

CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

[MUNICIPAL NOTICE 47 OF 2008]
[DATE OF COMMENCEMENT: 11 DECEMBER, 2008]

These By-Laws were published in *Provincial Gazette* No. 209 dated 11 December, 2008

eTHEKWINI MUNICIPALITY

CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

(Editorial Note: Sections 1.0, 2.2.1, 2.2.2, 2.2.3, 6.0, 7.0, 9.0, 10.0, 11.0, 12.0, and 13.0 came into effect on the 3rd of April 2009 by MN 15 which was published under *Provincial Gazette* 249 dated 23 March 2009.)

(Editorial Note: The remainder of the sections came into effect on the 17th of December 2009 by MN 169 which was published under *Provincial Gazette* 169 dated 17 December 2009.)

The Municipal Services all fall under one or another Schedule 4B or 5B heading but, in the interests of effective credit control and debt collection should be kept together. The Local Government: Municipal Systems Act also favours this approach.

ARRANGEMENT OF SECTIONS

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1.0 Definitions

Unless inconsistent with the context, the following words and phrases shall have the following meanings ascribed to them—

Administrative Justice: The procedures of natural justice as modified and extended by the Administrative Justice Act;

Administrative Justice Act: The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

Authorised Delegate: Any person or organ of State to whom a power of the Municipality has been delegated or sub-delegated in terms of section 238 of the Constitution or any other applicable law;

Authorised Officer: Any municipal employee to whom the Municipality has allocated a responsibility;

Calendar Month: A named month on the Gregorian calendar;

Cash Service: Any Municipal service paid for in advance (whether by way of an electricity dispenser, other pre-paid meter system or otherwise) or by way of cash on delivery;

Chief Financial Officer: The person appointed by the Municipal Council as such and any officer of the Municipality acting in that capacity;

City Hall Notice Board: The notice board in the foyer of the municipal offices at the seat of the Municipality as determined by Clause 8 of Provincial Notice 343 of 2000 (KZN);

City Manager: The employee appointed in terms of section 82 of the Municipal Structures Act and includes, where necessary, any acting Municipal Manager;

Constitution: The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

Controlled Municipal Service: Any Municipal service where the terms and conditions of supply and the procedure for obtaining the Municipal service concerned are fixed wholly or partly by public law;

Co-owners: Any two or more persons who hold any property (whether jointly, in division or in any form of communal land tenure), any beneficial owners of any trust property vested in any non-beneficial owners or any member of any “societas unius rei” the object of which association is the acquisition or holding of any property;

Credit Control and Debt Collection Policy: The legal instrument of the Municipality provided for in section 96 (b) of the Municipal Systems Act;

Credit Dispensing Unit: A device which dispenses credit for electrical energy in the form of cards and/or tokens for transfer of credit to an electricity dispenser;

Debtor: Any person who owes a liquid or a liquidated sum to the Municipality,

Deposit Interest: Interest determined in terms of section 7.0 on monies deposited with the Municipality by a depositor;

Electricity Dispenser: A device which measures electrical energy consumed and deducts such energy from the quantity credited by means of cards and/or tokens issued by a Credit Dispensing Unit and isolates the supply to the consumer in the event of the expiry of such credit;

eTM Website: <http://www.durban.gov.za>;

Executive Committee: A Committee of the kind referred to in section 43 of the Municipal Structures Act;

Final Date: The last day on which the Municipality provides a Municipal service or on which a person is liable for rates to the Municipality;

Financial Institution: A “financial institution” within the meaning of the Municipal Finance Management Act;

Fine: A fine as calculated in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991);

Information Act: The promotion of access to Information Act, 2000 (Act No. 2 of 2000);

Information Office: The address of the Information Officer as given by the Municipal Manager by Notice on the City Hall Notice Board;

Information Officer: The person appointed by the Municipality as the “Deputy Information Officer” in terms of section 17 of the Information Act;

Liable Party: Any person who is liable, whether individually or jointly and/or severally with another to pay monies to the Municipality;

Listed Public Company: Any public limited company listed on the Johannesburg Securities Exchange;

Mayor. The person appointed as Mayor of the municipality in terms of the Municipal Systems Act;

Monthly Charge: An amount payable to the Municipality once in every calendar month;

Municipal Facility: Any facility capable of being owned or operated by the Municipality under the Constitution, any other legislation or any legislative or executive assignment and which is owned or operated by or on behalf of the Municipality;

Municipal Finance Management Act: The Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003);

Municipality: The category A Municipality established in terms of Provincial Notice 343 of 2000 (KZN) and includes any committee or person delegated by the Municipal Council

Municipal Service: A service that the Municipality, in terms of its powers and functions, provides or may provide to or for the benefit of its inhabitants irrespective of whether—

- (a) such a service is provided, or to be provided by the Municipality through an internal mechanism of the kind contemplated in section 76 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or by engaging an external mechanism contemplated in that section; and
- (b) fees, charges or tariffs are levied in respect of such service or not;

Municipal Structures Act: The Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

Municipal Systems Act: The Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

Non-beneficial Owner: in relation to Property: an Owner of Property which is—

- (1) held by the Owner in trust for another, a group or the general public;
- (2) utilized in terms of a system of communal land tenure; or
- (3) earmarked for disposal in terms of the Restitution of Land Rights Act 1994 (Act 2 of 1994);

Notice: Notice in writing and Notify shall have a corresponding meaning;

Office Hours: 9h00–12h00 and 14h00–16h00 of every working day

Outstanding Amount: The total amount reflected as owing to the Municipality by the person concerned in the accounting records of the Municipality which includes any interest, penalties and other charges which may lawfully be raised by the Municipality;

Prescribed Service Fee: A service fee laid down by the Municipality for a particular Municipal service;

Public Holiday: A “public holiday” in terms of the Public Holidays Act;

Public Holidays Act: The Public Holidays Act, 1994 (Act 36 of 1994);

Sectional Plan: A “Sectional Plan” registered in terms of the Sectional Titles Act;

Sectional Titles Act: The Sectional Titles Act, 1986 (Act No. 95 of 1986);

Serve: “Serve” in accordance with the provisions of section 115 of the Municipal Systems Act;

Welfare Water Service: The welfare service for water provided by the Municipality in terms of its Credit Control and Debt Collections Policy,

Working Day: Any day (Saturdays, Sundays and Public Holidays excluded);

- 1.2 Unless inconsistent with the context, in these By-laws, the following words and phrases shall have the meanings ascribed to them in the Constitution—

Organ of State, Services, Unfair Discrimination

2.0 Consolidated Bills for Debtors of the Council—

- 2.1 The Municipality may in accordance with its Credit Control and Debt Collection Policy include in a single account for a debtor different amounts due and owing to the Municipality by that debtor regardless of whether such charges relate to any one account or fund without prejudice to its right to render separate statements of account for any one or more than one item for which the same debtor is liable.
- 2.2.1 The Municipality shall, after the person concerned has notified the Chief Financial Officer, deduct any *bona fide* dispute amount from such consolidated bill after a hearing conducted by the authorised delegate in accordance with the principles of Administrative Justice 1.
- 2.2.2 The provisions in these By-laws relating to the hearing by the authorised delegate and the appeal to the Chief Financial Officer or his assign shall apply with the necessary changes to any hearing under this section.
- 2.2.3 The disputed amount may be pursued by the Municipality as a separate amount owing.

3.0 Deposits

- 3.1 Without derogating from its rights to claim other appropriate security, the Municipality may, in accordance with its Credit Control and Debt Collection Policy, accept a single consolidated deposit as security for all amounts payable to the Municipality on the consolidated bill.
- 3.2 Where the Municipality has levied a deposit in respect of credit granted for any one Municipal service, the Municipality may, in accordance with its Credit Control and Debt Collection Policy, deem any such deposit payable or paid to the Municipality to be a consolidated deposit.
- 3.3 Where the Municipality has agreed in principle to the supply of any credit service, it shall require a deposit to be lodged with the Municipality consisting of such sum as is consistent with any applicable Credit Control and Debt Collection Policy.

- 3.4 Any deposit paid shall not be regarded as being in payment of any current account due to the Municipality.
- 3.5 Should the amount deposited in terms of this section subsequently prove to be insufficient, any liable party shall, within the time set out in a notice calling upon her to do so, deposit with the Municipality such further sum as may be necessary to increase the deposit to an amount sufficient to cover a sum consistent with the Credit Control and Debt Collection Policy as may be applicable at the time.
- 3.6 If, at any time the Municipality considers the amount deposited to be excessive, it may refund a portion thereof.
- 3.7 Any deposit lodged with the Municipality shall, after the issuing of any Notice calling upon the depositor to pay any amount due to the Municipality by the depositor, be applied to the payment or part-payment of any amount due to the Municipality by the depositor unless such sum as may be due and payable by the depositor is paid by the depositor within the period specified in such Notice.
- 3.8 Where any deposit is applied to the payment or part-payment of any amount due to the Municipality by the depositor, such application shall be deemed to be a payment by the depositor as Liable Party.
- 3.9 On 30th June in each year the Municipality shall cause the deposit account of every depositor who made a deposit before 31st December preceding that day to be credited with deposit interest.
- 3.10 Where any Notice is Served in terms of section 3.5, the provisions of section 7.0 shall apply equally to any Deposit Interest which has accrued to the deposit account of the person concerned under this section.
- 3.11 Subject to the provisions of section 3.7, any Deposit Interest credited to the depositor in terms of section 3.9 shall be credited to the depositor within 60 days after the final date together with the amount deposited by her.
- 3.12 Where it appears that any person is no longer a liable party and such person has vacated the premises supplied as her address in terms of section 11.0 the Municipality shall, after deducting any outstanding claims of the Municipality from the deposit of such person, place any outstanding amount in an earmarked account for such person for a period of three years from the date on which such disappearance became known to the Municipality.
- 3.13 After the expiry of the period of three years aforementioned, the balance of the deposit together with the interest thereon shall be forfeited to the Municipality:

Provided that if a claim is made after the expiry of the said three years, the Municipality may refund such amount where it appears to be just and equitable to do so.
- 3.14 Whenever the Municipality deems it necessary, it may make credit rating enquiries with credit bureaux and/or other persons who may have knowledge of the commercial standing of any debtor or person seeking credit from the Municipality.
- 3.15 Should the Municipality determine that any such person poses a payment risk to itself, the Municipality may, after applying the rules of administrative justice, determine a consolidated deposit or an increased consolidated deposit to protect the payment risk in accordance with its Credit Control and Debt Collection Policy.

4.0 Guarantees

- 4.1 Where an applicant for any Credit Service is a juristic person (other than an Organ of State or a Listed Public Company), such applicant shall, if required by the Municipality in addition to any security provided in terms of section 3.0, lodge with the Municipality, a guarantee for an amount specified by the Municipality and given by a financial institution in a form satisfactory to the Municipality.
- 4.2 Any guarantee provided shall not be regarded as being in payment of any current account due to the Municipality.
- 4.3 Where liability for monthly charges ceases, the Municipality shall issue a written release of any guarantees given on behalf of the juristic person concerned.
- 4.4 The Municipality may at any time require by notice any liable party to furnish a further guarantee from a financial institution for such additional amount as the Municipality may reasonably determine within the time set out in such Notice.

5.0 Termination of Services

- 5.1 The Municipality may, in accordance with its Credit Control and Debt Collection Policy, these By-laws and the principles of administrative justice, unilaterally cut off—
 - (1) the supply of electricity to any premises used for residential purposes; or
 - (2) the supply of water, electricity or both to any premises used for any purposes other than residential purposes, where—
 - (a) any amount on the consolidated bill or any other account for a liquid or liquidated amount remains outstanding for a period longer than that specified in the Credit Control and Debt Collection Policy of the Municipality;
 - (b) the liable party fails to pay any increased deposit as may be required in terms of section 3.5 hereof;
 - (c) the liable party fails to provide any increased guarantee as may be required in terms of section 4.4 hereof;
 - (d) the Municipality for whatever reason provided for in the Credit Control and Debt Collection Policy ceases, whether temporarily or permanently to provide the relevant service concerned to the premises concerned;
 - (e) the liable party breaches any of the terms and conditions for the supply of the service concerned.
- 5.2 The Municipality may without notice terminate the supply of a controlled Municipal service if a liable party has, without requesting any discontinuance, vacated the premises to which such service was supplied or the building on the premises concerned has been demolished.
- 5.3 The Municipality may in accordance with its Credit Control and Debt Collection Policy, these By-laws and the principals of administrative justice—
 - (1) unilaterally cut off the supply of electricity supplied by way of an electricity dispenser to any premises where such premises are charged with an overdue amount in terms of an applicable consolidated bill: or

- (2) refuse to supply any person with any card or token for the operation of an electricity dispenser serving any premises charged with an overdue amount in terms of any consolidated bill.

6.0 Restriction of Supply

The Municipality may in accordance with its Credit Control and Debt Collection Policy, these By-laws and the principles of administrative justice restrict or reduce the supply of water or cause such supply to be restricted or reduced to premises used for residential purposes to the minimum allowed for indigents as set out from time to time in that policy where any amount on the consolidated bill or any other account for a liquid or liquidated account remains unpaid for a period longer than that specified in the Credit Control and Debt Collection Policy.

7.0 Interest payable by or to the Municipality

- 7.1 The Chief Financial Officer may from time to time determine—
 - (a) the method of calculating interest on monies owed by or to the Municipality; and
 - (b) interest rates on monies owed by or to the Municipal and, in either case, not governed by any other law.
- 7.2 In determining any interest rate, the Chief Financial Officer may differentiate between different categories of ratepayers, users of Municipal services or any other category on such grounds as is reasonable as long as the differentiation does not amount to unfair discrimination.
- 7.3 The Municipality shall publish any determination made under section 7.1 or 2 on the eTM Website and at the Information Office and such publication shall be deemed to be sufficient notice of any such determination to all persons concerned.
- 7.4 Any person may inspect any publication issued under this section during office hours at the information office.

8.0 Administration Charges

- 8.1 Subject to the provisions of any legislation made in terms of section 255 (6) (a) and (7) of the Constitution, the Municipal council may by resolution impose any administration charge or a method for calculating any such administration charge for:—
 - (1) The execution of any act or acts referred to in these By-laws; and/or
 - (2) The use by the debtor of any method of payment involving the Municipality in costs, fees or administrative work, in accordance with the provisions of the Credit Control and Debt Collection Policy.
- 8.2 The Municipality shall publish any resolution made under this section on the eTM website and at the information office and such publication shall be deemed to be sufficient notice of any such resolution to all persons concerned.
- 8.3 In any resolution declaring, amending or withdrawing any administration charge or method of calculating an administration charge, the Municipal council shall fix a reasonable date from which such declaration, amendment or withdrawal shall be effective.
- 8.4 Any person may inspect any publication issued under this section during office hours at the information office.

9.0 Payment of Accounts

- 9.1 The Municipality may, in its discretion, accept a cheque as payment for any monies owed to it.
- 9.2 Where any cheque or other negotiable instrument negotiated or delivered to the Municipality in partial or in full satisfaction is dishonoured by the financial institution or other person on whom it is drawn, the Municipality may levy an administration charge against the debtor in accordance with the Credit Control and Debt Collection Policy.
- 9.3 Where a cheque or other negotiable instrument is dishonoured for insufficient funds, that fact will be sufficient for the Municipality to reconsider the payment risk associated with the debtor and adjust the consolidated deposit accordingly.
- 9.4 Any amount tendered in payment in full and final settlement of any outstanding amount is not accepted as full and final payment of the amount due on that date or any other date notwithstanding the handing over of the amount tendered to the bank of the Municipality or otherwise unless—
- (1) the amount tendered represents the outstanding amount on the date of the tender; or
 - (2) the Chief Financial Officer authorises the acceptance of the tender concerned and has written off the outstanding balance in accordance with applicable law.
- 9.5 Where less than the outstanding amount is paid by a debtor, the Municipality shall not allocate the sum in accordance with the debtor's preferences but, where accounts have not been consolidated, in accordance with the rules for payment laid down in any applicable Credit Control and Debt Collection Policy.

10.0 Condominia

All co-owners of a particular collective property are jointly and severally liable for all amount charged against the whole or any portion of such property.

11.0 Information

- 11.1 No liable party shall fail to notify the authorised delegate of any change of address at the address supplied at the information office within 7 days of such change.
- 11.2 No person to whom the Municipality has addressed a registered letter shall fail to uplift such letter from the Post Office concerned within 7 days of receipt by such Post Office.
- 11.3 No person who, when called upon for just cause by the Municipality to furnish her name and address or other information referred to in clause 11.6 to the authorised officer, shall—
- (1) fail to provide such information; or
 - (2) furnish false or incorrect information required.
- 11.4 Any person contravening section 11.1, or 3 hereof shall be guilty of an offence and, liable for a fine or imprisonment for a period not exceeding one year or for both such fine and imprisonment.
- 11.5 Where any person is convicted of contravening section 11.1, 2 or 3, the court may, in addition to sentencing such person to such fine or imprisonment as it may lawfully impose, further order such person to pay any outstanding amount together with interest at a rate per annum calculated every calendar

month as determined by the Municipality until date of payment together with an administration charge often per centum of such outstanding amount on or before a date specified in such order.

- 11.6 The Municipality may at any time by notice require any liable party to provide any such information as it reasonably believes is necessary for it to determine such changes as it may consider necessary to deposits, guarantees, billing, agency arrangements, addresses for service and the like or otherwise to carry out its functions within such time as is, within the circumstances, reasonable.
- 11.7 A notice of change of address shall not be considered as valid until an acknowledgement of change of address expressed in writing is received by the liable party.

12.0 Charges against the Property

Whenever any sum outstanding is charged against property in favour of the Municipality, the Municipality may enforce the charge by either—

- (1) proceeding against the owner in a court of competent jurisdiction for the sum so charged against the property by way of an appropriate court procedure; and/ or
 - (2) disconnecting or refusing to connect to property so charged—
 - (a) electricity or
 - (b) in the case of non-residential property, water
- in accordance with the provisions of these By-laws and the Constitution and the principles of administrative justice.

13.0 Administrative Justice

13.1 Where the Municipality issues a Notice in terms of—

- (1) section 3.5;
- (2) section 4.4; or
- (3) section 11.6,

it shall ensure that the notice further informs every person to whom the notice is addressed that if the notice is not complied with the supply of a stated Municipal service may be disconnected.

13.2 In giving any Notice referred to in section 13.1 or any notice of intention to disconnect or limit the supply of any Municipal service in terms of any other provision of these By-laws, it shall further inform the liable party concerned—

- (1) that if she is unable to provide the information, increased deposit or the guarantee within the time stated for any reason or, in the case of a notice of intention to disconnect, is unable to purge her default giving rise to that notice of intention to disconnect or limit the supply of a Municipal service, she should contact the authorised delegate within the time set out in such notice at the address given therein for a hearing; and
- (2) of the cost of the service charges for re-connecting the Municipal service concerned.

13.3 The authorised delegate shall hear the representations of the liable party in accordance with the principles of administrative justice and determine the matter in accordance with the same principles.

- 13.4 Where the authorised delegate determines any matter in terms of section 13.6, the authorised delegate shall ensure that he informs the person concerned of her right—
- (1) to appeal to the Chief Financial Officer or her assign, to make representations to such person, to present and dispute information before that person and, generally, of the procedure for hearings by that person;
 - (2) to request written reasons in terms of section 13.7 where such reasons are not supplied in a written determination;
 - (3) to appear in person before the Chief Financial Officer or her assign and to obtain assistance including, with the consent of the Chief Financial Officer or her assign, the right to legal representation before the person concerned; and
 - (4) to all other things which, depending on the circumstances of the case, are necessary to ensure a fair administrative procedure.
- 13.5 Where an authorised delegate makes a determination in terms of section 13.3, she shall, on the written request of the applicant whose application has been refused, provide reasons in writing to such applicant within fourteen days of such request.
- 13.6 The authorised delegate, the Chief Financial Officer or her assign (as the case may be) may, by administrative order, served on any person who in her opinion may be able to give any material information which she desires to obtain for the purposes of justly executing her responsibilities, require such person to furnish her with such information within such period and in such form as she may in such administrative order specify.
- 13.7 Any administrative order served under this section may require the person on whom it is served to appear in person before the authorised delegate who issued such order at such time and place as is specified in such notice and/or to bring or deliver any book, document or thing which has any bearing upon the subject or whom she suspects or believes that such person has in her possession or custody or under her control.
- 13.8 Where any book, document or thing is brought or delivered pursuant to any such administrative order, it may be retained for examination by the Municipality for a reasonable time.
- 13.9 Any person called in person may be interrogated by the person who issued such administrative order.
- 13.10 Any person who fails to comply with any administrative order shall be guilty of an offence and liable for a fine, imprisonment for a period not exceeding one year or both such fine or imprisonment.
- 13.11 The Chief Financial Officer or her assign shall conduct the appeal hearing in accordance with the provisions of these By-laws and uphold or dismiss wholly or in part, the appeal or substitute in any other way her decision for that of the authorised delegate and the Municipality will be *functus officio* on the determination of the matter by the employee concerned.

14.0 Effective Date

- 14.1 These By-laws shall come into effect on a date to be determined by the Mayor by notice in the *Provincial Gazette*.
- 14.2 The Mayor may determine different effective dates for different sections for these By-laws.
