

KGALAGADI DISTRICT MUNICIPALITY

CREDIT CONTROL BY-LAWS

PREAMBLE

Whereas section 98 of Local Government: Municipal Systems Act, 2000, provides that a municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement, now therefore the Council resolves as follows:

CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

1. DEFINITIONS

For the purpose of these by-laws, unless the context indicates otherwise-

“**Apparatus**” includes a building, structure, pipe, pump, wire, cable, meter, machine or any fitting.

“**Council**” means a municipal council as referred to in section 157 of the Constitution.

“**Credit Control**” means all the functions relating to the collection of monies owed by ratepayers and users of municipal services.

“**Customer Management**” means the focusing on the client's needs in a responsive and pro-active way to encourage payment, thereby limiting the need for enforcement.

“**Customer**” means any occupier of any premises to which the Council has agreed to supply or is actually supplying services, or if there is no occupier, then the owner of the premises.

“**Billing**” means proper formal notification (invoicing) on a statement to each customer of amounts levied for assessment rates and services and the net accumulated balance of the account.

“**Interest**” constitutes a levy equal to service levies and is calculated at a rate determined by the Council on all service levies in arrears.

“**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000.

“**Municipal Services**” means those services, rates and taxes reflected on the municipal account for which payments is required by Council.

“**Municipal Account**” shall include levies or charges in respect of the following services and/or taxes:

- a) Electricity consumption
- b) Water consumption
- c) Refuse removal
- d) Sewerage services
- e) Rates and taxes charged in relation to the value of the premises
- f) Interest

“Defaulter” means those persons owing the Council in respect of taxes and/or services charged for a period of more than 45 (forty-five) days from date of account.

“Occupier” means any person who occupies any premises or part thereof, without regard to the title under which he or she occupies.

“Owner” means –

- 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, trustees, executor, administrator, judicial manager, liquidator or other legal representative;
- c) in any case where the Council is unable to determine the identity of such person, a person who is entitled to the benefit of such premises or a building thereon;
- d) in 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 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 registered in terms of the Closed Corporation 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 in the Republic of South Africa .
 - (iv) any Embassy or other foreign entity.

“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, 9 of 1927 or in terms of the Deeds Registry Act, 47 of 1937; or
- b) sectional plan registered in terms of the Sectional Titles Act, 95 of 1986, which is situated within the area of jurisdiction of the Council.

- c) where services are rendered to a property by Council not included under (a) or (b).

“**Financial Manager**” means a person appointed by the Council to manage, *inter alia*, the Council’s financial administration and debt collection of the Council’s debtors as a delegated function.

2. GENERAL PROVISIONS

2.1 Notices and documents

- a) A notice or document issued by the Council in terms of these by-laws shall be deemed to be duly issued if it is signed by an officer authorised by the Council.
- b) If a notice is to be served on a person in terms of these by-laws, such service shall be effected by;
 - (i) delivering the notice to him or her personally or to his or her duly authorised agent;
 - (ii) by delivering the notice at his or her residence or place of employment to a person apparently not less than sixteen years of age and apparently residing or employed there;
- c) if he or she has nominated an address for legal purposes, by delivering the notice to such an address;
- d) registered or certified post addressed to his or her last known address;
- e) in the event of a body corporate, by delivering it at the registered office or the business premises of such body corporate;
- f) if service cannot be effected in terms of paragraphs (b) to (e) by affixing it to the principal door of entry to the premises, or placing it to a conspicuous place on the land to which it relates;
- g) if no postal services are available in a specific area, the Council may appoint an agent to deliver notices and documents at any premises where services are rendered.

2.2 Authentication of documents

- a) Every order, notice or other document requiring authentication by the Council shall be sufficiently authenticated, if signed by the Municipal Manager or by a duly authorised officer of the Council; such authority being conferred by resolution of the Council or by a by-law or regulations.
- b) Delivery of a copy shall be deemed to be delivery of the original.

2.3 Full and final settlement of an amount

- a) The Financial Manager shall be at liberty to appropriate monies received in respect of any of its municipal services it deems fit.

- b) 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, shall not be deemed to be in final settlement of such an account.
- c) The provisions in 2.3(a) above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.
- d) The Financial Manager and/or his/her delegate shall consent to the acceptance of such a lesser amount in final settlement of an account in writing after approval by Council.

2.4 Interest charges

Subject to the provisions of the Local Government Transition Act 1993 (Act 209 of 1993) or any other law relating to interest, the Council may by resolution of a majority of the members of the Council, charge and recover interest in respect of any arrears amount due and payable to the Council.

2.5 Prima Facie Evidence

In legal proceedings by the municipality, a certificate reflecting the amount due and payable to the Council, under the hand of the Municipal Manager, or suitably qualified person authorised by the Municipal Manager, shall upon mere production thereof be accepted by any court of law as prima facie evidence of the indebtedness.

3. POWER OF COUNCIL TO RECOVER COSTS

3.1 Dishonoured payments

Where any payment made to the Council is later dishonoured by a bank, the Council may levy such costs and administration fees against an account of the defaulting debtor in terms of the Council's tariff provisions.

3.2 Legal Fees

All legal costs, including attorney-and/or-own-client costs incurred in the recovery of amounts in arrears shall be levied against the arrears account of the debtor.

3.3 Cost to remind debtors of arrears

For any action taken in demanding payment from the debtor or reminding the debtors by means of telephone, fax, e-mail, letter or otherwise, that his/her payments are due, a penalty fee may be levied against the account of the debtor in terms of the Council's tariff provisions.

3.4 Disconnection fees

Where any service is disconnected as a result of non-compliance with these by-laws by the customer, the Council shall be entitled to levy and recover the standard disconnection fee as determined by the Council from time to time from the user of the services.

3.5 Accounts

The municipality may –

- a) consolidate any separate accounts of persons liable for payments to the municipality;
- b) credit any payment by such a person against any account of that person; and
- c) implement any of the debt collection and credit control measures provided for in these by-laws in relation to any arrears on any of the accounts of such a person.

4. SERVICE AGREEMENT

4.1 No supply of services shall be rendered unless and until application has been made and a service agreement, has been entered into by the consumer, in the Council's prescribed form in the format determined by the Financial Manager from time to time, and a deposit as security equal to an amount and in the form of either cash or a bank guarantee as determined by the Council from time to time, has been paid in full.

4.2 Termination of the service agreement must be in writing to the other party of the intention to do so on the prescribed form determined by the Financial Manager from time to time.

5. ARREARS COLLECTION

5.1 Credit Control and Debt Collection Policy

The Council shall have a written policy on credit control and debt collection, which provides for the following matters, set out in section 97 of the Municipal Systems Act:

- a) credit control procedures and mechanisms
- b) debt collection procedures and mechanisms
- c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents
- d) realistic targets consistent with –
 - (i) general recognised 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) in determining its policy the Council may differentiate between category of persons, clients, debtors and owners, as it may deem appropriate.
- i) Any other matters that may be prescribed by regulation in terms of section 96 of the Municipal Systems Act.

5.2 Power to restrict or disconnect supply of services

- a) 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:
 - (i) 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;
 - (ii) fails to comply with a condition of supply imposed by the Council;
 - (iii) obstructs the efficient supply of electricity, water or any other municipal services to another customer;
 - (iv) supplies such municipal service to a customer who is not entitled thereto or permits such service to continue;
 - (v) causes a situation which in the opinion of the Council is dangerous or a contravention of relevant legislation;
 - (vi) is placed under provisional sequestration, liquidation of judicial management, or commits an act of insolvency in terms of the Insolvency Act no 24 of 1936;
 - (vii) if an administration order is granted in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944) in respect of such user.
- b) The Council shall reconnect and or restore full levels of supply of any of the restricted or discontinued services only after the full amount outstanding and due, including the cost of such disconnection and reconnection, if any, have been paid in full or any other condition or conditions of the Council's Credit Control Policy as it may deem fit have been complied with.
- c) The right of Council to restrict water to any premises or customer shall be subject to the provisions of the Water Services Act, 108 of 1997 with additions/amendments from time to time.
- d) The right of Council to discontinue the provision of electricity to any consumer shall be subject to the provisions of the Electricity Act no 41 of 1987 with additions/amendments from time to time.
- e) The right to restrict, disconnect or terminate service due to non-payments for any other service or assessment rate shall be in respect of any service rendered by

Council, and shall prevail notwithstanding the fact that the person who entered into agreement for supply of services with the Council and the owner are different entities or persons, as the case may be.

5.3 Power of Entry and Inspection

- a) A duly authorised representative of the Council may for any purpose related to the implementation or enforcement of these by-laws, at all reasonable times or in an emergency at any time, enter premises, request information and carry out such inspection and examination as he or she may deem necessary, and for purposes of installing or repairing any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.
- b) If the Council considers it necessary that work be performed to enable an officer to perform a function referred to in (a) above properly and effectively, it may –
 - (i) by written notice require the owner or occupier of the premises at his or her own expense to do specified work within a specified period; or
 - (ii) if in its opinion the situation is a matter of urgency, without prior notice do such work or cause it to be done at the expense of the owner.
- c) If the work referred to (b) above is carried out for the sole purpose of establishing whether a contravention of these by-laws has been committed and no such contravention has taken place, the Council shall bear the expense connected therewith together with that of restoring the premises to their former condition.

5.4 Arrangements to pay outstanding and due amount in consecutive installments

- a) A debtor may enter into a written agreement with the Council to repay any outstanding and due amount to the Council under the following conditions;
 - (i) the outstanding balance, costs and any interest thereon shall be paid in regular and consecutive monthly installments;
 - (ii) the written agreement has to be signed on behalf of the Council by a duly authorised officer.
- b) Should any dispute arise as to the amount owing by an owner in respect of municipal services the owner shall notwithstanding such dispute proceed to make regular minimum payments based on the calculation of the average municipal account for the preceding three months prior to the arising of the dispute and taking into account interest as well as the annual amendments of tariffs of the Council.

5.5 Reconnection of services

The Financial Manager shall authorise the reconnection of services or reinstatement of service delivery after satisfactory payment and/or arrangement for payment has been made according to the Council's Credit Control Policy.

6. ASSESSMENT RATES

6.1 Amount due for assessment rates

- a) All assessment rates due by property owners are payable by the fixed date as determined by Council.
- b) Joint owners of property shall be jointly and severally liable for payment of assessment rates.
- c) Assessment rates may be levied as an annual single amount, or in equal monthly installments.
- d) Payment of assessment rates may not be deferred beyond the fixed date by reason of an objection to the valuation roll.

6.2 Claim on rental for assessment rates in arrears

The Council may apply to Court for the attachment of any rent, due in respect of rateable property, to cover in part or in full any amount outstanding in respect of assessment rates for a period longer than three months after the fixed date.

6.3 Liability of Company Directors for assessment rates

Where a company, closed corporation or a body corporate in terms of the Sectional Titles Act, 1986 is responsible for the payment of any arrears amount to the Council, the liability of such entity shall be extended to the directors or members thereof jointly and severally, as the case may be.

6.4 Disposed of Council's property and payment of assessment rates

- a) The Purchaser of Council property is liable for the payment of assessment rates on the property in respect of the financial year in which the Purchaser becomes the new owner or as determined in the purchase agreement.
- b) In the event that the Council repossesses the property, any outstanding and due amount in respect of assessment rates shall be recovered from the Purchaser.

6.5 Restraint on Transfer of property

- a) A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate –
 - (i) issued by the municipality in which that property is situated; and
 - (ii) which certifies that all amounts due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the three years preceding the date of application for the certificate have been fully paid.

- b) In the case of the transfer of immovable property by a trustee of an insolvent estate, the provisions of this section are subject to section 90 of the Insolvency Act, 1936 (Act no 24 of 1936)
- c) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.

6.6 Assessment rates payable on municipal property

- a) The lessee of municipal property is responsible for payment of any general assessment rates payable on the property for the duration of the lease, as if he is the owner of such property.
- b) The Financial Manager may elect to include the assessment rates in respect of a property in the rent payable by the lessee, instead of billing it separately as in the case of owners of properties.

7. RELAXATION, WAIVER AND DIFFERENTIATION

- 7.1 The Council may differentiate between different categories of ratepayers, users of services, customers, debtors, taxes, services, service standards and other matters.
- 7.2 The Council may, in a specific instance and for a particular owner or customer, relax or waive in writing the requirements of a provision of these by-laws.
- 7.3 Any such differentiation or relaxation shall be upon such conditions as Council may deem fit to impose, if it is of the opinion that the application or operation of that provision in that instance would be unreasonable.

8. REPORTING OF DEFAULTERS

The Council may in its discretion through a duly delegated officer report such persons that owe the Council monies to bodies that collate and retain such information. The information that would be included in such a report shall be the available personal information of the defaulter, or in the event of a legal person, the available statutory details, including information pertaining to the responsible officers of such legal person.

9. REPEAL OF COUCIL CREDIT CONTROL BY-LAWS

The provision of any by-law relating to the control of credit by the Council are hereby repealed insofar as they relate to matters provided for in these by-laws; provided that such provisions shall be deemed not to have been repealed in respect of any such by-law which has not been repealed and which is not repugnant to these by-laws on the basis as determined by the relevant by-laws.

10. OFFENCES

10.1 A person who –

- a) fails to give the access required by an officer in terms of these by-laws;

- b) obstructs or hinders an officer in the exercise of his or her powers or performance of functions or duties under these by-laws;
- c) uses or interferes with Council equipment or consumption of services supplied;
- d) tampers or breaks any seal on a meter or on any equipment belonging to the Council, or for any reason as determined by the Financial Manager causes a meter not to properly register the service used, shall be charged for usage, estimated by the Financial Manager based on average usage;
- e) fails or refuses to give an officer such information as he or she may reasonable require for the purpose of exercising his or her powers or functions under these by-laws or gives such an officer false or misleading information knowing it to be false or misleading;
- f) contravenes or fails to comply with a provision of these by-laws;
- g) fails to comply with the terms of a notice served upon him or her in terms of these by-laws;

shall be guilty of an offence and liable upon conviction to a period not exceeding six months' of community service or a fine not exceeding R20 000, or a combination of the aforementioned.

11. Council may establish its own debt collection section to manage credit control and debt collection related issues.

12. CONFLICTIONS OF LAWS

- 12.1 When interpreting a provision of these by-laws, any reasonable interpretation which is consistent with the purpose of the Municipal System Act, 2000, as set out in Chapter 9, on Credit Control and Debt Collection, must be preferred over any alternative interpretation which is inconsistent with that purpose.
- 12.2 If there is any conflict between these by-laws and any other by-laws of the Council these by-laws will prevail.

13. SHORT TITLE

These by-laws are called the Credit Control and Debt Collection By-Laws.