

DR JS MOROKA MUNICIPALITY

CREDIT CONTROL AND DEBT COLLECTION BY-LAW

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1. PREAMBLE

Whereas each municipal council must, under section 98(1) of the Local Government: Municipal System Act, Act No.32 of 2000, adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation;

Now therefore the following is adopted as the “By-law on Credit Control and Debt Collection”;

2. DEFINITIONS

In this by-law, unless the context indicates otherwise:

“Act”

Means the Local Government: Municipal System Act 32 of 2000;

“By - law”

Means legislation passed by the council of a municipality binding in the municipality on the person to whom it applies as referred to in the Municipal System Act No.32 of 2000.

“Basic Municipal Services”

Means a municipal services that is necessary to ensure an acceptable and reasonable availability of life and if not provide, would endanger public health or safety or the environment as per Municipal Systems Act No.32 of 2000.

“Council”

Means a municipal council as referred to in chapter 7 of the Constitution of the Republic of South Africa, Act No108 of 1996.

“Customer”

Means any person to whom a service is rendered by the council.

“Day”

Means a calendar and a period of days are calculated by excluding the first day of the period and including the last day, unless the last day falls on a Saturday, Sunday or public holiday in which event the period is calculated with exclusion of the day and also of the Saturday, Sunday or public holiday.

“Employer”

Means an employer as defined in paragraph 1 of the seventh schedule of the Income Tax Act, act no 58 of 1962.

“Financially Sustainable”

In relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring budgeted that the financing of that service from internal and external sources, including budgeted income, grants and subsidies for the service, is sufficient to cover the cost of

- a) The initial capital expenditure required for the service
- b) Operating the service and
- c) Maintaining, repairing and replacing the physical asset used in the provision of the service.

“Implementing authority”

Means the municipal manager of the council, their nominee or any other official appointed by the Council for the purpose of the implementation and enforcement of the council’s Credit Control and Debt Collection Policy and this By-law.

“Occupier”

Includes any person in actual occupation of premises without regard to the title under which they occupies, if any.

“Owner”

In relation to premises means:-

- a) The person who from time to time is registered as such in deeds registry as defined in the Deeds Registry Act No. 47 of 1937; or
 - b) Where the person’s insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration of their property is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative; or
 - c) In any case where the council is unable to determine the identity of such person who is entitled to the benefit of such premises or a building thereon, on
 - d) In the case of premises for which a lease of 30 years or more has been entered into, the lessee thereof, or
 - e) In relation to –
 - 1) Where a sectional title register has been opened under section 8 of the Sectional Title Act no 66 of 1971, the body corporate as defined in that act, and includes any person receiving rent for the premises whether for their own account or as agent for a person entitled to it.
 - 2) A piece of land delineated on a sectional plan registered in the Sectional Title Act no 95 of 1986, and without restricting the above the developer or the body corporate in respect of the common property, or
 - 3) 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 agent of such a person
 - f) 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
 - j) 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.
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- iv) Any embassy or other foreign entity.

“Person”

Means any natural person, local government body or similar authority, a company or close corporation incorporated under any law, a body of persons whether incorporated or not, a statutory body, public utility body, voluntary association or trust.

“Premises”

Means any piece of land, which is situated in the area of jurisdiction of the council, the external surface boundaries of which are delineated on:

- a) A general plan or diagram registered under the Land Survey Act No. 9 of 1927, or under the Deeds Registries Act no 47 of 1937: or
- b) A sectional plan registered under the sectional Titles Act no 95 of 1986.

“Ratepayer”

In relation to a municipality, as referred to in the Municipal System Act No.32 of 2000, liable to the municipality for the payment of:-

- a) Rates on property in the municipality
- b) Any other service tax, duty or levy imposed by the municipality or
- c) Fees for services provided either by the municipality or in terms of a service delivery agreement.

“Service”

Means any service rendered by the council, in respect of which an account may be rendered, excluding any service rendered by the council as an agent for another principal; and “service” have a corresponding meaning.

“Service Provider”

Means a person or institution or any combination of persons and institutions which provide a municipal service.

“Service delivery agreement”

Means an agreement between a municipal and an institution as stated in the Municipal System Act No. 32 of 2000 or person mentioned in section 76(b) in terms of which a municipal service is provided by that institution or persons, either for its own account or on behalf of the municipality.

“Supervisory authority”

Means a municipality’s executive committee.

3. INSTITUTIONAL RESPONSIBILITIES

The municipal council has certain responsibilities so as to ensure that this by-law is in agreement with other applicable legislative directives and it is practically possible for the council administration to implement, in an effective and cost efficient manner.

3.1 Responsibility of council

The council is the ultimate authority at local government level. It has the executive and legislative authority. After consultation with communities it has the power to take decision pertaining to local government issues which will have a direct impact of all residents within its municipal boundaries.

- 3.1.1 It is the responsibility of every councilor and official within a municipal council to uphold this by-law.
- 3.1.2 It is the responsibility of council to ensure that all money that is due and payable to the council is collected, subject to the provisions of the act and any other applicable legislation, including this by-law.
- 3.1.3 The council has adopted a Credit Control and Debt Collection Policy which is consistent with its rates and Tariff policies and complies with the provisions of the act and provides for the following matters:
 - a) Credit Control procedures and mechanisms.
 - b) Debt Collection procedures and mechanisms.
 - c) Indigent Debtors in a manner that is consistent with its rates and tariff policies and any national policy on indigents.

 - d) Realistic targets consistent with -
 - i) Generally recognized accounting practices and collection ratios; and
 - ii) The estimates of income set in the budget less an acceptable provision for bad debts.
 - e) Interest on arrears
 - f) Extensions of time for payment of accounts
 - g) Termination of services or the restriction of the provision of services when payments are in arrears.
 - h) Matters relating to unauthorized consumption of services when payments are in arrears
 - i) Any other matters that may be prescribed by regulation under section 104 of the act.

3.2 Responsibilities of the Executive Committee

The Supervisory authority is the executive committee of council constituted by council with the aim of ensuring that there is co-ordination and proper implementation and operation of council activities on a regular basis.

3.2.1 The supervisory authority must

- 3.2.2 The supervisory authority in the municipal council is responsible for the implementation and enforcement of the council's Credit Control and Debt Collection Policy and this By-law.
- 3.2.3 The supervisory authority is also responsible for evaluating or reviewing the policy and any applicable by-laws, when the need arises, so as to improve the efficiency of its Credit Control and Debt Collection mechanisms, processes and procedures; and
- 3.2.4 Report to the meeting of the Council at intervals as may be determined by the council.

3.3 Responsibilities of the Municipal Manager

The municipal manager is charged with the responsibility of ensuring that municipal services which are delivered to the communities are delivered in a cost-effective, sustainable manner and that there are

cost recovery measures in place to ensure that services can be delivered continuously.

3.3.1 The implementing authority must -

- a) It is the responsibility of the municipal manager as head of administration to ensure that according to the Credit Control and the Debt Collection Policy and By-laws, effective administrative mechanisms, processes and procedures are established to collect money that is due and payable to the council; and
- b) Report the prescribed particulars to a meeting of council executive committee at intervals as may be determined by the council. Particulars which may be contained in the report include the following:-
 - Debtors outstanding,
 - Turnover rates
 - Actions instituted against defaulting debtors.

3.4 Conduct of Councilors and officials

- 3.4.1 Every councilor and official must uphold and enforce the provision of this by-law and must refrain from any conduct which may undermine or be seen to undermine it.
- 3.4.2 The council must investigate any allegations of the conduct by a councilor or an official. Disciplinary action will be taken against officials. Councilors, whose conduct may be construed as a breach of the Code of Conduct for Councilors in Schedule 1 of the Act, are dealt with under its terms.

4. CREDIT CONTROL AND DEBT ADMINISTRATION

4.1 Service agreement and deposit

- 4.1.1 The council must enter into a service agreement with every new customer, failing which no service is rendered by the council.
- 4.1.2 Existing customers are regarded having such an agreement in place.
- 4.1.3 All service agreements are in the council's prescribed form.
- 4.1.4 The council may in any service agreement, determine and require a deposit from the customer, equivalent to the charge for two months' estimated supply of the service to the particular customer, or as determined by the council from time to time (thus these deposits can be increased from time to time)
- 4.1.5 The form of deposit will be cash or bank guarantee, or as determined by the council from time to time.
- 4.1.6 Before deposit has been paid in full, the council will render no service.
- 4.1.7 The council may increase the deposit required from the customer for the supply of a service, to a greater amount as may be

determined by the council, after the disconnection of services to a customer before resuming the supply to a customer of a service. The increased deposit may be required in addition to connection fee.

4.2 Agreement with employers Accounts

- 4.2.1 The council may enter into an agreement with a customer's employer, with the consent of the customer, to deduct any outstanding amounts due by the customer to the council or any regular monthly amounts as may be agreed, from the salary or wage of the customer; and
- 4.2.2 Bank deposits for municipal employees and other consumers can also be affected.
- 4.2.3 The council may provide special incentives for employers to enter into agreement and for employees to consent to the agreement.

4.3 Interest on overdue accounts

- 4.3.1 all accounts must contain at least the following particulars, where applicable:-

- c) The name of the council.
- d) The name of the customer
- e) Account number
- f) The service levies or rates in question.
- g) The period allowed for the payment of services and rates
- h) The land in respect of which the payment is required
- i) The date before which payment must be made.
- j) Business hours
- k) The method and place(s) of possible payment

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- l) Interest on late payment.
 - m) Consequences of non-payment.
 - n) Amount brought forward
 - o) Total amount payable

- 4.3.2 Accounts must be paid at the office of the council as indicated on the account where a cash receipting facilities is available without deduction and free of exchange on or before the day specified in the account as the date before which payment must be made.

- 4.3.3 The council may in its discretion arrange with any customer about alternative methods of payment of any monies due to it.

- 4.3.4 Except where there is a dispute between the municipality and customer about any specific amount claimed by the municipality from that customer, the council may:-

- a) Consolidate any of the accounts for any of the services rendered to any one customer.
- b) Credit a payment by the customer against any service reflected on the account claimed by the municipality from that customer, and

- c) Implement any of the debt collection and credit control measures provided for in the debt collection and credit control policy and this by-law in relation to any arrears on any of the accounts of the customer.

4.3.5 All amounts outstanding after the due date for payment bear interest at the standard rate of interest as from the due date for payment.

4.3.6 In legal proceedings by the council, certificate reflecting the amount due and payable to the council, under the hand of the municipal manager, or suitable qualified person authorized by the Municipal Manager, shall upon mere production thereof be accepted by any court of law as prima facie evidence of the indebtedness.

4.4 Cost Recovery

The council may levy the following costs against the account of the debtor.

- a) All legal costs, including attorney and own client costs, incurred in the recovery of amounts in arrears.
- b) A penalty fee, under council's tariff provisions for action taken in demanding payment from the debtor, or reminding the debtor, by means of telephone, fax, e-mail, letter or otherwise, that their payments are overdue.
- c) Cost and administration fees, under the council's tariff provisions, where any payment made to the council is later dishonored by the bank.
- d) The standard disconnection fee as determined by the council from time to time, where any service is disconnected.

4.4.2 The council may appropriate any payment by a customer in any manner it deems fit including firstly to any penalties and legal costs due to the council by the customer, secondly to any interest outstanding amount, and thereafter to the outstanding amount.

4.4.3 Where the exact amount due and payable to the council has not been paid in full, any lesser amount tendered to and accepted by any council employee, is not deemed to be in full and final settlement.

4.5 Appeals

4.5.1 Any customer may appeal to the council against the accuracy of an amount reflected in particular account within a reasonable period after receiving the amount.

4.5.2 When an account is in dispute, the customer is expected to pay an average of the last three months.

4.5.3 Appeals are made by way of written representations to the council or for those who cannot write filling in a form which council personnel will assist.

4.5.4 In the event of a customer alleging that any meter, measuring device or service connection is defective or inaccurate, the council may arrange for the meter, measuring device or service connection prove not to be defective or inaccurate by more than 3%, the costs of carrying out the inspection and test are paid by the customer who requested the inspection and test.

4.5.5 The implementing authority will endeavor to investigate and decide any appeal within two to three months of testing the meter after the receipt of the customer's representations.

4.5.6 Settlement offers for full and final payment of arrear amounts can be considered and granted by the Chief Financial Officer subject to the following conditions:

- a) Not more than the arrear interest levies on the account, or a portion thereof, can be granted as a credit against such an account, if it is in the best financial interest of the council.
- b) Out of court settlement offered by debtors against whom legal action is pending can be considered after consultation with the Legal Division of the Council and Legal Counsel, if it is in the best financial interest of the council.

4.6 Arrangements

4.6.1 Any customer may appeal to the council for an extension of time within which to pay any outstanding amount.

4.6.2 Arrangements will be on the written form, between the council and a customer for the payment in regular and consecutive monthly installments of the outstanding balance costs and interest thereon.

4.7 Report to defaulters

The council may in its discretion report persons who owe the council monies to bodies that collate and retain the information. The information that would be included in the report will be the available statutory details, including information about the responsible officers of such legal person.

5. POWERS OF THE MUNICIPAL COUNCIL

The municipal council has certain powers and function which have been allocated according to the constitution. One of the powers is the collection of monies owed to council for services rendered, e.g. provision of water, (electricity) and other municipal services.

5.1 Powers to restrict or disconnect supply of services.

5.1.1 The council may restrict, or disconnect the supply of water, and(electricity,) or discontinue any other service to any premises whenever a user of any service:

- a) Fails to make full payment on the due date or fails to make acceptable arrangements for the repayment of any amount for services, rates or taxes.

6.2 Offences

6.2.1 Any person is guilty of an offence and liable, on conviction, to imprisonment for a period not exceeding six months or community service or to fine not exceeding R20 000, or combination thereof, who:-

- a) Fails to give access required by an officer under this by-laws;
- b) Obstructs or hinders an officer in the exercising of their powers or performance of functions or duties under this by-laws in an unauthorized manner
- c) Uses or interferes with council equipment or consumption of services supplied.
- d) Tamperers or breaks any seal on a meter or as determined by the council causes a meter not to properly register the service used, are charged for usage;
- e) Gives an officer false or misleading information, knowing it to be false or misleading;
- f) Contravenes or fails to comply with a provision of this by-law;
- g) Fails to comply with the terms of a notice served on them under this by-law;
- h) A court convicting a person of an offence under this by-law may impose a sentence of community service in place of a fine or imprisonment.

6.3 Conflict of laws

6.3.1 When interpreting a provision of this by-law, any reasonable interpretation that is consistent with the purpose of the act, as set out in chapter 9, on credit control and debt collection must be preferred over any alternative interpretation that is inconsistent with that purpose.

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

CREDIT CONTROL POLICY

1. **Purpose:**

To regulate credit control within the Dr J.S Moroka Municipality with the objectives of sustainable service delivery.

2. **SCOPE OF APPLICATION:**

This policy applies within the Dr J.S.Moroka Municipality on each and every account issued by the municipality.

3. **PROCEDURE:**

Paypoint should be arranged in a manner which facilitates payment of services council offices may also open on the 1st Saturday of the month so as to facilitate payment for services. Where a consumer's account accumulated an outstanding amount the following steps could be implemented:

- a) Written reminder-requesting consumer to pay within 60 days, or call at the offices to discuss account and make arrangements to pay. (Possible Unemployment, etc)
- b) If no reaction, a final notice to pay within 14 days if forwarded, and failing to do so, the account is referred to the council/council committee delegated with powers to act on behalf of council.
- c) A request to pay is issued by the lawyer to the consumer, informing the relevant person that legal action if there is no reaction.

The consumer is also requested to call at the lawyer's office if there are any problems (unemployment, pension, etc) and to make acceptable arrangements to pay the arrears.

- d) Where there is no reaction, a final notice is forwarded council/council committee will ensure that the individual in question receive the summons.
- e) If there is still no reaction, a summons is issued by court. It is however at this stage still possible to approach the lawyer to make arrangements to pay the arrears.
- f) Where there is no reaction to a summons, goods are attached to be sold to recover costs. At this stage the process can only be stopped if the full outstanding amount is paid.

3.1 DISCOUNT SERVICES

Council will develop a separate policy on discounting services.

3.2 COMMUNICATION STRATEGY

The community should at all times be made aware of the Credit Control measures that council is implementing.

- a) Considering the fact that the Council is legally compelled to implement its credit control policy, ward committee could be requested to submit positive executable proposals to support the matter and make it more acceptable to the community.
- b) That the Municipal Manager could be requested to draw-up a notice regarding the policy as described above, and that the policy be published in public Places and be distributed to all households in the Council area of jurisdiction.
- c) That the overlapping amount after the R 86.00 subsidy be added to the current consumer account if the consumer is an indigent (Council discretion will apply).

3.3 IRRECOVERABLE BEBTS

With the exclusion of approved indigent applications, outstanding amounts of debtors be submitted from time to time to council for considering the writing off thereof, where after these debtors who could not be traced after legal action was instituted are to remain register with ITC Business Administration until the outstanding amounts are received, or an amount stipulated by council is received.

All debtors who purchase site and do not pay for the municipal services on the sites, the sites will be repossessed, auctioned and/or sold to pay the debt owing to council.

Should money be received from debtor after the debtor's account was written off then the amount should be paid into the provision for Bad Debts(**Bad Debt Recovered**)

A comprehensive register should be maintained of all debts, which have been written off, of which the debtors are to be registered with ITC Business Administration since the debtors are to be written off, interest can no longer accrue on the account. They should be liable for an account which will be regular reviewed by council.