

MKHAMBATHINI LOCAL MUNICIPALITY

“The Municipality”



CREDIT CONTROL AND DEBTORS COLLECTION POLICY

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Annexure I: Legal Requirements

1. DEFINITIONS

In this Policy, unless the context indicates otherwise, a word or expression, to which a meaning has been assigned in the Municipal Finance Management Act (MFMA) No. 56 of 2003, has the same meaning:

“Accounts” mean the municipal account for services rendered and for assessment rates levied by the municipality.

“Agreement” means the arrangement made with customers with regards to arrears.

“Arrears” mean any amount due, owing and payable in respect of municipal services not paid by due date.

“Credit control” means the limiting of further sales of services to debtors in arrears and the negotiation for payment in exchange for normalizing further service delivery.

“Customer” means any person liable to the Municipality for taxation or other charges.

“Due date” means the date indicated on an account statement by which time payment of the amount on the statement is required.

Indigent” means a household customer qualifying and registered with the Municipality as an indigent in accordance with the Indigent Management Policy;

“Municipality” for the purpose of this policy it means the Mkhambathini Municipality.

“Municipal services” for purposes of this policy mean services provided by the municipality or its authorized agent, including refuse removal and rates, or any one of the above.

2. OBJECTIVE: CONSTITUTIONAL OBLIGATIONS

The Council of the Municipality, in adopting this Policy on credit control and debt collection, recognizes its constitutional obligations to develop the local economy and to provide acceptable services to its residents. It simultaneously recognizes that it cannot fulfill these constitutional obligations unless it exacts payment for the services which it provides and for the taxes which it legitimately levies, in full from those residents who can afford to pay, and in accordance with its indigent relief measures for those who have registered as indigents in terms of the Council’s approved indigent management policy.

3. EXPECTED FUTURE PAYMENT LEVELS

- 3.1 In accordance with commonly accepted best practice, the Municipality will strive to ensure that payment levels in respect of all amounts legitimately owing to the Municipality (inclusive of the balance of the monthly accounts payable by registered indigents) are maintained at an annual average of at least 95%.
- 3.2 In order to deal with the ongoing problem of non-payment by residents who can afford their monthly commitments to the Municipality, the Municipality will follow a dual approach:
- a) To promulgate credit control and debt collection by-laws which deal stringently with defaulters,
 - b) At the same time, through the formal political structures of the Municipality, and in the administration's general dealings with the public, to make the community aware of its legal obligations towards the Municipality, and to emphasize the negative consequences for all if non-payment continues. The Municipality's ward committees are particularly charged with this responsibility.

4. ACCOUNTS AND BILLING

- 4.1 Customers will receive an understandable and accurate bill from the Municipality which will consolidate all levy charges for that property.
- 4.2 Accounts will be rendered monthly in cycles of approximately 30 days at the address last recorded with the Municipality or its authorized agent.
- 4.3 It is the customer responsibility to ensure that postal address and other contact details are correct. Consumers should be encouraged to provide the municipality with e-mail addresses where accounts could be sent to, rather than traditional postal addresses.
- 4.4 Settlement or due dates will be as indicated on the statement.
- 4.5 Where an account is not settled in full, any lesser amount tendered and accepted shall not be deemed to be in full and final settlement of such an account.
- 4.6 Where any payment is made by a negotiable instrument and is later dishonored by a bank, the Municipality or its authorized agent
- a) May recover the bank charges related to the transaction against the account of the customer.
 - b) Shall regard such an event as a default on a payment.

5. PAYMENTS FACILITIES AND METHODS

- 5.1 The Municipality will operate and maintain suitable and accessible banking and cash payment facilities to all users.
- 5.2 The Municipality will at its discretion allocate payments between service debts and debtors may not specify that payments are for specific portions of the account.
- 5.3 With the consent of a customer the Municipality may in terms of section 103 of the Municipal System Act, approach an employer to secure a debit or stop order arrangement.
- 5.4 The Municipality may provide for special incentives as contemplated in section 103 of the Municipal System Act.

6. INSTITUTION OF PROCEEDINGS

- 6.1 If a notice has been sent to an accountholder in terms of Paragraph 3, and the accountholder has not paid the amount due, including the interest raised on such account, or made an acceptable arrangement with the Chief Financial Officer for the payment of the arrear account, including interest, within a period of 28 (twenty eight) calendar days after the date of such notice, the Chief Financial Officer shall forthwith hand such account over for collection and such further action as is deemed necessary to the municipality's attorneys or any debt collecting agency appointed by the Council. Such further action shall include, if necessary, the institution of action in the appropriate court of law against the accountholder and the sale in execution of such property to recover arrear property rates and service charges (if the accountholder is also the owner of the property). All legal expenses incurred by the Municipality shall be for the account of the defaulting accountholder.
- 6.2 Schedule 2 to the Municipal Systems Act, 2000 (Act No 32 of 2000) determines in paragraph 10 as follows:
“A staff member of the Municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months and a municipality may deduct any outstanding amounts from a staff members’ salary after this period”
The Chief Financial Officer shall issue a salary deduction instruction where appropriate and in compliance with the Basic Conditions of Employment Act. and proportionally from

increases and/or the official's thirteenth cheque/performance bonus. In this regard, all temporary contract workers are also regarded as municipal officials.

- 5.3 Schedule 1 of the Municipal Systems Act, 2000 (Act No 32 of 2000) was amended per the Local Government Laws Amendment Act, 2002 (Act No. 51 of 2002) to provide as follows in paragraph 12A:

“A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months.”

The Municipal Manager shall issue a salary deduction instruction where appropriate or take other action as provided for in the Act. This includes the seizure of bonuses or any other additional allowances.

7. ARRANGEMENTS FOR PAYMENT OF ARREAR ACCOUNTS

- 7.1 It shall be at the discretion of the Chief Financial Officer whether or not to allow defaulting accountholders to make arrangements for the payment of arrear accounts.
- 7.2 Arrangements entered into must be both affordable to the consumer and protect the Municipality's interest.
- 7.3 Arrangements should be final and debtors will not be allowed to re-arrange debt repayments. It shall be a condition for the conclusion of any arrangement that the accountholder is bound to pay every current municipal account in full and on time during the period over which such arrangement extends.
- 7.4 Defaulting accountholder shall be allowed no more than 3 (three) months within which to pay an arrear account, together with the interest raised on such account. Care must be taken to ensure that all reasonable financial and social assistance, is rendered to assist owners/debtors/consumers before drastic action is taken to recover debt e.g. subsidies for Free Basic Services
- 7.5 All arrangements must be accepted in writing and the debtor must be provided with a copy of it. Arrangements must be compiled in a format that facilitates legal action, upon breach of contract. Written arrangements must as far as possible be in the form of agreements in terms of Section 57 of the Magistrate's Courts Act, (Act 32 of 1944) and as amended by

the Jurisdiction of Regional Courts Amendment Act, (Act 32 of 2008) (hereinafter referred to the Section 57 Agreements).

- 7.6 If an accountholder breaches any material term of an arrangement, the balance of the arrear account, together with the balance of interest raised on such account, shall immediately become due and payable to the Municipality, and legal action may be instituted.
- 7.7 An accountholder who has breached an arrangement as set out above (see 6.6) shall not be allowed to make any further arrangements for the payment of arrear accounts, but shall be proceeded against.
- 7.8 In the event the account holder defaults with arrear payment the Chief Financial Officer shall proceed with recovery measures after exhausting all collection measures.
- 7.9 Council may attach immovable or immovable property in order to recover arrears.
- 7.10 Council may take judgment against the debtor.
- 7.11 All costs of legal process, including interest, penalties, service discontinuation costs and legal costs associated with credit control are for the account of the debtor and should reflect at least the cost of the particular action.

8. QUERIES BY ACCOUNTHOLDERS

- 8.1 Consumers have the right to query accounts. In order to ensure the correctness of accounts and the satisfaction of consumers, all queries must be attended to swiftly and effectively.
- 8.2 Claims of not having received an account do not constitute a valid reason for non-payment of accounts. Queries regarding such non-receipt must be followed up with the Revenue Section in order for same to be addressed. A consumer liable for any services rendered by, or rates due to the Municipality must furnish the Municipality with an address where correspondence can be directed to (see 3.3 above).
- 8.3 In the event of an accountholder reasonably querying any item or items on the monthly municipal account, no action shall be taken against the accountholder as contemplated in paragraph 6 provided the accountholder has paid by due date an amount equal to the monthly average monetary value of the three most recent unquarried accounts in respect of the service under query, as well as all disputed balances on such account, and provided further such query is made in writing by the accountholder or is recorded in writing by the

Chief Financial Officer on behalf of the accountholder on or before the due date for the payment of the relevant account.

9. DISHONoured AND OTHER UNACCEPTABLE CHEQUES

9.1 If an accountholder tenders a Cheque which is subsequently dishonored by or is found to be unacceptable to the accountholder's bankers, the Chief Financial Officer shall – in addition to taking the steps contemplated in this policy against defaulting accountholders – charge such accountholder the penalty charge for unacceptable Cheque, as determined by the Council from time to time.

9.2 Should payments be dishonored twice, the debtors system must be encoded not to accept Cheques or debit order transactions of such a debtor and he/she must be informed thereof in writing.

10. DELEGATION OF RESPONSIBILITIES BY MUNICIPAL MANAGER

10.1 The Chief Financial Officer, including any person acting in such capacity, shall be responsible to the Council for the implementation of this policy and its attendant by-laws but – without in so doing being divested of such responsibility – may delegate in writing all or any of the duties and responsibilities referred to in these by-laws to any other official or officials of the Municipality, and may from time to time in writing amend or withdraw such delegation(s).

11. ROLE OF MUNICIPAL MANAGER

11.1 Section 100 of the Municipal Systems Act 2000 assigns the legal responsibility for implementing the credit control and debt collection policies and by-laws to the Municipal Manager.

11.2 In practice, however, the Municipal Manager will inevitably delegate some or many of the responsibilities specifically assigned to this office in the by-laws, as it will be administratively impossible for the Municipal Manager to perform the numerous other functions of this office as well as attend to frequently recurring administrative responsibilities. However, such delegation does not absolve the Municipal Manager from final accountability in this regard, and the Municipal Manager will therefore have to ensure that a proper internal reporting structure is established and consistently implemented so that the day-to-day actions of and results from the credit control and debt collection program are properly monitored and supervised.

- 11.3 It is also an integral feature of the present policy that the Municipal Manager shall report monthly to the Mayor, as the case may be, and quarterly to the Council on the actions taken in terms of the by-laws, and on the payment levels for the periods concerned. Such reports shall, as soon as practicably possible, provide the required information both in aggregate and by municipal ward.
- 11.4 In addition, such monthly report shall indicate any administrative shortcomings, the measures taken or recommended to address such shortcomings, and any actions by Councillors who could reasonably be interpreted as constituting interference in the application of the by-laws.
- 11.5 Notwithstanding all the foregoing references to the accountability of the Municipal Manager in regard to these by-laws, it is incumbent on all the officials of the Municipality, certainly all those who are at management level, as well as more junior officials who are directly or indirectly involved with the community and the municipality's general customer relations, to promote and support both this credit control and debt collection policy and the application of the attendant by-laws. The responsibilities of all officials include reporting to the Municipal Manager any evident breaches of these by-laws, whether by members of the community, other officials or Councillors of the Municipality.

12. ROLE OF COUNCILLORS

- 12.1 Section 99 of the Systems Act 2000 places the responsibility on the Mayor, as the case may be, of monitoring and supervising the application of the present policy and the attendant by-laws, and of reporting to the Council on the extent and success of credit control actions.
- 12.2 In order to maintain the credibility of the Municipality in the implementation of the present policy and the attendant by-laws, it is essential that Councillors should lead by example. Councillors, by adopting this Policy, therefore pledge, not only their unqualified support for the policy, but their commitment to ensuring that their own accounts will at no stage fall into arrears.

13. INTEREST ON ARREARS AND OTHER PENALTY CHARGES

- 13.1 Interest shall be charged on all arrear accounts at 1% per month compounded.

13.2 Considering each annual budget the Council shall review the adequacy of its interest charges, and shall determine the following for the financial year concerned:

- a) Penalty charges for dishonored Cheque.

14. INDIGENCY MANAGEMENT

14.1 In regard to the payments expected from registered indigents, and the credit control and debt collection actions contemplated in respect of such residents, this policy must be read in conjunction with the municipality's approved policy on indigent management.

15. UNCOLLECTABLE ARREARS

15.1 The effective implementation of the present policy also implies a realistic review of the Municipality's debtors book at the conclusion of each financial year. The Municipal Manager shall as soon as possible after 30 June each year present to the Council a report indicating the amount of the arrears which it is believed is uncollectable, together with the reasons for this conclusion for debtors in the 180 days and older category.

15.2 The Municipal Manager must ensure that all avenues have been utilized to collect the municipality's debt. The Council shall then approve the write off of such arrears, if it is satisfied with the reasons provided.

16. ARREARS WHICH HAVE ARISEN PRIOR TO THE ADOPTION OF THE PRESENT POLICY

16.1 The Council shall separately consider arrears which arose prior to the adoption of the present policy, and shall advise accountholders of their respective obligations in regard to such arrears. In determining such obligations, the Council shall have regard to the quantum of such arrears, to the period over which the default occurred, and to whether the accountholder concerned has registered as an indigent in terms of the municipality's policy on indigent management. The Council shall further consider an incentive scheme which will appropriately encourage accountholders to settle all or a stated percentage of these arrears.

17. BY-LAWS TO BE ADOPTED

17.1 By-laws shall be adopted to give effect to the Council's credit control and debt collection policy.

18. COMPLIANCE AND ENFORCEMENT

- a) Violation of or non-compliance with this policy will give a just cause of disciplinary steps to be taken.
- b) It will be the responsibility of Chief Financial Officer to enforce compliance with this policy.

19. EFFECTIVE DATE

The Policy shall come to effect upon approval by Council.

20. POLICY ADOPTION

This Policy has been considered and approved by the **COUNCIL OF THE MKHAMBATHINI LOCAL MUNICIPALITY**

ANNEXURE I

LEGAL REQUIREMENTS

It is essential for the protection of the municipality's interests that the provisions of particularly the Municipal Systems Act 2000 and the Property Rates Act 2004, in so far as they provide additional debt collection mechanisms for municipalities, be diligently enforced. At the same time, both the

council and the administration must note the obligations, which the municipality has towards the community in respect of customer care and relations.

For ease of reference a paraphrase of the relevant extracts from the Municipal Systems Act, specifically Sections 95 to 103 and Section 118, are therefore appended to this policy, as are Sections 28 and 29 of the Property Rates Act. The immediately relevant extracts from the Water Services Act 1997 and the Municipal Finance Management Act are also included in the annexure.

SECTION II: LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT NO. 32 OF 2000

SECTION 95: CUSTOMER CARE AND MANAGEMENT

A municipality must, in relation to the levying of rates and other taxes, and the charging of fees for municipal services, within its financial and administrative capacity, do the following:

- establish a sound customer management system which aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality itself or (where applicable) a service provider;
- establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider with regard to the quality of the services and the performance of the service provider;
- take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which moneys raised from the service are utilized;
- where the consumption of services is measured, take reasonable steps to ensure that the consumption by individual consumers of services is measured through accurate and verifiable metering services;
- ensure that persons liable for payments receive regular and accurate accounts which indicate the basis for calculating the amounts due;
- provide accessible mechanisms for those persons to query or verify accounts and metered consumption, as well as appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;

- provide mechanisms to monitor the response time and efficiency in complying with the aforementioned requirements; and
- Provide accessible pay points and other mechanisms for settling accounts or for making prepayments for services.

SECTION 96: DEBT COLLECTION RESPONSIBILITY OF MUNICIPALITIES

A municipality must collect all moneys that are due and payable to it, subject to the requirements of the present Act and any other applicable legislation. For this purpose, the municipality must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and which complies with the provisions of the present Act.

SECTION 97: CONTENTS OF POLICY

The municipality's credit control and debt collection policy must provide for all of the following:

- credit control procedures and mechanisms;
- debt collection procedures and mechanisms;
- provision for indigent debtors in a manner consistent with its rates and tariff policies and any national policy on indigents;
- realistic targets consistent with generally recognized accounting practices and collection ratios, and the estimates of income set in the budget less an acceptable provision for bad debts;
- interest on arrears (where appropriate);
- extensions of time for payment of accounts;
- termination of services or the restriction of the provision of services when payments are in arrears;
- matters relating to unauthorized consumption of services, theft and damages; and
- Any other matters that may be prescribed by regulation in terms of the present Act.

The municipality, within its discretionary powers, may differentiate in its credit control and debt collection policy between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters, and, if so, must ensure that such differentiation does not amount to unfair discrimination.

SECTION 98: BY-LAWS TO GIVE EFFECT TO POLICY

The council of the municipality must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.

Such by-laws may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters, and, if so, must ensure that such differentiation does not amount to unfair discrimination.

SECTION 99: SUPERVISORY AUTHORITY

A municipality's Mayor, as the case may be, or – if the municipality does not have an executive committee or Mayor – the council of the municipality itself, or a committee appointed by the council as the supervisory authority, must do all of the following:

- oversee and monitor the implementation and enforcement of the municipality's credit control and debt collection policies and any by-laws enacted in terms of the foregoing requirements, and the performance of the municipal manager in implementing the policies and by-laws;
- where necessary, evaluate or review the policies and by-laws, and the implementation of such policies and by-laws, in order to improve the efficiency of its credit control and debt collection mechanisms, processes and procedures; and
- at such intervals as may be determined by the council, report to a meeting of the council, except when the council itself performs the duties of the supervisory authority.

SECTION 100: IMPLEMENTING AUTHORITY

The municipal manager, or – where applicable – the service provider must:

- implement and enforce the municipality's credit control and debt collection policies and by-laws enacted in terms of the foregoing requirements;
- in accordance with the credit control and debt policies and any by-laws, establish effective administrative mechanisms, processes and procedures to collect moneys due and payable to the municipality; and
- at such intervals as may be determined by the council, report the prescribed particulars to a meeting of the supervisory authority referred to previously.

SECTION 101: MUNICIPALITY'S RIGHT OF ACCESS TO PREMISES

The occupier of premises in a municipality must give an authorized representative of the municipality or of a service provider access at all reasonable times to the premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.

SECTION 102: ACCOUNTS

Except where there is a dispute between the municipality and the person from whom the municipality has claimed any specific amount, a municipality may:

- consolidate any separate account of such person;
- credit a payment by such person against any account of that person; and
- implement any of the debt collection and credit control measures provided for in the present Act in relation to any arrears on any of the accounts of such person.

SECTION 103: AGREEMENTS WITH EMPLOYEES

A municipality may, within its discretionary powers, but with the consent of any person liable to the municipality for the payment of rates or other taxes or fees for municipal services, enter into an agreement with such person's employer to deduct from the salary or wages of such person any outstanding amounts due by such person to the municipality or such regular monthly amounts as may be agreed to.

The municipality may further, within its discretionary powers, provide special incentives for employers to enter into such agreements and for employees to consent to such agreements.

SECTION 118: RESTRAINT ON TRANSFER OF PROPERTY

The registrar of deeds or any other registration officer of immovable property may not register the transfer of any property other than on the production to such registration officer of a prescribed certificate issued by the municipality in which such property is situated, and which certificate certifies that all amounts due in connection with such property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

A municipality may recover, as far as is practicable, all amounts due to it for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties, in preference to any mortgage bonds registered against any property which is to be transferred.

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

Paragraph 10 of this Code of Conduct stipulates that if any staff member of a municipality is in arrears to the municipality for rates and service charges for a period longer than 3 months, the municipality may deduct any outstanding amounts from such staff member's salary after this period.

CODE OF CONDUCT FOR COUNCILLORS

Section 6A of this code requires Councillors to pay all rates, tariffs, rents and other moneys due to the municipality promptly and diligently.

The municipal manager is further required to notify the speaker of the council and the MEC for Local Government, in writing, whenever a councilor has been in arrears with any of these payments for a period exceeding 30 days.

SECTION III: LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003

SECTION 64: REVENUE MANAGEMENT

The accounting officer of the municipality is responsible for the management of the municipality's revenues, and must, for this purpose, take all reasonable steps to ensure:

- that the municipality has effective revenue collection systems consistent with Section 95 of the Municipal Systems Act 2000 and the municipality's credit control and debt collection policies;
- that revenues due to the municipality are calculated on a monthly basis;
- that accounts for municipal taxes and charges for municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;

- that all moneys received are promptly deposited in accordance with the requirements of the present Act, into the municipality's primary and other bank accounts;
- that the municipality has and maintains a management, accounting and information system which recognizes revenues when they are due, accounts for debtors, and accounts for receipts of revenues;
- that the municipality has and maintains a system of internal control in respect of debtors and revenues, as may be prescribed;
- that the municipality charges interest on arrears, accept where the council has granted exemptions in accordance with its budget related policies and within a prescribed framework; and
- that all revenues received by the municipality, including revenues received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

The accounting officer must immediately inform the national treasury of any payments due by an organ of state to the municipality in respect of municipal taxes or for municipal services, if such payments are regularly in arrears for periods of more than 30 days.

NOTE: SECTION 164: FORBIDDEN ACTIVITIES

Section 164(1)(c) lists as a forbidden activity the making by a municipality of loans to Councillors or officials of a municipality, directors or officials of any municipal entity, and members of the public. It has been assumed for purposes of compiling the credit control and debt collection policy that allowing any party to pay off arrears of rates and municipal service charges is not tantamount to the making of a loan in terms of Section 164.)

SECTION IV: LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO. 6 OF 2004

SECTION 28: RECOVERY OF RATES IN ARREARS FROM TENANTS AND OCCUPIERS

If the rates owed by a property owner are unpaid by due date, the municipality may recover such rates, either in whole or in part, from any tenant or occupier of the property concerned.

However, the tenant or occupier of the property must first be given written notice of the municipality's intentions, and the amount which the municipality may recover is limited to the amount of rent and other moneys due and unpaid by the tenant or occupier to the property owner concerned.

SECTION 29: RECOVERY OF RATES FROM AGENTS

If it is more convenient for the municipality to do so, it may recover the rates due on a property, either in whole or in part, from the agent of the property owner concerned.

However, the agent must first be given written notice of the municipality's intention, and the amount the municipality may recover is limited to the amount of any rent and other moneys received by the agent on behalf of such property owner, less any commission due to the agent.