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LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 1619

MOGALE CITY LOCAL MUNICIPALITY

NOTICE REGARDING CREDIT CONTROL BY-LAW

Notice is hereby by given in terms of section 98 (1) of Local Government Systems Act No. 32. 2000 that in July 2006 Council of Mogalec-City Municipality passed a resolution in terms of the Item K (ii) 1(5/2006) approving the following Credit control and Debt collection By-Law to give effect to the implementation of its Credit control and debt collection policy.

MOGALE CITY LOCAL MUNICIPALITY**CREDIT CONTROL and DEBT COLLECTION BY-LAWS**

These bylaws are made in terms of section 98 of the Municipal Systems Act, 2000(Act 32 of 2000) and the following is hereby enacted:

1. DEFINITIONS

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

“Arrears” means amounts due for levies on the municipal account for which no payments are reflected after the due date on the municipal account.

“Chief Financial Officer” means a person appointed by the Municipality to manage, *inter alia*, the financial administration and collection of the debt of the Municipality’s debtors.

“Client Management” means the focusing on the client's needs in a responsive and proactive way to encourage payment, thereby limiting the need for enforcement.

“Credit Control” means the limiting of further service delivery (and thus lowering current accounts and arrears growth) to defaulters and the negotiation for payment before normalizing service delivery again.

“Debt Collection” means the administrative and legal processes, which are necessary to collect unpaid income of the Municipality from its debtors.

“Debtor” means a person or entity to whom or to which a municipal account has been submitted. The Municipality is at liberty to submit one municipal account for all levies/charges in respect of a property, to the owner of that property and to distinguish between types of properties in this regard.

“Defaulter” means a debtor whose municipal account is in arrears for a period of more than 30 (thirty) days from date of account.

“Indigent” means debtors who are poor private households as defined by the Municipality’s policy regarding such people, who receive benefits in terms of the Social Package of tariffs and arrears included in the policy.

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

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

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

- (a) Electricity consumption
- (b) Water consumption
- (c) Refuse removal
- (d) Sewerage services
- (e) Property taxes charged in relation to the value of the premises in terms of the relevant legislation, including but not limited to the Property Rates Act
- (f) Interest on amounts in arrears
- (g) Value added tax on ratable municipal services
- (h) Rent levies for housing and municipal properties
- (i) Any other taxes levies or charges appropriate to local Government or any delictual, contractual or other claims against debtors.

“Municipality” means the Mogale City Local Municipality and the area under its jurisdiction.

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

“Owner” means-

- (a) the registered owner of premises in terms of the Deeds Registries Act, 1937(Act 47 of 1937) or the person in whom from time to time is vested the legal title to premises or where the Municipality is unable to determine the identity of such person, then that person who is benefiting or who is likely to benefit from such premises or a building thereon;
- (b) in the case of any right in land, the lessee or the holder of the right in land concerned;
- (c) where the person in whom the legal title is vested is insolvent or deceased, or is under any form of legal disability whatsoever, then that 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;
- (e) in relation to –
 - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 1986, (Act 95 of 1986) and without restricting the above, the developer or the body corporate in respect of the common property, or
 - (ii) a section as determined by such Act, the person in whose name such section is registered under a sectional title deed and includes the lawfully appointed agent of such a person;

“Person” means-

- (a) any legal person including but not limited to:
 - (i) a company registered in terms of the Companies Act, 1973 (Act 61 of 1973), Trust *inter vivos*, Trust *mortis causa*, a Closed Corporation registered in terms of the Closed Corporations Act, 1984 (Act 69 of 1984), a Voluntary Association.
 - (ii) any Department of State.
 - (iii) any Council or Board established in terms of any legislation applicable to the Republic of South Africa.
 - (iv) any Embassy or other foreign entity.

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

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

“Property” means:

- (a) Immoveable property and any building, whether moveable or immoveable and any other immoveable structure in or on the property or under the surface of the property, which are registered in the name of a person or entity;
- (b) a right registered against immoveable property in the name of a person or entity;
- (c) a land tenure right registered in the name of a person or entity, or granted to a person in terms of legislation.

2. GENERAL PROVISIONS

2.1 Notices and Documents

- (a) A notice or document issued by the Municipality in terms of these by-laws shall be deemed to be duly issued if it is signed by an authorized official or representative of the Municipality.
- (b) If a notice is to be served on a person in terms of these by-laws, such service shall be effected by:
 - (i) delivering the notice to him or her personally or to his or her duly authorized agent;
 - (ii) delivering the notice at his or her residence or place of employment to a person apparently not less than sixteen years of age and apparently residing or employed there;
 - (iii) if he or she has nominated an address for legal purposes, by delivering the notice to such an address;
 - (iv) registered or certified post addressed to his or her last known address;
 - (v) in the event of a body corporate, by delivering it at the registered office or the business premises of such body corporate;
 - (vi) if service cannot be effected in terms of paragraphs (b)(i) to (b)(v) then by affixing it to the principal door of entry to the premises, or placing it on a conspicuous place on the land to which it relates.

2.2 Authentication of documents

- (a) Every order, notice or other document requiring authentication by the Municipality shall be sufficiently authenticated, if signed by the Municipal Manager or by an authorized official or representative of the Municipality.
- (b) Delivery of a copy shall be deemed to be delivery of the original.

2.3 Full and final settlement of an amount

- (a) Notwithstanding the nomination upon payment by a debtor of any specified amounts towards selected services on a consolidated account, the Chief Financial Officer shall be at liberty to, either specifically or on a pro rata basis, appropriate monies received from a debtor of the Municipality to any of the amounts owed by that debtor in respect of any of the municipal services for which a municipal account has been submitted to that debtor.
- (b) Where the exact amount due and payable to the Municipality is not paid in full and a lesser amount is tendered to and accepted by any Municipal employee, excepting the Chief Financial Officer or his/her authorized delegate, such acceptance shall not be deemed to be in final settlement of the amount due.
- (c) The provisions in 2.3(a) above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.
- (d) The Chief Financial Officer's or his/her delegate's consent to the acceptance of such a lesser amount in full settlement, shall be in writing.

2.4 Interest charges

Subject to the provisions of the Municipal Systems Act 2000 (Act 32 of 2000) or any other law relating to interest, the Municipality shall recover interest in respect of any arrears amount due and payable to it at a rate determined in its Credit Control and Debt Collection Policy.

2.5 Security Deposit

The Municipality has the right to require from its debtors a form of surety consisting of either a cash deposit or a bank guarantee to cover the total value of the levies of at least one month on the services account and to increase this surety in case of payment default by a debtor.

2.6 Prima Facie Evidence

A certificate reflecting the amount in arrears and payable to the Municipality, under the hand of the Municipal Manager or suitably qualified person authorized by the Municipal Manager, shall upon mere production thereof be accepted by any court of law as prima facie evidence of the indebtedness.

3. POWER OF THE MUNICIPALITY TO RECOVER COSTS

3.1 Dishonored payments

Where any payment made to the Municipality is later dishonored by the bank, the Municipality shall levy a cost and administration fee against the municipal account of the defaulting debtor in terms of the Municipality's tariff.

3.2 Legal Fees

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

3.3 Cost to remind debtors of arrears

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

3.4 Disconnection fees

Where any service is disconnected or restricted for credit control purposes, the Municipality shall be entitled to levy and recover a disconnection fee from that debtor in terms of the Municipality's tariff.

3.5 Accounts

The Municipality may –

- (a) Consolidate any separate arrear municipal accounts of a debtor of the municipality;
- (b) Credit any unspecified payment by a debtor against any municipal account of that person;
- (c) Implement its debt collection and credit control measures in relation to the arrears on any of the municipal accounts of such a person at any address occupied by that person.
- (d) Establish a category or categories of properties for which only one consolidated municipal account will be submitted to the owners of those properties.

4. SERVICE AGREEMENT AND CLIENT MANAGEMENT

- 4.1 No supply of services shall be given unless and until application has been made and a service agreement, in the Municipality's prescribed format for either Residential Consumers or Business Consumers, has been entered into and a deposit as security equal to an amount and in the form of either cash or a bank guarantee as determined by the Municipality from time to time, has been paid. Such a services agreement will not be entered into without the consent of the owner of the relevant property. Such a deposit will not attract interest and must not be regarded as payment for arrears whilst the municipal account is still active, as it is intended as security after the eventual closure of the municipal account.
- 4.2 Termination of the services agreement must be in writing.
- 4.3 The Chief Financial Officer shall provide the infrastructure and expertise for client management to address the following aspects :
 - opening of new accounts
 - closure of accounts
 - account enquiries call centers and counters
 - debt collection counters and telephones
 - credit control call centre, counters, consultation facilities and correspondence
 - pay points and cashier services
 - account correspondence and corrections
 - communication to clients via the municipal account statement and specialized notices

5. ARREARS COLLECTION

5.1 Collection Policy

The Municipality shall have a written policy on credit control and debt collection which provides for:

- (a) Credit control procedures and mechanisms
- (b) Debt collection procedures and mechanisms
- (c) Provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents
- (d) Interest on arrears
- (e) Extensions of time for payment of accounts
- (f) Termination of services or the restriction of the provision of services when payments are in arrears
- (g) In determining its policy the Municipality may differentiate between categories of debtors, owners and properties as it may deem appropriate.

5.2 Power to restrict or disconnect supply of services

- (a) The Municipality may restrict or disconnect the supply of water, or disconnect any other service to any premises whenever a debtor:
 - (i) fails to make full payment on the due date or fails to make acceptable arrangements for the repayment of any arrears;
 - (ii) fails to comply with a condition of supply imposed by the Municipality;
 - (iii) obstructs the efficient supply of electricity, water, gas or any other municipal services to another customer;
 - (iv) supplies such municipal service to a customer who is not entitled thereto or permits such service to continue;
 - (v) causes a situation which in the opinion of the Municipality is dangerous or a contravention of relevant legislation;
 - (vi) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act no 24 of 1936;
 - (vii) is granted an administration order in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944)
- (b) The Municipality shall reconnect supply of any of the restricted or discontinued services after the amount outstanding and due, including the costs of such disconnection and reconnection, if any, have been paid or after any other condition or conditions of the Municipality's Collection Policy have been complied with.
- (c) The right of the Municipality to restrict water to any premises or customer shall be subject to the provisions of the Water Services Act, 1997(Act 108 of 1997) and related guidelines from National Government.
- (d) The right to restrict, disconnect or terminate a service to a property due to non-payment of any municipal account or due to unauthorized usage of municipal services shall be in respect of any municipal service to that property, and shall prevail notwithstanding the fact that payment was intended to have been made in respect of any specific municipal

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

5.3 Power of Entry and Inspection

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

5.4 Arrangements to pay outstanding and due amount in consecutive installments

- (a) A debtor may enter into a written agreement with the Municipality to repay any outstanding arrears to the Municipality under the following conditions:
 - (i) the outstanding balance, costs and any interest thereon shall be paid in regular and consecutive monthly installments;
 - (ii) monthly installments will be debited on the monthly current account, which has to be paid every month to ensure that the agreement is not cancelled;
 - (iii) the written agreement has to be signed on behalf of the Municipality by an authorized official.
- (b) Should any dispute arise as to the amount owed by a debtor in respect of a specific municipal service, that debtor shall notwithstanding such dispute proceed to make regular minimum payments for that service, based on the calculation of the average amounts levied for that municipal service for the preceding three months prior to the arising of the dispute and taking into account interest, the annual amendments of tariffs of the Municipality and full payment for those municipal services levies on the consolidated account which are not in dispute.

5.5 Reconnection of services

The Chief Financial Officer shall authorize the reconnection of services or reinstatement of service delivery after satisfactory payment and/or arrangement for payment has been made according to the Municipality's Credit Control and Debt Collection Policy.

6. PROPERTY TAX

6.1 Amount due for property tax

- (a) Property tax is payable by property owners by a fixed date as determined by the Municipality.
- (b) Joint owners of property shall be jointly and severally liable for payment of property tax.
- (c) Property tax may be levied as an annual single amount, or in equal monthly installments.
- (d) Payment of property tax may not be deferred beyond the fixed date by reason of an objection to the valuation of the property.

6.2 Claim on rent income for property tax in arrears

The Municipality may apply to Court for the attachment of any rent income, in respect of a ratable property, to cover in part or in full any amount outstanding in respect of arrears on the municipal accounts of such a property for a period longer than three months after the fixed date.

6.3 Liability of Company Directors for property tax

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

6.4 Municipal property sold/donated and payment of property tax

- (a) A new owner of property obtained from the Municipality, is liable for the payment of property tax for the property in respect of the financial year in which he/she becomes the new owner.
- (b) In the event that the Municipality has to repossess the property, any outstanding and due amount in respect of property tax shall be recovered from the intended new owner.

6.5 Restraint on Transfer of property

- (a) A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate –
 - (i) issued by the municipality in which that property is situated; and
 - (ii) which certifies that all amounts due in connection with that property for municipal services and other municipal taxes, levies and duties have been fully paid.
- (b) In the case of the transfer of immovable property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936).

- (c) An amount due for municipal services 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.

7. RELAXATION, WAIVER AND DIFFERENTIATION

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

8. REPORTING OF DEFAULTERS

The Municipality may in its discretion through a delegated official or representative report defaulters to bodies that collate and retain such information. The information included in such a report shall be the available personal information of the defaulter, or in the event of a legal person, the available statutory details, including information pertaining to the responsible officials of such legal person.

9. REPEAL OF MUNICIPAL CREDIT CONTROL BY-LAWS

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

10. OFFENCES

10.1 A person who –

- (a) fails to give the access required by an official or representative of the Municipality in terms of these by-laws;
- (b) obstructs or hinders an official or representative of the Municipality in the exercise of his or her powers or performance of functions or duties under these by-laws;
- (b) illegally uses or interferes with municipal services equipment or illegally consumes municipal services;
- (d) tampers or breaks any seal on a meter or on any equipment belonging to the Municipality, or for any reason causes a meter not to properly register the service

consumption, shall be charged for usage, estimated by the Chief Financial Officer based on average usage;

- (e) fails or refuses to give an official or representative of the Municipality such information as he or she may reasonably require for the purpose of exercising his or her powers or functions under these by-laws or gives such an official or representative false or misleading information knowing it to be false or misleading;
- (f) contravenes or fails to comply with a provision of these by-laws;
- (g) fails to comply with the terms of a notice served upon him or her in terms of these by-laws;

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

11. CONFLICTION BY-LAWS

If there is any conflict between these by-laws and any other by-laws of the Municipality, these by-laws will prevail.