

The Council of the City of uMhlathuze has in terms of Section 156 (2) of the South African Constitution 1996 (Act 108 of 1996) read in conjunction with Section 11 and Section 12 of the Local Government: Municipal Systems Act, 2000 (Act no 32 of 2000) made the following bylaws:

CITY OF uMHLATHUZE

CREDIT CONTROL AND DEBT COLLECTION BYLAWS

1. DEFINITIONS

For the purpose of these bylaws, the wording or any expression has the same meaning as contained in the Act, except where clearly indicated otherwise and means the following:

“act” means the Local Government: Municipal Systems Act: (Act No 32 of 2000).

“arrangement” means a written agreement entered into between the Council and the debtor where specific repayment parameters are agreed upon.

“arrears” - means those rates and service charges that have not been paid by the due date and for which no arrangement has been made.

“authorised representative” – means a person or instance legally appointed by the Council to act or to fulfil a duty on its behalf.

“Chief Executive Officer” – means the person appointed as Municipal Manager and/or the Chief Accounting Officer and includes any person acting in that position or to whom such authority is delegated.

“Chief Financial Officer” – means a person appointed as the Chief Financial Officer of the Municipality, or his nominee.

“Council” – means the Council on the uMhlathuze Municipality, as referred to in section 157 of the Constitution of the Republic of South Africa Act 108 of 1996, of the uMhlathuze Municipality established by Provincial Notice 346, dated 19 September 2000.

“credit control” - means all the functions relating to the collection of monies owed by ratepayers and the users of municipal services.

“customer” - means any occupier of any premises to which Council has agreed to supply or is actually supplying services, or if there is no occupier, then the owner of the premises and includes any debtor of the municipality.

“interest” – means a charge levied with the same legal priority as service fees and calculated at a rate determined by Council from time to time on all arrear monies.

“municipal account” – means an account rendered specifying charges for services provided by the Municipality, or any authorised and contracted service provider, and/or assessment rates levies.

“Municipality” - means the uMhlathuze Municipality.

“municipal services” – means those services provided by the Municipality, such as, inter alia the supply of water and electricity, refuse removal, sewerage treatment, and for which services charges are levied.

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

“owner” – means the person in whom the legal title to premises is vested from time to time. In a case where the person in whom the legal title is vested is insolvent or deceased, or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative.

- In a case where Council is unable to determine the identity of such person, a person who is entitled to the benefit of such premises with a building thereon.

In the case of premises for which a lease of 30 years or more has been entered into, the lessee thereof:

- In relation to-

A piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 1986, (Act 95 of 1986), and without restricting the above, the developer or the body corporate in respect of the common property; or a section as defined in such Act, the person in whose name such a section is registered under a sectional title deed and includes the lawfully appointed agent of such a person;

- Any legal person including but not limited to-

A company registered in terms of the Companies Act, 1973 (Act 61 of 1973), a trust, a closed corporation registered in terms of the Closed Corporations Act, 1984 (Act 69 of 1984) and a voluntary association;

- Any department of State;
- Any Council of Board established in terms of any legislation applicable to the Republic of South Africa;
- Any Embassy or other foreign entity;
- Any lessee of Council owned property.

“premises/property” – includes any piece of land, the external surface boundaries of which are delineated on a general plan or diagram registered in terms of the Land Survey Act, 1927 (9 of 1927), or in terms of the Deed Registry Act, 1937 (47 of 1937); **or** a unit within a sectional plan registered in terms of the Sectional Titles Act, 1986 (95 of 1986), which is situated within the area of jurisdiction of the Council;

“services agreement”- means an agreement concluded between the Municipality and the Consumer in respect of the provision of municipal services by the Municipality to the Consumer.

2. MEANING OF CERTAIN WORDS

Any word or expression used in these Bylaws to which a meaning has been assigned in the Act will bear that meaning unless the context indicates otherwise.

3. OBJECTIVES

The objectives of these bylaws are:

- (1) to give effect to the City of uMhlathuze’s Credit Control and Debt Collection, as adopted by Council on 3 July 2007.
- (2) to stand as a supervisory, enforcement as well as the implementation authority of the City of uMhlathuze’s Credit Control and Debt Collection.

4. APPLICATION

These bylaws apply in the area of jurisdiction of the Municipality, notwithstanding the provisions of section 11(2) of the Local Government: Municipal System Act, 2000 (Act No 32 of 2000).

5. APPLICATION FOR MUNICIPAL SERVICES

- (1) Consumers who require a municipal service must, where possible, enter into a written service agreement with the Municipality before the Municipal service is rendered.
- (2) The application for the municipal service must occur 2 days prior to taking occupation of the premises, so that the Municipality can ensure that a meter reading is taken on the appropriate day and that the services are available when occupation is taken. Failure to adhere to the timeframe may result in customers not having the Municipal services available when occupation is taken.
- (3) The Municipality will render the first account after the first meter reading cycle to be billed following the date of signing the service agreement.
- (4) Consumers who illegally consume municipal services prior to the conclusion of a services agreement shall be guilty of an offence and punishable in terms of these Bylaws.

- (5) Where a municipal service is rendered or has been rendered and no services agreement exists, the liability for the payment of the account vests with the owner of the property as all service charges are deemed a charge upon the property as contemplated in section 118(3) of the Act.

6. DEPOSITS AND GUARANTEES

- (1) Deposits are payable when new customers conclude a services agreement and when existing customers move to a new supply address.
- (2) Customers must pay a deposit equal to an amount as determined by the Chief Financial Officer or his nominee from time to time but not less than two and a half times the average account in respect water and or electricity consumption plus value added tax.
- (3) Bank guarantees issued by a financial institution and corporate guarantees approved by the Chief Financial Officer may be accepted.
- (4) Deposits and guarantees as well as the minimum amounts required may be reviewed and increased by the Municipality as determined in terms of the Council's Policy.

7. ACCOUNTS AND BILLING

- (1) The Municipality shall produce one consolidated account for all Municipal services to a property per month in a thirty-day cycle and produced in accordance with the meter reading cycles.
- (2) In the event of non-receipt of a Municipal account, the onus rests on the account holder to obtain a free copy of the Municipal account from the Municipality, before the due date.
- (3) Accounts must be paid on the due date as indicated on the Municipal account. If applicable, interest on arrears will accrue after due date if the account remains unpaid, irrespective of the reason for non-payment.
- (4) The rate at which interest is charged on all arrear accounts will be determined annually during the budget review process and will be included in Council's Tariff of Charges.
- (5) The interest rate is a rate per annum and is charged on a monthly basis and late payment for a portion of a month will be deemed to be late payment for a full month.
- (6) Payments for Municipal accounts must be received on or before the due date at a Municipal pay-point. In the case of any electronic payments or payments via agents, the money must be received in the municipal bank account before the due date and not later than the close of business. Payments are only deemed as received once they have been reflected on Council's Financial System.
- (7) Non-payment of the Municipal account will result in debt collection actions.

- (8) Consumers who have offered a cheque as payment for services, and which cheque is returned by the Financial Institution as “referred to drawer”(“RD”), will be disconnected and / or blocked at the soonest opportunity. The account will be flagged and no further cheque payments will be accepted. The flag on the account, which effectively prevents the account holder from making any cheque payments, can be reviewed at the discretion of the Chief Financial Officer after 24 months.
- (9) Metered services consumed by an unknown customer are billed to the owner of the property to which the service connection is registered.

8. ARRANGEMENTS FOR SETTLEMENT OF ARREAR ACCOUNTS

- (1) It is the responsibility of a debtor who is in arrears with his account to make arrangements with the Municipality as to how such account shall be settled.
- (2) The Chief Financial Officer or his delegate shall enter into such arrangements with the debtors whose Municipal accounts are in arrears.
- (3) The terms applicable to the settlement of arrear debt as well as any upfront payment shall be determined by the Chief Financial Officer.
- (4) Only account holders with positive proof of identity or an authorised agent with a Power of Attorney will be allowed to enter into an arrangement for the payment of arrear accounts in instalments.
- (5) The arrangement must be in writing and may be in the form of an Acknowledgement of Debt. One copy must be handed to the customer.
- (6) Failure to honour the agreement will lead to immediate blocking/ disconnection/ restricting of Municipal services as well as further legal action where applicable.
- (7) No arrangement may be concluded with customers without the written authorisation of the owner of that property.

9. ALLOCATION OF PAYMENTS

- (1) A customer may not selectively nominate payment of his Municipal account or portions of his account.
- (2) The Chief Financial Officer may at his discretion consolidate any separate Municipal accounts of persons liable for payments to the municipality and/or credit a payment by such a person against any account or portion of an account of that person.

10. TENDERS FOR BUSINESS

- (1) When inviting tenders for the provision of services or delivery of goods, potential contractors may submit tenders subject thereto that all Municipal accounts owing by the tenderer and/or its directors, owners or partners have been paid or that suitable arrangements (which include the right to off-set in the event of non-compliance) have been made for payment of any arrears.

- (2) No tender will be allocated to a person/contractor until a suitable arrangement for the repayment of arrears, has been made. No further debt may accrue during the contract period.
- (3) Council may deduct any moneys owing to the Municipality from contract payments due to any of its creditors.

11. APPROVAL OF BUILDING PLANS

Before any building plans pertaining to the alteration, improvement or erection of buildings or structures on a property can be considered for approval, or any permission to proceed with such construction can be given, all arrears outstanding for a period longer than 30 days associated with the relevant property must be paid.

12. DEBT COLLECTION

- (1) The Municipality may institute credit control mechanisms for collection of outstanding debt until all such the debt has been collected. These mechanisms include, but are not limited to:
 - (a) The disconnection / restriction of electricity and/or water;
 - (b) Preventing the sale of electricity to customers on the prepayment system with any other arrear account with the Municipality;
 - (c) If a debtor's electricity supply has been disconnected on three or more consecutive occasions within one year, to advise the debtor to convert to a prepayment, supply to be installed at the cost of the debtor.
 - (d) Standby electricians, meter readers and contractors are not permitted to restore any Municipal service to customers without authority from the Municipality's Credit Control Section.
- (2) Customers whose supply of Municipal services has been unlawfully reconnected or bypassed will be regarded as having tampered with the meter or the supply.

13. RESPONSIBILITY FOR AMOUNTS DUE AND PAYABLE

- (1) In terms of Section 118(3) of the 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.
- (2) All municipal debts shall be a charge upon the property and shall be payable by the owner of such property.
- (3) Any person who purchases or otherwise acquires or leases immovable property from the Municipality shall be deemed to be the owner thereof from the date of such purchase or other acquisition by him or from the commencement of such lease, as the case may be.
- (4) Where the property is owned by more than one person, each such person shall be liable jointly and severally for all municipal debts charged on the property.

14. ENHANCED EXTENDED DISCOUNT BENEFIT SCHEME (EEDBS) PROPERTIES

- (1) Certain residual housing stock in Council's area of jurisdiction is still in the process of being alienated in terms of the Enhanced Extended Discount Benefit Scheme (EEDBS).
- (2) Many of the beneficiaries of the type of housing as contemplated in sub-section (1) are in arrears and all credit control actions provided for in these Bylaws are applied except for the sale in execution of the properties.
- (3) All properties, which are still subject to transfer in terms of the EEDBS scheme, where the original beneficiary is no longer in occupation of the property, shall be re-allocated by Council to another person in terms of prevailing policies regarding the allocation of properties.
- (4) Any debt that remains outstanding on the accounts referred to in sub-section (3) shall be written off as irrecoverable when the new owner takes occupation of the property. Where the new beneficiary has been in occupation of the property, all debt that is applicable to the period where he was in occupation, will remain a debt outstanding for his account.

15. TAMPERING WITH SERVICES

- (1) The application of any measures applicable in respect of tampering with municipal services are provided for in Council's Electricity Supply Bylaws and Water Services Bylaws.
- (2) Any amounts debited to a customer's account in respect of electricity illegally consumed forms an integral part of the customer's account and no arrangements for the payment of the outstanding account in instalments can be made unless the debtor pays a first upfront amount of 50% (fifty percent) of his total outstanding account.

16. SERVICE OF DOCUMENTS AND PROCESS

- (1) Any notice, including an account or final notice or other document that is served on or sent to a person in terms of these bylaws, is regarded as having been served or received :
 - (a) when it has been delivered to that person personally.
 - (b) when it has been left at that person's place of residence or business in the Republic.
 - (c) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.
 - (d) when any notice is sent via email or cell phone text message it is deemed served / received when the message has been sent and there exists an electronic record that such message was sent.

- (2) When any notice or other document must be authorised or served on or sent to the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

17. ASSISTANCE TO INDIGENT DEBTORS

Assistance to indigent debtors shall be provided in accordance with the provisions of Council's Credit Control and Debt Collection Policy as well as the Indigent Policy as approved by the Council.

18. COMMUNICATION

The municipality shall at its own cost make the Credit Control and Debt Collection Bylaws available to the community. Any amendments to the Bylaws shall be communicated in accordance with the Act.

19. WAIVER

- (1) Council may, on good cause shown in the public interest, waive compliance with or permit deviations, exceptions and exemptions from any provision of these bylaws subject to such conditions as are reasonable.
- (2) Council must serve a written notice of waiver which is signed by the Municipal Manager upon the person. The notice must cite -
 - (a) the provision that was waived or relaxed; and
 - (b) the extent to which it has been waived.
- (3) Council must keep a record which contains a copy of the notice, and the public may, at all reasonable hours, inspect this record at the offices of Council.

20. RIGHT OF APPEAL

- (1) A person who is of the opinion that his or her rights are affected by a decision of a municipal officer may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- (2) The Municipal Manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).
- (3) The appeal authority must consider the appeal and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (4) When the appeal is against a decision taken by –
 - (a) a municipal officer other than the Municipal Manager, the Municipal Manager is the appeal authority;

- (b) the Municipal Manager, the Executive Committee or Executive Mayor is the appeal authority; or
 - (c) a political structure or political office bearer or a Councillor, a committee of councillors who were not involved in the decision and who were appointed by Council for this purpose is the appeal authority.
- (5) An appeal authority must commence with an appeal within 6 weeks and decide the appeal within a reasonable time.

21. SHORT TITLE

These bylaws are called the Credit Control and Debt Collection Bylaws.

22. OFFENCES AND PENALTIES

- (1) Any person who –
- (a) contravenes or fails to comply with any provisions of these By-laws; or
 - (b) fails to comply with any notice issued in terms of these By-laws; or
 - (c) fails to comply with any lawful instruction given in terms of these By-laws; or
 - (d) obstructs or hinders any employee of Council in the execution of his or her duties under these By-laws,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

23. INCONSISTENCY WITH OTHER BYLAWS

In the event of any inconsistency between any provision of these bylaws, and any other Council bylaw, these bylaws prevail.

24. REPEAL OF BYLAWS

The Credit Management Bylaws for the City of uMhlathuze published on 11 July 2002 under the Municipal Notice of the Provincial Gazette Notice MN 22, are hereby repealed and replaced by these Bylaws, which are to become effective on promulgation thereof.