

LOCAL AUTHORITY NOTICE 68



CREDIT CONTROL AND DEBT COLLECTION

BY-LAW

FOR

MAKANA MUNICIPALITY

NB: Adopted by Council: 10 June 2008

PREAMBLE

In an attempt to ensure that the communities residing within the Makana Municipal area of jurisdiction pay for services rendered by the municipality, the Makana Municipality hereby approves the Credit Control and Debt Collection *By-Law*, in order to ensure that all communities who are not considered to be indigent cases pay for basic services that are provided by the municipality, as required by the Municipal Systems Act No. 32 of 2000 and other government regulations, and also to ensure that the levels of non-payment for municipal services are minimized. Payment for services rendered by the municipality will enable the municipality to provide services as planned in its annual Budget and the annual Integrated Development Plan (IDP).

DEFINITION OF KEY WORDS

In this policy the following words shall have the meanings assigned as follows: -

1. **“Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003),
2. **“Accounting Officer”** refers to the Municipal Manager of the municipality,
3. **“By-law”** refers to the legislation passed by the council of a municipality binding in the municipality on the persons to whom it applies,
4. **“Chief Financial Officer”** refers to the head of the Budget and Treasury Business Unit,
5. **“Dishonoured Cheque”** a cheque rejected by the bank due to various reasons, such as insufficient funds in the account, incorrect cheque signatory, amount incorrect, etc.
6. **“Finance Department”** refers to the municipal department dealing with the financial affairs of the municipality,
7. **“Finance and Service Delivery Committee”** refers to the committee of council dealing with the financial affairs of the municipality,
8. **“Indigent Households”** These are households or ratepayers that fall within the qualifying criteria of being declared a poor household and qualify for financial assistance through the Assistance to the Poor / Indigent Policy.

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1. LEGAL COMPLIANCE

In terms of the Constitution of the Republic of South Africa, everybody has the right of access to certain municipal services. A local authority can therefore not refuse a person his or her constitutional right on the basis that he/she constitutes an unacceptably high credit risk. It is in any event, not in the spirit of the developmental local government in South Africa to exclude people from basic services, especially those residents in the long neglected communities.

However, it is in nobody's interest that these basic rights be abused (for example, by not paying or by abusing usage). A national disaster could follow in the wake of a general collapse in local government. The right of access to basic services should be protected but, on the other hand, local government should be given protection against abuse and "misconduct". The Constitution states in section 152 (1) (b) that local government must strive within its financial and administrative capacity, to ensure the provision of services to communities in a sustainable manner.

Services should be rendered within the following eight principles, as outlined in the White Paper on Transforming Public Services (**Batho Pele Principles**):

- o Consultation with community;
- o Agreement on service standards;
- o Equal access to services;
- o Courtesy in rendering of services;
- o Provision of information to all;
- o Openness and transparency regarding cost of services;
- o Communities' right to redress; and
- o Value for money.

The above could only be realised if local government obtains sufficient revenue to fund its activities and tasks in order to provide services.

Presently, local revenue comes from two sources, namely:

- o Own generation through taxes, levies and tariffs.
- o An equitable share of revenue raised nationally in terms of section 214 and 227 (1)(a) and (b) of the Constitution.

Section 227 (2), of the Constitution also states that additional revenue raised by the municipalities may not be deducted from their equitable share of revenue raised nationally or from any other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.

The National Credit Control Guidelines issued by the Department of Constitutional Development on 13 March 1998, expresses the following concerns:

- o Tariffs in many cases are not cost reflective, and therefore the true potential debtors is substantially reduced;
- o Extending service delivery to the low income communities in the form of basic services, without an accompanying improvement in economic circumstances,

will increase the negative result;

- o In many cases, amalgamation has placed immense pressure on municipal administrative structures. Adjustments to accommodate the changed circumstances may be lagging in favour of showing progress with service delivery;
- o Lenient approaches to debtors, in terms of extended payment periods, is contributing to the debtor's accumulation of debt and is not producing any improvement to the situation on the ground or to substantial cash inflows.

Chapter 9 of the Municipal Systems Act (MSA) No. 32 of 2000 deals with the subject of "Credit Control and Debt Collection" by municipalities in the Republic of South Africa, and states inter-alia the following: -

- (i) Section 95 of the MSA obliges the municipalities to establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality,
- (ii) Section 96 of the MSA provides that a municipality must collect all monies due and payable to it, and for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent to its rates and tariffs policy,
- (iii) Section 97 of the MSA provides that the credit control and debt collection policy of the municipality must provide for credit control and debt collection procedures and mechanisms as well as provision for indigent debtors that is consistent with its policies on indigent households and any national policies or government regulations on indigent households.

Section 97(1) of the MSA requires that the credit control and debt collection policy of the municipality to provide for the following: -

- (i) Credit control procedures and mechanisms,
- (ii) Debt collection procedures and mechanisms,
- (iii) Provision for indigent debtors that is consistent to its indigent policy, and any other government regulations relating to indigent households,
- (iv) Realistic targets consistent with (a) General Recognised Accounting Practices and collection ratios, and (b) the estimates of income as set in the budget less an acceptable provision for bad debts.
- (v) Interest on arrears, where appropriate,
- (vi) Extension of time for payment of accounts,
- (vii) Termination of services or the restriction of the provision of services when payments are in arrears,
- (viii) Matters relating to unauthorised consumption of services, theft and damages, and
- (ix) Any other matters that may be prescribed by regulation in terms of Section 104.

Section 97(2) of the MSA further states that the municipality's credit control and debt collection policy may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.

Section 99 of the MSA places the legal responsibility on the executive mayor or executive committee, of monitoring and supervising the application of the credit control and debt collection policy, and of reporting to council on the extent and success of credit control actions. Section 99 of the MSA assigns the legal responsibility for implementing the credit control and debt collection policy and by-laws to the municipal manager.

2. SCOPE OF THE BY-LAW

This *By-Law* applies to the Makana Municipality's area of jurisdiction, and is only applicable to the ratepayers of Makana Municipal area, who are excluded from the Assistance to the Poor / Indigent Policy of the municipality, as determined or revised from time to time by Council.

3. OBJECTIVES OF THE BY-LAW

The objectives of the Credit Control and Debt Collection By-Law of the Makana Municipality are as follows: -

- (i) Ensuring that households pay for the basic services that they are afforded by the municipality,
- (ii) Ensuring that the municipality is able to provide services as approved in its annual budget or its annual Integrated Development Program (IDP), and
- (iii) Ensuring that the non-payment of services is minimised.

4. DEFINITION OF CREDIT CONTROL

Credit control is the process utilised by a municipality to ensure collection of revenue from rates, fees levied and for services rendered and entails in the main, metering/measurement, billing/invoicing and debt collection.

5. CREDIT CONTROL PRINCIPLES

The following principles are to be considered:

- o Enforcement is a local matter subject only to relevant legislation;
- o The municipal manager who is entrusted with the determination and execution of credit control measures must report to the municipal council;
- o Enforcement and policy-making must be independent to ensure accountability;
- o Credit control must be understandable, uniform, fair and consistently applied;
- o Credit control must be effective, efficient and economical;
- o The credit control measures employed must be sustainable in the long term; and

A proper indigence policy must be in place to ensure that the circumstances of the poor are accommodated.

6. ELEMENTS OF CREDIT CONTROL

6.1 Metering/Measurement

Service metering or measurement is the determination of the amount of service rendered to each customer in each category. This may vary from flat rates, such as refuse removal, to metered consumption of water and electricity, to deemed consumption such as sewerage disposal.

6.2 Billing / Invoicing

Billing refers to the process of preparing and presenting a claim or invoice to each consumer, which is based on the quantity of service, which is consumed by, and delivered to the consumer in a specified time.

6.3 Arrear Collection

Arrear collection, commonly known as credit control in local government, refers to the process of recovery of outstanding amounts from customers by taking the necessary steps and actions which include among others, interruption of services, litigation and attachment of assets.

7. CONTRACT OF AGREEMENT FOR THE SUPPLY OF SERVICES

Before being supplied with a service, a consumer must enter into a contract of agreement. The contract must stipulate and be accompanied by a deposit as determined by Council from time to time (**on a financial year basis**).

Consumers shall not be entitled to interest on deposits lodged with the municipality. Upon termination of the consumer agreement with the municipality, the deposit shall first be offset against any outstanding balances and the remaining balance of the deposit (if any), refunded to the consumer.

8. RENDERING OF ACCOUNTS

The municipality shall render a regular account for the amount owing by a debtor for rates, fees and service charges but failure by the municipality to render such accounts shall not absolve the debtor of his obligation to pay for rates, fees and/or services received.

Accounts must show the following:

- o If measured, details of consumption for the period being charged and the amount due;
- o If flat rate, the amount due in terms of services rendered;
- o The amount due for other services rendered;
- o Other amounts due;
- o The amount due for property tax;

- o The final date for payment of amount due, which shall not be more than 14 days from date of invoice.

9. CREDIT CONTROL PROCEDURE

If payment for the amount due is not received by the municipality by the due date, then the following procedure shall be instituted:

9.1 Hand delivering of a final notice to the debtor demanding payment within fourteen (14) calendar days of the date of the notice;

9.2. The final notice shall contain the following information:

- o Final date for payment to be made;
- o Notice of termination of services should payment not be made;
- o Total amount due for payment;
- o Reconnection fee applicable in case of disconnection of service;
- o In the event of disconnection, the review of amount of deposit at the discretion of the Chief Financial Officer

9.3 If no payment is received after the expiry of the fourteen (14) day period of grace, arrangements shall be made to have the service discontinued by means of a "cut-off" letter posted at the debtor's property;

9.4 Should payment still not be received after "cut-off", relevant municipal official shall visit the premises to ensure that unauthorised consumption is not taking place;

9.5 At this stage, the procedure for collection of arrears shall be instituted against the debtor.

10. PROCEDURES FOR COLLECTION OF ARREARS

Arrangement for payment of arrears should be made as follows but only after an Acknowledgement of Debt (the Agreement), has been signed by the debtor who should provide positive proof of identity or an authorised agent with a Power of Attorney.

The agreement must be completed entailing details of all arrangements for paying off arrear account (**as detailed hereunder**). A copy of the agreement must be handed to the client and a copy filed in the debtor's file by the Chief Financial Officer.

For consumers earning between R1 741 - R2 500,00 per month or less, the following is to apply:-

(Consumers refer to the entire household)

- 10.1 Consumers in arrears for 1, 2 or 3 months must pay a minimum amount equal to 25% of their arrears with the remaining 75% to be settled in six equal instalments commencing from the month following the month in which the initial 25% payment was made. The reconnection fee is also to be paid over and above the 25% payment in order for the service to be reinstated.

- 10.2 Consumers in arrears for longer than three months up to six months must pay a minimum payment equal to 20% of their arrears with the remaining 80% to be settled in eight equal monthly instalments commencing from the month following the month in which the initial 20% payment was made. The reconnection fee is also to be paid over and above the 20% payment in order for the service to be reinstated.
- 10.3 Consumers in arrears for a period exceeding six (6) months must pay a minimum payment of 10% of their arrears with the remaining 90% of their arrears to be settled in 12 monthly instalments commencing from the month following the month in which the initial payment was made. The reconnection fee is also to be paid over and above the 10% payment in order for the service to be reinstated.

For consumers earning more than R2 500,00 per month, the following is to apply:

- 10.4 Consumers in arrears for 1, 2 or 3 months must pay a minimum amount equal to 50% of their arrears with the remaining 50% to be settled in three equal monthly instalments commencing from the month following the month in which the initial 50% payment was made. The reconnection fee is also to be paid over and above the 50% payment in order for the service to be reinstated.
- 10.5 Consumers in arrears for longer than three months up to four months must pay a minimum payment equal to 40% of their arrears with the remaining 60% to be settled in four equal monthly instalments commencing from the month following the month in which the initial 40% payment was made. The reconnection fee is also to be paid over and above the 40% payment in order for the service to be reinstated.
- 10.6 Consumers in arrears for longer than four months up to six months must pay a minimum payment equal to 30% of their arrears with the remaining 70% of their arrears to be settled in five equal monthly instalments commencing from the month following the month in which the initial 30% payment was made. The reconnection fee is also to be paid over and above the 30% payment in order for the service to be reinstated.
- 10.7 Consumers in arrears for a period exceeding six months must pay a minimum payment of 25% of their arrears with the remaining 75% of their arrears to be settled in six (6) equal monthly instalments commencing from the month following the month in which the initial payment was made. The reconnection fee is also to be paid over and above the 25% payment in order for the service to be reinstated.
- 10.8 If a consumer fails to comply with any arrangement, the services will once again be discontinued/restricted and the total arrears due will have to be paid prior to having the services restored. A consumer who fails to comply with any arrangement is automatically excluded from the right to be considered for a further arrangement for a period of twelve months.

- 10.9 All arrangements will automatically include the condition that any future monthly accounts plus interest levied are paid by the standard due date.
- 10.10 All arrangements are to be entered into and signed by the consumer on a prescribed form designed by the Finance Directorate. No telephonic or verbal arrangements will be entertained.
- 10.11 A consumer whose cheque is returned marked "refer to drawer" for a second time will be informed that in future only cash payments will be accepted. A list of such consumers will be handed to the cashiers.
- 10.12 The first payment (initial payment) to be made after the signing of the agreement shall be made within 30 days. Agreement will lapse if initial payment is not received within 30 days.

The Chief Financial Officer is allowed to apply his / her mind in cases of debtors who cannot afford making these arrangements, due to their financial reasons.

11. RIGHT OF ACCESS

Municipal officials have the legal right of access to any property occupied by a consumer for the purposes of reading or inspecting meters or connections or to disconnect, discontinue or restrict supply of service and for the evaluation of the property.

12. RIGHT OF APPEAL

An appeal must be submitted in writing to the Municipal Manager prior to the final due date for payment of the contested amount, and must contain details of the specific items on the account which are the subject of appeal, with full reasons. The debtor's obligation to pay that portion of the total amount due represented by the items appealed against, is suspended until the appeal has been finalised. The debtor must, however, immediately pay the balance of the account together with an amount representing the average cost of the item appealed against over the preceding three months, or an amount determined by the Municipal Manager.

Whilst the appeal of the debtor is being dealt with, any further amounts accruing for services rendered to the debtor, shall be payable on due date. If the appeal is in respect of a metered consumption amount, the meter must be tested within 14 days of lodgement of appeal, or as soon as possible thereafter, in order to establish the accuracy. The debtor must be informed in writing of the results of the test of the meter, and of any adjustment to the amount due by him as a result of the meter having been found NOT to be faulty together with the cost of testing the meter. If the meter is found to be faulty, the municipality shall make the necessary adjustments to the debtors account based on the average usage for the past three months prior to the malfunctioning of the meter and shall bear the cost incurred in having the meter tested. If no error is found with the meter, the debtor will be liable for the cost of testing the meter.

13. STEPS TO BE TAKEN BEFORE EFFECTING DISCONNECTIONS

The municipality should as far as is practically possible, ensure that the following steps

are in place before effecting disconnections:

- o Reputable and efficient billing distribution systems to ensure that all consumers receive their monthly accounts is available;
- o Sufficient pay points exist;
- o Councillors should consult widely with their constituencies in order to encourage them to pay for services provided;
- o Consumers who fail to honour their debts should be given reasonable written warnings and notices for them to pay their accounts;
- o Restriction of services and/or termination should be done within the ambit of the relevant legislation.

14. COMMENCEMENTS AND OR RESUMPTION OF SERVICES

The underlying principle in the provision of services by the municipality is that the service is provided to a property. Any change in tenancy, shall not compromise the municipality's right to demand payment for outstanding amounts due for services rendered before a new connection or a reconnection is made in terms of the following clauses.

14.1 New Service Connections

Connections and supply of a new service shall only be effected after all charges in respect of deposits and connection fees, and any arrears that may have accrued for services rendered to the property by the municipality, have been paid.

14.2 Resumption of discontinued services

If the debtor has:

- o Paid the full amount outstanding, or
- o Made a suitable arrangement with the Chief Financial Officer for the payment of the amount in arrears, then the service will be resumed, subject to clause 7.2 of this policy.

15. UNAUTHORISED CONSUMPTION, THEFT, OR WILFULL DAMAGE TO MUNICIPAL PROPERTY

The following shall constitute UNAUTHORISED consumption, theft or damage:

- o Any connection to, or consumption from, an electricity line that has not been provided to the consumer by the Council;
- o Any consumption of water from, or connected to, a municipal pipeline that has not been provided to the consumer by the Council;
- o Any damage to, or adjustment of any metering instrument which may result in inaccurate data being obtained by the Council or which may lead to a reduced charge being payable by the consumer;
- o Any removal of any metering instrumentation by any person other than a municipal officer or authorised agent;
- o Any tampering with or wilful or malicious damage to any component or any reticulation or metering system as installed by Council.

Where any such illegal activity is detected, the municipal supply shall be immediately suspended. The debtor shall be held responsible for payment of all deemed or calculated consumption on the basis determined by Council as well as for penalties determined by Council from time to time. Such penalties shall be in addition to any

penalties imposed by a court of law arising from criminal prosecution for offences committed. For the purposes of this policy, the penalties as stipulated by the Council, from financial year to financial year, shall apply. The municipality shall have the right to review these penalties at its discretion.

16. DISCONTINUATION OF SERVICES

- o Debtors who have ceased to make use of municipal services and still have an outstanding amount owing to the municipality, are classified as inactive debtors;
- o Immediate steps shall be taken to recover outstanding amounts to ensure that debt does not become irrecoverable;
- o Upon discontinuation of service, the deposit held shall be appropriated to off-set outstanding amounts owing and if insufficient to cover debt, a letter of demand shall be written to the debtor demanding payment within 14 days for the balance owing;
- o If no payment is received within the 14-day period, legal action shall be instituted.

The municipality will exercise its rights, in terms of the Credit Control Policy, to disconnect supply (e.g. electricity) or restrict services (e.g. water), in cases of debtors who fail to respond to the reminders forwarded to them. This paragraph must be read in conjunction with the Credit Control and Debt Management Policy. Nothing stops the municipality in disconnecting / restricting services (i.e. water and electricity) when the account holder fails to pay for other services such as rates, refuse charges, sewerage charges, etc.

17. RESPONSIBILITY FOR CREDIT CONTROL

In terms of Chapter 6, section 29 (d) (1) of the Municipal Finance Management Act No: 56 of 2003, the Municipal Manager must take effective and appropriate steps to collect all moneys due to the municipality.

18. FINANCIAL IMPLICATIONS

Implementation of the credit control policy has to be funded from the operating budget of a municipality. If this has an incremental impact on the budget, it must be offset by the improved cash flow as a result of an efficient collection system.

19. PERSONNEL IMPLICATIONS

Where a credit control function does not exist in a municipality, the responsibility for the function rests with the Chief Financial Officer who must ensure that the function is properly delegated to a responsible official.

20. ARREAR ACCOUNTS FOR MUNICIPAL EMPLOYEES AND COUNCILLORS

The code of conduct in the Municipal Systems Act No. 32 of 2000, for municipal employees and councillors requires municipal employees and councillors not to have

arrear municipal accounts for a period in excess of 90 days. The Municipal Manager is permitted to deduct such arrears, without any warning from the affected party.

Also, Section 124(b) of the Municipal Finance Management Act No. 56 of 2003 requires the municipality to disclose in the financial statements councillors whose accounts were in arrears for a period in excess of 90 days, during the financial year under review.

21. INDIGENT CONSUMERS

Indigent consumers are defined as those people who, due to a number of factors or circumstances (**including their income levels**), are unable to make a full monetary contribution towards basic services.

The municipality must handle indigent consumers in terms of its Assistance to the Poor / Indigent Policy.

22. POLITICAL SUPPORT

It is clear that without good administrative processes, good communication and an earnest attempt to change the culture of non-payment and very importantly, total "buy in" from all politicians, no credit control policy will be effective.

23. CONTROL / WORKING DOCUMENTS

The following forms, letters or documents are listed as a guide:

- o Application/Agreement for Supply of Services Form;
- o Indigent Support Application Form;
- o Acknowledgement of Debt Form;
- o Application for Termination of Services Form;
- o Fee Structure Document (penalties, service deposits, connection fee, reconnection fee, etc.)
- o Credit Control Monthly Planner;
- o Final Notice Form;
- o Cut Off List Form;
- o Cut Off Letter;
- o Reconnection List Form
- o Register to record "Arrangements for Payment".

24. HOW WILL THIS BY-LAW BE SUCCESSFULLY COMMUNICATED?

The success of this By-Law will depend on various key stakeholders that exist within the Makana Municipal area of jurisdiction, including the following: -

- o Political Leadership (e.g. Executive Mayor, Councillors and Ward Committee Members),
- o Administrative Leadership (e.g. Municipal Manager and Directors of various Directorates or Business Units),
- o All Employees of Council have the responsibility of being the mouthpiece of the municipality or their employer, in as far as informing the members of the public about their benefits resulting from this policy,

Lastly, this *By-Law* must be communicated to the communities residing at Makana Municipal area of jurisdiction through community newspapers, notices in the notice boards, municipal websites, municipal accounts, booklets, and any other means of communication deemed to be effective.

25. REVIEWAL OF THE CREDIT CONTROL AND DEBT MANAGEMENT BY-LAW

This *By-Law* will be reviewed at least once a year, and such reviewal must firstly be submitted to the Finance and Service Delivery Committee by the Chief Financial Officer, as well as the Mayoral Committee, and be finally endorsed by the Municipal Council before it can be implemented. This *By-Law* supersedes any other one adopted by Council previously, including any other resolutions taken.