to a person in terms of legislation.

1. PURPOSE OF THE BY-LAW

The purpose of this by-law is to give effect to the municipality's credit control and debt collection policy, its implementation, enforcement and to ensure that credit control, debt collection and indigent support forms part of the financial system of the Municipality. It must ensure that the same procedures are followed for each individual case, as required by S.95 of Act, as well as s.64 of the Local Government: Municipal Financial Management Act, 2003 (No. 56 of 2003) (hereafter referred to as the MFMA).

2. RESPONSIBILITY FOR CREDIT CONTROL & DEBT COLLECTION

2.1 Supervisory Authority

The Municipality's Executive Committee must, in terms of s.99 of the Act –

2.1.1 oversee and monitor:

2.1.1.1 The implementation and enforcement of the Municipality's credit control and debt collection policy and any by-laws enacted; and

2.1.1.2 The performance of the Municipal Manager in implementing the policy and any by-laws.

2.1.2 When necessary, evaluate, review or adapt the policy and any by-laws, or the implementation of the policy and any such by-laws, in order to improve efficiency of its credit control and debt collection mechanisms, processes and procedures; and

2.1.3 Report quarterly to a meeting of the Council.

2.2 Implementing Authority

The Municipal Manager must in terms of s.100 of the Act –

2.2.1 Implement and enforce the Municipality's credit control and debt collection policy as well as indigent support scheme and any by-laws enacted in terms of the Act;

2.2.2 In accordance with the credit control and debt collection policy and any such by-laws establish effective administrative mechanisms, processes and procedures to collect money that is due and payable to the Municipality; and

2.2.3 Report the prescribed particulars monthly to a meeting of the Executive Committee.

2.3 Unsatisfactory Levels of Indebtedness

2.3.1 If the level of indebtedness in a particular ward or part of the Municipality exceeds the level of the acceptable norm as determined in the Credit Control and Debt Collection Policy, the supervisory authority must, without delay, advise the councilor for that ward. The councilor concerned:

2.3.1.1 Must without delay convene a meeting of the ward committee, if there is one, or convene a public meeting and report the matter to the committee or meeting for discussion and advice; and

2.3.1.2 make appropriate recommendations to the supervisory authority.

3. FINANCIAL MATTERS

3.1 Service Agreement

Before a service is supplied, a consumer must enter into a contract of agreement and such contract should provide for a deposit to be paid as security.

3.2 Control over Deposits of Security

3.2.1 The deposit to be paid must be an amount not less than an average sum equal to two month's service levies, as calculated by the Chief Financial Officer.

3.2.2 After the disconnection of a service by the Municipality, an increased deposit may be required in addition to a reconnection fee.

3.2.3 Where the services are not readily available and the Municipality must incur additional costs to provide such services, the Municipality may require bank guarantees for the provision of municipal services.

3.2.4 Deposits received must be reviewed annually and a register must be maintained for this purpose. The total sum of deposits received shall constitute a short-term liability in the books of the Municipality. No interest shall accrue in favour of the depositors thereof. Upon termination of the debtor's agreement with the Municipality, the deposit will first be offset against any outstanding balance (if any) owed to the Municipality, and the remainder thereof will be refunded to the customer.

3.3 Rendering of Accounts

3.3.1 Although the Municipality undertakes to render a monthly account for the amount due by a debtor, failure thereof shall not relieve a debtor of the obligation to pay the amount.

3.3.2. Accounts to ratepayers and users of municipal services must contain at least the following particulars:

3.3.2.1 The name of the Municipality

3.3.2.2 The name of the ratepayer / user of the service'

3.3.2.3 The service levies or rates in question"

3.3.2.4 The period allowed for the payment of services and rates;

3.3.2.5 The property and address in respect of which the payment is required;

3.3.2.6 The date before which payment must be made;

3.3.2.7 Any discount for early or prompt payment (if applicable);

3.3.2.8 Interest on late payment;

- 3.3.2.9 Consequences of non-payment;
- 3.3.2.10 Amount brought forward;
- 3.3.2.11 Consumption for the current month reflecting units consumed and cost per service
- 3.3.2.12 Total amount payable.

3.4 Actions to Secure Payment

3.4.1 The Municipality and service providers may, in addition to the normal civil legal procedures to secure payment of accounts that are in arrears, take the following actions to secure payment for municipal rates and services:

3.4.1.1 Termination and restriction of the provision of services; and

3.4.1.2 Allocating a portion of payments or pre-payment purchases to service charges' arrears or future charges.

3.5 Dishonoured Payments

Where any payments made to the Municipality is later dishonoured by the bank, the Municipality may levy such costs and administration fees against an account of the defaulting debtor in terms of the Municipality's tariff provisions. The Chief Financial Officer may, in his discretion, require a regular defaulter to pay by cash only.

3.6 Interest Charges

Interest will be charged on overdue accounts in accordance with the Council's Credit Control and Debt Collection Policy as well as the relevant legislation.

3.7 Legal Fees

All legal costs, including attorney-and-own-client costs incurred in the recovery of amounts in arrears shall be levied against the arrears account of the debtor.

3.8 Cost to Remind Debtors of Arrears

For any action taken in demanding payment from the debtor or reminding the debtor, by means of telephone, fax, e-mail, letter or otherwise, that his/her payments are due, a penalty fee may be levied against the account of the debtor in terms of the municipality's tariff provisions.

3.9 Disconnection Fees

Where any service is disconnected as a result of non-compliance with this by-law by the customer, the Municipality shall be entitled to levy and recover the

standard disconnection fee, as determined by the Municipality from time to time, from the user of the services.

3.10 Accounts Administration

- 3.10.1 In terms of s.64(2)(e) MFMA, the Municipality must maintain a management, accounting and informal system which recognizes revenue when earned, accounts for debtors and accounts for the receipt of all revenue collected.
- 3.10.2 Consolidate any separate accounts of persons liable for payments to the Municipality;
- 3.10.3 Credit any payment by such a person against any account of that person; and
- 3.10.4 Implement any of the debt collection and credit control measures provided for in this by-law in respect of any arrears on any of the accounts of such a customer.

3.11 Power to Restrict or Disconnect Supply of Services

- 3.11.1 The Municipality may restrict or disconnect the supply of water and electricity or discontinue any other service to any premises whenever a user of any service:
 - 3.11.1.1 Fails to make full payment on the due date or fails to make acceptable arrangements for the repayment of any arrear amount for services, rates or taxes;
 - 3.11.1.2 Fails to comply with a condition of supply imposed by the municipality;
 - 3.11.1.3 Obstructs the efficient supply of electricity, water or any other municipal services to another customer;
 - 3.11.1.4 Supplies such municipal service to a person who is not entitled thereto or permits such service to continue;
 - 3.11.1.5 Causes a situation which in the opinion of the municipality is dangerous or a contravention of relevant legislation;
 - 3.11.1.6 Is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act, Act No. 24 of 1936; and
 - 3.11.1.7 If an administration order is granted in terms of section 74 of the Magistrates Court Act, Act No. 32 of 1944 in respect of such user.

- 3.11.2 The Municipality shall reconnect and or restore full levels of supply of any of the restricted or discontinued services only after the full amount outstanding and due, including the costs of such disconnection and reconnection, if any, have been paid in full or any other condition or conditions of this Policy as it may deem fit have been complied with.
- 3.11.3 The right to restrict, disconnect or terminate service due to non-payment shall be in respect of any service rendered by the Municipality and shall prevail notwithstanding the fact that payment has been made in respect of any specific service and shall prevail notwithstanding the fact that the person who entered into agreement for supply of services with the municipality and the owner are different entities or persons, as the case may be.

3.12 Full and Final Settlement of an Amount

- 3.12.1 The Chief Financial Officer shall be at liberty to appropriate monies received in respect of any of the municipal services as he/she deems fit.
- 3.12.2 Where the exact amount due and payable to the Municipality has not been paid in full, any lesser amount tendered to and accepted by a municipal employee, except where the Chief Financial Officer and/or his/her fully authorized delegate consents thereto, shall not be deemed to be in final settlement of such an amount.
- 3.12.3 The provisions above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.
- 3.12.4 The Chief Financial Officer and/or his/her delegate shall consent to the acceptance of such a lesser amount in full and final settlement, in writing.

3.13 Arrangement to Pay Outstanding and Due Amounts in Consecutive Installments

- 3.13.1 A debtor may enter into a written agreement with the Municipality to repay any outstanding and due amounts to the Municipality under the following conditions:
- 3.13.1.1 The outstanding balance, costs and any interest thereon shall be consolidated and an amount paid in regular and consecutive monthly installments, not exceeding a period of 24 months;
- 3.13.1.2 The subsequent current monthly amounts must be paid in full; and
- 3.13.1.3 The written agreement has to be signed on behalf of the Municipality by the Chief Financial Officer or his/her duly authorized delegate.
- 3.13.2 In order to determine monthly installments, a comprehensive statement of assets and liabilities of the debtor must be compiled by a treasury official. To ensure

the continuous payment of such arrangement the amount determined must be affordable to the consumer, taking into account that subsequent payment of the monthly current accounts is a prerequisite for concluding an arrangement. The main aim of an agreement will be to promote full payment of the current account and to address the arrears on a consistent basis.

3.13.3 Should any dispute arise as to the amount owing by a consumer in respect of municipal services the consumer shall, notwithstanding such dispute, proceed to make regular minimum payments based on the calculation of the average municipal debits for the preceding three months prior to the arising of the dispute and taking into account interest as well as the annual amendments of tariffs of the Municipality.

3.14 Interest on Arrears

The Chief Financial Officer may, as part of an incentive scheme, authorise that as soon as an agreement to repay arrears has been concluded the amount in arrears will be placed into a suspense account and no further interest will be levied. As long as the agreement is honored no further interest will be added. In case of default the suspended amount will be reversed and interest will again be levied from date of default.

3.15 Reconnection of Services

The Chief Financial Officer or his/her duly authorized delegate shall authorise the reconnection of services or reinstatement of service delivery after satisfactory payment and/or arrangement for payment has been made according to the Policy.

3.16 Prima Facie Evidence

A certificate reflecting the amount in arrears and payable to the Municipality shall upon mere production thereof be accepted by any Court of Law as prima facie evidence of the indebtedness.

4. PERSONNEL AND FINANCIAL IMPLICATIONS

4.1 Where a credit control and debt collection function does not exist, this implies that a dedicated structure be established with a credit control officer in charge. In view of the fact that credit control and debt collection must always be able to operate in isolation to any customer management service, it is imperative that a staff establishment for this function be implemented.

- 4.2 The establishment of a credit control and debt collection division will have to be financed from the operating budget, which will have an incremental impact on the budget. However, this will be offset by improved cash inflow as a result of an efficient collection system.

5. FRAUD, TAMPERING AND OTHER CRIMINAL ACTIVITY

- 5.1 The Municipality may not interfere where criminal activity is evident. The legal penalties and criminal justice system may not be subject to conflicting resolutions by the municipality. All such cases must be prosecuted to the fullest extent of the law.
- 5.2 The Municipality may not supply water or electricity to a customer who is found guilty of/or if it is admitted that fraud, theft or any other criminal action involving the use of these services existed, until the total costs, penalties, other fees and tariffs and rates due to the municipality have been paid in full.
- 5.3 All charges to rectify any tampering with municipal services, service charges, call fees and other related tampering charges must be paid in full before arrangements can be made for other debts on the account.

6. AGENTS, ATTORNEYS AND OTHER COLLECTION AGENTS

- 6.1 All external agents acting on behalf of the Municipality are to be named, together with their details and contact information. Likewise, all agents are to be supplied with a copy of the credit control and debt collection Policy, the by-law and other relevant measures.
- 6.2 Clear instructions to agents and other arrangements must be explained for the customers' benefit. Under no circumstances may agents negotiate terms, extend payment periods or accept cash on behalf of municipality, unless specifically instructed in writing to do so. The agent must produce this instruction on request by consumers.
- 6.2 The costs to the Municipality and to the debtor must be detailed for each stage of the credit control and debt collection measures and for all possible actions. The liability for the costs of legal action and other credit control actions must be for the account of the debtor.

7. CREDIT CONTROL POLICY TO BE APPLIED FOR INDIGENT HOUSEHOLDS (See Councils' Indigent Support Policy)

7.1 Purpose of Policy

7.1.1 The key purpose of an indigent support policy is to ensure that indigent households are not denied a reasonable service, and on the other hand, the municipality is not financially burdened with non-payment of services: Provided that sufficient budgetary provision exists, the indigent support policy should remain intact.

7.1.2 To achieve this purpose it is important to set a fair threshold level, and then to provide a fair subsidy of tariffs. The consumer, in order to qualify for indigency, needs to complete the prescribed documentation as required.

7.2 Aims of the Policy

7.2.1 The credit control and debt collection policy aims to achieve the following:

7.2.1.1 To distinguish between persons who can and those who genuinely cannot pay for services;

7.2.1.2 To let persons who cannot pay register with the municipality so that the services rendered to them can be subsidized;

7.2.1.3 To enable the municipality to determine and identify defaulters in order to ensure appropriate credit control procedures;

7.2.1.4 To establish an indigent directory of all persons who qualify therefore

7.3 Obligation to Pay

The subsidy received may not be enough to cover the full account of the subsidized consumer. In such an event, the consumer is still responsible for the balance between the full account and the subsidy received. Where applicable, credit control must still be applied for these outstanding amounts.

8. CREDIT CONTROL AND DEBT COLLECTION RULES FOR SERVICE CHARGES

8.1 Where consumers fail to pay their service accounts by the 7th of the month, following the date of the account, the following actions will be taken:

8.1.1 Final notices/accounts may be delivered or posted after the final date of payment. The final notice/account will contain a note that the client may arrange to pay the outstanding balance in terms of the Credit Control and Debt Collection Policy. Information that this account constitutes a final notice and failure to settle the account on the due date will lead to disconnection of services at any date

thereafter, without further notice, must however form an integral part of such account.

- 8.1.2 An Acknowledgement of Debt must be completed in respect of all arrangements for paying off arrear accounts. A copy must be handed to the consumer.
- 8.1.3 Debit orders may be completed for the monthly payment of an agreed amount or at least the current amount, as far as possible. If the arrangement is dishonoured, the full balances will immediately become due and payable.
- 8.1.4 Only account holders with positive proof of identity or an authorized agent with a Power of Attorney will be allowed to complete an Acknowledgement of Debt.
- 8.1.5 Where cheques are returned, "Refer to Drawer" after an arrangement has been made, the full balance will immediately become payable. Services supply to such clients will immediately be disconnected until the full amount is paid in cash or per bank guaranteed cheque. The Chief Financial Officer, in his discretion, may require a defaulter to pay in cash.
- 8.1.6 No person will be allowed to enter into a second agreement if the first agreement was dishonoured, except in special cases of merit as authorized by the Chief Financial Officer.
- 8.1.7 Where arrangements were not made and service supply is disconnected due to non-payment, it will be restored only upon payment of the full outstanding balance or signing of an Acknowledgement of Debt on merit.
- 8.1.8 Merit cases, where special circumstances prevail, must be treated individually and could amongst others include the following categories:
 - (a) Deceased estates
 - (b) Liquidated companies
 - (c) Private persons under administration
 - (d) Outstanding enquiries on accounts, for example, misallocated payments, water leaks, journals, incorrect levies, etc.
 - (e) Certain categories of Pensioners
 - (f) Any other cases not mentioned which can be regarded as merit cases due to circumstances.
- 8.1.9 Further extension for payment of arrears in respect of merit cases should preferably not exceed 60 months (5 years) or any other period in the discretion of the Chief Financial Officer.
- 8.1.10 Only the Chief Financial Officer may agree to such merit extensions and these must be supported by documentary proof: Defaulters previous payment record will be taken into consideration.

- 8.1.11 When disconnection of service supply takes place due to non-payment, the consumer's deposit will be adjusted within the discretion of the Chief Financial Officer or his delegate.
- 8.1.12 New consumer deposits for business and industrial customers must be re-assessed three months after the initial deposit date.
- 8.1.13 All other business and industrial deposits will be reviewed annually.
- 8.1.14 Where the consumer has not entered into a service agreement with the Municipality, services will be disconnected until such time as a service agreement has been signed and the applicable deposits paid.
- 8.1.15 Where service supply has been disconnected erroneously a written apology will be dispatched within seven working days.
- 8.1.16 Where services are illegally restored legal action will be taken.
- 8.1.17 Where service amounts remain outstanding or unpaid for more than two months, without response, the account will be handed over to debt collectors for the collection and/or for legal action to the Council's Attorneys and may be listed at the Information Trust Corporation.
- 8.1.18 Such clients will have to make further arrangements with the attorneys and/or the debt collectors for payment of the arrear amounts. Current monthly accounts must however be paid directly to the Municipality.
- 8.1.19 Once an account has been handed over for collection, the case will not be withdrawn unless there was a mistake or oversight on the part of the Municipality.
- 8.1.20 Services shall not be supplied if the consumer's account is not paid in full or satisfactory arrangements in terms of this Policy have been made and honored.
- 8.1.21 After installation of a prepaid meter, water and/or electricity shall not be sold to consumers, unless the full amount on the consumers account has been paid or an agreement for the settlement of arrears has been concluded, a service agreement entered into, connection fees and the applicable deposits paid, in term of this Policy.

9. CREDIT CONTROL AND DEBT COLLECTION RULES FOR ASSESSMENT RATES AND UNMETERED PROPERTIES

- 9.1 Where consumers fail to pay their accounts in respect of assessment rates and unmetered properties by the due date of every month, the following actions will be taken:
- 9.1.1 Final notices/accounts will be posted or delivered where accounts are in arrears for 60 days (2 months) or more. The final notice/account will contain a note that the client may arrange to pay the outstanding balance in terms of this by-law. Information that this account constitutes a final notice and failure to settle the account on the due date will lead to disconnection of services where applicable and any date thereafter, without further notice, must however form an integral part of the account. In the case of assessment rates the defaulter must be advised that the Council intends instituting legal process which could lead to his/her property being sold in execution.
- 9.1.2 The same procedure in respect of arrangements for paying off of arrears or extension of payments as for services will apply.
- 9.1.3 If no response has been received within 14 days after the final account had been sent, those accounts still outstanding will be handed over to debt collectors for collection and/or for legal action to the Attorneys and will be listed at the Information Trust Corporation.
- 9.1.4 Where an account remains unpaid on a property that is unmetered, the above procedures will also apply.
- 9.1.5 As part of the legal actions involved to collect outstanding taxes, Council's Attorneys may obtain an attachment order on the applicable property on behalf of the Municipality only after having received written instruction in this regard from the Chief Financial Officer.

10. OFFENCES

A person who -

- (a) fails to give the access required by an official or representative of the Municipality in terms of this by-law;
- (b) obstructs or hinders an official or representative of the Municipality in the exercise of his or her powers or performance of functions or duties under this by-law;
- (c) illegally uses or interferes with municipal services equipment or illegally consumes municipal services;
- (d) tampers or breaks any seal on a meter or on any equipment belonging to the

Municipality, or for any reason causes a meter not to properly register the service consumption, shall be charged for usage, estimated by the Chief Financial Officer based on average usage;

(d) fails or refuses to give an official or representative of the Municipality such information as he or she may reasonably require for the purpose of exercising his or her powers or functions under this by-law or gives such an official or representative false or misleading information knowing it to be false or misleading;

(e) contravenes or fails to comply with a provision of this by-law;

(f) fails to comply with the terms of a notice served upon him or her in terms of this by-law;

shall be guilty of an offence and liable upon conviction to a period not exceeding six months of community service or a fine not exceeding R10 000 (Ten Thousand Rand), or a combination of the aforementioned.

11. CONFLICTING BY-LAWS

If there is any conflict between this by-law and any other by-laws of the Municipality, this by-law will prevail.