

MAKHUDUTHAMAGA MUNICIPALITY  
CREDIT CONTROL BY-LAW

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## 1. **DEFINITIONS**

- 1.1 “arrears” refers to any amount due to the Council and not paid by the due date.
- 1.2 “billing” refers to the process of charging for services provided by issuing accounts.
- 1.3 “Council” means the Council of Makhuduthamaga Municipality.
- 1.4 “credit control” means all the functions relating to the collection of monies owed by ratepayers and users of municipal services.
- 1.5 “debt collection” refers to the debt recovery process and includes sanctions (warning, disconnection, adverse credit rating, legal process and/or eviction, etc) to be applied in the event of non-payment of accounts.
- 1.6 “disconnection” means interrupting the supply of water and/or electricity to a debtor as a consequence of ignoring a notice for payment.
- 1.7 “due date” refers to the final date of payment as shown on the debtor's municipal account, demand or notice in terms of this By-Law.
- 1.8 “effective disconnection” includes, inter alia, the physical removal of connections and/or equipment as a consequence of unauthorised reconnection (tampering and/or by-passing) of the disconnected service.
- 1.9 “financial officer” means the staff member of Makhuduthamaga Municipality responsible for the collection of moneys owed to the Municipality and and/or any other staff member to whom he/she has delegated duties and responsibilities in terms of this By-Law.
- 1.10 “financial year” means a year ending 30 June.

- 1.11 “fixed charge” refers to availability charge as per the municipal tariff structure.
- 1.12 “holistic” or “consolidated” refers to the combining of all debt in order to establish the total obligation the debtor has to the Municipality.
- 1.13 “Indigents” refers to households or persons who are below the poverty threshold level of R1100.
- 1.14 “Indigent amount” refers to the applicable value of the indigent subsidy as determined by the Council of the Makhuduthamaga Municipality from time to time.
- 1.15 “interest on overdue accounts” is based on a full month and part of a month shall be deemed to be a full month.
- 1.16. “Legal process or procedures and/or legal action” refers to; inter alia, the process and/or action described in the Magistrate Courts Act No. 32 of 1944; Local Government: Municipal Structures Amendment Act No. 33 of 2000; Local Government: Municipal Systems Act No. 32 of 2000: Municipal Finance Management Act 56 of 2003.
- 1.17 “Letter of Demand” means a notice sent prior the legal process commencing.
- 1.18 “Municipality” includes the Council, a Committee of the Council, a duly authorised official of the Council and an Agent of the Council.
- 1.19 “non-residential debtors” are classified as those debtors who are businesses, institutions or municipalities.
- 1.20 “occupier” means a person, who occupies any premises or part thereof, without regard to the title under which he or she occupies;
- 1.21 “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 to premises is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- [c] In any case where the Municipality is unable to determine the identity of such person, a person who is entitled to the benefit of the use of such premises or a building or buildings thereon;
- [d] In the case of premises for which a lease agreement of 30 years or longer 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 No. 95 of 1986), the developer or the body corporate in respect of the common property, or
  - [ii] A section as defined in the Sectional Titles Act, 1986 (Act No. 95 of 1986), the person in whose name such section is registered under a sectional title deed and includes the lawfully appointed agent of such a person;

1.22 “parked arrears” refers to those monies that were put on hold by some of the former Councils which now constitute Makhuduthamaga Municipality.

1.23 “payment” refers to any form of redemption acceptable to the Council of Makhuduthamaga Municipality from time to time towards the balance on an account.

- 1.24 “person” means any natural person, local government body or like authority, a company incorporated under any law, a body of persons whether incorporated or not, a statutory body, public utility body, voluntary association or trust;
- 1.25 “premises” means any piece of land, the external surface boundaries of which are delineated on –
- [a] A general plan or diagram registered in terms of the Land Survey Act, 1927 (Act No. 9 of 1927), or in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937); or
  - [b] A sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986);
  - [c] A register held by a tribal authority;
  - [d] Which includes (a) and/or (b) and/or (c) receiving municipal services.
- 1.26 “prescribed tariff or charge” means a charge prescribed by the Municipality;
- 1.27 “public notice” means a notice displayed on a municipal Notice board and/or newspaper in at least two of the official languages in general use within the Province or area in question, and, where possible, the notice shall be published in the same language as that predominantly used in the publication of the newspaper.
- 1.28 “residential debtors” are classified as those debtors who are not business, institution or municipality.
- 1.29 “service” means a municipal service rendered by Makhuduthamaga Municipality and includes the supply of electricity, water, sanitation and refuse removal.

- 1.30 “State Pension” means those old age persons currently registered for a State 'old age' pension or "Older Persons Grant" as defined by SASSA.
- 1.31 “sundry debt” refers to any debt other than for rates, housing, metered services, sewerage and refuse removal.
- 1.32 “supply” means any metered supply of water or electricity.
- 1.33 “tampering” means the unauthorised reconnection of a supply that has been disconnected for non-payment, the interference with the supply mains or bypassing of the metering equipment to obtain an unmetered service.
- 1.34 “the provider” refers to utilities/entities providing basic services such as electricity, water and sewerage.
- 1.35 “total household income or household income” refers to the total formal and informal gross income of all people living permanently or temporarily on the property on which the account is based, this includes any form of income whatsoever derived from whatsoever entity or person, both natural and juristic.
- 1.36 “Town” refers to the entire administration area of Makhuduthamaga Municipality.
- 1.37 Unless the context clearly indicates a contrary intention, an expression which denotes gender shall include a reference to any other gender; the singular shall include a reference to the plural and vice versa.

## **2. PRINCIPLES**

This By-Law supports the following principles:

- 2.1 Human dignity must be upheld at all times.

- 2.2 The By-Law must be implemented with equity, fairness, transparency and consistency.
- 2.3 Details related to the debt and the account of the debtor should be correct at all times.
- 2.4 Debts and arrangements to repay debts shall be treated holistically, but different repayment periods or methods may be determined for different types of service, debtors or areas within the general rule that the repayment period should be in sympathy with the installments that the debtor can afford.
- 2.5 The implementation of this By-Law should be based on sound business practices. This includes credit worthiness checks when application for services is made, as well as debt collection through sanctions of warnings, disconnections, evictions and other legal processes.
- 2.6 New services will only be provided if a clearance certificate has been issued indicating that all amounts due in respect of municipal services, surcharge on fees, property rates and other municipal taxes, levies and duties at the debtor's previous address have been paid.
- 2.7 New applications for services will be subject to prescribed credit information. In determining the applicants credit worthiness, all information furnished on the application form may be verified by the Council with any or all data information institutions, credit information bureau and/or any financial institutions.
- 2.8 Where alternatives are available, Council may provide reduced levels of service to manage the debt growth.
- 2.9 Debtors may be referred to third party debt collection agencies and may be placed on the National Credit Rating list.



- 2.10 All recoverable costs incurred by Council relating to the collection process shall be recovered from the debtor.
- 2.11 Interest charges on overdue accounts will be levied from the due date if not paid by the following due date and will be calculated for a full month irrespective of when payment is made. The interest charged will appear in the following month's account.
- 2.12 As part of the arrangements made to repay debt, debtors may be required to co-operate with any reasonable measures that might be required to reduce their level of use of consumptive services to affordable levels.
- 2.13 At all times, the most financially beneficial arrangement to Council must be entered into whilst still retaining the principles of this By-Law.
- 2.14 Successful credit control is dependent upon a reliable billing system, an accurate municipal data base and the implementation and enforcement of Credit Control in all areas.
- 2.15 New services will only be provided once the recipient of services has signed a service agreement contract clearly setting out terms and conditions related to the delivery of such services and the obligations of the consumer related to safeguarding Councils equipment, payment of bills for services rendered and costs that Council may deem necessary from time to time.

### **3. APPLICATION FOR MUNICIPAL SERVICES**

- 3.1 Applicants for municipal services shall be required to complete a prescribed application form which shall contain:

[i] A certificate by the applicant to the effect that the information contained therein is true and correct;

- [ii] An acknowledgement by the applicant that, in the event of the Municipality supplying the requested service, a binding contract shall come into existence between the applicant and the Municipality subject to the terms and conditions pertaining to the supply of the requested service as may be determined by the Council from time to time.
- 3.2 The applicant shall be interviewed by an official who may carry out a full credit check and endeavor to trace all municipal debt owed by the applicant. This will require the provision of, inter alia and if applicable, an Identity Document, binding lease agreement, title deed and other supporting documents as required by Council from time to time.
- 3.3 Applications for services from businesses, including but not limited to trusts, companies, close corporations and partnerships must include a resolution delegating authority to the applicant to apply for the relevant service and furnishing, if applicable, the business entity's registration number or IT number, the names, addresses and all relevant contact particulars of all the business's directors, members, trustees, proprietors or partners.
- 3.4 The prescribed application form forms an integral part of this By-Law insofar as the contents of such application form is not in conflict with any of the provisions of this By-Law.

*All new applications for the provision of a service may be subject to the payment of a deposit based on the applicants' municipal payment history, with a minimum deposit as per the applicable municipal tariffs.*

#### **4. RATES**

- 4.1 Annual Rates (and other annual levies)

- 4.1.1 Interest will be charged on all overdue accounts, in accordance with the applicable legislation, at an interest rate that shall be determined by Council from time to time.
- 4.1.2 If an account is not paid by the due date as displayed on the account, a notice shall be issued showing the total amount owed to Council.
- 4.1.3 If an account is not settled or there is no response from the debtor to make acceptable arrangements to repay the debt, summons shall be issued and the legal process followed.
- 4.1.4 In instances where the rates debt is in respect of Municipal property sold by suspensive sale agreement, the collection thereof will be undertaken in terms of the Deed of Sale or any subsequent applicable written agreement between the Council and the debtor.
- 4.1.5 At any stage while the debt is outstanding, all reasonable steps shall be taken to ensure that the ultimate sanction of a sale-in-execution is avoided or taken only as a last resort. The Council, however, has total commitment to a sale-in-execution should the debtor fail to make use of the alternatives provided for by the Council from time to time.
- 4.1.6 Any debtor may be granted the opportunity of converting to a monthly rates payment arrangement for the following financial year.

## 4.2 Monthly Rates

- 4.2.1 Interest will be charged on all overdue accounts at an interest rate that shall be determined by Council from time to time.

4.2.2 Property owners may apply in writing to the Municipality before the annual rates are levied each year to pay the rates charges for the applicable year in 12 [twelve] equal monthly installments over the following year. This arrangement if accepted will remain in force for every year until the arrangement is withdrawn in writing by either party. Should the consumer not pay these monthly amounts by the due date, they will be deemed to be in breach of the agreement and interest and other actions shall be applied to collect outstanding amounts. In addition to the above, council may terminate the arrangement.

4.2.3 The monthly amount payable for current annual rates plus interest will be calculated to allow the total balance of such amount to be paid in equal installments by the end of that financial year.

4.2.4 Should the debtors' rates arrears equal the amount of any three monthly installments or more, the full balance of the annual rates will become due and payable and the account status will be converted from monthly to annual.

### 4.3 Rates Clearance Certificate

No rates clearance certificate will be issued by the Municipality contrary to the provisions of Section 118 of the Local Government: Municipal Systems Act 32 of 2000.

#### 4.4 Determination and Collection of Rates

The Municipal Systems Act 32 of 2000 shall, until repealed or replaced, continue to apply in respect of the determination, application and collection of rates owing to the municipality as well as the seizure and sale of property in execution.

### 5. **SERVICES**

#### 5.1 Service Tariffs

All tariffs and or charges payable in respect of services rendered by the Municipality must be determined by the Municipality by a resolution passed by its Council in accordance with its tariff Policy or any by-laws in respect thereof and/or in accordance with any regulations adopted by the Municipality or made applicable to the Municipality in terms of the provisions of the Water Services Act 1997 and any other national legislation.

*The debtor will at all times be bound by the conditions as stated in clause 5.1*

#### 5.2 Fixed Charges

The tariffs referred to in Clause 7.1infra, may include a fixed charge payable by every owner or debtor in respect of services provided by the Municipality whether or not such services are actually used by such owner or debtor.

#### 5.3 Deposits

5.3.1 Every debtor must, on application for the provision of municipal services and before such services will be provided by the Municipality, deposit with the Municipality a sum of money herein referred to as a 'services deposit the amount of which and in respect of what service shall be determined by the Council of the Municipality by resolution from time to time.

- 5.3.2 The Council may require a debtor to whom services are provided and who was not previously required to pay a deposit, for whatever reason, to pay a deposit on request, within a specified period.
- 5.3.3 The Council may from time to time review the sum of money deposited by a debtor in terms of this section and, in accordance with such review –
- (a) Require that an additional amount be deposited by the debtor; or
  - (b) Refund to the debtor such amount as may be held by the Municipality in excess of the reviewed deposit.
- 5.3.4 An amount deposited with the Municipality in terms of this Section shall not be regarded as being in payment or part payment of an account due for services rendered.
- 5.3.5 If, upon the termination of the agreement for the provision of services, an amount remains due to the Municipality in respect of services rendered to the debtor, the Municipality may apply the deposit in payment or part payment of the outstanding amount and refund any balance to the debtor.
- 5.3.6 No interest shall be payable by the Municipality on the amount of a deposit held by it in terms of this Section.
- 5.3.7 An agreement for the provision of services may contain a condition that a deposit shall be forfeited to the Municipality or its authorised agent if it has not been claimed within twelve months of the termination of the agreement.
- 5.3.8 The municipality shall maintain a record of all deposits received, whether manually or electronically. These deposits will be accounted for and in line with generally Accepted Municipal Accounting Practices (GAMAP).

## **6. INTEREST**

- 6.1 Except where expressly provided to the contrary in this By-Law, the Municipality may levy interest on all arrears at a rate prescribed by the Council from time to time in accordance with prevailing law.
- 6.2 Interest will not be raised on "Parked Arrears". Parked arrears must, however, be included in arrangements and notwithstanding anything to the contrary contained in this By-Law, parked arrears must be collected in full before transfer of the property to a new purchaser is authorised by the Municipality.

## **7. ACCOUNTS**

- 7.1 Monthly accounts will be rendered to debtors in respect of services rendered and become due and payable on or before the 15<sup>th</sup> of the month following the billing date, or the first working day thereafter.

All amounts not paid by the 15<sup>th</sup> of the month or the first working day after this date will result in the relevant punitive measures being implemented as stated in Clause 11.

- 7.2 Failure by the Municipality to render an account does not relieve a debtor of the obligation to pay any amount due and payable.
- 7.3 An account rendered by the Municipality for services provided to a debtor shall be paid not later than the last date for payment specified in such account, which date will not be more than twenty one days after the date of the account.
- 7.4 If payment of an account is received after the date referred to in Sub- Clause 9.1, a late payment charge or interest as may be prescribed by the Municipality, must be paid by the debtor to the Municipality.

7.5 Accounts will show the following;

- [i] The consumption or estimated consumption is determined for the measuring, estimating or allocating for applicable services;
- [ii] The measuring or consumption period;
- [iii] The applicable tariff;
- [iv] The amount due in terms of the consumption;
- [v] The amount in arrears, if any;
- [vii] The interest payable on any arrears, if any;
- [viii] The final date for payment;

*The conditions as stated in the above clause shall remain intact whether the applicable service is being undertaken under an agency/or similar agreement or not.*

7.6 Accounts may be accompanied by a notice stating that -

- [i] The debtor may enter into an agreement with the Municipality for payment of the arrear amount in installments at the Municipality before the final date for payment, if a debtor is unable to pay the full amount due and payable;
- [ii] If no such agreement is entered into, the Municipality may, in accordance with the By-Law contained herein, limit the water and/or electricity to the debtor;



- [iii] Legal action may be instituted against any debtor for the recovery of any arrear amount in terms of the By-Law contained herein;
- [iv] The defaulting debtor's name may be listed with a credit bureau or any other equivalent body as a defaulter;
- [v] The account may be handed over to a debt collector for collection;
- [vi] Proof of registration, as an Indigent debtor, in terms of the Municipality's indigent By-Law must be handed in before the final date for payment; and
- [vii] An Indigent debtor is only entitled to basic services, and will be liable for payment in respect of services used in excess of the quantity of basic services.

## **8. DISPUTES, QUERIES AND COMPLAINTS**

8.1 In these clauses "Dispute" refers to the instance when a debtor questions the correctness of any account rendered by the Municipality to such debtor and the debtor lodges an appeal with the Council in accordance with this Section.

8.2 Procedure to be followed

In order for a dispute to be registered with the Municipality, the following procedures must be followed:

8.2.1 By the Debtor:

8.2.1.1 The debtor must submit the dispute in writing to the Municipal Manager of Makhuduthamaga Municipality - (Form AD1).

- 8.2.1.2 No dispute will be registered verbally whether in person or over the telephone.
- 8.2.1.3 The debtor should furnish his full personal particulars including the identity number, account number, direct contact telephone number, fax, e-mail addresses and any other relevant particulars as may be required by the Municipality.
- 8.2.1.4 The full nature of the dispute must be described in the correspondence referred to above.
- 8.2.1.5 The debtor must continue to make payment for services, which is based on the average of the 3 [three] preceding months.
- 8.2.1.6 The onus will be on the debtor to ensure that he receives a written acknowledgement of receipt of the dispute from the Municipality.
- 8.2.2 By the Council:
- 8.2.2.1 On receipt of the dispute, the following actions are to be taken:
- 8.2.2.2 All Administrations must keep a register in which all disputes received will be entered.
- 8.2.2.3 The following information should be entered into the register:
- Debtor's Account Number
  - Debtor's Identity Number
  - Debtor's name
  - Debtor's address
  - Dispute Reference number
  - Full particulars of the dispute
  - Name of the official to whom the dispute is given to investigate.

- Actions that have/were taken to resolve the dispute.
- Signature of the controlling official.

- 8.2.2.4 The Financial Officer will keep custody of the register and conduct a daily or weekly check or follow-up on all disputes as yet unresolved.
- 8.2.2.5 A written acknowledgement of receipt of the dispute must be provided to the debtor.
- 8.2.2.6 All investigations regarding disputed amounts must be concluded by Council's Financial Officer within 21 [twenty one] calendar days from receipt thereof.
- 8.2.2.7 The debtor shall be advised in writing of the findings on the dispute, within 7 [seven] days from the conclusion of the investigation.
- 8.2.2.8 The Council agrees not to institute disconnection proceedings against the debtor on condition that the debtor complies with Clause 10.2.1.5.

### 8.3 Appeal against finding

- 8.3.1 A debtor may, in writing, appeal against a finding of the Municipality.
- 8.3.1.1 An appeal in terms of Clause 10.3.1 shall be in writing and shall set out the reasons for the appeal and be lodged with the Municipal Manager within 21 [twenty one] days from the date the debtor is advised of the findings of the investigation.
- 8.3.1.2 An appeal must be decided by the Council of the Municipality at its first ordinary meeting held after the appeal was lodged, should this not be delegated to a recognised committee.

- 8.3.1.3 The decision of the Council shall be final and the debtor must pay any amounts due and payable in terms of such decision within 14 [fourteen] days of the debtor being advised of the Council's decision.
  
- 8.3.1.4 The Council may, in its sole discretion, condone the late lodging of an appeal or other procedural irregularity.

- 8.3.1.5 If the debtor is not satisfied with the outcome of the appeal, he may, under protest, pay the amount in dispute and redress his action in a court of law.

The debtor must however immediately pay the balance of the account together with an amount representing the average cost of the item appealed against over the preceding months, or an amount determined by the Municipal Management. The debtor will remain liable for all other amounts falling due during the adjudication of the appeal.

If an appeal is in respect of metered consumption, the meter instrument must be tested by the Municipality within 14 [fourteen] days of lodging of appeal to establish the accuracy thereof.

The debtor should be informed in writing of the results of the test of the instrument and of any adjustment made on the amount due by him, together with the cost of the test for which the debtor will be liable if no error could be found with the instrument. If a faulty meter or instrument is revealed, the Municipality will bear the costs thereof.

## **9. ARREARS**

- 9.1 If a debtor fails to pay the amount/s due and payable on or before the final date for payment, being the 15<sup>th</sup> of each month, a Demand for the Payment of Arrears notice (letter of demand) must either be hand delivered or sent, per registered mail, to the most recent recorded address of the debtor, within 7 [seven] working days from the due date or the first working day thereafter (Form - DS1).
- 9.2 Failure to deliver or send a Demand for the Payment of Arrears notice within 7 [seven] working days does not relieve a debtor from an obligation to pay such arrears.

9.3 The Demand for the Payment of Arrears notice must contain the following statements -

- [a] The amount in arrears and any interest payable;
- [b] That the debtor may conclude an agreement with the Municipality for payment of the arrear amount in installments within 7 [seven] days of the date of the demand for the payment of arrears notice;
- [c] That, if no payment is received and no such agreement is entered into within the stated period, then a Notice of Discontinuation of Services (Form - DS2) will be issued, allowing a period of 7 [seven] days from the date of the demand for the payment of arrears notice.
- [d] That, if no payment is received and no such agreement is entered into within the period stated in [c] above, services to the debtor will be limited without further notice (Notice of Disconnection of Services Form DS3), and that legal action may be instituted against such debtor for the recovery of any amounts owing in accordance with this By-Law;
- [e] That the debtor's name may be listed with a credit bureau or any other equivalent body as a defaulter;
- [f] That the account may be handed over to a debt collector for collection;
- [g] That proof of registration, as an indigent debtor, in terms of the Municipality's Indigent By-Law must be handed in before the final date of the final demand notice;
- [h] That an indigent debtor is only entitled to basic services and that such an debtor will be liable for payment in respect of services used in excess of the quantity of basic services.

## **10. AGREEMENT FOR THE PAYMENT OF ARREARS IN INSTALLMENTS**

- 10.1 Only a debtor with positive proof of identity or a person authorised in writing by that debtor, will be allowed to enter into an agreement for the payment of arrears in installments (Form - AD2).
- 10.2 The offer by the debtor to settle arrear amounts plus accrued interest thereon shall be embodied in a written agreement signed by the parties. The aforesaid agreement shall include an acknowledgement of debt signed by the debtor and a copy of the agreement shall be made available to the debtor. The cost of preparation of the agreement plus any incidental costs associated therewith shall be borne by the debtor.
- 10.3 A debtor will, in the agreement, assume liability for any administration fees, costs incurred in taking action for the recovery of arrears and any penalties, including the payment of a higher deposit.
- 10.4 A debtor may be required to complete a debit order for the payment of arrears.
- 10.5 No agreement for the payment of arrears plus accrued interest thereon will be longer than twenty-four months, unless the circumstances referred to in Clause 12.6 and Clause 16 to 19 prevail.
- 10.6 The Municipality may, on an individual basis, allow a longer period than 24 [twenty four] months for the payment of arrears if special circumstances prevail that, in the opinion of the Municipality, warrants such an extension and which the debtor reasonably could not prevent or avoid.

Documentary proof of any special circumstances must be furnished by the debtor on request by the Municipality.

10.7 In concluding an agreement with a debtor, the arrangement criteria referred to in Clause 16 to 19 shall be applied and, as far as possible, be incorporated into the agreement referred to in this Clause.

10.8 The Municipality may, in exercising its discretion under Clause 6 have regard to a debtor's-

[a] Credit record;

[b] Consumption;

[c] Level of service;

[d] Previous breaches of agreements for the payment of arrears in installments;

and

[e] Any other relevant factors.

10.9 If a debtor fails to comply with an agreement for the payment of arrears in installments, the total of all outstanding amounts, including the arrears, any interest thereon, administration fees, costs incurred in taking relevant action, and penalties, including payment of a higher deposit, will immediately be due and payable, without further notice or correspondence.

10.10 The amount due and payable by a debtor constitutes a holistic or consolidated debt, and any payment made by a debtor of an amount less than the total amount due, will be allocated in reduction of the consolidated debt in the following order -

[a] Towards payment of the current account;

[b] Towards payment of arrears;

[c] Towards payment of interest; and



[d] Towards costs incurred in taking relevant action to collect amounts due and payable.

10.11 A debtor may, in the sole discretion of the Financial Officer, be allowed to enter into a new agreement for the payment of arrears in installments where that debtor has failed to honor a previous agreement for the payment of arrears in installments, entered into after the receipt of a discontinuation notice. In the event of such further agreement being permitted, then the arrangements mentioned in Clause 18.2 shall be applied.

10.12 Where a body corporate is responsible for the payment of any arrear amount to the Municipality in respect of a sectional title development, the liability of the body corporate shall be extended to the members thereof, jointly and severally and the agreement shall reflect this status accordingly.

## **11. DISCRETION: NEGOTIABLE AMOUNTS**

11.1 Discretion in terms of negotiable amounts as per this By-Law is delegated to the Financial Officer with the right to sub- delegate.

11.2 Officials with delegated powers may use discretion as a final tool by which decisions can be made in accordance with this By-Law.

11.3 At all times, and at all levels, discretion will only be used so as to apply the principles embodied in the By-Law and to ensure that some form of payment acceptable to Council is forthcoming from negotiations with the debtor.

## **12. ARRANGEMENTS**

12.1 Principles for Residential Debtors

- 12.2 Notwithstanding that all debts should be treated holistically, certain categories of debt may be subject to category specific repayment parameters.
- 12.3 Current charges must be paid in full and cannot be negotiated.
- 12.4 The debtor may be required to prove levels of income and must agree to a monthly payment towards arrears based on his ability to pay or based on his total liquidity if Council so requires.
- 12.5 All negotiations with the debtor should strive to result in an agreement that is sustainable and is most beneficial to Council.
- 12.6 Interest will be charged on arrears at an interest rate that shall be determined by Council from time to time.
- 12.7 Interest on arrears in respect of all services and rates may, at the option of the Council, be frozen whilst the debtor adheres to the conditions of an arrangement.
- 12.8 Debtors, excluding housing debtors, who default on three occasions in respect of arrangements made will be denied the privilege of making further arrangements, and the full amount becomes due and payable.
- 12.9 All arrangements should be subject to monthly review.
- 12.10 All services may be disconnected and legal action will be taken against debtors as provided for in this By-Law and/or such debt may be referred to third party debt collectors, for recovery.

### **13. ARRANGEMENT CRITERIA FOR RESIDENTIAL DEBTORS**

13.1 All debtors who are in arrears and apply to make arrangements to reschedule their debt will, subject to Clause 17, be obliged to make the following minimum payment requirements at the time of entering into such arrangement:

13.1.1 Current account plus

13.1.2 an initial payment towards arrears with the minimum payment being equal to a monthly installment which will liquidate the arrear amount plus accrued interest thereon within a period of 24 months.

13.1.3 Each following month the debtor will be required to pay:

13.1.4 Current account plus

13.1.5 An installment as determined in 13.1.2 above.

13.2 Should the debtor default, payments will be as follows:

13.2.1 First Default: Current account plus the monthly payment as determined in 13.1.2 above increased by 25% of that payment.

13.2.2 Second Default: Current account plus 50% of the monthly payment as determined in 13.1.2.above increased by 50% of that payment.

13.2.3 Final Default: Current account plus Full arrears.

13.3 In all cases, failure to respond to notices will result in normal credit control procedures and/or legal processes being followed.

#### **14. ARRANGEMENT CRITERIA FOR NON RESIDENTIAL DEBTORS**

- 14.1 Non-residential debtors may make arrangements to liquidate their arrears where it would be financially beneficial to the Council for them to do so.
- 14.2 The final decision to make these arrangements will rest with the Financial Officer with the right to sub-delegate.
- 14.3 If any non-residential debtor wishes to make an arrangement for a period of not longer than six months and will pay the first installment immediately, interest on the arrangement amount may be suspended as long as the terms of the arrangement are maintained.

**15. LISTING OF DEBTOR WITH CREDIT BUREAU**

15.1 Where an account rendered to a debtor remains outstanding for more than 90 [ninety] days -

- [a] The defaulting debtor's name shall be listed with a credit bureau or any other equivalent body as a defaulter, provided that the agreement for the provision of services provides therefore; and
- [b] May be handed over to a debt collector or an attorney for collection.
- [c] The collection criteria relating to the above collection mechanisms (outsourced collections) must comply with those provisions as laid out in 'Arrangement Criteria', prior to any services being restored.
- [d] Collection fees relating to monies collected by debt collectors and/or attorneys should be no more than 10% on the actual amount of debt collected.

## **16. IRRECOVERABLE DEBT**

16.1 Debt *will* be regarded as irrecoverable if:

16.1.1 All reasonable notifications and cost effective measures to recover a specific outstanding amount have been exhausted; or

16.1.2 If the amount to be recovered is too small to warrant further endeavors to collect it; or

16.1.3 The cost to recover the debt does not warrant further action, i.e. to summons in another country; or

16.1.4 The amount outstanding is the residue after payment of a dividend in the rand from an insolvent estate; or

16.1.5 A deceased estate has no liquid or fixed assets to cover the outstanding amount; or

16.1.6 It has been proven that the debt has prescribed; or

16.1.7 The debtor is untraceable or cannot be identified so as to proceed with further action; or

16.1.8 It is impossible to prove the debt outstanding; or

16.1.9 The outstanding amount is due to an administrative error by Council.

16.2 Authorisation

16.2.1 As rates are deemed to be recoverable in all instances, all requests to write-off debt in respect of rates must be presented as individual items to the Financial Officer.

16.2.2 In respect of other debt, schedules indicating the debtor account number, the debtor's name, and the physical address in respect of which the debt was raised, address erf number, if applicable, and amount per account category as well as the steps taken to recover a debt and a reason to write off the amount, must be compiled and submitted to the Financial Officer and then to Council for consideration with a view to writing off such debt as irrecoverable.

16.2.3 Notwithstanding the above, Council or its authorised officials will be under no obligation to write off any particular debt and will always have the sole discretion to do so.

## **17. TERMINATION, LIMITATION AND DISCONTINUATION OF SERVICES**

- 17.1 A debtor may terminate an agreement for the provision of services by giving to the Municipality not less than thirty calendar days' notice in writing of the debtors' intention to do so.
- 17.2 The Municipality may, after having given notice, terminate an agreement for services if a debtor has vacated the premises to which such agreement relates.
- 17.3 The Municipality may, subject to the conditions contained in this By-Law, limit or discontinue services provided in terms of this By-Law -
- [a] On failure by the debtor to pay the prescribed tariffs or charges on the date specified and after the final demand referred to in these by-laws has been issued and there has been no response from the debtor.
  - [b] On the failure of the debtor to comply with the provisions of any agreement entered into with the Municipality in terms of this By-Law.
  - [c] On failure by the debtor to comply with any other provisions of these by-laws and after due notice has been given to the debtor.
  - [d] At the written request of a debtor;
  - [e] If the agreement for the provision of services has been terminated and the Municipality has not received an application for subsequent services to the premises within a period of 14 [fourteen] days of such termination;
  - [f] If the building on the premises to which services were provided has been demolished;
  - [g] If the debtor has interfered with a limited or discontinued service; or

[h] In an emergency.

17.4 The Municipality will not be liable for any damages or claims that may arise from the limitation or discontinuation of services provided in terms of this Section.

## **18. NOTICES AND DOCUMENTS**

18.1 A notice or document issued by Makhuduthamaga Municipality in terms of this By-Law shall be deemed to be duly authorised by the Council of the Municipality.

18.2 Without derogating from the provisions of Section 115 of the Local Government Municipal Systems Act 32 of 2000, if a notice or document is to be served on an owner, debtor or any other person in terms of this By-Law, such service shall be effected by –

- [a] Delivering it to him or her personally or to his or her duly authorised agent;
- [b] Delivering it at his or her residence, village or place of business or employment to a person 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, delivering it to such an address;
- [d] If he or she has not nominated an address for legal purposes, delivering it to the address given by him or her in his or her application for the provision of services, for the reception of an account for the provision of services;
- [e] Sending it by pre-paid registered or certified post addressed to his or her last known address;



[f] In the case of a legal person, by delivering it at the registered office or business premises of such legal person; or

[g] If service cannot be effected in terms of sub-sections [a] to [f], by affixing it to a principal door of entry to the premises concerned.

18.3 In the case where compliance with a notice is required within a specified number of working days, such period shall be deemed to commence on the date of delivery or sending of such notice.

## **19. RIGHT OF ACCESS**

19.1 An authorised representative of the Municipality must, at all reasonable hours, be given unrestricted access to the debtor's premises in order to read, inspect, install or repair any meter, service or service connection for reticulation, or to disconnect, reconnect, stop or restrict the provision of any service.

19.2 Any person who contravenes Clause 19.1 above will be deemed to have contravened the provisions of Section 101 of the Local Government Municipal Systems Act 32 of 2000, as amended and will be charged with the commission of an offence which, if proven guilty, may attract the penalties referred to in Section 119 of the Act.

19.3 Failure to comply with Clause 19.1 could result, inter alia, in any of the debtor's services being disconnected or terminated.

## **20. OTHER DEBT AND GENERAL**

20.1 Sundries

20.2 Interest will be charged on all overdue accounts at an interest rate that shall be determined by the Council from time to time.

20.3 In the recovery of sundry debt, Council reserves the right to utilise any legal action at its disposal as well as make use of any third party debt collector.

20.4 Disconnection and/or termination of services may be utilised to obtain overdue payment.

## **21. EMPLOYER DEDUCTIONS**

21.1 The Council may, subject to an employee's consent, enter into an agreement with the employer of such employee to deduct an agreed amount from that employee's weekly or monthly wages or salary in payment towards current service and arrear service charges owing to the Municipality.

21.2 In return for this "collection service", employers' who have municipal accounts will have their accounts credited with the equivalent commission, the extent of which will determined by Council from time to time.

21.3 Employers who do not have municipal accounts will be paid their commission in a manner determined by the Council.

## **22. FULL AND FINAL SETTLEMENT PAYMENTS**

22.1 Any part payment of an account in full and final settlement can only be rendered to the Financial Officer or his delegated authority.

22.2 Should such a payment not be tendered in accordance with Clause 29.1 above and:

22.2.1 Each payment being cash or postal orders, on discovery thereof, will be returned to the payer; or

22.2.2 Such payment be in the form of a cheque, the cheque will be returned to the drawer; or

22.2.3 Such payment be in the form of a cheque, credit card or electronic payment and deposited, the amount of such payment will be returned to the drawer thereof.

22.2.4 Furthermore, should such a payment not be tendered in accordance with Clause 29.1 above, the account will be adjusted accordingly, where applicable, and debt management actions in terms of this By-Law will commence or continue as if no payment had been tendered.

## **23. DISHONoured PAYMENTS**

### 23.1 Rates and General Services

If the drawer of the cheque, or the debtor who received value from the depositing of the cheque, is an existing debtor of Council, the reversal and penalty fee may be debited to an account of the drawer or beneficiary and a letter of notification must be sent to the debtor. Such fee shall be deemed to be a tariff charge and shall be recovered from the debtor. Council reserves the right to refuse to accept further cheques from the drawer or beneficiary, to place the matter on the National Adverse Credit Listing and also institute legal action which may include criminal charges against the offender.

### 23.2 Miscellaneous Services

23.2.1 If the drawer of the cheque is not an existing debtor of Council, then a sundry debtor account is opened and the debit and penalty is raised. Once the account is submitted and the debtor fails to honor the cheque and pay the penalty within 14 [fourteen] days of receipt, a final demand is generated and submitted. If there is still no

response, then the matter shall be handed over for placement on the National Adverse Credit listing and/or legal action that may include criminal charges being instituted against the offender.

23.2.2 If the drawer of the cheque or the debtor who received value from the depositing of the cheque is an existing debtor of Council, the reversal and penalty fee may be debited to an account of the drawer or beneficiary and a letter of notification must be sent to the debtor. Such fee shall be deemed to be a tariff charge and shall be recovered from the debtor. Council reserves the right to refuse to accept further cheques from the drawer or beneficiary and also institute legal action which may include criminal charges against the offender.

23.2.3 Unpaid cheques shall be dealt with in accordance with Clause 23.

## **24. PROPERTY MANAGEMENT LEASES**

The procedure for the recovery of arrears on leases will be in accordance with the conditions contained in the relevant lease contract.

## **25. HOUSING**

### 25.1 General Principles

25.1.1 Interest may be charged on all overdue accounts at an interest rate that shall be determined by Council from time to time.

25.1.2 An arrangement requires the payment of the current account plus an acceptable amount towards the arrears each month (refer "Arrangements").

25.1.3 If an arrangement is not honored, the debt collection process/legal action will begin.

25.1.4 The Ward and/or Proportional Representative (PR) Councilors will be informed of defaulting debtors following the issuing of a Letter of Demand and Judgment Order against the occupant.

- 25.1.5 Home visits will be undertaken by officials or representatives on behalf of Council following the issue of the Letter of Demand to the debtor and again, once a Judgment Order has been granted. The visiting official or representative will make every effort to encourage the defaulting debtor to pay arrears.
- 25.1.6 The debtor is responsible for all legal costs and will have to pay such costs before any legal action may be stopped.
- 25.1.7 A Warrant of Ejectment will be obtained and the subsequent eviction process may only be stopped if all outstanding arrears, plus any legal costs, are paid.
- 25.1.8 Once an eviction has been carried out by the Sheriff of the Court, no reinstatement of the evicted debtor will be considered.
- 25.2 Failure to Honor Arrangements -(Sale in Execution)the collection of arrears through property will be brought into effect should Makhuduthamaga Municipality not have recourse against the consumer using conventional recovery means such as the disconnection of electrical and/or water services. Should the Municipality be granted the provision of these services, the standard collection process will be adopted which allows arrangements to be made on arrears, utilisation of the discontinuation of services and as a last resort the “Sale in Execution” of the Debtors property for the settlement of arrears.
- 25.2.1 If payment on arrangements is not received by the due date, a First Contact Letter must be served on the debtor requesting full and final payment and offering the debtor an opportunity to make an arrangement for payment within 7 days from the date of such letter.
- 25.2.2 If there is no response to the First Contact Letter, a Letter of Demand must be issued, allowing the defaulter 7 days as a final opportunity to make an arrangement for payment.

25.2.3 If the debtor fails to respond to this notice, the legal collection process will commence and the debtor will be responsible for all legal costs incurred by the Council.

25.2.4 A Warrant of Ejectment will be obtained and the subsequent eviction process may only be stopped if all outstanding arrears, plus any legal costs, are paid.

25.2.5 If the amount due on the day of eviction is not paid, repossession of the property will take place and arrangements must be made for resale of the property.

## **26. OFFENCES AND PENALTIES**

26.1 The Council acknowledges that, in terms of Section 119 of the Local Government: Municipal Systems Act 32 of 2000 it is an offence for:

[a] A Councillor to attempt to influence the Municipal Manager or any staff member of Makhuduthamaga Municipality not to enforce an obligation in terms of this By-Law;

[b] A Municipal Manager or other staff member of Makhuduthamaga Municipality to accede to an attempt mentioned in paragraph [a]

## **27. THE MUNICIPAL MANAGER**

The Municipal Manager in his capacity as the accountable officer is in terms of section 10G(2)(a)(ii) of the Transitional Act on Local Government, Act no 97 of 1996 and in terms of the chapter 9 of the Systems Act No 32 of 2000 responsible for the finances of Council and is also held accountable therefore.

The Municipal Manager must report to the MEC for Local Government in the Province should Councilors exercise any improper influence on officials in the execution of their duties.

Those Clauses detailed below will be of force and affect should Makhuduthamaga Municipality provide services for either electricity or water or *both*.



**28. LIMITATION AND DISCONTINUATION OF SERVICE DUE TO FAILURE TO COMPLY WITH FINAL DEMAND**

28.1 The Municipality shall, within 7 [seven] working days after the expiry of the 7 [seven] day period allowed for payment in terms of the final demand (Form - DS1), issue a Notice of Discontinuation of Services (Form - DS2):

[a] Limit the provision of services to the defaulter; and

[b] Hand deliver or send, per registered mail, to the last recorded address of the debtor, a discontinuation notice informing him that the provision of services will be disconnected within 7 [seven] days of the date of the discontinuation notice;

[i] No payment is received within the allowed period;

[ii] No agreement is entered into for the payment of arrears in installments;

[iii] No proof of registration as indigent is handed in within the 14 [fourteen] day period, recorded from the initial issue of the demand for the payment of arrears (final demand).

28.1.1 As part of the consultative process. Ward Councilors may be given details of those debtors that may be in breach of the above. This action will not however not interfere or limit the Credit Control and Debt Collection process.

28.1.2 A discontinuation notice must contain-

[a] The amount in arrears and any interest payable;

- [b] A statement that the debtor may conclude an agreement with Municipality for payment of the arrears amount in installments, within 7 [seven] days of the date of the discontinuation notice;
- [c] that if no such agreement is entered into within the stated period, the Municipality may discontinue the provision of services with immediate effect, notwithstanding any legal action instituted or in the process of being instituted against the debtor for the recovery of the arrear amount; and
- [d] Proof of registration, as an indigent debtor, in terms of the Municipality's indigent By-Law must be handed in within 7 [seven] days of the date of the discontinuation notice.

28.2 The Municipality may, within 7 [seven] working days after the expiry of the 7 [seven] day period allowed for payment in terms of the Notice of Discontinuation of Services notice, discontinue the provision of services to the defaulting debtor, if -

- [a] No payment was received within the allowed period;
- [b] No agreement was entered into for the payment of arrears in installments;
- [c] No proof of registration as indigent was furnished within the 14 (fourteen) day period allowed.

**29. LIMITATION AND DISCONTINUATION OF SERVICE DUE TO FAILURE TO COMPLY WITH AGREEMENT TO PAY ARREARS IN INSTALMENTS**

29.1 In the event of a debtor failing to make payment in terms of an agreement referred to in Clause 12, a notice shall be served on the debtor informing him:

- [a] That payments in terms of the agreement have not been received;

- [b] Of the full amount outstanding in terms of the agreement;
- [c] That unless full payment of the outstanding installments are received within a period of 14 days from the date of such notice, the Municipality reserves the right to cancel the agreement, claim all outstanding amounts from the debtor and discontinue the service in respect of which the agreement was concluded.

29.2 In the event of the debtor failing to respond to the aforesaid notice within the stipulated period, the Municipality may discontinue the provision of services to the defaulting debtor without further notice.

A notice shall be left at the property advising that the supply has been disconnected which also warns the debtor that all electric points should be considered live and all water outlets should be closed. This notice will also advise the debtor that the supply will only be reconnected after the total balance outstanding as well as any disconnection and reconnection penalties have been paid, or an arrangement which is acceptable to Council has been made. This notice should also warn of the consequences of unauthorised connection.

The onus remains with the debtor to prove that the relevant balances and penalties referred to Clause 9.5 above have been paid.

### **30. RESTORATION OF SERVICES**

After a debtor settles arrear amounts owing to the Municipality following discontinuance of a service, the discontinued service will be restored within 7 [seven] working days or a reasonable period of time, to the type of service the debtor elected in terms of the agreement for the provision of services.

## **31. UNAUTHORISED RECONNECTION OF WATER/ELECTRICITY**

### **SUPPLY (TAMPERING)**

- 31.1 The 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 person responsible for such unauthorised reconnection or tampering. Where this has occurred, the service reconnected without authorisation or tampered with will be effectively disconnected and penalties shall be imposed as per the tariffs determined by Council from time to time.
- 31.2 The full amount of arrears plus any unauthorised consumption, and any applicable reconnection tariffs, will be payable prior to reconnection. Should exceptional circumstances exist, adequate payment arrangements may be permitted at the sole discretion of the Financial Officer with the right to sub-delegate.
- 31.3 It should be noted that "free flow" does not constitute tampering; the onus is however on the debtor to bring such cases to the attention of the Municipality.

## **32. PREPAYMENT ELECTRICITY METERS**

The installation of prepayment electricity meters, with the written permission of the owner, should be encouraged. The debtors whose electricity supply has been disconnected three times for non-payment will be compelled to install a prepayment electricity meter before the supply is reconnected. All prepayment electricity meters are installed at the owner or tenant's own expense.

## **33. PREPAYMENT ELECTRICITY METERS USED TO RECOVER ARREARS**

A minimum of 20% to a maximum of 50% of the value of units purchased for electricity shall be allocated in the first instance to electricity arrears and thereafter

to any other arrears. This action will be by prior arrangement with the debtor and shall remain unchanged unless by default.