



# EThekweni Municipality

## CREDIT CONTROL AND DEBT COLLECTION POLICY

### 2016/2017

ADOPTED ON 31 MARCH 2016

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## 1. PURPOSE

This Policy, read together with the eThekweni Municipality Credit Control and Debt Collection By-law, provides procedures and mechanisms for credit control and debt collection. The Policy has been compiled in compliance with the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act), which requires the adoption of a credit control and debt collection policy, which is consistent with the Municipality's rates and tariffs policies and which complies with the Systems Act. The Policy aims to ensure that the Municipality's approach to debt recovery is sensitive, transparent and is equitably applied throughout the Municipality's geographic area.

## 2. DEFINITIONS

Words contained in this Policy have the same meaning as in the eThekweni Municipality: Credit Control and Debt Collection By-law, except where the context indicates otherwise. In addition, the following words and phrases have the following meanings:

**"Account"** means written notification in the form of a statement of account in respect of municipal services, rates, sundry charges and other charges, addressed to a person liable for payment thereof;

**"Agent"** means a person authorised by the customer to act on his or her behalf;

**"Arrears"** means any amount which is due, owing and payable and which remains unpaid by due date;

**"Authorised Official"** means the Head: Revenue or his delegate in terms of the Municipality's System of Delegations;

**"Bulk customer"** means a customer who consumes large amounts of electricity for commercial or industrial purposes;

**"By-law"** means eThekweni Municipality: Credit Control and Debt Collection By-Law, as amended;

**“CFO”** means a person employed by the Municipality in terms of section 57 of the Systems Act as the Chief Financial Officer of the Municipality, and includes any person to whom the Chief Financial Officer has delegated or sub-delegated a power, function or duty in accordance with the system of delegation developed by the Municipal Manager in terms of section 79 of the Municipal Finance Management Act and section 59 of the Systems Act;

**"Collection charges"** means the charges which the Municipality is entitled to recover in terms of section 75A(1) of the Systems Act, and includes the administrative cost–

- (a) of reminding any ratepayer or customer of arrears;
- (b) for the termination, restriction or reinstatement of any municipal service to a defaulting ratepayer or customer;
- (c) of any notice rendered, sent, delivered or published to a ratepayer or customer in terms of the By-law or any other law;
- (d) of any merchant fee; and
- (e) in respect of any other charge which the Municipality is by law entitled to recover;

**“Company”** shall bear the same meaning as “Company” in the Company’s Act, 2008 (Act 71 of 2008);

**“Consolidated account”** means a monthly account reflecting municipal service fees, charges, surcharges on fees, property rates, sundry charges and other municipal taxes, levies and duties and all consolidations in terms of section 102 of the Systems Act;

**“Credit Authority”** means any arrangement made by agreement between the Municipality and a customer for the payment of any arrears in instalments. Such arrangement may take the form of an agreement or an acknowledgment of debt;

**"Customer"** means any person or their agent with whom the Municipality or an authorised official has entered into an agreement for the provision of any municipal service to the premises;

**“Deemed Owner”** means the occupiers contemplated in section 27.2 of this Policy;

**“Defaulter”** means a Customer whose account is in arrears;

**“Deposit”** means a monetary amount raised by the Municipality in relation to the consumption of a Municipal Service and mitigation of credit risk to the Municipality, irrespective of the existence of an agreement;

**“Due date”** means the date on which a customer’s account becomes payable, which in the case of monthly accounts is twenty-one days from the date of the account, and in the case of annual accounts is the 31 October each year;

**“Effective Date”** means the date on which this Policy comes into effect which shall be 1 July 2016;

**“flow limiter”** means an electronic device installed in the water connection which allows for a normal flow rate but restricts the daily volume of water to a present amount of 300 litres per day;

**“flow restrictor”** means a washer which is installed in the water connection which allows a daily consumption of approximately 360 litres of water in a six hour period but at an extremely low flow rate;

**“Housing Substitution Policy”** means a policy where the children of a social housing tenant who is deceased, are substituted as tenants;

**“Illegal connection”** means any connection to a system through which municipal services are provided, which is not authorised or approved by the Municipality or an authorised official;

**“Juristic person”** includes a partnership, a proprietor, association or other body of persons, corporate or unincorporated and includes a trust and organ of state;

**“Leak period”** means the metering period immediately prior to the date of repair of the leak and the metering period during which the leak is repaired. Each of these two periods will not exceed 65 days;

**“Meter”** means any device which measures any demand or quantity of either electricity energy or water passing through such meter;

**“Metering period”** means the time interval between two successive billed meter readings but shall exclude previous leak periods;

**“MPRA”** means the Local Government: Municipal Property Rates Act, 2004 (Act 6 of 2004), as amended;

**“Multi-property owner”** means an owner of 50 or more registered properties in the Municipality’s area of jurisdiction;

**“Municipal charges”** means municipal service fees, surcharge on fees, penalties, interest, property rates, and other municipal taxes, levies and duties, as well as any other charges in terms of Legislation, Policy or an agreement including Sundry Charges and Collection charges;

**"Municipal service"** means a service provided by the Municipality in terms of its powers and functions to or for the benefit of the local community, irrespective of whether or not –

- (a) such service is provided by the Municipality itself or by engaging an external mechanism contemplated in section 76 of the Systems Act; or
- (b) any fees, charges or tariffs are levied in respect thereof;

**“Net salary”** means the gross salary minus pension and statutory deductions;

**"Owner”** In addition to the persons defined in the MPRA, includes:

- (a) In relation to a property referred to in paragraph (a) of the definition of "property" in the MPRA, a person in whose name ownership of the property is registered;
- (b) An owner in a sectional title scheme who owns in addition to the residential unit, a garage, parking, granny flat or storage room, under separate Title in the scheme, is deemed to be the owner of ONE property for the purposes of 7.2 and 7.3. of the Rates Policy of the Municipality;
- (c) An owner of two or more properties which are notarially tied to each other, is deemed to be the owner of ONE property for the purposes of 7.2 and 7.3 of the Rates Policy of the Municipality;
- (d) The administrator of the body corporate of a sectional title scheme where the common property of a sectional title scheme is at issue and there are no elected trustees of the body corporate;
- (e) The administrator, where the owner of a property is a mental health care user as defined in section 1 of the Mental Health Act, 2002 (Act No. 17 of 2002);
- (f) The business rescue practitioner, where the owner of a property has been placed under business rescue;
- (g) The managing agent, where the owner of a property is absent from the Republic of South Africa or where the Municipality has, after reasonable attempts, not been able to determine his or her whereabouts;

(h) Every person who is entitled to occupy or use a building, or who does occupy or use a building, where –

- (i) The owner of the property is absent from the Republic of South Africa;
  - (ii) The Municipality has, after reasonable attempts, not been able to determine the whereabouts of the owner of the building; and
  - (iii) There is no managing agent;
- (i) Trustees and beneficiaries jointly, in the case of property in a trust;
  - (j) An executor or administrator, in the case of property in a deceased estate;
  - (k) A trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
  - (l) A judicial manager, in the case of a property in the estate of a person under judicial management;
  - (m) A curator, in the case of property in the estate of a person under curatorship;
  - (n) A person in whose name a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude, as joint owner together with the registered owner;
  - (o) A lessee, in the case of a property that is registered in the name of the Municipality and is leased by it;
  - (p) A buyer or a developer, in the case of a property that was sold by the Municipality and of which possession was given pending registration of ownership in the name of the buyer, beneficiary, or a developer;
  - (q) A fideicommissary as joint owner together with the fiduciary;
  - (r) Ingonyama Trust in respect of the land vested in the Ingonyama Trust by virtue of the Ingonyama Trust Act of 1994, as amended, or any other law;
  - (s) The National Government of the Republic of South Africa, in the case of a property that is registered in the name of a deregistered company or close corporation and where ownership thereof has accrued to the state by operation of law ( bona vacantia);
  - (t) An owner of a property in the name of any other juristic person not mentioned in this definition of an owner;
  - (u) A Deemed Owner; and
  - (v) A child or children in charge of a property in the case of a child headed household as contemplated in this Policy and the Rates Policy of the Municipality;

**"Person"** means a natural person or Juristic Person;

**"Property"** means–

- (a) immovable property registered in the name of a person, including, in the case of sectional title scheme, a sectional title unit registered in the name of a person;

- (b) a right registered against immovable property in the name of a person;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation, excluding a permission to occupy; or
- (d) a public service infrastructure;

**“Prescribed form”** means any document that may be prescribed by law or required by the CFO from time to time; in a format approved by Council;

**“Rates”** means a municipal rate on property envisaged in terms of section 229(1) (a) of the Constitution and levied by the Municipality in terms of the MPRA, expressed as cents in the rand;

**“Rates Regulations”** means the Municipal Property Rates Regulations, 2006 as amended;

**“Residential property”** means a dwelling, in any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person **excluding** a dwelling where the dominant use is for any purpose other than residential, or where it is used in the supply of commercial accommodation;

**“Revenue Clearance Certificate”** means a certificate of the kind referred to in Section 118(1) of the Systems Act;

**“Services Account”** means an account which relates to Water and or Electricity consumption and related charges;

**“Service Agreement”** means an agreement entered into between the Customer and the Municipality for the provision of municipal services. (E.g. Water, Electricity);

**“social housing tenant”** means any person renting any residential premises from any public legal body for less than a full rack rental or renting residential premises from a private person and receiving from the National or Provincial Government a subsidy or other amount to empower the tenant to pay the full rack rental;

**“Social Worker”** means a person employed by the Municipality who is registered as a social worker under the Social Service Professions Act, 1978 (Act No 110 of 1978);



**“Sundry charge”** means an amount charged to a customer which is not directly linked to a property and includes but is not limited to–

- (a) charges arising from damage to municipal property and equipment;
- (b) monies owed for municipal services other than rates, water, electricity and sanitation;
- (c) monies awarded to the Municipality through court orders and judgments;
- (d) fines; and
- (e) monies owed to the municipality by the municipality staff (staff debts);

**“Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as amended;

**“Tenant”** means in relation to this Policy a person with whom has entered into a lease agreement with the Landlord; and such person became a Customer to the Municipality prior the adoption of clause 3.1 of this Policy .This excludes tenants stated in clause 3.3 and Social Housing Tenants as mentioned in this Policy;

**“Tenderer”** means a contractor, service provider or supplier who has submitted a tender for the provision of services or the delivery of goods to the Municipality;

**“Water services”** means the supply of potable water and, where a municipal sewerage reticulation system exists, the disposal of sewage; and

**“50/50 pre-payment debt recovery”** means a pre-payment system whereby 50% of payment is allocated to arrears and 50% is allocated to the purchase of electricity. Only owners can make application for a pre-payment system, excluding municipal employees, councillors and social housing tenants whose accounts are in arrears.

## **PROVISION OF MUNICIPAL SERVICES**

### **3. REGISTRATION FOR MUNICIPAL SERVICES**

3.1 **Residential property** - The Municipality will endeavour to register **owners only** for services on their properties. Tenant registrations currently in place will continue until the tenant vacates, the account is closed or the Municipality cancels the contract of the tenant in default in terms of subsection 6.1 (b) of this Policy.

- 3.2 **Business property** - The Municipality will only enter into new contracts for municipal services with tenants if the owner of the property is a multi-property owner as defined, and the municipal accounts on all of his or her properties are paid. Where the landlord is not a multi-property owner, the owner of the property must register for services.
- 3.3 When the owner of the property is a bulk customer, the CFO, at his or her discretion, may allow tenants of the bulk customer to be registered for municipal services on the property concerned, upon submission of any documents or information that may be requested by the CFO.
- 3.4 **Government property** - The Municipality will continue to register tenants for services. The respective Government Departments shall be held liable for the debts on their own property.
- 3.5 **Sundry accounts** - The customer must provide the Municipality with a municipal account number or rate account number. If the customer does not have an existing municipal account then a new account must be created.
- 3.6 The Municipality shall whenever possible, combine any separate accounts of a person who is liable for payment to the Municipality, into one consolidated account.
- 3.7 No registrations or additions to the customer database can be processed unless legal documentation acceptable to the CFO has been produced in each instance.
- 3.8 If there is an outstanding debt on the property, this debt must be settled in full, or suitable payment arrangements must be made by the owner of the property, before any customer or owner is registered for services.
- 3.9 Customers who fail to register and who illegally consume services will be subjected to such administrative, civil or criminal action as the Municipality deems appropriate.
- 3.10 Where the purpose for or extent to which any municipal service used is changed, the onus and obligation is on the customer or owner to advise the Municipality of such change.

- 3.11 A person applying for a Municipal Service must enter into a service agreement with the Municipality in order for such Municipal Service to be provided.
- 3.12 **Documentation and Information (Juristic Persons)**- An application by a Juristic Person for a Municipal Service must include –
- (a) The submission of a resolution delegating authority to the applicant and furnishing, if applicable, the Juristic person's Registration Number or Trust Reference Number with the Master of the High Court.
  - (b) The names, identity number, cell phone number, physical and postal addresses, email addresses and any other particulars of all the directors or members or trustees or proprietors or partners, as maybe prescribed.
  - (c) Certified copies of the following where applicable:
    - (i) Current Letter of Authority of the Trustee(s).
    - (ii) Identity documents of the persons referred to in (b) above.
    - (iii) CIPC registration documents.
    - (iv) Constitution.
  - (d) A signed Direct Debit form as prescribed by the Municipality.
  - (e) Deeds of Suretyship in the prescribed form, signed by the persons referred to in (b) above.
- 3.13 A person may be required to provide to the Municipality such personal information, as may be prescribed, for any purpose contemplated in this policy, amongst others, all contact details (postal/physical/email address etc.), proof of identification, financial information and such other relevant documentation, as may be required by the Municipality from time to time (e.g. binding lease agreement, title deed etc.).
- 3.14 All information furnished may be verified by the Municipality with any or all data information institutions, credit information bureau's and any financial institutions as may be deemed necessary by the Municipality in determining a person's credit worthiness or for any other reason as determined by the CFO.
- 3.15 The Municipality has a right to conduct a full credit check on any person who is or who will become subject to this policy or any other policy of the Municipality.

#### **4. DEPOSITS**

- 4.1 Upon date of ownership transfer, a deposit will be automatically raised, based on the criteria determined by the CFO, from time to time.

- 4.2 The CFO may exclude a category of owners from payment of deposits.
- 4.3 Where a tenant terminates a services account, consumption charges emanating from a meter must thereafter be linked to the owner's rates account and a deposit will be raised once consumption is recorded and will become due in the next months' bill.
- 4.4 The Municipality may appropriate a customer's deposit on any account related to that customer.
- 4.5 Notwithstanding receipts for different services, deposits payable to the Municipality shall be a consolidated deposit, paid in cash. Sureties shall not be accepted in lieu of deposits.
- 4.6 Where a business customer does not present a valid South African ID Document, a deposit equivalent to twice the prescribed deposit shall apply, in addition to the personal suretyships.
- 4.7 If a customer is in arrears, the deposit may, upon due notice, be increased.
- 4.8 The Municipality may utilise the consolidated deposit as security for any or all of the charges or amounts included in the statement of account.
- 4.9 Social Housing tenants qualify for the same deposit as an owner.
- 4.10 No deposit will be raised on property where there is no consumption however an availability fee shall be raised.
- 4.11 Where a tenant has absconded leaving a debt on a property, an additional deposit, equal to the debt on the property, may be raised on any other account held by the tenant with the Municipality.
- 4.12 **Guarantees**
- a. Guarantees shall not be accepted as a form of deposit except where Municipal Property is alienated or as the CFO may direct from time to time

- b. Existing Guarantees shall be honoured for the duration of the contract with the Municipality.
- c. Addendums to existing Guarantees shall not be accepted. The additional deposit must be paid in cash.
- d. Where guarantees are held in lieu of deposits, such guarantee shall be presented for payment and a new deposit shall be raised to any arrear account.

#### 4.13 **Review of Deposits**

- a. If the customer poses a credit risk, the value of the original deposit paid or a guarantee held may be reviewed from time to time by the CFO.
- b. The deposit on an account shall be reviewed when–
  - i. the Account is paid after the due date;
  - ii. payment by negotiable instrument or direct debit is dishonored; or
  - iii. there is increased consumption of services.
- c. The Municipality may increase the deposit payable by a customer by up to 12 months average usage.
- d. The deposits on all accounts may increase pro rata based on the Bulk consumption charge to Eskom and Umgeni Water.

#### 4.14 **Interest Payable on Cash Deposits**

The Municipality will not pay interest on cash deposits. Any interest accruing on existing deposits in accordance with a determination made by the Municipality, prior to the Effective Date, will cease from the Effective Date. All interest that has accrued up to the Effective Date will be added to the deposit held by the Municipality. The deposit plus interest accrued, shall be taken into account upon closure or termination of an account.

4.15 **Substitution of Accounts for Social Housing Tenants**

Should a customer request to substitute another person as a customer on their existing account, such customer shall forfeit his/her/its Deposit and the person so substituted shall inherit the deposit on the account. Such deposit shall be subject to review in terms of **4.13** above.

## **ACCOUNTS MANAGEMENT**

### **5. ACCOUNTS**

- 5.1 The Municipality will deliver notices and accounts in accordance with section 115 of the MSA. A Customer may register for another mode of transmission as set out in the Credit Control and Debt Collection By-Law. In the case of multiple-ownership, the account will be delivered to any one of the owners.
- 5.2 Failure to receive or accept accounts does not relieve a customer of the obligation to pay any amount due and payable. The onus is on the customer to make every effort to obtain a copy of the account, or establish the amount payable for payment.
- 5.3 The Municipality or an authorized official must, if administratively possible, issue a duplicate account to a customer on request. The Municipality will provide owners with copies of their tenant's accounts if requested in writing.
- 5.4 The Municipality may post annual rates assessment for record purposes.
- 5.5 With the exception of Government Accounts, assessment rates shall be billed on a monthly basis, and may only be billed annually by prior written agreement, subject to the Rates Policy of the Municipality.
- 5.6 Customers are required to update their information details with the Municipality promptly whenever information on record changes and or whenever requested by the Municipality. A failure to update information with the Municipality or a failure to respond to the Municipality's request for updated information may, subject to the principles of

administrative justice, result in with-holding of services, disconnection of services or prosecution. Such update of information includes, but is not limited to—

- a. Details of executors or administrators of deceased estates;
- b. Deregistration of a company if the company is the account holder;
- c. Details of deceased company directors, members of Close Corporations and trustees of Trusts;
- d. Details of deceased partners and;
- e. Letters of appointment of a Trustee or Liquidator in the case of an insolvency /liquidation together with contact particulars.

5.7 The Municipality may recover a rate annually, on application, from multi-property owners. Such application must reach the Municipality on or before 30 April of each year and the annual rates account is to be paid by 31 October of each year.

5.8 The payment of rates shall not be affected by reason of an objection, appeal or non-compliance with the Rates Policy of the Municipality.

5.9 A request for a reconciliation of any account shall be processed after payment of a prescribed fee.

5.10 Tokens for pre-paid electricity may only be refunded within 48 hours of purchase thereof.

5.11 There is no obligation on the Municipality to provide records older than 5 years from the date such records are requested.

## **6 RESPONSIBILITY FOR AMOUNTS DUE**

6.1 In terms of Section 118 (3) of the Systems Act, an amount due for municipal service fees, surcharge 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. Accordingly —

- a. the owner of such property shall be liable for charges incurred in connection with such property and all municipal debts must be paid by the owner of such property without prejudice to any claim or right of recovery which the Municipality may have against another person;
- b. the Municipality reserves the right to cancel a contract with the customer in default and register the owner of such property for services on the property; and
- c. Subject to the right to a basic water supply as contemplated in the Water Services Act, 1997 (Act No. 108 of 1997), as amended, the Municipality will not provide any services on the property until all municipal debts on the property have been paid in full or suitable arrangements have been made to pay such debts. The Municipality reserves the right to determine the manner in which access to a basic water supply will be provided.

6.2 Where the property is owned by more than one person, each owner shall be jointly and severally liable, the one paying the other to be absolved, for all municipal debts charged on the property.

6.3 Owners with their tenants who are registered as customers shall be held jointly and severally liable, the one paying the other to be absolved, for debts on their property, except for property rates.

6.4 Refuse removal shall form part of the property debt payable by the owner of the property.

6.5 When a Juristic person opens a Service Account, the directors, members or trustees as the case may be must sign personal suretyships in favour of the Municipality. Liability for outstanding amounts may be extended to such directors, members or trustees jointly and severally, the one paying the other to be absolved.

6.6 The Municipality may —

- a. recover from a tenant, occupier or agent such monies as are owing by the tenant, occupier or agent to the owner, as payment of the arrears



owing by such owner for so long as a tenant or occupier occupies a property in respect of which arrears are owing, or an agent acts for an owner in respect of whose property arrears are owing;

- b. recover the amount in whole or in part despite any contractual obligation to the contrary on the part of the tenant, occupier or agent;
- c. recover from the tenant, occupier or agent an amount which is limited to the amount of the rent or other money due and payable, but not yet paid by the tenant, occupier or agent; and
- d. apply to the Companies and Intellectual Property Commission to re-register a deregistered company or close corporation or apply to court for an order of restoration or the voiding of the deregistration for the purposes of recovering the amounts owed by that company or close corporation for all municipal debts which have accrued and shall recover the costs of re-registration from the directors or members accordingly.
- e. In the case of assets accruing to the State by operation of any law [(bona vacantia) – Section 76 (2) (i) of the PMFA] collect outstanding fees from the relevant treasury who may exercise all powers, authority and prerogatives, and fulfill any obligation on behalf of the state.

6.7 Should the tenant, occupier or agent refuse to pay as contemplated in subsection 6.6 to the Municipality, the services of the tenant, occupier or agent may be disconnected.

6.8 Should any dispute arise as to the amount owing, the customer shall pay all amounts which are not subject to the dispute that are due and payable, pending the finalisation of the dispute lodged in respect of the specific amount owed by the customer.

6.9 Subject to sections 20 and 21, where an existing Customer wishes to convert an existing electricity and or water supply service to a Pre-paid meter, the customer must first settle all outstanding amounts or make a suitable arrangement to liquidate the outstanding amount as contemplated in section 24, before an application for a pre-paid meter may be considered.

- 6.10 On special projects identified by the Municipality, pre-paid meters may be zero costed.
- 6.11 In former cluster dwellings that are owned by the Municipality, where 80% of the electricity is serviced via pre-paid meters, the remaining credit meters are to be converted to the pre-payment system.
- 6.12 In relation to low cost housing schemes, the Municipality may charge a fixed rate for property rates, which charge may be deducted via the pre-payment system.
- 6.13 The owner of the property may be held liable for tampering with the electricity metering equipment or the water metering equipment on the property as well as charges that arise therefrom.
- 6.14 Where any subsidiary company of a holding company is indebted to the Municipality, the liability for such arrears may be extended to the holding company; and where any holding company is indebted to the Municipality, the liability for such arrears may be extended to any subsidiary company
- 6.15 Debtors may be referred to a third party debt collector and tracing agent.

## **7 PAYMENT OPTIONS**

- 7.1 The Municipality will endeavour to establish a payment network to ensure that wherever practically possible, customers in receipt of accounts have access to a payment site within a reasonable distance of their home.
- 7.2 The Municipality shall accept payment under the following circumstances–
- a. Payment by cheque – provided it is a Bank cheque in ALL instance.
  - b. Payment via a Bank cheque, electronic funds transfer (EFT) or Cash for Settlement of final accounts.
  - c. Subject to a. and b. above, the following payment methods are also available:
    - (i) EFT;

- (ii) Internet Transfers;
    - (iii) Third party collectors appointed from time to time by the Municipality;
    - (iv) Direct Debit; and
    - (v) Debit Order payments.
  - d. The following shall apply for all EFT payments of the customer's arrears accounts:
    - (i) Only proof of payments from customers will be accepted.
    - (ii) The proof of payment will be verified, where applicable, for authenticity (through the submitting bank's website).
    - (iii) All reconnection requests where services have been disconnected will ONLY be actioned once payments have been cleared and or received to the respective consumer accounts.
  - e. Customers whose accounts are in arrears are encouraged to pay at online sites in the Municipality's banking halls.
- 7.3 Cheques will not be accepted in any other circumstances except those listed in subsection 7.2 of this Policy.
- 7.4 Where any direct debit or payment made to the Municipality or an authorised official is later dishonoured by the bank, the Municipality or its authorised official–
  - a. will recover the bank charges incurred relating to that dishonoured payment against the account of the customer;
  - b. may regard such an event as default on payment and the account shall be dealt with as an arrear account; and
  - c. reserves the right to take legal action for recovery of arrears.
- 7.5 Where the payment is made by debit or credit card, such payments are limited to R2 500 **per account per month**. Payments made in excess of this value, including multiple payments which value exceeds R2500, will result in an administration charge.
- 7.6 The methods of payment shall be determined by the CFO from time to time.

7.7 Where a customer signs a Credit Authority with the Municipality, payment shall, as far as possible, only be accepted via a direct debit procedure.

## **8 FULL AND FINAL SETTLEMENT**

8.1 Where the exact amount due and payable has not been paid in full, any lesser amount tendered and receipted, shall not be in full and final settlement of such an account, except when duly accepted in terms of a delegated authority.

8.2 Subsection 8.1 shall prevail notwithstanding the fact that such lesser payment was tendered or receipted in full settlement.

8.3 The CFO must be consulted on any settlement, out of court or otherwise, that has a financial implication on the Municipality.

## **9 CASH ALLOCATION**

9.1 In accordance with section 102 of the Systems Act, the Municipality may–

- a. consolidate any separate accounts of persons liable for payments to the Municipality;
- b. credit a 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 this Policy in relation to any arrears on any of the accounts of such a person.

9.2 Any amounts paid may be appropriated to the oldest debt first.

9.3 Any amount paid by the customer in excess of an existing debt may be held in credit for the customer in anticipation of future rates and fees for municipal services, and no interest will be payable on that amount.

- 9.4 The Municipality's allocation of payment is not negotiable and the customer may not choose which account to pay.

## **10 INTEREST AND ADMINISTRATIVE CHARGES**

- 10.1 Interest charges are raised on arrears which appear on the accounts.
- 10.2 The legal rate of interest raised on arrears is equivalent to the rate of interest as determined in Regulation 9 of the Rates Regulations unless other applicable legislation stipulates the contrary.
- 10.3 Interest shall accrue 30 days from date of account on unpaid accounts. Interest shall accrue for each completed month in respect of any arrears remaining unpaid after 30 days of the account. A part of a month shall be deemed to be a completed month on the basis that interest is charged as from the first day of the account being in arrears.
- 10.4 Payments on assessed or estimated charges, where the final amount has not been determined but which would have been due and payable had the amount been determined, shall attract interest from the date when it would have been so due and payable. For example, 30 days from date of account.
- 10.5 Where a debtor qualifies for a full reduction in the value of his property, and where such debtor enters into an Acknowledgement of Debt with the Municipality to pay off arrears for service charges, no further interest will be added to the arrears outstanding if during the period, the debtor adheres to the agreement.
- 10.6 Interest may only be reversed under the following circumstances—
- a. exemptions as determined by this Policy from time to time;
  - b. if the Municipality has made an administrative error on the account;
  - c. Where any debt has arisen as a result of a faulty meter or the Municipality has applied an incorrect charge, meter constant or tariff due to an administrative error;

d. where an owner takes over the debts of the tenant; and

e. where the Municipality approves such reversal from time to time.

10.7 An administrative charge as determined by a Resolution of the Municipal Council shall be levied on arrear rates where the Municipality has instituted legal action against the owner by service of summons to recover same.

## **11 PROCUREMENT OF GOODS AND SERVICES AND PAYMENTS IN TERMS OF CONTRACTS**

11.1 When submitting a tender for the provision of services or the delivery of goods, each potential tenderer must prove to the satisfaction of the Municipality that all accounts for which the tenderer is liable, have been paid up to date, and that all accounts for which each and every director, member, owner, partner or trustee of the tenderer is liable, have also been paid up to date.

11.2 The Municipality will at its sole discretion check whether all the municipal accounts are up to date. Copies of all current accounts sent to the tenderer and to each director, member, owner, partner or trustee must be attached to the tender documents.

11.3 Where a tenderer's place of business or business interests are outside the jurisdiction of the Municipality, a Revenue Clearance Certificate from the relevant Municipality must be produced.

11.4 Before awarding a tender, the Municipal debts of the tenderer and of each director, member, owner, partner or trustee of the tenderer must be paid in full.

11.5 Where payments are due to a creditor of the Municipality, or in terms of any contractual arrangement with the Municipality, any arrear amount owing to the Municipality may be set off against such payments.

11.6 This Policy applies to quotations, public tenders and tenders in terms of section 36 of the Municipality's Supply Chain Management Policy.

## **12 AGREEMENT WITH EMPLOYERS**

12.1 Section 103 of the Systems Act reads as follows—

A Municipality may—

- (a) with the consent of a person liable to the Municipality for the payment of rates or other taxes or fees for municipal services, enter into an agreement with that person's employer to deduct from the salary or wages of that person-
  - (i) any outstanding amounts due by that person to the Municipality;  
or
  - (ii) regular monthly amounts as may be agreed.

12.2 In the event that the employee voluntarily chooses to use the method of payment as contemplated in subsection 12.1 for the payment of his or her municipal accounts, the employee may approach the Municipality for the agreement to be concluded.

12.3 A collection commission may be payable to the employer as determined from time to time.

## **13 STAFF, COUNCILLORS AND WARD COMMITTEE MEMBERS IN ARREARS**

- 13.1
- a. Item 10 of Schedule 2 to the Systems Act (Code of Conduct for Municipal Staff Members) states that—
    - i. a staff member of the Municipality may not be in arrears to the Municipality for rates and service charges for a period longer than three (3) months; and
    - ii. a Municipality may deduct any outstanding amounts from a staff member's salary after this period; and
  - b. The Municipality shall liaise with the relevant staff on repayment of their arrears.

- c. The staff member must sign a Credit Authority and direct debit deduction form in accordance with this Policy
  - d. No special treatment shall be afforded to staff members whose accounts are arrears.
  - e. Any staff member who has breached the code will be dealt with in accordance with the disciplinary procedures adopted by the Municipality or as prescribed by Law or determined by a Collective Agreement.
- 13.2
- a. Item 12A of Schedule 1 to the Systems Act states that a Councillor may not be in arrears to the Municipality for a period longer than three months.
  - b. The Municipal Manager shall liaise with the Speaker and issue the necessary salary deduction instruction where appropriate.
- 13.3
- Where the Municipality is satisfied with the reasons supplied by the staff member or Councillor stating why the account is in arrears, the staff member or Councillor must pay such arrears within a period of 3 months with interest.
- 13.4
- On appointment to a higher post, employees who have signed a Credit Authority shall increase their instalments on the Credit Authority in accordance with their new salary increase.
- 13.5
- Staff and Councillors do not qualify for the Debt Relief Program under section 16.
- 13.6
- The Council reserves the right to deduct any arrears from the stipend or any other amounts payable to ward committee members.

## **14 ARREAR ACCOUNTS**

### **Disconnection and Reconnection of Services**



- 14.1 Arrears on rates, services or any other consolidated debt may result in disconnection of ANY service or withholding use of municipal facilities.
- 14.2 A disconnection penalty fee, as determined by the CFO, from time to time, will be raised on all accounts printed for disconnection.
- 14.3 A reconnection fee will be raised on reconnection of services
- 14.4 Any official or contractor appointed by the Municipality for the purposes set out herein, may, at all reasonable times enter any premises to which services are supplied by the Municipality, in order to inspect pipes, wires or any apparatus used for the supply of services and belonging to the Municipality, for the purpose of ascertaining the quantity of services supplied or consumed, or to disconnect or terminate such supply or remove any apparatus belonging to the Municipality.
- 14.5 Should the owner fail to allow access to the premises or the property to which services are supplied by the Municipality on three consecutive occasions, the CFO may, having given due notice, disconnect, stop or restrict or discontinue the provision of any service, and the owner, at his or her cost should opt for a pre-paid meter.
- 14.6 The owner of the property remains liable and responsible for all instances of unauthorised reconnections and disconnections, tampering, damage or theft of municipal infrastructure, and services installed in the property. Further, the onus is upon the owner to ensure that tenants on the premises or the property refrain from such acts.
- 14.7 Unauthorised reconnection of, or tampering with a service supply is prohibited and shall constitute a criminal offence that will result in legal action being taken against the owner and disconnection of municipal services.
- 14.8 Subject to applicable legislation, the Municipality may refuse the supply of water or electricity to a consumer who is found guilty of fraud, theft or any other criminal offence related to municipal services, or, where it is evident that such criminal offence has occurred, until such time as the total costs, penalties, other fees, illegal consumption and any applicable tariffs and rates due to the Municipality have been paid in full.

- 14.9 Reconnections of municipal services will only be allowed when all applicable penalties and fees have been paid and the debt has been extinguished or suitable arrangements have been made to settle the debt.
- 14.10 Services may be disconnected , after due notice has been given ,where the–
- a. owner or tenant is deceased; or
  - b. company, close corporation or trust has been deregistered, and such has not been reported to the Municipality.
- 14.11 Reconnection of services where services have been disconnected in terms of subsection 14.10 above will be authorised when–
- a. an executor has been appointed; or
  - b. the Company or Close corporation has been re-registered.
- 14.12 The services of customers on pre-paid meters, who tamper with their services, will be disconnected and any amounts due to the Municipality will become payable immediately.
- 14.13 Where a municipal service, which is not in the name of the registered owner, has been restricted, disconnected or discontinued, the CFO may, subject to the principles of administrative justice, insist that the service be transferred into the name of such property owner; and
- a. Notwithstanding subsection 14.13, the CFO may at any other time insist that the service be transferred into the name of such property owner.
- 14.14 Any additional grounds for disconnecting municipal services as set out in the Bylaw, shall be deemed to form part of this Policy.

## **15 DOMESTIC WATER AND SEWAGE DISPOSAL CUSTOMERS**

- 15.1 Flow restrictors or flow limiters will be installed in water connections of customers who have not paid the total charges for water services (i.e. supply of potable water, and, where applicable, the disposal of sewage) for sixty (60) days or more, and who owe the Municipality more than an amount determined by the CFO from time to time, for water

used and sewage discharged and who have not responded to written notification from the Municipality to–

- a. pay the outstanding amount;
- b. meet with officials of the Municipality; or
- c. make arrangements to settle the debt.

15.2 Flow limiters are installed on application and in compliance with the conditions as set out below.

15.3 On restriction of the water supply via a flow restrictor washer, customers have the following payment options–

- a. pay the outstanding arrear amount in respect of water service charges plus all relevant charges in full;
- b. apply for a flow limiter and sign a Credit Authority, subject to subsection 15.7 below; or
- c. sign a Credit Authority for the arrears.

15.4 Confirmation of tampering of a restricted supply on two occasions may result in the entire water connection being removed. Customers have two options to facilitate the reinstatement of the water supply–

- a. pay the outstanding debt in respect of water services charges in full (including all charges) plus the prevailing costs of a new water connection and penalty charges; or
- b. apply for a flow limiter and sign a Credit Authority. The connection costs and penalty charges must be paid immediately.

- 15.5 If a customer has received a new connection and then tampers with it again, the connection will be removed and will not be replaced until all outstanding water debts have been paid.
- 15.6 All illegal connections that are found will be removed and owners and occupiers may be prosecuted by a court of law.
- 15.7 The following applies to customers whose water supply has been limited using a flow limiter device–
- a. They are obliged to attend a 15 minute training session. The training programme is vital as it makes customers aware of how to manage with the free basic water per day. The customer is also made aware that if the flow limiting device is tampered with in any way and the supply of water to the property increases above the free basic water per day and the tampering is detected by the Municipality before it has been reported to eThekweni Water and Sanitation Unit by the customer, then the supply of water to the property will be permanently disconnected until the amounts owing have been paid in full (including the cost of a new water connection). In this regard, interest will again be due from the date that the tampering is detected by the Municipality.
  - b. They must sign a Credit Authority and consent to judgment. The debt may not attract further interest for the duration of the Credit Authority;
  - c. They must pay a minimum amount, as determined from time to time by the CFO, towards the Credit Authority;
  - d. The flow limiting device will be removed once the outstanding amount is paid in full and the charge to remove the device is paid.
  - e. The Credit Authority shall be cancelled on application for a revenue clearance certificate and all debts on the property shall become due, owing and payable.
- 15.8 In the event of a funeral or other function associated with the death of a family member, or a family wedding, an application may be made for temporary relief whereby the flow

limiter may be removed for a specific period of up to seven days only. The application must be supported by a letter from the ward or PR Councillor and the payment of a prescribed fee as per the approved schedule of tariffs, to be reviewed annually. The flow limiter will be reinstated after seven days.

## **16 DEBT RELIEF PROGRAMME**

16.1 The debt relief programme is aimed at assisting customers who are in arrears for water services charges, for sixty (60) days or more. Customers, excluding officials and Councillors, eligible for the debt relief programme are those families–

- a. who reside on property with a rateable value as determined by the Municipality at its annual budget; or
- b. who, irrespective of the property value, are confirmed by the CFO as being too poor to be able to afford their current water services debt; after having taken into consideration an assessment report from a Municipal Social worker in terms of subsection 16.2.b; or
- c. where the Customer has temporarily lost employment and has been assessed by a social worker in terms of subsection 16.2.b.

16.2 The following criteria must be met before a customer will be regarded as eligible for debt relief:

- a. a comprehensive report by the ward or PR councillor on the customer must be submitted to the Municipality;
- b. an assessment and report by the municipal social worker who would present his or her opinion, based on a site visit, on whether the family qualifies for debt relief;
- c. a verification report by a water and sanitation official;
- d. approval by the Deputy Head: Customer Services in respect of municipal property values allowed for rates relief; and

- e. approval by the Head: Water and Sanitation, in respect of municipal property values exceeding the values allowed for rates relief.
- 16.3 The customer must sign a contract and have the conditions of the contract explained. Subject to subsection 16.5, the debt will be written off over a period of twenty (20) months.
- 16.4 The outstanding arrears will be “parked” in a suspended account and will not attract any interest or other penalties if the customer pays the current water services account in full by the due date for payment.
- 16.5 If the customer fails to pay the current monthly water account in full and by the due date, the customer will be liable to have his or her write-off period extended on a month to month basis; provided however, if the period over which the current account is not paid by due date, exceeds four consecutive months, then the contract will terminate on the first day of the fifth month. For example, twenty months could reach twenty four months, if the account is not paid for a period of four months.
- 16.6 The customer has a choice when he or she signs the debt relief contract to either–
  - a. stay on a full or semi pressure water supply; or
  - b. choose to have a flow limiter installed thus limiting his or her consumption to an amount per day equal to the free basic water allowance as determined in the schedule of tariffs.
- 16.7 The effect of a flow limiter is that a customer will receive a nil account at the end of the month for water services i.e. for both water usage and sewage disposal, and still benefit from the monthly write-off of one twentieth of the outstanding water services debt, versus the customer who chooses to remain on full supply who will receive a bill for water services consumed which will have to be paid for as stated in subsection 16.4 above.
- 16.8 If the customer chooses to remain on a full or semi pressure normal supply and defaults on the current payments in respect of water services charges, then a flow limiter will be installed immediately. The customer may then pay the current arrears or make

arrangements to pay same over a maximum period of three months, via a Credit Authority. Once the current debt is paid, the customer may return to normal supply.

- 16.9 Should a customer be caught tampering with or be found to have tampered with the water connection to a property, while a debt relief contract is active and in effect, the contract will terminate immediately and the debt outstanding at the time the contract terminates will become payable in full, with the interest charges accruing as well as the cost of a new connection. If the customer reports any tampering before the Municipality detects it, the contract will remain in effect.
- 16.10 On application for the issue of a revenue clearance certificate, while the debt relief contract is active, the full debt due to the Municipality shall become due, owing and payable. However, in exceptional circumstances, the Municipality may, in its sole discretion, permit the proposed new owner to take over the debt by signing a new Credit Authority with the Municipality in respect of whatever amount of such arrears which cannot be settled by the existing owner in full, and all rights and obligations in regard to the arrears will pass to the new owner on transfer of the property.
- 16.11 Municipal debts, which have been suspended in respect of former municipal owned property, will be reinstated on application for the issue of a revenue clearance certificate. ["Parked off debt" per Council Resolution date 29 June 2006]
- 16.12 Where residential properties are situated in non-cadastral areas and do not appear in the Valuation Roll, such properties will be valued above R 250 000 if the dwellings on each property have a total floor area of more than 50 square metres.

## **17 DOMESTIC WATER INSURANCE**

- 17.1 It is the responsibility of the Owner of property to take out a water loss insurance policy against undetected underground leaks. Where the Municipality has contracted with a private insurance Company for the provision of Domestic Water insurance for its Customers, a Customer may opt to participate in such insurance arrangement. In such event, the monthly premium payable, will be raised on the consolidated account, and forwarded to the private insurance company. If the private insurance company, in question, is satisfied that the leak was underground and was repaired correctly, it will process the customer's claim and pay directly to the Municipality. Customers are given

sixty (60) days after the leak has been repaired to submit a claim. Customers are referred to the actual Insurance policy Document for a detailed explanation on the conditions of Indemnity or Basis for Cover.

- 17.2 The customer's account may be suspended for disconnections to water for a period of sixty (60) days to facilitate the insurance process.
- 17.3 Accounts shall not be suspended where there are disputes with respect to the amount paid or rejected by the insurance company.
- 17.4 Disputes must be lodged, in writing, within thirty (30) days of the claim being paid.
- 17.5 An adjustment, determined in accordance with the terms and conditions of the water loss insurance policy for individually metered dwelling units, will be made in respect of sewage disposal charges raised against any domestic or non-domestic customer where the sewage disposal charges arise from any underground water leaks which were repaired correctly and timeously.

## **18 TERMINATION / TRANSFER OF SERVICES**

- 18.1. At least fourteen (14) days' notice is required from the customer upon termination or transfer of an account, to enable the Municipality to take final meter readings and process account adjustments.
- 18.2. Once the account is terminated, the account must thereafter be linked to the owner's rates account.
- 18.3. Unless otherwise directed by an order of court, the Municipality will not terminate a Water and or Electricity supply, at the request of a Landlord or owner, where there are occupiers on the property or premises and the Landlord or the owner is not a Customer in respect of such supply.
- 18.4. A customer who wishes to terminate, disconnect or remove a Water and or Electricity Supply where there are occupiers on the property or premises, must, before such an application may be considered:



- (a) Provide the Municipality with proof that the occupiers have been given 14 days' notice of the proposed termination (not later than 30 days prior to the lodging of an application with the Municipality); and
  - (b) Settle all amounts owing to the Municipality or make a suitable arrangement to liquidate the debt as contemplated in section 24 of this Policy.
- 18.5. The requirement to give 14 days' notice mentioned in subsection 18.4 above, is in line with the Constitutional Court decision in Joseph and Others v City of Johannesburg & Others CCT 43/09 and the principles of administrative justice.
- 18.6. The Municipality may exercise its common-law right where a tenant on a property is in breach of his or her contract with the Municipality, and transfer the debt to the owners' account. The tenant shall forfeit his or her deposit to the owner where the outstanding debt is paid by the owner.

## **19 UNALLOCATED CONSUMPTION**

- 19.1 Notwithstanding that an electricity and or water service may have been disconnected, the registered owner remains liable to monitor his /her property as well as the metering as defined in this Policy. Accordingly when electricity and water consumption is recorded on a property during a period for which there is no registered customer against whom a bill can be raised, the relevant charges for electricity and water services shall be raised against the registered owner on his or her consolidated bill. Furthermore, the Municipality has the right to remove relevant Municipal infrastructure (and other components) at the cadastral boundary of the property to ensure that ongoing electricity and or water consumption, is terminated.

## **20 METER READINGS**

The Municipality may estimate readings and read meters in accordance with the period prescribed in the respective water and electricity Policies and By-laws.

## **21 DEBT RECOVERY USING THE PRE-PAYMENT METERING SYSTEM (RESIDENTIAL CUSTOMER ONLY)**

- 21.1 A Customer whose account is in arrears, may apply to the CFO on a prescribed form for the 50/50 pre-payment debt recovery facility.
- 21.2 In order to qualify for the 50/50 pre-payment debt recovery facility, the following minimum criteria must be met:
- a. A Customer's account must be in arrears in an amount exceeding R500; and
  - b. The Municipal valuation of the Customer's property must not exceed R250 000, save that in the case of a Senior Citizen, the Municipal property valuation must not exceed R460 000;
  - c. A Customer must be a Residential Customer;
  - d. A customer must sign an Acknowledgement of Debt in favour of the Municipality in respect of the total outstanding indebtedness;
- 21.3 The CFO is not obliged to grant an application for the 50/50 pre-payment debt recovery facility.
- 21.4 When concluding the Acknowledgement of Debt, the customer's deposit will be appropriated towards reducing the outstanding debt.
- 21.5 Where an application for the 50/50 pre-payment debt recovery facility is approved, **NO** connection fee in respect of the prepaid meter and or additional charges or additional deposit will be raised for the Customer whose electricity meter was not tampered with and or was not removed on account of tampering.
- 21.6 A Customer whose account is in arrears and whose meter has been tampered with, will be liable to pay a connection fee and sign an Acknowledgement of Debt before a prepaid meter can be installed on site. Such connection fee may, in the discretion of the CFO, be added to the principal debt owing under the Acknowledgment of Debt.

- 21.7 Upon conclusion of an Acknowledgment of Debt, it will be incumbent upon the Customer to complete such documents as maybe required by the eThekwini Electricity Department for the installation of the pre-payment metering system.
- 21.8 Child - Headed Households must meet the requirements as set out in the Municipality's Rates Policy and an application must be made with the consent of the Social Worker appointed by the Municipality.

## **22 REVENUE CLEARANCE CERTIFICATES**

Subject to Sections 118(1) and (1A) of the Systems Act, the following shall apply to the issue of a revenue clearance certificate for the purpose of effecting transfer of a property to a new owner.

- 22.1 Assessments–
- a. an application shall be made by a conveyancer, in the prescribed format. Each application must be accompanied by the relevant application fee. The application will not be processed until the fee is paid.
  - b. copies of all current accounts must accompany any application made manually. If the relevant information is not provided, the application will be returned to the conveyancer.
  - c. the new owner may be held liable post transfer should the application not record the correct meter numbers on the property.
  - d. the Municipality does not accept responsibility for errors on manual applications. The Conveyancer must check that all details on the application, assessment and the revenue clearance certificate are correct.

- e. assessed figures are calculated ninety (90) days in advance. Service charges are estimated for ninety (90) days based on previous consumption, taking into account any existing Rebate.
- f. upon the receipt of the revenue clearance certificate request, a letter shall be sent to the nominated Conveyancer notifying him or her about his or her responsibilities to inform both the seller and the purchaser regarding the total amount of municipal outstanding debts charged against the property.
- g. an "Attorneys' Report" in respect of all amounts owing and the assessed figures, shall be issued upon the receipt of the request for the report.
- h. the assessment shall remain valid for a period of thirty (30) days from the issue date. If payment has not been received within this period, a re-assessment may be required and payment of a further application fee will apply.
- i. amounts raised on the Supplementary Valuation Roll prior to the effective date of that roll, will be billed for the purpose of the assessment. The seller shall be deemed to have waived his right to be billed on the effective date of such roll.
- j. prior to the issue of a revenue clearance certificate for a subdivision which is still held under the title of the parent property, the owner/seller must, subject to the provisions of section 22.1.0 pay all debt on the parent property. The onus rests with the owner/seller to ensure that on new sub-divisions, the debts on the parent property are fully paid.
- k. any discrepancies may result in delays in the issuing of a revenue clearance certificate, and in addition may result in the levying of additional backdated rates, penalties or charges.
- l. any amounts paid shall be appropriated to the oldest debt first.
- m. a separate application is required for each transfer.

- n. an assessment in terms of S118 (1) of the Systems Act will only be issued on request by a Conveyancer.
- o. the balance of the debt, prior to the two years preceding the date of application of a certificate, shall remain as a charge against the property. The Municipality shall exercise its rights to recover such debt as guided by the law on the application of section 118 of the Systems Act.
- p. the Municipality reserves the right not to provide services on the property until all debt is fully paid or suitable arrangements are made to pay the debt;
- q. the onus is on the Conveyancer to advise the purchaser of the provisions of section 22.1. **o** and **p** above.
- r. where the Municipal account is in respect of a debt consolidated under Section 102 of the Systems Act, the said consolidated account will be deconsolidated on application for a revenue clearance certificate. An account for the property subject to the Revenue Clearance application will be rendered together with the full interest that accrued on the consolidated account.
- s. a revenue clearance certificate shall be issued within ten (10) days of the date of payment of the amount requested in the "Attorneys' Report".
- t. Where simultaneous transfers of a property are contemplated, the Conveyancer must apply for a separate revenue clearance certificate in respect of each new transfer.

## 22.2 Revenue Clearance Certificates–

- a. Payment of the assessment must be made in cash, EFT payments, direct debit, bank transfers, bank cheques or other instruments accepted by the CFO from time to time.

- b. There shall be no refunds on the cancellation of a sale or otherwise.
- c. The Certificate shall be valid for a period of sixty (60) days from date of issue.
- d. The certificate shall be endorsed with the balance owing as a charge against the property in order to bring the same to the attention of the seller, buyer and conveyancer. The onus is on the conveyancer to advise his or her clients accordingly.
- e. The Municipality may institute legal proceedings to recover the balance owed from the persons referred to section 22.1 o.
- f. The Municipality reserves the right to follow any of the legal mechanisms available to it in order to recover the balance of the debt, including, lodging an urgent application to interdict the sale of the property until the debt is paid in full.
- g. All Collection Charges incurred in pursuing recovery of arrears, shall be levied against the debtor's account.

22.3 Information and contact details of the purchaser provided on the revenue clearance certificate shall be used as details of the new owner (purchaser) for the purposes of billing for rates, services and consolidated accounts, until the same has been changed by the purchaser.

22.4 On the date of ownership transfer, the previous owner's (the Seller) service agreement will be deemed to have lapsed, and, subject to the rights of the Municipality in terms of section 6.1(c) and 22.1p of this Policy, the new owner (purchaser) must conclude a new service agreement with the Municipality.

22.5 The seller shall furnish to the Municipality new contact details, in writing, comprising a postal and physical address and such further information as may be determined by the CFO from time to time, prior to the Municipality issuing the rates clearance certificate. The seller shall continue to keep the Municipality informed of any change in contact details until such time as the Municipality has confirmed in writing that all amounts that became due whilst the property was in the ownership of the seller (whether or not raised

at the time of the rates clearance certificate) have been paid up. Non-compliance with this clause will be regarded as an offence.

22.6 Where, subsequent to the transfer of ownership of a property, a Municipality becomes aware of any Municipal Charges that ought to have been raised in terms of any Legislation (e.g. the MPRA) or this Policy against a predecessor in title to the property, the Municipality reserves the right to levy such Charges against the new owner (purchaser); provided that that the new owner (purchaser) shall only be liable for those Charges that become due and payable with effect from the date of transfer.

## **23 LEGAL ACTION.**

23.1 Legal proceedings may be instituted by the Municipality to recover arrear amounts on service accounts, where—

- a. disconnection action yielded no satisfactory result;
- b. disconnection action is not possible due to the nature of the services for which the account has been rendered; or
- c. the arrears are older than ninety (60) days.

23.2 The Municipality may, in terms of Sections 28 and 29 of the MPRA, recover arrear rates from tenants in occupation of the relevant property, or managing agents, but only to the extent of the rent payable or amount due by the tenant but not yet paid to the owner of the property. This does not preclude further legal action against the owner.

23.3 For residential properties occupied by owners, all reasonable steps shall be taken to ensure that the ultimate sanction of judgment and sale-in-execution is avoided or taken as the last resort. The Municipality, however, has total commitment to follow the legal process through to judgment and sale-in-execution should the debtor fail to make use of the alternatives provided for by the Municipality from time to time.

23.4 Once judgment is obtained the properties will be advertised and sold through public auction, unless appropriate settlement has been made to the satisfaction of the

Municipality. The Municipality shall assess annually, the appropriate minimum amount below which it will not attach homes.

- 23.5 All Collection Charges shall be debited to the relevant debtor's account.
- 23.6 Proceeds of the Sale in Execution may be appropriated to any of the debtor's accounts in arrears.
- 23.7 Metering and connection equipment remain in the ownership of the Municipality at all times and the owner of the property, on which such meters and connection equipment is installed, shall be held responsible for all instances of tampering, damage or theft. Accordingly, the owner of the property concerned is liable for any breach of this duty and may be prosecuted.
- 23.8 Where a Sectional Title Body Corporate is in arrears, the CFO may apply to court for the appointment of an administrator in terms of Sections 46 and 47 of the Sectional Titles Act 95 of 1986, as amended.

## **24 CREDIT AUTHORITIES IN RESPECT OF ARREARS IN TERMS OF SECTION 58 OF THE MAGISTRATES COURTS ACT**

- 24.1 The Municipality may, at its discretion, enter into a Credit Authority in the prescribed form, incorporating a consent to judgment in terms of section 58 of the Magistrates Courts Act, with customers and owners in arrears with Municipal service fees, surcharges on fees, property rates and other municipal taxes, levies, duties and sundry charges, after consideration of an application submitted by such persons as prescribed by the Municipality.
- 24.2 The Municipality may conduct a credit check and request certain information from a customer or owner in order to satisfy itself that the customer or owner will be able to honor the agreement. Such credit check may include a full risk analysis of the customer or owner concerned to determine his/hers/it's:
- (a) Risk profile as an individual/entity; and



- (b) Interests in any Juristic person.
- 24.3 Before any Credit Authority is concluded, all municipal service fees, surcharges on fees, property rates and other municipal taxes, levies, duties and sundry charges must be consolidated onto one account (if not done previously) and a Credit Authority concluded for the full debt.
- 24.4 The customers' current account must be paid in full, and maintained, for the duration of the Credit Authority.
- 24.5 The owner of a property must consent in writing to a Credit Authority being entered into between the Municipality and his or her tenant. The owner consents to judgment should the tenant breach the Credit Authority.
- 24.6 Should the tenant breach the Credit Authority referred to in subsection 24.5 above, the Credit Authority and the account shall be terminated immediately with the tenant and linked to the owner's rate account.
- 24.7 Re-connection and disconnection fees, where applicable, must be paid in full before any Credit Authority can be entered into.
- 24.8 By entering into a Credit Authority, the debtor(s), and where applicable, the owner, acknowledge that failure to meet any installment will result in prompt disconnection action being taken, without prejudice to any legal action that the Municipality may take to recover the arrears.
- 24.9 Credit authorities to be concluded with Juristic persons shall require;
- a. documentation and information as set out in section 3.12 above as maybe applicable.–
  - b. the financial situation of the Juristic person to be reviewed taking into account latest audited financial statements and other supporting documentation relevant to their financial position.

- c. Deeds of suretyship in favour of the Municipality, by the persons referred to in subsection 3.12 (b) above, as the case may be; in an amount equivalent to the value of the debt plus current accounts; and
- d. the deposit to be reviewed.

24.10 A Credit Authority may **not** be granted where—

- a. arrears have arisen due to dishonoured cheques or direct debit reversals;
- b. instances of repeated meter tampering have been identified;
- c. the services have been removed; or
- d. Any other relevant factors.

24.11 Where any debt has arisen as a result of a faulty meter or the Municipality having applied an incorrect charge or tariff, the customer may arrange to pay the debt over a maximum period at the discretion of the CFO.

24.12 The amount of the down payment and the period of the Credit Authority shall be at the discretion of the CFO.

24.13 The Credit Authority shall be terminated if a debtor relocates from the property. The balance owing shall become immediately due and payable.

24.14 The monthly installments on a Credit Authority are payable within twenty one (21) days from the date of the account notwithstanding any further extension of time printed on the face of the account.

24.15 A Credit Authority shall be cancelled upon application for a revenue clearance certificate on the property, and the whole debt shall become due, owing and payable, notwithstanding any agreement to the contrary.

24.16 Where the Credit Authority is based on interim readings, the amounts on the Credit Authority will accordingly be adjusted once the actual readings are taken. The customer must sign any additional documentation relative to this.

24.17 A Credit Authority for staff and councillors shall be in accordance with section 13.

24.18 The customer who signs a Credit Authority must make payment to the Municipality via a Debit Order.

24.19 The Municipality is not a Credit Provider within the meaning of the National Credit Act, 2005 (Act No 34 of 2005). Nothing in this Policy should be construed as conferring such status on the Municipality.

## **25 DISPUTES**

25.1 A customer who wishes to lodge a dispute in respect of an account must submit the dispute in writing, on the prescribed form, to the Authorised Official as defined in this Policy stating the reasons for such dispute and any relevant facts, information or representation which the Authorised Official should consider to resolve the dispute.

25.2 The dispute must be submitted within twenty one (21) days of the account. If a dispute is raised after this period, it will be treated as an enquiry, the account will not be suspended and normal credit control procedures will apply.

25.3 The dispute must relate to a specific amount on the account. Amounts not in dispute must be paid in full. If the amounts not in dispute remains unpaid, services may be disconnected.

25.4 Should any dispute arise with respect to the amount owing, the debtor will continue to make regular payments based on the average charges for the preceding three (3) months prior to the dispute, plus interest where applicable.

25.5 A query is not regarded as a dispute. A query is a verbal inquiry whereas a dispute must be in writing and lodged with the relevant municipal department or section.

25.6 Proven tampering charges are not regarded as a dispute.

25.7 The customer must provide the Authorised Official with the account alleged to be in dispute, which includes incorrect readings, misallocation of payments, incorrect tariffs

charged and incorrect property values used and any other relevant information that may be required.

25.8 The Authorised Official:

- a) May investigate or cause the dispute to be investigated within 30 days , or as soon as possible after such dispute is received;
- b) May hear representations, or call for additional information /documentation from a Customer who disputes an account;
- c) Must inform the customer, promptly, in writing, of his or her finding after conclusion of the investigation;
- d) Must take a decision, based on the spirit of the Policy.

25.9 A dispute submitted above shall not stop or defer the continuation of any credit control and legal procedure already instituted for the recovery of arrear payments relating to such dispute.

25.10 The customer has the right to appeal to the CFO against the decision of the Authorised Official. The CFO may hear representations and either confirm, vary or revoke the decision of the Authorised Official and must communicate his decision within 30 days of date of receipt of the appeal or as soon thereafter as possible.

25.11 A person whose rights are affected by the decision of the CFO may lodge an appeal against that decision within 21 days of the date of notification of the decision, to the Municipal Manager in terms of section 62 of the Systems Act. The appeal must be lodged on the prescribed form.

25.12 Disputes regarding the General Valuation Roll must be submitted to the Municipality's Real Estate Unit in the form of an objection or appeal as envisaged by Sections 50 and 54 of the MPRA. The account must be paid in full until an objection or appeal outcome is reached where after the account will be credited or debited accordingly.

## **26 REFUNDS**

26.1 Credits on accounts shall only be refunded:

- 26.1.1 On application and subject to all the customer's accounts being fully paid,
- a. to the account holder, on a water services or electricity account;
  - b. to the owner;
  - c. to the conveyancer to pay the buyer or seller, on transfer of a property,
- unless otherwise directed by an order of Court.
- 26.2 The provisions of subsection 26.1.1 above shall apply to any credits that may arise from an objection or Appeal process.
- 26.3 A refund shall be forfeited after 3 years if it remains unclaimed.

## **27 DECEASED ESTATES**

- 27.1. The Executor of a Deceased Estate shall be liable for payment of all debts on the property.
- 27.2. For the purposes of liability for an account, including a consolidated account, the occupier or occupiers of a property which vests in a deceased estate where neither an executor nor administrator has been appointed, will be regarded as the Deemed Owner. The CFO may request a deemed owner to sign a services agreement. Where there is more than one occupier on the property, every occupier will be jointly and severally liable for an account or consolidated account.
- 27.3. "Deemed Ownership" does not confer any rights on an occupier other than the liability to pay the accounts.
- 27.4. In accordance with subsection 14.10, failure to inform the Municipality that the property forms part of a deceased estate may result in the disconnection of services, until an executor has been appointed.

## **28 HOUSING**

- 28.1 This Policy shall apply equally to Social Housing tenants.
- 28.2 Where the Municipality has sold a property in a suspensive sale agreement to a Social Housing tenant and that owner or tenant is responsible for the rates and service charges on that property, the accounts will be consolidated with rates, and services will be disconnected for non-payment.
- 28.3 Where Social housing tenants are substituted in terms of the any Municipal Policy, Legislation or agreement, the substituted tenant shall assume the rights and obligations of the one so substituted, including all debts, credit authorities and deposits.

## **29 IRRECOVERABLE DEBT**

- 29.1 Debt will only be considered as irrecoverable if it complies with one or more of the following criteria–
- a. all reasonable notifications and cost-effective legal avenues have been exhausted to recover a specific outstanding amount;
  - b. any amount equal to or less than R500.00, or as determined by Council from time to time, will be considered too small, after having followed basic checks, to warrant further endeavours to collect it;
  - c. the cost to recover the debt does not warrant further action;
  - d. it has been proven that the debt has prescribed;
  - e. the debtor is untraceable or cannot be identified so as to proceed with further action;
  - f. the debtor has emigrated leaving no assets of value to cost-effectively recover the Municipality's claim;

- g. it is not possible to prove the debt outstanding;
- h. a court has ruled that the claim is not recoverable;
- i. the claim is subject to any order of court;
- j. the claim is subject to an out of court settlement agreement;
- k. the debt is subject to a settlement in terms of section 109 of the Systems Act;
- l. the Municipality has resolved that the debt is irrecoverable;
- m. if an offer of Full and Final Settlement is accepted and confirmed in writing by the Head: Legal and CFO if it has financial implications;
- n. the outstanding amount is–
  - i. as a result of an administration error;
  - ii. an interest as a result of a property debt that arose prior to the current owner taking transfer and successive transfers before his; or
- o. expenditure incurred in respect of internal accounts raised in the name of the Municipality, in any previous financial year;
- p. conversion of old dormant account balances of debtors, inherited from the previous municipalities which now form part of the Municipality, and where reasonable steps have been taken to recover these debts; or
- q. where the Municipality-
  - i. expropriates any property; or
  - ii. purchases any property in terms of its Sales in Execution.

- 29.2. Provided there is sufficient provision for bad debt, the CFO shall write off any revenue which is irrecoverable or the recovery of which is considered not to be reasonably practicable.
- 29.3. The CFO must report to Council all amounts that have been written off as irrecoverable with the Section 71 MFMA report.

### **30 LEASES**

- 30.1 Persons who lease property from the Municipality for the purposes of any business or trade must sign a surety agreement covering all debt incurred on the said property during the duration of the lease.
- 30.2 Where the lessee is a company or close corporation, the directors or members are required to sign a personal surety covering all debt incurred on the said property during the duration of the lease.
- 30.3 Municipal service accounts must be opened in the name of the lessee only. The rates and services accounts will be consolidated.
- 30.4 Sub-lessees' may open service accounts in their names with the consent of the Head: Real Estate and provided that the account is consolidated with the rates account.

### **31 BUSINESS RESCUE**

- 31.1 In terms of Section 118 (3) of the Systems Act, an amount due for municipal service fees, surcharge 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. Accordingly
  - 31.1.1 Where in terms of the Companies Act, 2008, a company is required to publish a notice in terms of subsection (3)(a) or (4)(b) of Section 129 relating, respectively to the adoption of a resolution to be placed under business rescue or the appointment of a business rescue practitioner, it must simultaneously give notice to the Municipality by pre-paid registered post to the Correspondence



Department, attention **Head of Revenue**, 1<sup>st</sup> Floor Atrium Building, Smart Exchange, Walnut Road, Durban, 4001, and by electronic communication to [revline@durban.gov.za](mailto:revline@durban.gov.za), clearly headed "Business Rescue" for the attention of **Head of Revenue**.

## **32 HOSTELS**

### **Sanctions and collections**

- 32.1 Where an account rendered to a debtor remains outstanding for more than 90 [ninety] days the defaulting debtor's name may, at the option of the Municipality, be listed with a credit bureau or any other equivalent body as a defaulter,
- 32.2 Emolument attachment orders in the case of employed debtors, and eviction processes may be implemented as part of the debt collection procedures.

## **33 CLAIMS IN RESPECT OF DAMAGE TO SERVICE INFRASTRUCTURE AND MUNICIPAL PROPERTY**

- 33.1 Where a contractor has been engaged to provide services or to deliver goods on behalf of the Municipality and the contractor damages/destroys service infrastructure or Municipal property, the following will apply:
- 33.1.1 The contractor must forthwith notify the relevant department within the municipality, e.g. eThekweni Electricity Department whose service infrastructure or Municipal property was damaged/destroyed, so that a claim can be submitted to the Municipality's Insurance section or where applicable, to the Municipality's Insurance Company in order to quantify and recover the damages sustained.
- 33.1.2 The contractor shall remain liable for the damage caused to the service infrastructure or Municipal property notwithstanding that its contract with the Municipality may have terminated or been cancelled.

33.1.3 Upon quantification of the damages sustained, the CFO shall issue a certification of the quantum. Such certification shall be deemed to be a liquid document for purposes of recovery of the damages.

33.1.4 The damages shall become a collectable debt in terms of this Policy.

### **34. MISREPRESENTATION**

34.1 Any person who has received any benefit or relief in terms of this Policy and who has misrepresented themselves in order to qualify for such benefit or relief will be deemed to have committed an offence and remedial measures will be taken in a manner as determined by the Municipality from time to time, and the CFO–

- (a) Will reverse all benefits and relief received;
- (b) Will raise any fee, as determined by Council from time to time, as set out in the Tariff Policy; and
- (c) Will cancel any Credit Authority and all amounts due to the Municipality will become payable immediately.

34.2 The Municipal Manager shall report any misrepresentation in terms of this Policy to the South African Police Services.

### **35. POLICY EVALUATION AND REVIEW**

To be in a position to measure the outcome of the Policy, the Municipality believes that the output of this Policy should be measured in terms of general recognised accounting practices and the following benchmarks will be applicable:

|                        |                                 |   |            |
|------------------------|---------------------------------|---|------------|
|                        | <u>Total amount outstanding</u> |   | <u>365</u> |
| DEBT COLLECTION PERIOD | = revenue                       | X | 1          |

$$\text{ANNUAL DEBTORS COLLECTION RATE} = \frac{\text{last 12 months receipts from debtors}}{\text{last 12 months billing}} \times \frac{100}{1}$$

The norm on the debt collection period is set at 60days and the collection rate is set at 95%

## **ANNEXURE A**

### **ASSISTANCE TO THE POOR**

#### **Electricity:**

eThekwini Electricity implemented a Free Basic electricity (FBE) tariff . This tariff applies to indigent customers who consume less than 150kWh per month.

#### **Qualifying Criteria**

1. The customer's consumption must be equal to or less than an average of 150 kWhs per month, calculated over a period of the preceding 11 months (the vending system determines the period of usage, with respect to a meter, and if this period is less than 11 months, the average is calculated over this reduced period).
2. The average consumption is calculated at each purchase or enquiry at the vendor.
3. A person who has zero consumption does not qualify for a FBE token.
4. The FBE tokens must be collected in the current month only, and cannot be carried-forward to the next month.

The above automated-functioning of the system is supported by a manual enabling/disabling of customers that consume below 150 kWhrs, when required.

#### **Exclusions**

The free basic electricity is meant for the law-abiding indigent customers. The following are excluded from the FBE tariff:

1. Commercial Accommodation as defined in the current Rates Policy of the Municipality;
2. General lighting supplies in residential complexes;

3. Security huts and automated-gate supplies;
4. All business connections; and
5. Indigent citizens who have tampered with their supplies

### **Credit Customers**

All credit customers that fit the above criteria are required to fill a change-over form to convert to pre-payment metering, at no cost to the customer. Each of these customers will be audited for compliance using the above criteria.

### **Prepaid Customers**

All customers will be audited for compliance and the system of those not fitting the above criteria will be disabled on the vending system. It will be during this auditing process that a formal address will be assigned to each customer and uploaded onto the prepaid data-base.

### **Free Basic Water:**

- a. No charge for the supply of water is raised for domestic residential customers for the first 9 kl of water per month for those customers:
  - i) With a full pressure connection where the property value is less than or equal to the threshold value as approved by the Municipal Council at its annual Budget;  
or
  - ii) With a water supply via a low pressure roof tank.All other domestic residential customers will be charged for the volume of water supplied at the tariff for residential customers.
- b. All water supplied via a standpipe is free of charge (standpipes are installed subject to the conditions as stipulated in the Water Policy).

### **Sewage Disposal**

There are three levels of service available to Domestic Residential Customers based on certain conditions–

- a. Where the water supply to a customer is limited to 300 litres per day via a ground tank or yard tap, the only acceptable sewage disposal option is a Urine Diversion toilet,( or some approved alternative thereof ) which is provided at no cost to the householder but then remains the responsibility of the householder for all maintenance items including periodic emptying;
- b. A connection to the Municipal waterborne sewerage system which offers a nil sewage disposal charge for water usage below 300litres per day, a stepped tariff (which provides reduced tariffs for lower sewage disposal volumes ) and a reduced tariff where the water is by means of a semi- pressure service and the water is between 300 litres and 833litres per day consumption; and
- c. Where a Municipal waterborne sewerage reticulation system is not available an on – site privately owned sewage disposal system ( a conservancy tank, a septic tank or a privately owned low volume treatment plant ) is permitted where the full costs are met by the householder who will not be subject to any Municipal charges for sewage disposal.

These tariffs may be amended by Council at its annual budget.

Informal communities are served by communal toilet blocks which are both provided and serviced at no cost to the community.

Where an informal community is located on privately owned land, the consent of the private land owner may be sought before such a service can be provided. Such consent may not be unduly with-held.

### **Refuse Removal**

Property less than the threshold value as approved by the Municipal Council at its annual Budget will be not be charge for refuse and removal.

Property above the threshold value as approved by the Municipal Council at its annual Budget; is based on a sliding scale.

### **Rates**

In addition to the R15 000 reduction in value of residential property imposed by the MPRA, the Municipality may grant an additional rebate by resolution of Council at its annual budget. This further rebate is aimed primarily at persons owning low-cost properties and is an integral part of the Municipality's indigent relief measures.

### **Acknowledgement of Debt**

Where a debtor occupies property of the kind referred in this Annexure A, and qualifies for a full reduction in the value of his/her property, and where such debtor enters into an Acknowledgement of Debt with the Municipality to pay off arrears for service charges, no further interest will be added to the arrears outstanding if during the period, the debtor adheres to the Agreement.