

eThekweni, South Africa

## Credit Control and Debt Collection

Legislation as at 17 August 2017

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FRBR URI: /akn/za-eth/act/by-law/2017/credit-control-debt-collection/eng@2017-08-17

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# eThekwini South Africa

## Credit Control and Debt Collection By-law, 2017

[Published in KwaZulu-Natal Provincial Gazette 1868 on 17 August 2017](#)

Assented to on 28 June 2017

Commenced on 17 August 2017

*[This is the version of this document from 17 August 2017.]*

To provide for credit control and the collection of all monies due and payable to the Municipality; to provide for the requirements for registration of municipal services; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

WHEREAS the Municipality is entitled in terms of section 229 of the Constitution of the Republic of South Africa, 1996, to impose rates on property and surcharges on fees for services provided by or on its behalf within its area of jurisdiction;

WHEREAS the Municipality is entitled in terms of section 75A of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)) to levy and recover fees, charges or tariffs in respect of any function or service of the Municipality and to recover collection charges and interest on any outstanding amount;

WHEREAS the Municipality is obliged in terms of section 96 of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)) to collect all money that is due and payable to it, subject to the provisions of that Act and any other applicable legislation;

AND WHEREAS the Municipality is obliged in terms of section 98 of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)) to adopt By-laws to give effect to the Municipality's credit control and debt collection policy, its implementation and enforcement;

NOW THEREFORE the municipal council of the eThekwini Metropolitan Municipality, acting in terms of section 156 read with Schedule 4 (Part B) and Schedule 5 (Part B) of the Constitution, and read with section 98 and 11 of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)), hereby makes the following By-law:

### Chapter 1 Interpretation

#### 1. Definitions

In this By-law, unless the context indicates otherwise#

"**account**" means written notification of municipal services, rates, sundry and other charges due to the Municipality, and addressed to a person liable for payment thereof;

"**acknowledgement of debt**" means an admission of liability and written undertaking by a debtor to repay an amount owing to the Municipality, and includes a consent to judgement contemplated in section 58 of the Magistrates Court Act, 1944 ([Act No. 32 of 1944](#));

"**agent**" means a person authorised by the customer to act on his or her behalf;

"**arrears**" means any amount which is due, owing and payable and which remains unpaid by the due date;

"**authorised official**" means a person authorised to implement the provisions of this By-law, including but not limited to–

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#));
- (b) municipal or Metropolitan Police Officers as contemplated in the South African Police Service Act, 1995 ([Act No. 68 of 1995](#)); and
- (c) such employees, delegated nominees, representatives and service providers of the Municipality: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"**availability fee**" means a fee as determined in terms of the Municipality's Tariff Bylaw and Tariff Policy;

"**CFO**" means a person employed by the Municipality in terms of section 56 of the Systems Act as the Chief Financial Officer of the Municipality, and includes any person to whom the Chief Financial Officer has delegated or sub-delegated a power, function or duty in accordance with the system of delegation developed by the municipal manager in terms of section 79 of the Municipal Finance Management Act and section 59 of the Systems Act;

"**collection charges**" means the charges which the Municipality is entitled to recover in terms of section 75A(1) of the Systems Act, and includes the administrative cost#

- (a) of reminding any person of arrears;
- (b) for the termination, restriction or reinstatement of any municipal service to a defaulting person;
- (c) of any notice rendered, sent, delivered or published to a person in terms of this By-law or any other law;
- (d) of any merchant fee; and
- (e) in respect of any other charge which the Municipality is by law entitled to recover;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996, as amended;

"**customer**" means any person with whom the Municipality has entered into an agreement with for the provision of any municipal service to a premises;

"**deposit**" means a monetary amount raised by the Municipality in relation to the consumption of a municipal service and mitigation of credit risk to the Municipality, irrespective of the existence of an agreement;

"**disconnection**" means a termination or restriction of a municipal service supplied to a meter;

"**due date**" means the date on which a person's account becomes payable, which in the case of monthly accounts is 21 days from the date of the account, and in the case of annual accounts is the 31st of October each year;

"**fee**" means a prescribed amount charged by the Municipality to a person for the provision of any municipal service;

"**illegal connection**" means any connection or reconnection to a system through which municipal services are provided, where such connection or reconnection was not authorised or approved by the Municipality;

"**Ingonyama Trust land**" means land held in trust by the Ingonyama Trust established in terms of section 2 of the Ingonyama Trust Act, 1994 (Act No. 3KZ of 1994);

"**juristic person**" includes a partnership, a proprietor, association or other body of persons, corporate or unincorporated and includes a trust and organ of state;

"**municipal council**" or "council" means the eThekweni municipal council, a municipal council referred to in section 157(1) of the Constitution;

**"Municipal Finance Management Act"** means the Local Government: Municipal Finance Management Act, 2003 ([Act No. 56 of 2003](#));

**"Municipality"** means the eThekweni Municipality, as amended, a category A metropolitan municipality as envisaged in terms of section 155(1) of the Constitution;

**"municipal manager"** means a person appointed in terms of section 54A of the Systems Act as the head of administration of the municipal council;

**"municipal service"** means a service provided by the Municipality in terms of its powers and functions to or for the benefit of the local community, irrespective of whether or not–

- (a) such service is provided by the Municipality itself or by engaging an external mechanism contemplated in section 76 of the Systems Act; or
- (b) any fees, charges or tariffs are levied in respect thereof;

**"occupier"** means any person who occupies any premises or part thereof, without regard to the title under which such person occupies the premises concerned;

**"owner"**#

- (a) in relation to a property referred to in paragraph (a) of the definition of "property", means a person in whose name ownership of the property is registered;
- (b) in relation to a right referred to in paragraph (b) of the definition of "property", means a person in whose name the right is registered;
- (c) in relation to a land tenure right referred to in paragraph (c) of the definition of "property", means a person in whose name the right is registered or to whom it was granted in terms of legislation, excluding permission to occupy;
- (d) in relation to public service infrastructure referred to in paragraph (d) of the definition of "property", means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of "publicly controlled"; and
- (e) includes a person whom the Municipality may for the purpose of this By-law regard as the owner of a property in the following cases:
  - (i) trustees and beneficiaries jointly, in the case of property in a trust;
  - (ii) an executor or administrator, in the case of a property in a deceased estate;
  - (iii) a trustee or liquidator, in the case of a property in an insolvent estate or the owner of which is in liquidation;
  - (iv) a judicial manager or business rescue practitioner, in the case of a property in the estate of a person under judicial management or business rescue;
  - (v) a curator or administrator, in the case of a person whose estate has been placed under curatorship or administration;
  - (vi) a person in whose favour a usufruct or other personal servitude has been registered and who shall be deemed to be a joint owner together with the registered owner;
  - (vii) a lessee, in the case of a property that is registered in the name of the Municipality and is let by it to such lessee;
  - (viii) a buyer, in the case of a property that was sold by the Municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer;
  - (ix) a child or children in charge of the property in the case of child headed households; and
  - (x) an owner as contemplated in terms of the Municipality's policy dealing with municipal property rates;

"**person**" means a natural person or juristic person;

"**Policy**" means the Credit Control and Debt Collection Policy adopted by the council, as amended from time to time;

"**premises**" means any piece of land, with or without any building or structure thereon where#

- (a) the external surface boundaries of which are delineated on#
  - (i) a general plan or diagram registered in terms of the Land Survey Act, 1997 ([Act No. 8 of 1997](#)) or a document which has at any time prior to the commencement of that Act been accepted as a diagram in the Deeds Registry or Surveyor-General's Office, or in terms of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#)); or
  - (ii) a sectional plan registered in terms of the Sectional Titles Act, 1986 ([Act No. 95 of 1986](#));
- (b) there is an official document in respect of rural land or Ingonyama Trust land, which is situated within the area of jurisdiction of the Municipality; or
- (c) a municipal service is rendered on land which is not specified on a plan;

"**property**" means#

- (a) immovable property registered in the name of a person, including, in the case of sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in the name of a person;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation, excluding a permission to occupy; or
- (d) public service infrastructure;

"**publicly controlled**" means owned by or otherwise under the control of an organ of state, including a#

- (a) public entity listed in the Public Finance Management Act, 1999 ([Act No.1 of 1999](#));
- (b) municipality; or
- (c) municipal entity as defined in the Systems Act;

"**rates**" means a municipal rate on property envisaged in section 229(1)(a) of the Constitution levied by the Municipality in terms of the Rates Act;

"**Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 ([Act No. 6 of 2004](#));

"**sundry charge**" means an amount charged to a person which is not directly linked to a property or premises, and which includes but is not limited to#

- (a) charges arising from damages to municipal property and equipment;
- (b) monies owed for municipal services other than rates, water, electricity and sanitation;
- (c) monies awarded to the Municipality through court orders and judgments;
- (d) fines; and
- (e) monies owed to the Municipality by municipal staff.

"**Systems Act**" means the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)); and

"**tenderer**" means a contractor, service provider or supplier who has submitted a tender for the provision of services or the delivery of goods to the Municipality.

## 2. Interpretation of By-law

- (1) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.
- (2) This By-law must be read in conjunction with the Policy.
- (3) Where there is a conflict between this By-law and another By-law of the Municipality, this By-law prevails over the affected provision of the other By-law in respect of any credit control and debt collection matter.

## 3. Objects of By-law

The objects of this By-law are to#

- (a) give effect to the Municipality's Policy, and its implementation and enforcement in terms of section 156(2) of the Constitution read with sections 96 and 98 of the Systems Act;
- (b) provide for the collection of monies due and payable to the Municipality; and
- (c) provide for matters incidental thereto.

## 4. Application of By-law

This By-law applies throughout the Municipality's area of jurisdiction in respect of any#

- (a) amounts billed and payable to the Municipality for rates or the provision of any municipal service;
- (b) amounts billed and payable to any service provider of the Municipality in respect of any municipal service provided by the service provider concerned on behalf of the Municipality; and
- (c) any other monetary amounts owing to the Municipality.

## Chapter 2 Requirements for the provision of municipal services

### 5. Registration for the provision of municipal services

- (1) An applicant for a municipal service must comply with the registration process determined by the Municipality in the Policy for the provision of such service, which includes but is not limited to#
  - (a) the submission of a written application for the provision of such service on a form determined by the Municipality for that purpose;
  - (b) furnishing any information or documentation required by the Municipality for the purpose of registering for such service;
  - (c) entering into a service agreement with the Municipality; and
  - (d) the payment of a deposit of an amount determined by the CFO to be held by the Municipality as consolidated security in respect of all municipal services provided by the Municipality to the applicant.
- (2) If an applicant is an existing customer of the Municipality in respect of any other municipal service on premises in respect of which any amount is in arrears, such applicant must#
  - (a) pay the arrears in full; or
  - (b) at the discretion of the Municipality, make suitable arrangements with the Municipality for the payment of such arrears, before an application for a new service in terms of this By-law may be considered.



## 6. Deposits

- (1) The payment of a deposit mentioned in subsection 5(1)(d) is subject to the criteria determined by the CFO in accordance with the Policy and is due and payable at#
  - (a) the time of application for municipal services; and
  - (b) any other time deemed necessary by the Municipality.
- (2) Payment of a deposit must be made in cash unless otherwise provided for in terms of the Policy.
- (3) Where there is no consumption of municipal services on premises, an availability fee determined by the Municipality may be raised in respect of the property concerned.
- (4) Deposits paid by a customer to the Municipality shall be held as a consolidated deposit and used as security for any or all amounts owed by the customer as included in the account.
- (5) The Municipality may in its discretion by due notice to a customer, require a customer to increase the deposit furnished in terms of subsection 5(1)(d).
- (6) No interest on cash deposits held by the Municipality shall accrue to the customer.

## 7. Service agreement between the Municipality and a customer

- (1) The Municipality may not approve an application for the provision of any municipal service, unless the applicant has signed an agreement on a form determined by the Municipality for that purpose accepting the terms and conditions for the provision of such service, all of which are deemed to be incorporated into this By-law.
- (2) Where the purpose for or extent to which any municipal service used has changed, the onus and obligation rests on the customer to advise the Municipality of such change.

## 8. Measurement of consumption

- (1) The Municipality must conduct or cause to be conducted an accurate measurement of the municipal services consumed at intervals determined by the Municipality: Provided that nothing in this section prevents the Municipality from making an estimate of the consumption of municipal services for any relevant period if#
  - (a) the reading of the meter could not be obtained in respect of the period in question;
  - (b) no meter has been installed to measure the consumption on the premises concerned;
  - (c) for any other reason the meter could not be accessed to be read; or
  - (d) as a result of an illegal connection, a reading could not be obtained.
- (2) Irrespective of the fee payable for the consumption of municipal services being based on measured or estimated consumption, the customer concerned remains liable for the payment of the fee in respect thereof.

## 9. Review of existing service agreements

- (1) The Municipality may review the terms and conditions of any existing service agreement with a customer to take into account#
  - (a) any change in law;
  - (b) any change in the circumstances of the customer; or

- (c) any change in the circumstances surrounding the provision of any municipal service by the Municipality, and require such customer to enter into a new service agreement with the Municipality based on the resultant changes in law or circumstances.
- (2) Subsections 6(4) and 6(5) apply to any deposit payable by a customer in respect of a new service agreement referred to in subsection (1).

## 10. Termination of service agreements

- (1) Subject to sections 17 and 26, the Municipality may terminate a service agreement if#
  - (a) a customer has given written notice of not less than 14 days to the Municipality of such customer's intention to do so; or
  - (b) the Municipality has given written notice of not less than 14 days to the customer, if the customer concerned has breached or failed to comply with any specific term or condition of the service agreement, and has failed to remedy such breach or rectify such failure after service on such customer of a notice to do so in terms of section 11 of this By-law.

## 11. Notice of compliance

A written notice of compliance must be served on a customer or person#

- (a) in order to avoid the service agreement to which the non-compliance relates being terminated in terms of subsection 10(1)(b); or
- (b) where there has been a breach of a provision of the By-law and the Municipality is of the opinion that it is necessary to serve such notice.

## Chapter 3 Account administration

## 12. Accounts

- (1) The Municipality must maintain proper and accurate accounts which must be rendered and administered by it in accordance with the Policy, this By-law, as well as any other applicable law.
- (2) Failure by the Municipality to render an account does not relieve a customer of an obligation to pay any amount that is due and payable by such customer in terms of this Bylaw.
- (3) The Municipality may, in accordance with the section 102 of the Systems Act#
  - (a) consolidate any separate accounts of a customer liable for payments to the Municipality;
  - (b) credit any payment by such customer against any account of that customer; or
  - (c) implement any of the debt collection and credit control measures provided for in this By-law or the Policy in relation to any arrears on any of the accounts of the customer.
- (4) In the event of separate accounts being consolidated as contemplated in subsection (3), the total amount due and payable by a customer shall constitute a consolidated debt, and any payment made by a customer of an amount less than the total amount due will, subject to section 23, be allocated in the reduction of the consolidated debt in the order determined by the CFO in his or her sole discretion.
- (5) Any amount paid by a customer in excess of an existing debt may be#
  - (a) held in credit for the customer in anticipation of future rates and fees for municipal services or for the purposes contemplated in subsection 18(1)(b), without any interest accruing on such amount;

- (b) refunded either as a whole or a portion thereof to the customer concerned, subject to the right of the Municipality to withhold payment until it is satisfied that payment of such refund is not in contravention of any law; or
  - (c) refunded to the conveyancing attorney if the property in question has been transferred.
- (6) Should the Municipality become aware that the customer has since vacated the premises supplied as his or her address in terms of this By-law, the Municipality must, after deducting any outstanding amounts due to it from the deposit of such customer, place the balance thereof in an account retained for such customer for a period of time determined in the Policy from the date on which the customer's disappearance became known to the Municipality.
- (7) After the expiry of the period mentioned in subsection (6), the balance of the deposit, together with interest thereon that may have accrued in terms of repealed credit control and debt collection By-laws or previously adopted policies, will be forfeited to the Municipality, unless the CFO is not satisfied that this is just and equitable to do so.

### 13. Account information

Without limiting the amount of information which may be included by the Municipality in a customer's account, any account rendered by the Municipality to a customer must contain at least the following information:

- (a) the consumption or estimated consumption as determined for the relevant consumption period;
- (b) the period to which the consumption or estimated consumption relates;
- (c) the amount due based on the consumption or estimated consumption;
- (d) the amount due and payable for any other municipal service;
- (e) the amount due and payable for any sundry charge;
- (f) the amount in arrears, if any;
- (g) the interest payable on any arrears, if any;
- (h) collection charges insofar as they may be relevant;
- (i) the final date for payment; and
- (j) the methods, places and approved agents where payments may be made.

### 14. Account administration and monitoring

The Municipality must, subject to section 8, implement reasonable measures to ensure#

- (a) accurate metering of consumption at fixed intervals;
- (b) limited delay between service connection and the first and subsequent rendering of accounts;
- (c) accurate and up-to-date information contained in accounts rendered to customers;
- (d) accurate monthly accounts with the application of the appropriate and correct prescribed fees, rates and other related amounts due and payable;
- (e) timely dispatch of accounts to correct address furnished by a customer;
- (f) adequate provision and the efficient operation of facilities for payment throughout the Municipality's area of jurisdiction;
- (g) where necessary, the appointment of agents to accept payments on behalf of the Municipality; and
- (h) appropriate and reasonable hours of business in order to facilitate account payments.

## 15. Responsibility for payment of account

- (1) It is the responsibility of the customer to ensure that his or her account is paid timeously and that such account does not fall into arrears.
- (2) Where a customer is a tenant of the property concerned, the owner of the property shall be held jointly and severally liable with the tenant for debts on the property.
- (3) Subsection (2) does not apply to the payment of rates, which payment shall be the sole responsibility of the owner of such property.

## 16. Disputes in respect of accounts rendered by the Municipality

- (1) A person must lodge a written dispute with the Municipality to challenge the correctness or accuracy of any amount due and payable by such person reflected in an account rendered by the Municipality in terms of this By-law: Provided that such dispute must be lodged with the Municipality before or on the due date for payment specified in the account concerned.
- (2) A person must, pending resolution of the dispute, continue to make regular monthly payments in respect of rates, if applicable, or in respect of any municipal service, as the case may be, based on the average monthly fees for the preceding three months prior to the dispute arising, plus interest if applicable, until the dispute is resolved.
- (3) Where a person fails to lodge a dispute within the period mentioned in subsection (1), any correspondence received from the person after such period concerning the correctness or accuracy of an account, will be treated as an enquiry and
  - (a) the account will not be suspended; and
  - (b) such enquiry must be accompanied by the payment of at least an amount equal to the average amount per month that was due and payable in respect of the municipal service concerned during the preceding three months.
- (4) If an objection or appeal is lodged against the value of property in terms of sections 50 and 54 of the Rates Act, on publication of a new or supplementary valuation roll in terms of section 49 of the Rates Act, the owner must still make payment to the Municipality based on the rates payable in respect of the property concerned on the previous valuation roll prior to the lodgement of the objection or appeal.
- (5) Any amount not in dispute must be paid in full by the person concerned and municipal services may be disconnected or restricted where such amounts remain unpaid.
- (6) The Municipality must register the dispute or enquiry and take reasonable steps to ensure that the dispute or enquiry is addressed within a reasonable period.
- (7) The Municipality must
  - (a) investigate or cause the dispute to be investigated within 30 days, or as soon as possible after such dispute is received; and
  - (b) inform the person, in writing, of his or her finding as soon as possible after conclusion of the investigation, instructing that either such person's account will be credited with an amount found to have been overpaid or, alternatively, that any amount found to be due and payable must, subject to section 23, be paid within a reasonable period from the date on which the person concerned is notified thereof, unless an appeal is lodged within that period in terms of subsection (8).
- (8) Except for instances where the right of appeal is specifically afforded to a person in terms of any other law, a person may, subject to section 35, lodge an appeal in writing with the municipal manager in terms of section 62 of the Systems Act against a decision referred to in subsection (7), within 21 days of the date of notification of the decision.

- (9) The Municipality must inform the person concerned in writing of the decision on the appeal, instructing that any amount found to be overpaid will be credited to such person's account or, alternatively, that any amount found to be due and payable must be paid within seven days from the date on which the person is notified thereof.
- (10) The Municipality will only supply records of documents to the person concerned for the last 5 years.

### **17. Failure to pay accounts on due date**

- (1) The Municipality must take the necessary steps to recover payment of any accounts which remain unpaid after the due date for the payment thereof.
- (2) Where#
  - (a) a tenant or an occupier occupies a property in respect of which arrears are owing; or
  - (b) an agent acts for an owner in respect of whose property arrears are owing,the Municipality may recover from such tenant, occupier or agent such monies as are owing by the tenant, occupier or agent to the owner, as payment of the arrears owed by such owner.
- (3) The Municipality may recover the amount in whole or in part from the tenant, occupier or agent despite any contractual obligation to the contrary between an owner and his or her tenant, occupier or agent.
- (4) The amount the Municipality may recover from the tenant, occupier or agent is limited to the amount of the rent or other money due and payable, but not yet paid by the tenant, occupier or agent to the owner.
- (5) Should the tenant, occupier or agent fail or refuse to pay over any monies to the Municipality in terms of this section, the municipal services of the tenant, occupier or agent may be disconnected.
- (6) Before resorting to litigation for the recovery of arrears, the Municipality may send a final demand notice, which may appear on the account addressed to the defaulting person, calling upon such person to make payment within a stipulated period, failing which legal steps may be taken for the recovery thereof.
- (7) Failure by the Municipality to send a final demand notice does not relieve a customer from paying the arrears.

### **18. Rates and municipal service charges upon the property**

- (1) Amounts due for municipal services and other rates, taxes, levies and duties on a property are a charge upon the property, and the Municipality may take any of the following actions to secure payment thereof:
  - (a) terminate or restrict the provision of any municipal service in terms of section 19; (b) allocate the whole or a portion of any payment of an account, or the whole or a portion of a pre-payment for future accounts as contemplated in paragraph 12(5)(a), as payment for arrear municipal service fees or rates;
  - (c) subject to section 118(1) of the Systems Act, withhold the issuing of a rates or revenue clearance certificate until all amounts due in connection with the property concerned for municipal service fees, surcharges on fees, rates and other municipal taxes, levies and duties for the period contemplated in paragraph 118(1)(b) of the Systems Act have been fully paid;
  - (d) unilaterally disconnect the supply of electricity supplied by way of an electricity dispenser to any premises where such premises is charged with an overdue amount in terms of an applicable consolidated bill, or refuse to supply any person with any card or token for the operation of an electricity dispenser serving any premises charged with an overdue amount in terms of any consolidated bill;

- (e) refuse to register new customers for services on the premises until the previous debt is paid;
  - (f) in respect of the consolidated debt, recover arrears from tenants or occupiers of the premises in respect of which the consolidated debt is owing, or from the agents as contemplated in sections 28 and 29 of the Rates Act; or
  - (g) exercise all such rights as may be allowed in law.
- (2) The Municipality may, for the purposes of finalising the issuing of a revenue clearance certificate contemplated in subsection 18(1)(c), request the seller of the property to submit supporting information or documentation as may be determined by the Municipality.

## 19. Termination or restriction of a municipal service

- (1) The Municipality may terminate or restrict the provision of any service in terms of the prescribed termination and restriction procedures set out in this By-law, the Policy or any other applicable law to any premises if the customers, owners, heirs, or occupiers, as the case may be, in respect of the municipal service concerned#
- (a) fails to make full payment of arrears on or before the final date for the payment thereof, and such person fails to sign an acknowledgement of debt in terms of section 26 in respect of the arrears concerned before termination or restriction;
  - (b) fails to pay any instalment payable in terms of an agreement referred to in paragraph (a) before or on the due date;
  - (c) fails to comply with any condition of provision imposed by the Municipality in respect of the service concerned;
  - (d) obstructs the efficient provision of the service concerned to another customer;
  - (e) provides the service concerned to a person who is not entitled thereto or permits such provision to continue;
  - (f) causes a situation relating to any service which, in the opinion of the Municipality, is dangerous or constitutes a contravention of any applicable law, including the common law;
  - (g) tampers with an electricity or water meter or in any way reinstates without the Municipality's knowledge or consent the provision of a previously terminated or restricted service;
  - (h) is placed under provisional sequestration, liquidation judicial management, or business rescue or commits an act of insolvency in terms of the Insolvency Act, 1936 ([Act No. 24 of 1936](#)) or is subject to an administration order granted in terms of section 74 of the Magistrate's Court Act, 1944 ([Act No. 32 of 1944](#)), and there is a failure to enter into a new service agreement within 14 days of the Municipality requiring such service agreement in terms of section 9 read with section 18 of this By-law; or
  - (i) fails to notify the Municipality within 30 days from date of death of the customer.
- (2) The Municipality must notify a customer of disconnection by informing such person contemplated in subsection (1)#
- (a) that the provision of the service concerned will be, or has been disconnected on the date specified in such notification; and
  - (b) of the steps which can be taken to have the service reinstated.
- (3) The notice of disconnection may be included on the bill or any other notice issued in terms of this By-law.
- (4) If a customer intends to terminate or restrict a municipal service, the customer must provide the Municipality with notice of such intention within the time period provided for in the Policy.

## 20. Reinstatement of the supply of a municipal service

- (1) Where the supply of a municipal service has been terminated or restricted by the Municipality in terms of section 19, the supply of such service may not be reinstated either fully or partially until
  - (a) the full amount of arrears, including interest and collection charges, if any, have been paid;
  - (b) an agreement for payment of arrears contemplated in paragraph (a) has been entered into in terms of section 26; (c) the full amount of arrears in respect of any agreement referred to in paragraph (b), including interest and collection charges, if any, and any increased deposit, where required, have been paid; or
  - (d) any other condition considered by the CFO to be appropriate, including payment of an additional deposit, has been complied with.
- (2) Once all the conditions stipulated in subsection (1) have been met, a reconnection order must be issued by the Municipality to the effect that every applicable condition contemplated in subsection (1) has been complied with and that the municipal service concerned may be reconnected.
- (3) The Municipality may remove an entire water or electricity connection in the event of an illegal connection.

## 21. Interest charges

- (1) All arrears in respect of accounts for rates and municipal services bear interest equivalent to the rate of interest as determined in terms of the Municipal Property Rates Regulations, 2006 or any other applicable legislation.
- (2) Interest calculated on arrears may only be reversed as determined by the Municipality in terms of the Policy.

## 22. Administration charges

A prescribed administration charge may be levied by the Municipality against the account of a customer in respect of any legal action taken by or on behalf of the Municipality in terms of this By-law or the Policy.

## 23. Municipality's discretion in appropriation of payments received

- (1) Subject to subsection 12(3), the Municipality may appropriate monies received in respect of any debt contemplated in this By-law at its sole discretion, irrespective of any instruction issued by the customer directing how such monies are to be appropriated.
- (2) If any amount due and payable to the Municipality in terms of this By-law has not been paid in full, any lesser amount tendered to and accepted by the Municipality does not constitute payment in full and final settlement of the full amount due, unless the lesser amount was accepted in full and final settlement in writing under a power delegated or subdelegated to such employee in terms of section 59 of the Systems Act.

## 24. Actions for the recovery of outstanding amounts

- (1) The Municipality may recover charges, costs and interest on any arrear amount, which may include but are not limited to
  - (a) costs and administration fees where payments to the Municipality by negotiable instruments are dishonoured by banks when presented for payment;
  - (b) legal and administration costs, including attorney-and-client costs and tracing fees incurred in the recovery of debts;

- (c) restriction, disconnection and reconnection fees, where any service has been restricted or disconnected as a result of non-compliance with this By-law;
  - (d) any losses the Municipality may suffer as a result of an illegal connection in respect of municipal equipment or meters; and
  - (e) any collection commission incurred.
- (2) Subject to section 18, if an amount payable to the Municipality in respect of an account for rates or municipal services remains outstanding, wholly or in part, after the due date for the payment thereof, the defaulting person may be
  - (a) listed with a credit bureau; and
  - (b) handed over to a debt collector or an attorney for collection.
- (3) In the event of an overdue account being handed over to a debt collector or an attorney for collection, the person concerned is liable for any interest and collection charges raised in respect thereof.
- (4) Any action taken in terms of this By-law may not be suspended or withdrawn unless the—
  - (a) arrears, any charge, cost, interest thereon, and additional security, if required by the Municipality, have been paid in full; or
  - (b) parties in the matter enter into a written settlement agreement.
- (5) Subject to Schedule 2 item 10 of the Systems Act and in accordance with the provisions of the Policy, any amount in arrears on an account of a municipal staff member may be deducted by the Municipality from such municipal staff member's salary, as the case may be.
- (6) The Municipality may enter into an agreement with any councillor whose account is in arrears to deduct any amount in arrears from the councillor's allowance.
- (7) Charges, costs and interest recovered in terms of subsection (1) may be levied against the arrear account of the person concerned.
- (8) The amount or manner of calculation of the interest charged or the amount or manner of calculation of collection charges must be passed by the municipal council with a supporting vote of a majority of its members in terms of section 75A of the Systems Act.

## **25. Agreement with Employer**

- (1) Subject to section 103 of the Systems Act, the Municipality may in order to recover any outstanding amount due by the customer to the Municipality and, with the consent of the customer, enter into an agreement with the customer's employer to deduct from the salary or wages of the customer regular monthly amounts as may be agreed upon.

## **26. Acknowledgements of debt**

- (1) Any person who is indebted to the Municipality may be required to sign a written acknowledgement of debt on a form determined by the Municipality for that purpose setting out the terms which are agreeable to the Municipality for the recovery of such debt.
- (2) If the amount payable by a person in terms of an acknowledgement of debt contemplated in subsection (1) is payable in instalments, any payment received shall be allocated in reduction of the consolidated debt of such person in the order determined in the Policy, notwithstanding any instruction to the contrary by the person concerned.
- (3) A person may be required to arrange a debit order for the payment of arrears in respect of which an acknowledgement of debt contemplated in subsection (1) has been signed by the person concerned.



- (4) Subject to subsection (5), no acknowledgement of debt may provide for payment over a period longer than 24 months.
- (5)
  - (a) An acknowledgement of debt providing for payment over a period in excess of 24 months, may be accepted by the Municipality in terms of delegated authority, if special circumstances which the person could not reasonably have prevented or avoided, prevail and which, in the opinion of the CFO, warrant a longer period of payment; and
  - (b) documentary proof of any special circumstances as contemplated in paragraph (a) must be furnished by a person on request by the Municipality.
- (6) The Municipality must, in exercising its discretion in terms of subsection (5), have regard to a person's–
  - (a) credit record;
  - (b) consumption of services;
  - (c) ability to afford the proposed instalments, taking into account the person's financial situation;
  - (d) level of service;
  - (e) previous breaches of agreements for the payment of arrears in instalments; and
  - (f) any other relevant factors.
- (7) If a person fails to comply with the terms of an acknowledgement of debt contemplated in subsection (1), the total outstanding amount, including the arrears, any interest thereon, any collection charges, and payment of a higher deposit if required by the Municipality, will immediately become due and payable, and the additional higher deposit, if so required, must be provided, without further notice.
- (8) If a person fails to comply with the terms of an acknowledgement of debt contemplated in subsection (1) that was signed after receipt of a disconnection notice for water or electricity services, or both as the case may be, the municipal service concerned may be disconnected without further notice, in addition to any other action taken against or which may be taken by the Municipality against the person concerned.
- (9) The Municipality may not grant or accept an acknowledgement of debt by a person if#
  - (a) that person has failed to honour a previous acknowledgement of debt for the payment of arrears to the Municipality, unless the CFO decides otherwise on good cause shown;
  - (b) arrears have arisen due to dishonoured cheques or direct debit reversals;
  - (c) instances of repeated illegal connections have been identified;
  - (d) municipal service connections have been removed; or
  - (e) any other relevant factor exists as provided for in the Policy.
- (10) Once an acknowledgement of debt contemplated in subsection (1) is signed, the amount in arrears must be reflected as a current amount.

## Chapter 4

### Assistance to the poor and irrecoverable debts

#### 27. Assistance to the poor

- (1) The Municipality may grant assistance to any person who is regarded by the Municipality as poor in accordance with the qualifying criteria as set out in the Policy.

- (2) The person who qualifies for assistance in terms of subsection (1) must be prepared to convert to pre-payment metering whenever required by the Municipality to do so.
- (3) The Municipality must conduct regular audits of persons who are receiving assistance in terms of subsection (1) to ensure that they still meet the criteria for such qualification and, if not, take the necessary steps for the withdrawal of such assistance, subject to due compliance with the Constitution and the rules of natural justice.

## 28. Irrecoverable debts

- (1) Where a debt owing to the Municipality is considered irrecoverable in terms of the criteria set out in the Policy, and provided that there is sufficient provision to cover bad debts due to the Municipality, the CFO must write off such debt in accordance with the Policy.
- (2) The CFO must report to the council at its next meeting of all amounts that have been written off as irrecoverable in terms of subsection (1), and all such information must also be included in the monthly budget statements which must be rendered by the municipal manager in terms of section 71 of the Municipal Finance Management Act.

## Chapter 5 Miscellaneous

### 29. Municipality's right of access to premises

- (1) In accordance with the Policy and section 101 of the Systems Act, an authorised official may access any premises at any reasonable time in order to read, inspect, install or repair any meter or service connection, or to disconnect, stop or restrict the provision of any service.
- (2) Should access to the premises be unreasonably denied or prevented for the purposes of effecting a disconnection, a disconnection penalty fee may be raised in the account, over and above any penalty which may be imposed in terms of section 36 of this By-law.

### 30. Transmission of documents

Where any account, notice or other document issued by the Municipality in terms of this By-law is required to be given or delivered by the Municipality to any person, such communication may be#

- (a) posted by ordinary mail to the last known address of the person;
- (b) e-mailed to the person's e-mail account provided;
- (c) messaged (sms'd) to the person's cell phone number; or
- (d) be given or delivered in terms of Section 115 of the Systems Act or the Electronic Communications Act, 2005 ([Act No. 36 of 2005](#)).

### 31. Prima facie evidence of information

For the purposes of the recovery of any amount due and payable to the Municipality in terms of this By-law#

- (a) a copy of any relevant account; and
- (b) a certificate issued by the Municipality confirming the amount, shall constitute prima facie evidence of the information contained in such documents.

### 32. Update of customer details

A customer or owner, as the case may be, must furnish the Municipality with updated information details of such person when a change of such information occurs, or on request by the Municipality, which includes but is not limited to#

- (a) contact details of the customer or owner;
- (b) details of executors or administrators of deceased estates;
- (c) deregistration or termination of a company, close corporation or trust if the company, close corporation or trust is the account holder;
- (d) details of deceased#
  - (i) company directors;
  - (ii) members of close corporations; or
  - (iii) trustees of Trusts;
- (e) notice of a company or close corporation placed under business rescue or liquidation; or
- (f) any change of members, directors or trustees of a juristic person.

### 33. Illegal connections

- (1) An owner is responsible for taking measures to secure his or her electricity or water meter.
- (2) No person may#
  - (a) reconnect, attempt to reconnect or cause or permit a reconnection to any municipal service where the Municipality has restricted or disconnected such supply;
  - (b) tamper, break or interfere with any municipal equipment or unlawfully use or interfere with municipal services provided by the Municipality; or
  - (c) knowingly consume, use or distribute any municipal service which has been obtained in an unlawful manner.
- (3) A person must notify the Municipality if he or she becomes aware of an illegal connection.
- (4) Where there is evidence of an illegal connection, it shall be presumed that the owner caused or allowed such illegal connection.
- (5) Where prima facie evidence of an illegal connection, tampering, or interference referred to in subsection (2) exists, the Municipality has the right to disconnect the supply immediately without prior notice to the owner and the owner is liable for all fees and charges levied by the Municipality for the disconnection and subsequent reconnection.

## Chapter 6 Procurement of goods and services by the municipality

### 34. Procurement of goods and services by the Municipality

- (1) When submitting a tender for the provision of goods or services to the Municipality, every tenderer must prove to the satisfaction of the Municipality that all accounts for municipal services for which the tenderer and each of its directors, members, owners, partners or trustees are liable, have been paid in accordance with the requirements contained in the Policy and the Municipality's Supply Chain Policy.

- (2) The Municipality may at its sole discretion check whether all the municipal accounts of its supplier of goods or services are up to date and if found to be in arrears, any amount payable to the supplier may be set off against the arrear amount.
- (3) Where a contractor's place of business is out of the jurisdiction of the Municipality, a certificate from the relevant Municipality must be produced.
- (4) Where a contractor, or its directors, members, owners, partners or trustees, is indebted to the Municipality for rates or any service charges and payments are due to that contractor in respect of goods or services provided to the Municipality, or in terms of any contractual arrangement with the Municipality, the arrear amount owing may be set off against such payments.

## **Chapter 7 General**

### **35. Appeals**

- (1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against the decision in terms of the Appeals provision contained in Section 62 of the Systems Act 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.
- (3) All appeals lodged are done so in terms of the Systems Act and not in terms of this Bylaw.

### **36. Offences and penalties**

- (1) A person commits an offence if he or she#
  - (a) obstructs, hinders, or in any manner interferes with an authorised official who is acting or who is entitled to act in terms of this By-law;
  - (b) fails to comply with any lawful instruction or notices given in terms of this By-law or Policy;
  - (c) deliberately furnishes false or misleading information to an authorised official;
  - (d) tampers, breaks, or interferes with any equipment owned by or municipal services provided by the Municipality;
  - (e) makes any misrepresentation in order to qualify for any benefit or relief in terms of this By-law or Policy; or
  - (f) contravenes any provision of this By-law.
- (2) Any person who is convicted of an offence under this By-law is be liable to a fine of an amount not exceeding R40 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and imprisonment.

### **37. Delegations**

- (1) Subject to the Constitution and applicable national and provincial laws, any#
  - (a) power, excluding a power referred to in section 160(2) of the Constitution;
  - (b) function; or
  - (c) duty, conferred, in terms of this By-law, upon the council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor or staff member, to an entity within, or a staff member employed by, the Municipality.

- (2) The delegation in terms of sub-section (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Systems Act, subject to the criteria set out in section 50(2) of the said Act.
- (3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the#
  - (a) entity or person issuing the delegation or sub-delegation;
  - (b) recipient of the delegation or sub-delegation; and
  - (c) conditions attached to the delegation or sub-delegation.

### 38. Repeal of laws and savings

- (1) The By-law mentioned in the first and second columns of the Schedule to this By-law are hereby repealed to the extent set out in the third column of the said Schedule.

Short title and commencement 39. This By-law is called the Credit Control and Debt Collection By-law, 2017 and takes effect on the date of publication thereof in the Provincial Gazette or as otherwise indicated in the notice thereto.

#### BY-LAW REPEALED

Number and year of law	Title	Extent of repeal
By-law No. 47 of 2008	eThekweni Municipality Credit Control and Debt Collection By-laws	The whole