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## MUNICIPAL NOTICE

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No. 101

16 July 2014

### uMLALAZI MUNICIPALITY

#### CREDIT CONTROL AND DEBT COLLECTION BY-LAWS



The Council of the uMlalazi Municipality, has in terms of Section 156 of the Constitution, 1996 (Act No. 108 of 1996) read in conjunction with Section 11 of the Local Government Municipal Systems Act 2000 (Act No. 32 of 2000) made the following By-laws, which By-law shall come into operation on the date of publication in the provincial gazette.

#### CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

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1. **Definitions**

In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates –

“**Accounting Officer**”, in relation to the municipality, means the municipal official referred to in Section 60 of the Local Government: Municipal Finance Management Act, 2003 [Act No. 56 of 2003];

“**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 official**” means any official of the Council who has been authorised by it to administer, implement, and enforce the provisions of these by-law; pointed by the Council to act or to fulfil a duty on its behalf.

**"Council"** means the uMlalazi municipality and its successor in law and includes the Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any official to whom the Executive Committee or Municipal Manager has delegated any powers and duties with regard to these By-laws;

**"Chief Financial Officer"** means the employee designated in terms of Section 80(2) (a) of the Local Government: Municipal Finance Management Act, (Act no. 56 of 2003) or any person duly authorised by the Council to act on his behalf;

**"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 authorized and contracted service provider, and/or assessment rates levies.

**"Municipal Manager"** means a person appointed as such by the Council in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (act no. 117 of 1998) or any other person acting by virtue of any power delegated to him/her;

**"Municipality"** means the uMlalazi Municipality established in terms of Section 155(6) of the Constitution, 1996, and established by and under Sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with Sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

**"Municipal services"** means those services provided by the Municipality, such as, inter alia the supply of electricity, refuse removal, 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
- 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 By-laws 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 by-laws are:

- 3.1 To give effect to the uMlalazi Municipality's Credit Control and Debt Collection, as adopted by Council.
- 3.2 To stand as a supervisory, enforcement as well as the implementation authority of the uMlalazi Municipality's Credit Control and Debt Collection.

### 4. Application

These by-laws 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

- 5.1 Consumers who require a municipal service must, where possible, enter into a written service agreement with the Municipality before the Municipal service is rendered.
- 5.2 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.  
r reading cycle to be billed following the date of signing the service agreement.
- 5.4 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 By-laws.
- 5.5 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

- 6.1 Deposits are payable when new customers conclude a services agreement and when existing customers move to a new supply address.
- 6.2 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 three times the average account in respect electricity consumption and refuse plus value added tax.
- 6.3 Deposits required may be reviewed and increased by the Municipality as determined in terms of the Council's Policy.

### 7. Accounts and Billing

- 7.1 The Municipality shall produce one consolidated account for all Municipal services to a property per month in a thirty-day cycle.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 Non-payment of the Municipal account will result in debt collection actions.
- 7.7 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 and a fee will be charged. The account will be flagged and no further cheque payments may be accepted. The flag on the account, which effectively prevents the account holder from making

Financial Officer after 24 months.

7.8 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**

8.1 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.

8.2 The Chief Financial Officer or his delegate shall enter into such arrangements with the debtors whose Municipal accounts are in arrears.

8.3 The terms applicable to the settlement of arrear debt as well as any upfront payment shall be determined by the Chief Financial Officer.

8.4 Only account holders with positive proof of identity or an authorized agent with a Power of Attorney will be allowed to enter into an arrangement for the payment of arrear accounts in instalments.

8.5 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.

8.6 Failure to honour the agreement will lead to immediate blocking/ disconnection/ restricting of Municipal services as well as further legal action where applicable.

8.7 No arrangement may be concluded with customers without the written authorization of the owner of that property.

## **9. Interest on Arrears**

9.1 In respect of any amount for property rates remaining unpaid after the final date for their payment there shall be added for each month during which the default continues a penalty/interest calculated at the rate determined by Council annually during the budget process and for the purpose of this paragraph part of a month shall be deemed the full month.

9.2 In respect of any amount for electricity and refuse removal remaining unpaid after the final date for their payment there shall be added for each month during which the default continues a penalty/interest calculated at the rate determined by Council annually during the budget process and for the purpose of this paragraph part of a month shall be deemed the full month.

## **10. Allocation of Payments**

10.1 A customer may not selectively nominate payment of his Municipal account or portions of his account.

10.2 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.

11.1 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 includes the right to off-set in the event of non-compliance) have been made for payment of any arrears.

11.2 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.

11.3 Council may deduct any moneys owing to the Municipality from contract payments due to any of its creditors.

## **12. 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.

### **13. Debt Collection**

- 13.1 The Municipality may institute credit control and debt collection mechanisms for collection of outstanding debt until all such the debt has been collected. These mechanisms include, but are not limited to:
- 13.1.1 The disconnection / restriction of electricity
- 13.1.2 Preventing the sale of electricity to customers on the prepayment system with any other arrear account with the Municipality;
- 13.1.3 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.
- 13.1.4 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.
- 13.1.5 Handing over to Councils attorneys for collection of accounts remaining unpaid after all other credit control and debt collection mechanisms have been used.
- 13.2 Customers whose supply of Municipal services has been unlawfully reconnected or bypassed will be regarded as having tampered with the meter or the supply.
- 13.3 Legal fees charged by Council's attorneys on any account that is handed over for collection, shall be debited and recovered on individual accounts to which legal fees are applicable
- 13.4 Council may utilize any other mechanism for debt collection provided such mechanism is stated in its Credit Control and Debt Collection policy.

### **14. Responsibility for Amounts Due and Payable**

- 14.1 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.
- 14.2 All municipal debts shall be a charge upon the property and shall be payable by the owner of such property.
- 14.3 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.
- 14.4 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.

### **15. Enhanced Extended Discount Benefit Scheme (EEDBS) Properties**

- 15.1 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).
- 15.2 Many of the beneficiaries of the type of housing as contemplated in Clause (1) are in arrears and all credit control actions provided for in these By-laws are applied except for the sale in execution of the properties.
- 15.3 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 reallocated by Council to another person in terms of prevailing policies regarding the allocation of properties.
- 15.4 Any debt that remains outstanding on the accounts referred to in Clause (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.

**16. Tampering with Services**

- 16.1 The application of any measures applicable in respect of tampering with municipal services are provided for in Council's Electricity Supply By-laws
- 16.2 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.

**17. Service of Documents and Process**

- 17.1 Any notice, including an account or final notice or other document that is served on or sent to a person in terms of these by-laws, is regarded as having been served or received:
- 17.1.1 When it has been delivered to that person personally.
- 17.1.2 When it has been left at that person's place of residence or business in the Republic.
- 17.1.3 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.
- 17.1.4 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.
- 17.2 When any notice or other document must be authorized 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.

**18. 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.

**19. Communication**

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

**20. Waiver**

- 20.1 Council may, on good cause shown in the public interest, waive compliance with or permit deviations, exceptions and exemptions from any provision of these by-laws subject to such conditions as are reasonable.
- 20.2 Council must serve a written notice of waiver which is signed by the Municipal Manager upon the person. The notice must cite : -
- 20.2.1 The provision that was waived or relaxed; and
- 20.2.2 The extent to which it has been waived.
- 20.3 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.

**21. Objection**

A person may within a period of seven days object to a decision of the Council or Municipal Manager made in terms of these by-laws which objection shall be referred to the executive committee for consideration whose decision shall be final.

**22. Offences and Penalties**

Any person who contravenes any of these by-laws shall be guilty of an off



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rand (R1 000,00) in the case of a first conviction, in the event of a subsequent conviction for the same offence, a fine not exceeding R2 000,00 (two thousand rands (R2 000,00), or in default of payment of any fine imposed, imprisonment for a period not exceeding three months, provided that in the event of a continuing offence, a fine not exceeding one hundred rand (R 100,00) for each day which the contravention continued, may be prescribed.

**23. Short Title**

These by-laws shall be called the Credit Control and Debt Collection By-laws.

**24. Repeal of By-laws**

In the event of any inconsistency between any provision of these by-laws, and any other Council by-law, these by-laws prevail. The Municipality's existing by-laws are hereby repealed by these by-laws on date of promulgation.

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