

NKETOANA LOCAL MUNICIPALITY

CREDIT CONTROL AND DEBT COLLECTION BY-LAW

APPROVED BY SPECIAL COUNCIL: 30/05/2014
ITEM: 013/05

NKETOANA LOCAL MUNICIPALITY

NOTICE

CREDIT CONTROL AND DEBT COLLECTION BY-LAW

Notice is hereby given that in terms of Section 13, of the Local government: Municipal Systems Act, Act 32 of 2000, the Nketoana Local Municipality has passed the By-law as set out below.

NKETOANA LOCAL MINICIPALITY

Credit Control and Debt Collection By-law

To give effect to the Municipality's Credit Control and Debt Collection Policy, its implementation and enforcement in terms of Section 156(2) of the Constitution of the Republic of South Africa, 1996 and Sections 96 & 98 of the Municipal Systems Act, 2000; to provide for the collection of all monies due and payable to the Municipality; and to provide for matters incidental thereto.

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1. Definitions

In this By-law, unless the context indicates otherwise –

"act" - the Local Government Act: Systems Bill, 2000 (act No 32 of 2000) as amended.

"arrangement" - a written agreement entered into between the Council and the debtor where specific repayment parameters/conditions for the repayment of debt are agreed to.

"arrears" – means any amount due and payable to the Municipality and not paid by the due date.

"authorized representative" – a person, persons or instance legally appointed by the Council to act or to fulfil a duty on its behalf

"CFO" – a person appointed as the Chief Financial Officer of the Municipality, or his/her nominee.

"Council" – means the Council of the Municipality.

"Councilor" – means a member of the Council.

"credit control" – all functions/actions relating to the collection of debt.

“customer” or **“user”** – any occupier/owner to who services is supplied

“debt” – monies owing to the Municipality in respect of the rendering of services and includes monies owing in regard to property rates, housing, leases, rentals, and any other outstanding amounts, inclusive of any interest thereon, owing to the Municipality.

“debtor” – any person who owes a debt to the Municipality.

“defaulter” – any person who defaulted on any payments for money owed to the Municipality.

“due date” – the final date on which a payment, as shown on the debtor’s municipal account, is due and payable.

“engineer” – the person in charge of the civil and/or electrical component of Council.

“equipment” – a building or other structure, pipe, pump, wire, cable, meter, engine or any accessories.

“implementing authority” – the Municipal Manager or his/her nominee acting in terms of Section 100 of the Systems Act.

“indigent debtor” – a debtor who meets certain criteria as determined by the Municipality from time to time.

“interest” – a rate of interest, charged on overdue accounts, which is one percent higher than the prime rate, which is obtainable from any commercial bank on request, unless determined otherwise by the Municipality, on capital, based on a full month and part of a month must be deemed to be a full month.

“Municipality” – the Nketoana local Municipality and includes any municipal entity established by such municipality.

“municipal entity” – any municipal entity as defined in Section 1 of the Municipal Systems Act, No 32 of 2000.

“Municipal manager” – the person appointed as Municipal Manager in terms of Section 82 of the Local Government: Structures Act, Act 117 of 1998 and include any person acting in that position or to whom authority was delegated.

“occupier” – any person who occupies any property or part thereof, without regard to the title under which he/she occupies the property

“official” – an “official” as defined in Section 1 of the Local Government: Municipal Finance Management Act, No 56 of 2003.

“owner” –

- (a) The person in whom from time to time is vested the legal title to premises;
- (b) In a case where the person in whom the legal title is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- (c) In a case where the Council is unable to determine the identity of such person, a person who is entitled to the benefit of such premises with a building thereon;
- (d) In the case of premises for which a lease of 30 years or more has been entered into, the lessee thereof;
- (e) In relation to-
 - (i) A piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 1986, (Act 95 of 1986), and without restricting the above the developer or the body corporate in respect of the common property; or
 - (ii) A section as defined in such Act, the person in whose name such a 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), a trust, a closed corporation registered in terms of the Closed Corporations Act, 1984 (Act 69 of 1984) and a voluntary association;
 - (ii) Any department of State;

- (iii) Any Council of Board established in terms of any legislation applicable to the Republic of South Africa;
- (iv) Any Embassy or other foreign entity;

“policy” – the Municipality’s Credit Control and Debt Collection policy.

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

- (a) A general plan or diagram registered in terms of the Land Survey Act, 1927 (9 of 1927), or in terms of the Deed Registry Act, 1937 (47 of 1937); or
- (b) A sectional plan registered in terms of the Sectional Titles Act, 1986 (95 of 1986), which is situated within the area of jurisdiction of the Council;

“service” the “municipal service as defined in Section 1 of the Systems Act, and includes a function listed in Schedules 4B and 5B of the Constitution of the Republic of South Africa, 1996 and any other service rendered by the Municipality.

“supervisory authority” - the Executive committee of the Municipality or its nominee, acting in terms of Section 99 of the Systems Act.

“Systems Act” – the Local Government: Municipal Systems Act, No 32 of 2000.

“third party debt collector” – any person or persons authorized to collect monies or institute legal proceedings against debtors, on behalf of the Municipality.

“this By-law” – includes the Credit Control and Debt Collection Policy.

“total household income” or **“household income”** – the total formal and informal gross income of all people living permanently or temporarily on the property on which the account is based.

2. **Duty to collect debts**

All debt owing to the Municipality must be collected in accordance with this By-law, Policy or any other legislative requirements.

3. **Provision of services**

New applications for services and the provision of new services must be dealt with as prescribed in the By-law and the Policy.

4. **Service agreements**

Except as otherwise determined in terms of this By-law and the Policy, no services may be supplied until an agreement has been entered into between the Municipality and the user for the supply of a service. The current conditions, regulations and/or legislative requirements will apply in the absence of a written agreement.

5. **Deposits**

The Municipality may require the payment of a deposit for the provision of new services and the reconnection of services, or may adjust the amount of any existing deposit, as prescribed in this By-law and the Policy.

6. **Interest charges**

The Municipality may charge and recover interest in respect of any arrear debt, as prescribed in this By-law and the Policy.

7. **Arrangements to pay arrears**

- (1) The Municipal Manager may make arrangements with a debtor to pay any arrear debt under conditions a prescribed in terms of this By-law and the Policy
- (2) Should any dispute arise out of the amount of the arrear debt, the debtor must nevertheless continue to make reasonable and regular payments, in terms of the arrangement, until such time as the dispute has been resolved.

8. Arrangements with a debtor's employer

The Municipal Manager may –

- (a) with the consent of a debtor, enter into an agreement with that person's employer to deduct from the salary or wages of that debtor –
 - (i) any outstanding amounts due by the debtor to the Municipality; or
 - (ii) regular monthly amounts as may be agreed; and
- (b) provide special incentives for –
 - (i) employers to enter into such agreements; and
 - (ii) debtors to consent to such agreements.

9. Power to restrict or disconnect supply of services

- (1) The Municipal Manager may restrict or disconnect the supply of any service to the premises of any user whenever such user of a service –
 - (a) fails to make payment on the due date;
 - (b) fails to comply with an arrangement; or
 - (c) fails to comply with a condition of supply imposed by the Municipality;
 - (d) tenders a negotiable instrument which is dishonored by the bank, when presented for payment.
- (2) The Municipal Manager may reconnect and restore full levels of supply of any of the restricted or discontinued services only –
 - (a) after the arrear debt, including the costs of disconnection or reconnection, if any, have been paid in full and any other conditions have been complied with; or
 - (b) after an arrangement with the debtor has been concluded.
- (3) The Municipal Manager may restrict, disconnect or discontinue any service in respect of an arrear debt.

10. Recovery of debt

Subject to Section 9, the Municipal Manager, must, with regards to rates, and may, with regards to other debt –

- (a) by legal action recover any debt from any person; and
- (b) recover debt from any organ of state with due consideration of the provisions of Chapter 3 of the Constitution of the Republic of South Africa, 1996, and may refer a debtor to third party debt collection agencies and have such debtor placed on the National Credit Rating list.

11. Recovery of costs

The Municipal Manager may recover the following costs, in instances where such costs are incurred by or on behalf of the Municipality:

- (a) costs and administration fees where payments made to the Municipality by negotiable instruments are dishonored by banks when presented for payment and the Municipality may refuse any further such negotiable instruments in future if such instruments by a debtor were dishonored more than three times;
- (b) legal and administration costs, including attorney-and-client costs and tracing fees incurred in the recovery of debts;
- (c) restriction, disconnection and reconnection fees, where any service has been restricted or disconnected as a result of non-compliance with this By-law and Policy;
- (d) any losses the Municipality may suffer as a result of tampering with municipal equipment or meters; and
- (e) any collection commission incurred.
- (f) any fines and/or penalties charged in the process

12. Attachment

The Municipal Manager may, in order to recover debt, approach a competent court for an order to attach a debtor's moveable and immoveable property.

13. Claim of rent for outstanding debt

The Municipal Manager may, in terms of Section 28 of the Municipal Property Rates Act, No 6 of 2004, attach any rent, due in respect of any ratable property, to cover in part or in full any amount in respect of outstanding rates after the due date.

14. Full and final settlement payments

- (1) Any amount tendered in defrayment of a debt, will be accepted at any cash receiving office of the Municipality.
- (2) No offer of payment in full and final settlement of a debt, when such amount is less than the outstanding amount, must be accepted, unless confirmed in writing by the Municipal Manager.
- (3) Notwithstanding subsection (14.2), the payment so offered must be credited against the debtor's account, without prejudice to the Municipality's right.

15. Consolidation of a debtor's accounts

- (1) The Municipal Manager may –
 - (a) consolidate any separate accounts of a debtor;
 - (b) credit a payment by a debtor against any account of that debtor; and
 - (c) implement any of the measures provided for in this By-law and the policy, in relation to any arrears on any of the accounts of such debtor.
- (2) Subsection (15.1) does not apply where there is a dispute between the Municipality and a debtor referred to in that subsection concerning any specific amount claimed by the Municipality from that person.

16. Indigents

A debtor, who can prove indigence, will be dealt with as prescribed in the relevant policies.

17. Delegation

The Municipal Manager may delegate any of his or her powers in terms of this By-law or the Policy to any employee or official of the Municipality and any board member of a municipal entity subject to applicable legislation.

18. Offences and penalties.

Any person who –

- (a) obstructs or hinders any councilor or official of the Municipality in the execution of his or her duties under this By-law or the Policy;
 - (b) unlawfully uses or interferes with Municipal equipment or consumption of services supplied;
 - (c) tampers with any municipal equipment or breaks any seal on a meter;
 - (d) contravenes or fails to comply with the provisions of this By-law or the policy; or
 - (e) fails to comply with a notice served in terms of this By-law or the Policy,
- is guilty of an offence and liable on conviction to a penalty and/or other legislative process.

19. Short title

This By-law is called the Nketoana Local Government: Credit Control and Debt Collection By-law, 2014