

Lesedi, South Africa

Credit Control

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Lesedi South Africa

Credit Control By-law, 2015

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The Municipal Manager of LESEDI LOCAL Municipality hereby publishes in terms of Section 13 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) read with Section 162 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) the Lesedi Local Municipality Credit Control By-Law which shall come into operation on the date of publication hereof.

1. Definitions

In these by-laws words used in the masculine gender include the feminine, the singular includes the plural and vice versa and, unless the context otherwise indicates:-

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

“**Council**” means the municipal council as referred to in Section 157 of the Constitution.

“**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 the 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.

“**Defaulter**” means any person owing the Council arrear monies in respect of taxes and/or service charges.

“**Effective Date**” shall mean 30 days from the date of publication and promulgation of the same on the Provincial Gazette.

“**Municipal Manager**” means the person appointed as Municipal Manager by the municipal council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 [Act 117 of 1998] as amended and includes a person acting in this position.

“**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 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 is vested is insolvent or dead, 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;
- (c) In a case where the 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;
- (d) In the case of premises for which a lease of 30 years or more 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 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 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
- (f) any legal person including but not limited to:
- (i) 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.
 - (ii) Any Department of State.
 - (iii) Any Council of 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 Deed 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.

“**Financial Officer**” means a person appointed by the Council to manage, inter alia, the Council’s financial administration and debt collection of the Council’s debtors and includes any person acting in this position.

2. Credit control policy

- 2.1 The Council shall have a written policy on credit control and debt collection which shall be termed the Credit Control and Debt Collection Policy and which may provide for -
- (a) Credit control procedures and mechanisms;
 - (b) Debt collection procedures and mechanisms;
 - (c) Provision for indigent debtors;
 - (d) Interest on arrears;
 - (e) Extensions of time for payment of accounts, including arrangements for payment;
 - (f) Termination of services or the restriction of the provision of services when payments are in arrears;
 - (g) The provision of new services;
 - (h) An agreement between a debtor’s employer and the Council to deduct amounts from the debtors salary or wage;
 - (i) Any other matter which is incidental to credit control and debt collection;
 - (j) The sale in execution of any property.
- 2.2 In determining its policy, the Council may differentiate between categories of persons, clients, debtors and owners as it may deem appropriate provided such differentiation does not amount to unfair discrimination.

3. Power to restrict or disconnect supply of services

- 3.1 The Council may restrict or disconnect the supply of water and electricity or discontinue any other service rendered to any premises whenever a user of any such service:
- (a) Fails to make full payment on the due date or fails to make an acceptable arrangement for the repayment of any amount for services, rates or taxes;
 - (b) Fails to comply with a condition of supply imposed by the Council;
 - (c) Obstructs the efficient supply of water, electricity or any other municipal services to another customer;
 - (d) Supplies such municipal service to a customer who is not entitled thereto or permits such a service to continue;
 - (e) Tampers with any municipal supply meter or bypasses any metering equipment in order to obtain an un-metered service;
 - (f) Causes a situation which in the opinion of the council is dangerous or a contravention of relevant legislation;
 - (g) Is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act 24 of 1936 or any other applicable law;
 - (h) If an administration order is granted in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944) in respect of such a user,
- 3.2 The right of Council to restrict water to any premises or consumer shall be subject to the provisions of section 4 of the Water Services Act, 108 of 1997.
- 3.3 The right to restrict, disconnect or terminate a service shall be in respect of any service rendered by Council, and shall prevail notwithstanding the fact that payment has been made in respect of any specific service and notwithstanding the fact that the person who entered into an agreement for the supply of services with the Council and the owner are different entities or persons, as the case may be.

4. Sales in execution

- 4.1 The Council may only sell a property in execution in terms of a policy determined by it from time to time.

5. Power of entry and inspection

- 5.1 A duly authorized representative of the Council 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 and carry out such inspection and examination as he or she may deem necessary, and for purposes of installing or repairing any meter or service connection reticulation, or to disconnect, stop or restrict the provision of any service.
- 5.2 If the Council considers it necessary that work be performed to enable an employee to perform a function referred to in sub-section 5.1 properly and effectively, it may -
- (a) By written notice require the owner or occupier of the premises at his own expense to do specific work within a specified period; or
 - (b) 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.
- 5.3 If the work referred to in sub-section 5.2 (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 Council shall bear the expense connected therewith together with the expense of restoring the premises to its former condition.

6. Arrangements to pay outstanding and due amounts in consecutive instalments

6.1 A debtor may enter into a written agreement with the Council to repay any outstanding and due amount to the Council under the following conditions as determined by the Credit Control and Debt collection Policy of the Council:

- (a) The outstanding balance, costs and any interest thereon in regular and consecutive monthly instalments;
- (b) The written agreement being signed on behalf of the Council by a duly authorized officer.
- (c) That in the event of any dispute arising as to the amount owing by an owner or occupier in respect of municipal services such owner or occupier shall, notwithstanding such dispute, proceed to make regular minimum payments based on the calculation of the average municipal account for the preceding three months prior to the arising of the dispute and taking into account the time value of money to be determined by the Financial Officer as well as the annual amendments of tariffs of the Council.

7. Reconnection of services

The Financial Officer shall authorize the reconnection of services or the reinstatement of service delivery after satisfactory payment and/ or arrangements for payment has or have been made by the debtor in accordance with the Council's Credit Control Policy.

8. General provisions

8.1 Notices and Documents

- (a) A notice or document issued by the Council in terms of these by-law shall be deemed to be duly issued if signed by an employee duly authorized by the Council.
- (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 personally or to his duly authorized agent or;
 - (ii) By delivering the notice at his 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 has nominated an address for legal purposes, by delivering the notice to such an address; or
 - (iv) By registered or certified post addressed to his last known address.
 - (v) In the case of a body corporate, by delivering it to the registered office or the business premises of such a body corporate;
 - (vi) If service cannot be effected in terms of the aforesaid sub-sections by affixing it to the principal door of entry to the premises, or displaying it on a conspicuous place on the land to which it relates.

8.2 Authentication of Documents

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

8.3 Full and final settlement of an amount

- (a) The Financial Officer shall be at liberty to appropriate monies received in respect of any municipal services provided by the Municipality in a manner he deems fit in accordance with the Credit Control Policy of the Council.
- (b) Where the exact amount due and payable to the Council has not been paid in full, any lesser amount tendered to and accepted by any Council employee, shall not be deemed to be in final settlement of such an amount unless permitted by the Credit Control Policy of the Council.
- (c) The provisions in sub-section (a) above shall prevail notwithstanding the fact that such a lesser payment was tendered and/or accepted in full settlement.

8.4 Interest charges

Subject to the provisions of any other law relating to interest, the Council may charge and recover interest in respect of any arrears amount due and payable to it.

8.5 Prima Facie Evidence

A certificate under the hand of the Municipal Manger reflecting the amount due and payable to the Council shall upon mere production thereof be accepted by any court of law as prima fade evidence of the indebtedness reflected therein.

9. Power of Council to recover costs

9.1 Dishonoured payments

Where any payment made to the Council is later dishonoured by the bank, the Council may levy such costs and administration fees as may be reasonable and enforceable in terms of prevailing legislation.

9.2 Legal Fees

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

9.3 Cost to remind debtor of arrears

Any cost incurred in demanding payment from the debtor or reminding the debtor, by means of telephone, fax, e-mail, letter or otherwise, that his payments are due, may be levied against the account of the debtor.

9.4 Disconnection fees

Where any service is discontinued as a result of non-compliance with these by-laws by the debtor, the Council shall be entitled to levy and recover the standard disconnection fee as determined by it from time to time from such debtor.

9.5 Accounts

The Council may –

- (a) Consolidate any separate accounts of persons liable for payments to the municipality;
- (b) Credit a payment by such a person against any account of that person; and
- (c) Implement any of the debt collection and credit control measures provided for in these by-laws in relation to any arrears on any of the accounts of such a person.

10. Service agreement

No supply of services shall be given unless and until application has been made by a customer on the prescribed form and a service agreement has been entered into between such customer and the Municipality and a deposit as security equal to an amount as determined by the Council from time to time has been paid in full by such a customer.

11. Assessment rates

11.1 Amount due for assessment rates

- (a) All assessment rates due by property owners are payable by the fixed date as determined by Council.
- (b) Joint owners of property shall be jointly and severally liable for payment of assessment rates
- (c) Assessment rates may be paid as an annual single amount, or in equal payments or payments of varying amounts as determined by the Council.
- (d) Payment of assessment rates may not be deferred beyond the fixed date by reason of an objection to the valuation roll.

11.2 Claim on rental for assessment rates in arrears

The Council may apply to the appropriate Court for the attachment of any rental due in respect of rateable property in order to cover in part or in full any amount outstanding in respect of assessment rates for a period longer than three months after the fixed date.

11.3 Liability of Company Directors for assessment rates

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

11.4 Disposed of Council's property and payment of assessment rates

- (a) The purchaser of Council property is liable for the payment of assessment rates on the property from the date such property was sold to the purchaser.
- (b) In the event of the Council repossessing the aforesaid property, any outstanding and due amount in respect of assessment rates shall be recovered from the Purchaser.

11.5 Assessment rates payable on municipal property

- (a) The lessee of municipal property shall be responsible for payment of any general assessment rates payable on such property for the duration of the lease.
- (b) The Financial Officer may elect to include the assessment rates in respect of a property in the rental payable by the lessee.

12. Relaxation, waiver and differentiation

- 12.1 The Council may differentiate between different categories of ratepayers, users of services, customers, debtors, taxes, services, service standards and other matters provided such differentiation does not amount to unfair discrimination.
- 12.2 The Council may, in a specific instance and for a particular owner or customer and subject to such conditions as the Council may deem fit, relax or waive in writing the requirements of any provision of these by-laws.

13. Reporting of defaulters

The Council may, in its discretion and through a duly delegated employee report such persons that owe the Council monies to bodies that collate and retain such information. The information that would be included in such a report shall be available personal information on the defaulter, or in the event of a legal person, the available statutory details, including information pertaining to the responsible officers of such legal persons.

14. Repeal of Council credit control by-laws

The provisions of any by-law or by-laws relating to the control of credit by the Council of any Council now comprising an administrative unit of the Council are hereby repealed

15. Offences

Any person who-

- (a) Fails to give the access required by an employee in terms of these by-laws;
- (b) Obstructs or hinders an employee in the exercise of his or her powers or performance of functions or duties under these by-laws;
- (c) Uses or interferes with Council equipment or consumption of services supplied;
- (d) Tampers or breaks any seal on a meter or on any equipment belonging to the Council or for any reason as determined by the Financial Officer causes a meter not to properly register the service used;
- (e) Fails or refuses to give an employee such information as he or she may reasonably require for the purpose of exercising his or her power or functions under these by-laws or gives such an officer false or misleading information knowing it to be false or misleading;
- (f) Contravenes or fails to comply with a provision of these by-laws.

shall be guilty of an offence and be liable upon conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding six month's or both such a fine and imprisonment and, in addition, may be charged for usage, as estimated by the Financial Officer based on average usage during the previous 6 months or as may be determined by resolution of the Council from time to time;

7. Short title

These by-laws shall be known as the Credit Control Bylaws

8. Effective date

These by-laws shall come into operation thirty days from the date of promulgation and publication of the same on the provincial gazette .

16. Conflict and repealing of the by-laws

If there is any conflict between these by-laws the policy, these by-laws will prevail.

All the By-Laws with the same title promulgated previously by the Lesedi Local Municipality will, from the date of promulgation of this By-Law, repealed.