



**eThekweni Municipality**  
**CREDIT CONTROL AND DEBT COLLECTION POLICY**  
**2018/2019**

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## **1. PURPOSE**

This Policy, read together with the eThekweni Municipality Credit Control and Debt Collection By law, has been compiled in compliance with the Local Government: Municipal Systems Act 32 of 2000 and provides procedures and mechanisms for credit control and debt collection as contemplated in Chapter 9 of the Systems Act.

In terms of Section 96, the Municipality is enjoined to (a) collect all money that is due and payable to it, subject to the Act and any other applicable legislation; and (b) for that purpose, to adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies.

The raising and recovery of revenue is a constitutional right and duty of the Municipality and is fundamental to the long term financial and economic sustainability of the Municipality and to the achievement of the Municipality's constitutional responsibilities in, inter alia, addressing the needs of the local community. In turn, members of the local community have the right, amongst others, to access municipal services (subject to the law), and a reciprocal statutory duty in terms of Section 5(2) of the Systems Act to pay promptly service fees, rates on property and other charges, levies and duties imposed by the Municipality.

This Policy aims, on the one hand, to ensure that the Municipality's approach to credit control and debt collection is sensitive, transparent and is equitably applied throughout the Municipality's geographic area and seeks on the other hand, to enable the Municipality to conduct its financial affairs in an effective, economic and efficient manner by ensuring that the incidence of under collection of revenue and bad debt is minimized, its revenue base is protected and has ability to grow and that cash flow is not negatively impacted upon, thereby compromising optimal delivery of services.

## **2. DEFINITIONS**

Unless indicated to the contrary in this Policy, words contained in this Policy have the same meaning as in the eThekweni Municipality: Credit Control and Debt Collection By-law.

**"Account"** means written notification in the form of a statement of account in respect of municipal services, rates, sundry charges and other charges, 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 and for the purposes of this policy it also means a Credit Authority;

**"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 due date;

**"Authorised Official"** means the Head: Revenue or his delegate in terms of the Municipality's System of Delegations;

**"Availability Fee"** means the tariff referred to under Tariff Type in the eThekweni Municipality's Tariff Policy;

**"Bulk Customer"** means a Customer who consumes large amounts of electricity for commercial or industrial purposes;

**"By-law"** means the eThekweni Municipality: Credit Control and Debt Collection By-Law, as amended;

**"Category of Owners"** means, for the purpose of section 4.2 of this Policy, any department of state or administration in the national, provincial or local sphere of government which has a good credit history with the Municipality.

**"CFO"** means a person employed by the Municipality in terms of section 57 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 ratepayer or Customer of arrears;
- (b) for the termination, restriction or reinstatement of any Municipal service to a defaulting ratepayer or Customer;
- (c) of any notice rendered, sent, delivered or published to a ratepayer or Customer in terms of the 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;

**“Company”** means a Company as defined in the Companies Act, 2008 (Act 71 of 2008);

**“Consolidated account”** means a monthly account reflecting municipal service fees, charges, surcharges on fees, property rates, sundry charges and other municipal taxes, levies and duties and all consolidations in terms of section 102 of the Systems Act;

**“Credit Authority”** means any arrangement made by agreement between the Municipality and a Customer for the payment of any arrears in instalments. Such arrangement may take the form of an agreement or an acknowledgment of debt;

**“Customer”** means any person or their agent with whom the Municipality or an Authorised Official has entered into an agreement for the provision of any Municipal service to the premises;

**“Defaulter”** means a Customer whose account is in arrears;

**“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 Customer’s account becomes payable, which in the case of monthly accounts is twenty-one days from the date of the account, and in the case of annual accounts is the 31 October each year;

**“Effective Date”** means the date on which this Policy comes into effect which shall be 1 July 2018;

**"Fee"** means a prescribed amount charged by the Municipality to a Customer for the provision of any Municipal service;

**"Financial Guarantee"** means an irrevocable and unconditional written undertaking issued by a registered South African Bank in favour of the Municipality, to honour all obligations (present or future) owed by a person to the Municipality, should that person be in breach of any or such obligation;

**"Fines"** means any lawfully determined pecuniary penalty which is payable by a person to the Municipality in terms of applicable legislation, arising from the commission of an act or an omission that is punishable by law;

**"Flow limiter"** means an electronic device installed in the water connection which allows for a normal flow rate but restricts the daily volume of water to 300 litres per day;

**"Flow restrictor"** means a washer which is installed in the water connection which allows a daily consumption of approximately 360 litres of water in a six hour period but at an extremely low flow rate;

**"Housing Substitution Policy"** means a policy where the children of a social housing tenant who is deceased, are substituted as tenants;

**"Illegal connection"** means any connection or reconnection to a system through which Municipal services are provided, which is not authorised or approved by the Municipality or an Authorised Official;

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

**"Leak period"** means the metering period immediately prior to the date of repair of the leak and the metering period during which the leak is repaired. Each of these two periods will not exceed 65 days;

**"Meter"** means any device which measures any demand or quantity of either electricity energy or water passing through such meter;

**“Metering period”** means the time interval between two successive billed meter readings but shall exclude previous leak periods;

**“MPRA”** means the Local Government: Municipal Property Rates Act, 2004 (Act 6 of 2004), as amended;

**“Multi-property owner”** means an owner of 50 or more registered properties in the Municipality’s area of jurisdiction;

**“Municipal charges”** means municipal service fees, surcharge on fees, penalties, interest, property rates, and other municipal taxes, levies and duties, as well as any other charges in terms of Legislation, Policy or an agreement including Sundry Charges and Collection charges;

**“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;

**“Net salary”** means the gross salary minus pension and statutory deductions;

**“Owner”** means:

- (a) In relation to a property referred to in paragraph (a) of the definition of "property" in the MPRA, a person in whose name ownership of the property is registered;
- (b) The administrator of the body corporate of a sectional title scheme where the common property of a sectional title scheme is at issue and there are no elected trustees of the body corporate;
- (c) The administrator, where the owner of a property is a mental health care user as defined in section 1 of the Mental Health Act, 2002 (Act No. 17 of 2002);
- (d) The business rescue practitioner, where the owner of a property has been placed under business rescue;
- (e) The managing agent, where the owner of a property is absent from the Republic of South Africa or where the Municipality has, after reasonable attempts, not been able to determine his or her whereabouts;
- (f) Every person who is entitled to occupy or use a building, or who does occupy or use a building, where –

- (i) The owner of the property is absent from the Republic of South Africa;
  - (ii) The Municipality has, after reasonable attempts, not been able to determine the whereabouts of the owner of the building; and
  - (iii) There is no managing agent;
- (g) Trustees and beneficiaries jointly, in the case of property in a trust;
  - (h) An executor or administrator, in the case of property in a deceased estate;
  - (i) A trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
  - (j) A judicial manager, in the case of a property in the estate of a person under judicial management;
  - (k) A curator, in the case of property in the estate of a person under curatorship;
  - (l) A person in whose name a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude, as joint owner together with the registered owner;
  - (m) A lessee, in the case of a property that is registered in the name of the Municipality and is leased by it;
  - (n) A buyer or a developer, in the case of a property that was sold by the Municipality and of which possession was given pending registration of ownership in the name of the buyer, beneficiary, or a developer;
  - (o) A fideicommissary as joint owner together with the fiduciary;
  - (p) Ingonyama Trust in respect of the land vested in the Ingonyama Trust by virtue of the Ingonyama Trust Act of 1994, as amended, or any other law;
  - (q) The National Government of the Republic of South Africa, in the case of a property that is registered in the name of a deregistered company or close corporation and where ownership thereof has accrued to the state by operation of law ( bona vacantia);
  - (r) An owner of a property in the name of any other juristic person not mentioned in this definition of an owner; and
  - (s) A child or children in charge of a property in the case of a child headed household as contemplated in this Policy and the Rates Policy of the Municipality;

**"Person"** means a natural person or Juristic Person;

**"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;

**“Prescribed”** means a determination set or laid down by law, or by the Municipal Council or the CFO from time to time;

**“Prescribed Form”** means any document that may be prescribed by law or approved by Municipal Council or required by the CFO from time to time;

**“Rates”** means a municipal rate on property envisaged in terms of section 229(1) (a) of the Constitution and levied by the Municipality in terms of the MPRA, expressed as cents in the rand;

**“Rates Regulations”** means the Municipal Property Rates Regulations, 2006 as amended;

**“Residential property”** means a dwelling, in any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person **excluding** a dwelling where the dominant use is for any purpose other than residential, or where it is used in the supply of commercial accommodation;

**“Revenue Clearance Certificate”** means a certificate of the kind referred to in Section 118(1) of the Systems Act;

**“Section 118(1) debt”** means debt contemplated in Section 118(1) of the Systems Act;

**“Section 118(3) debt”** means debt contemplated in Section 118(3) of the Systems Act;

**“Services Account”** means an account which relates to water and or electricity consumption and related charges;

**“Service Agreement”** means an agreement entered into between the Customer and the Municipality for the provision of a Municipal service which includes but is not necessarily limited to water and electricity;

**“Share Block Company”** means a share block company as defined in the Share Blocks Control Act;

**“Share Blocks Control Act”** means the Share Blocks Control Act, 1980 (Act 59 of 1980);

**“Share block scheme”** means a share block scheme as defined in the Share Blocks Control Act;

**“Social Housing Tenant”** means any person renting any residential premises from any public legal body for less than a full rack rental or renting residential premises from a private person and receiving from the National or Provincial Government a subsidy or other amount to empower the tenant to pay the full rack rental;

**“Social Worker”** means a person employed by the Municipality who is registered as a social worker under the Social Service Professions Act, 1978 (Act No 110 of 1978);

**“Sundry charge”** means an amount charged to a Person which is not directly linked to a property and includes but is not limited to–

- (a) charges arising from damage 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 the Municipality staff (staff debts);

**“Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as amended;

**“Tenant”** means in relation to this Policy, a person who entered into a lease agreement with a Landlord; and became a Customer of the Municipality prior the adoption of section 3.1 of this Policy .This excludes tenants referred to in section 3.3 and 14.5 and Social Housing Tenants as mentioned in this Policy;

**“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;

**“Water services”** means the supply of potable water and, where a municipal sewerage reticulation system exists, the disposal of sewage;

**“50/50 pre-payment debt recovery”** means a pre-payment system whereby 50% of payment is allocated to arrears and 50% is allocated to the purchase of electricity. Only owners can

make application for a pre-payment system, excluding municipal employees, councilors and social housing tenants whose accounts are in arrears, and

“**80/20 pre-payment debt recovery**” means a pre-payment system whereby 20% of payment is allocated to arrears and 80% is allocated to the purchase of electricity. This prepayment system excludes municipal employees and councilors in arrears.

## **PROVISION OF MUNICIPAL SERVICES**

### **3. REGISTRATION FOR THE PROVISION OF MUNICIPAL SERVICES**

- 3.1 **Residential property** - The Municipality will endeavour to register **owners only** for services on their properties. Tenant registrations that are currently in place will continue until the tenant vacates the premises, the account is closed or the Municipality cancels the contract of the tenant that is in default in terms of subsection 6.1 (b) of this Policy.
- 3.2 **Business property** - The Municipality will only enter into new contracts for the provision of Municipal services with tenants if the owner of the property is a multi-property owner as defined in this Policy, and the municipal accounts on all of his or her properties are paid. Where the landlord is not a multi-property owner, the owner of the property must register for the provision of Municipal services.
- 3.3 When the owner of the property is a Bulk Customer, the CFO, at his or her discretion, may allow tenants of the bulk customer to be registered for municipal services on the property concerned, upon submission of any documents or information that may be requested by the CFO.
- 3.4 **Government property** - The Municipality will continue to register tenants for services. The respective Government Departments shall be held liable for the debts on their own property.
- 3.5 **Sundry accounts** – A Person must provide the Municipality with a municipal account number or rate account number. If the Person does not have an existing municipal account then a new account must be created.

- 3.6 The Municipality shall whenever possible, combine any separate accounts of a person who is liable for payment to the Municipality, into one consolidated account.
- 3.7 No registrations or additions to the customer database can be processed unless legal documentation acceptable to the CFO has been produced in each instance.
- 3.8 If there is an outstanding debt on the property (other than historic debt incurred by a previous owner of the property) this debt must be settled in full, or suitable payment arrangements must be made by the owner of the property, before a Customer or owner is registered for services. This section does not apply to a new owner who has taken transfer of property and applies for a Municipal service.
- 3.9 Customers who fail to register and who illegally consume services will be subjected to such administrative, civil or criminal action as the Municipality deems appropriate.
- 3.10 Where the purpose for or extent to which any Municipal service used is changed, the onus and obligation is on the Customer or owner to advise the Municipality of such change.
- 3.11 A Person applying for a Municipal service must enter into a Service Agreement with the Municipality in order for such Municipal service to be provided.
- 3.12 **Documentation and Information (Juristic Persons)-** An application by a Juristic Person for a Municipal service must include –
- (a) The submission of a resolution delegating authority to the applicant and furnishing, if applicable, the Juristic person's Registration Number or Trust Reference Number with the Master of the High Court.
  - (b) The names, identity number, cell phone number, physical and postal addresses, email addresses and any other particulars of all the directors (excluding ex-officio directors as contemplated in the Companies Act, 2008 (Act 71 of 2008) or members or trustees or proprietors or partners.
  - (c) Certified copies of the following where applicable:
    - (i) Current Letter of Authority of the Trustee(s).
    - (ii) Identity documents of the persons referred to in (b) above.
    - (iii) CIPC registration documents.
    - (iv) Constitution.
  - (d) A signed Direct Debit form in the prescribed form.

(e) Deeds of Suretyship in the prescribed form, signed by the persons referred to in (b) above. Provided that:

- (i) Directors of a listed company on a stock exchange for public trading or of a public company or of a state owned company, are excluded from this requirement.
- (ii) The CFO may, upon written application, waive such Deed of Suretyship requirement and determine another form of security that will protect the Municipality's interests and mitigate risk to the Municipality. Such other form of security may include (but is not necessarily limited to) a higher deposit as contemplated in section 3.19. Ultimately, the decision rests with the CFO.

3.13 A person may be required to provide to the Municipality with personal information, as may be prescribed, for any purpose contemplated in this policy, amongst others, all contact details (such as postal/physical/email address.), proof of identification, financial information and any other relevant documentation, as may be required by the Municipality from time to time (such as a lease agreement or a title deed).

3.14 All information furnished may be verified by the Municipality with any or all data information institutions, credit information bureau's and any financial institutions as may be deemed necessary by the Municipality in determining a person's credit worthiness or for any other reason as determined by the CFO.

3.15 The Municipality has a right to conduct a full credit check on any person who is or who will become subject to this policy or any other policy of the Municipality.

3.16 A Surety may, upon application to the CFO, be released from his obligations to the Municipality in the following circumstances-

3.16.1 The Surety has resigned or been removed/disqualified as a director, member, trustee, proprietor or partner as the case may be, or the Surety's term of office as director has expired as per the Memorandum of Incorporation in terms of the Companies Act, 2008; and

3.16.2 No amounts are due, owing and payable by the principal debtor at the time of application.

- 3.17 No application for the release of a Surety as contemplated in section 3.16, will be considered by the CFO unless the application is accompanied by the following documentation -
- 3.17.1 In the case of a Director of a company or member of a close corporation, the Surety must provide proof in the form of a document issued by CIPC that he is no longer a director /member of such company or close corporation;
- 3.17.2 In the case of a Trustee, the Surety provides proof in the form of a document issued by the Office of the Master of the High Court or a certificate by a practicing attorney that he is no longer a trustee;
- 3.17.3 In the case of any other person mentioned in section 3.12(b), the Surety provides documentation to the satisfaction of the CFO that he has ceased to be a member, proprietor or partner, as the case may be, of the juristic entity in question;
- 3.17.4 Where another person takes the place of the Surety within the Juristic Entity, a duly signed Deed of Suretyship in favour of the Municipality must be furnished, by the new surety to the Municipality, in the prescribed form.
- 3.18 In considering an application for the release of a Surety, the provisions of sections 3.13-3.15 shall be applicable.
- 3.19 Notwithstanding the provisions of section 3.12(e), a juristic entity may elect to pay a higher deposit, in cash, as determined by the CFO, from time to time, in lieu of furnishing Deeds of Suretyship as contemplated in section 3.12(e). A written application to waive the provisions of section 3.12(e), must be made to the CFO who shall conduct a full financial analysis and credit check of the juristic entity and to call for any documents or other information as may be considered relevant to the consideration of the application. A Financial Guarantee in lieu of a higher cash deposit, will not be accepted.
- 3.20 When an application is made in terms of section 3.12e (ii), section 3.19, or section 4.12(e), the following financial ratio's will be applicable in order for the CFO to consider the application:
- i. Quick ratio of 1:1
  - ii. Net Profit margin of 2.5%

- iii. Gearing < 40%
- iv. Cash Reserves 60 days over monthly expenditure.

3.21 A member of a Share block company may register for a Municipal service to an individually metered flat. In order to mitigate risk to the Municipality in the event of non-payment of any Services Account, a Share block company must stand surety for the obligations of such member and furnish a Deed of Suretyship in favour of the Municipality in the prescribed form, alternatively a Financial Guarantee. No application for a Municipal service will be accepted unless such suretyship is provided, alternatively a Financial Guarantee.

#### 4. DEPOSITS

- 4.1 Upon date of ownership transfer, a deposit will be automatically raised, based on the criteria determined by the CFO, from time to time which include but are not limited to the Customer's profile, the risk the Customer poses to the Municipality, previous consumption, connection type and size of the metered Municipal service.
- 4.2 All organs of state should budget to pay a deposit equivalent to at least 3 months estimated municipal service charges, when making application for a Municipal service. However, the CFO may exclude a Category of Owners from payment of deposits.
- 4.3 Where a tenant terminates a Services Account, consumption charges emanating from a meter must thereafter be linked to the owner's rates account and a deposit will be raised once consumption is recorded and will become due in the next months' bill.
- 4.4 The Municipality may appropriate a Customer's deposit on any account related to that Customer.
- 4.5 Notwithstanding receipts for different services, deposits payable to the Municipality shall be a consolidated deposit, paid **in cash**. Neither Financial Guarantees nor sureties will be accepted in lieu of deposits.

- 4.6 Where a business customer does not present a valid South African ID Document, a deposit equivalent to twice the prescribed deposit shall apply, in addition to the personal suretyships.
- 4.7 If a Customer is in arrears, the deposit may, upon due notice, be increased.
- 4.8 The Municipality may utilise the consolidated deposit as security for any or all of the charges or amounts owed by the customer as included in the statement of account.
- 4.9 Social Housing tenants qualify for the same deposit as an owner.
- 4.10 No deposit will be raised on property where there is no consumption however an availability fee shall be raised.
- 4.11 Where a tenant has absconded leaving a debt on a property, an additional deposit, equal to the debt on the property, may be raised on any other account held by the tenant with the Municipality.
- 4.12 **Guarantees**
- a. Guarantees in lieu of a Deposit are not acceptable except in the circumstances set out in this Policy.
  - b. Existing Guarantees held by the Municipality in lieu of a Deposit shall be honoured for the duration of the contract with the Municipality.
  - c. Addendums to existing Guarantees shall not be accepted. The additional deposit must be paid in cash.
  - d. Where guarantees are held in lieu of deposits, such guarantee shall be presented for payment and a new deposit shall be raised on any arrear account.
  - e. Notwithstanding the provisions of section 4.12 (a), a Financial Guarantee issued by a registered South African Bank and in a form acceptable to the CFO, may be furnished by an applicant for a Municipal service in lieu of the Deed of Suretyship referred to in section 3.12(e) above. Written application to furnish



such a Financial Guarantee must be made to the CFO who shall have the right to conduct a full financial analysis and credit check of the applicant and to call for such other documents and have regard to such other information as may be considered relevant to the consideration of the application.

- f. The CFO may demand or accept, a Financial Guarantee issued by a registered South African Bank on behalf of a contractor, in favour of the Municipality as security for any damage or loss that is incurred by, or may be sustained by the Municipality during the course of any work undertaken by the contractor in the circumstances set out in section 33.1.
- g. Where municipal property is alienated, the CFO may accept the lodging of a Financial Guarantee, in a form acceptable to the CFO, in lieu of a cash deposit on the purchase price.
- h. The CFO may, on written application, permit a person to substitute a Financial Guarantee referred to in (e) with another Financial Guarantee either from the same guarantor or a different guarantor, provided there is no risk to the Municipality.

#### 4.13 **Review of Deposits**

- a. If the Customer poses a credit risk, the value of the original deposit paid or an existing guarantee held by the Municipality, may be reviewed from time to time by the CFO.
- b. The deposit on an account shall be reviewed when—
  - i. the Account is paid after the due date;
  - ii. payment by negotiable instrument or direct debit is dishonored; or
  - iii. there is increased consumption of services.
- c. The Municipality may increase the deposit payable by a Customer by up to 12 months average usage.

- d. The deposits on all accounts may increase on a pro rata basis based on the bulk consumption charge to Eskom and Umgeni Water.

#### 4.14 **Interest Payable on Cash Deposits**

The Municipality will not pay interest on cash deposits.

#### 4.15 **Substitution of Accounts for Social Housing Tenants**

Should a Social Housing Tenant request to substitute another person as a Customer on their existing account, such Customer shall forfeit his/her/its Deposit and the person so substituted shall inherit the deposit on the account. Such deposit shall be subject to review in terms of **4.13** above.

## **ACCOUNTS MANAGEMENT**

### **5. ACCOUNTS**

- 5.1 The Municipality will deliver notices, any other document and accounts in accordance with section 115 of the Systems Act. A Customer may register for another mode of transmission as set out in the Credit Control and Debt Collection By-Law. In the case of multiple-ownership, the account will be delivered to any one of the owners.
- 5.2 Subject to the provisions of section 95(e) of the Systems Act, a failure to receive or accept accounts does not relieve a Customer of the obligation to pay any amount due and payable. The onus is on the Customer to make every effort to obtain a copy of the account, or establish the amount payable for payment.
- 5.3 The Municipality or an authorised official must, if administratively possible, issue a duplicate account to a customer on request. The Municipality will provide owners with copies of their tenant's accounts if requested in writing.
- 5.4 The Municipality may post annual rates assessment for record purposes.

- 5.5 With the exception of Government Accounts, assessment rates shall be billed on a monthly basis, and may only be billed annually by prior written agreement, subject to the Rates Policy of the Municipality.
- 5.6 Customers are required to update their information details with the Municipality promptly whenever information on record changes and or whenever requested by the Municipality. A failure to update information with the Municipality or a failure to respond to the Municipality's request for updated information may, subject to the principles of administrative justice, result in the restriction of services, disconnection of services or prosecution. Such update of information includes, but is not limited to–
- a. Details of executors or administrators of deceased estates;
  - b. Deregistration or termination of a company, close corporation or trust if the company, close corporation or trust is the account holder;
  - c. Details of deceased company directors, members of Close Corporations and trustees of Trusts;
  - d. Details of deceased - partners
    - (i) Company directors;
    - (ii) Members of close corporations; or
    - (iii) Trustees of Trusts;
  - e. Letters of appointment of a Trustee or Liquidator in the case of an insolvency /liquidation together with contact particulars.
  - f. Contact details of the Customer;
  - g. Notice of a company or close corporation placed under business rescue or liquidation and
  - h. Any change of members, trustees or directors of a juristic person.
- 5.7 The Municipality may recover a rate annually, on application, from multi-property owners. Such application must reach the Municipality on or before 30 April of each year and the annual rates account is to be paid by 31 October of each year.
- 5.8 The payment of rates shall not be affected by reason of an objection, appeal or non-compliance with the Rates Policy of the Municipality.
- 5.9 A request for a reconciliation of any account shall be processed after payment of a prescribed fee.

- 5.10 Tokens for pre-paid electricity may only be refunded within 48 hours of purchase thereof.
- 5.11 There is no obligation on the Municipality to provide records older than 5 years from the date such records are requested.
- 5.12 Accounts may reflect actual or estimated Municipal charges.
- 5.13 In order to ensure that credit control information on owners and property is regularly updated, the Municipality's Building Plans Assessment Department must provide the CFO with monthly returns of all applications submitted in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977). Such monthly returns must contain the name of the owner of the property, the nature of the application and application reference number, as well as the deeds office description and street address of the property that is the subject of the application. Similar information must be provided by the Municipality's Land Use Management Department in relation to land development applications that are made under the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) read together, with the eThekweni Municipality: Planning and Land Use Management Bylaw, 2016.
- 5.14 Where a Customer of the Municipality seeks to transfer shares in a Share block company-
- a. Such Customer must ensure that all arrears on any Services Account relating to the Customer's individually metered flat within the Share block scheme, are fully paid or satisfactory arrangements have been made with the Municipality to pay the debt. The Customer must liquidate all debt or make arrangements to settle amounts owed to the Municipality, within 14 days of date of conclusion of either the contract that must be entered into for the acquisition of a share or shares in terms of the Share Blocks Control Act, or the date of conclusion of the Use Agreement in accordance with the Share Blocks Control Act, whichever date is the earlier.
  - b. The Share block company, must, before concluding a Use Agreement with the transferee or before the transfer of the shares is effected into the name of the transferee, whichever date is the earlier, forthwith notify the

Municipality, in the prescribed form of the proposed transfer of shares so that the Municipality can update its records.

- 5.15 Provided that the Share block company fulfills its obligations set out in section 5.14 b), the Municipality will not exercise its rights under the Deed of Suretyship contemplated in section 3.21 to recover debt owing by the Customer.
- 5.16 A Share block company must annually, by not later than 30 April of each Municipal Financial Year furnish the Municipality with a written statement, in a prescribed form, certifying-
- a) The number of flats in the Share block scheme that are individually metered for the purposes of receiving a Municipal service;
  - b) The type of Municipal service being supplied to each individually metered flat;
  - c) The full names and addresses of the members of the Share block company whose flats are individually metered, with their corresponding flat number and municipal billing number;
- 5.17 The provisions of section 5.14 b) apply with such changes to the context, as may be required, where a Share block company cancels a Use Agreement that it has concluded with a Customer in terms of the Share Blocks Control Act.
- 5.18 In terms of Section 22 of the Companies Act, 2008 (Act 71 of 2008), a company may not carry on its business recklessly, with gross negligence, with intent to defraud or trade under insolvent circumstances. Where a company fails to honour its obligations to the Municipality in terms of the law, and its debt to the Municipality exceeds 90 days or longer, the CFO may (without detracting from other credit control measures that may be implemented), report such company to the Companies and Intellectual Property Commission for investigation for having breached the provisions of such Act. This could result in the Commissioner issuing an order for the company or close corporation to cease trading.

## 6 RESPONSIBILITY FOR AMOUNTS DUE

- 6.1 In terms of Section 118 (3) of the Systems 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. Accordingly —
- a. the owner of such property shall be liable for charges incurred in connection with such property during his or her ownership and shall remain liable irrespective of the change of ownership, and all municipal debts must be paid by the owner of such property without prejudice to any claim or right of recovery which the Municipality may have against another person;
  - b. the Municipality reserves the right to cancel a contract with the Customer in default and to register the owner of such property for services on the property; and
  - c. Subject to the right to a basic water supply as contemplated in the Water Services Act, 1997 (Act No.108 of 1997), as amended, the Municipality will not provide any services on the property until all municipal debts (other than historic debt incurred by a previous owner of the property), on the property have been paid in full or suitable arrangements have been made to pay such debts. The Municipality reserves the right to determine the manner in which access to a basic water supply will be provided.
- 6.2 Where the property is owned by more than one person, each owner shall be jointly and severally liable, the one paying the other to be absolved, for all municipal debts charged on the property.
- 6.3 Owners with their tenants who are registered as Customers shall be held jointly and severally liable, the one paying the other to be absolved, for debts on their property, except for property rates. It is in the interests of a tenant of property, however, to ensure

that the landlord provides the tenant with proof of payment of rates on the leased property, on a regular basis.

6.4 Refuse removal shall form part of the property debt payable by the owner of the property.

6.5 When a Juristic person opens a Service Account, the directors, members or trustees as the case may be must sign personal suretyships in favour of the Municipality. Liability for outstanding amounts maybe extended to such directors, members or trustees jointly and severally, the one paying the other to be absolved.

6.6 The Municipality may —

a. In a case of an Owner who is in arrears:

(i) recover from a tenant, occupier or agent such monies as are owing by the tenant, occupier or agent to the owner, as payment of the arrears owing by such owner for so long as a tenant or occupier occupies a property in respect of which arrears are owing, or an agent acts for an owner in respect of whose property arrears are owing;

(ii) recover the amount in whole or in part despite any contractual obligation to the contrary on the part of the tenant, occupier or agent; or

(iii) recover from the tenant, occupier or agent an amount which is limited to the amount of the rent or other money due and payable, but not yet paid by the tenant, occupier or agent;

b. apply to the Companies and Intellectual Property Commission to re-register a deregistered company or close corporation or apply to court for an order of restoration or the voiding of the deregistration for the purposes of recovering the amounts owed by that company or close corporation for all municipal debts which have accrued and shall recover the costs of re-registration from the directors or members accordingly; or

c. In the case of assets accruing to the State by operation of any law [(bona vacantia) – Section 76 (2) (i) of the PMFA] collect outstanding fees from

the relevant treasury who may exercise all powers, authority and prerogatives, and fulfill any obligation on behalf of the state.

- 6.7 Should the tenant, occupier or agent refuse to pay as contemplated in subsection 6.6 to the Municipality, the services of the tenant, occupier or agent may be disconnected.
- 6.8 Should any dispute arise as to the amount owing, the Customer shall pay all amounts which are not subject to the dispute that are due and payable, pending the finalisation of the dispute lodged in respect of the specific amount owed by the Customer.
- 6.9 Subject to sections 20 and 21 of this Policy, where an existing Customer wishes to convert an existing electricity and or water supply service to a Pre-paid meter, the Customer must first settle all outstanding amounts or make a suitable arrangement to liquidate the outstanding amount as contemplated in section 24 of this Policy, before an application for a pre-paid meter may be considered.
- 6.10 On special projects identified by the Municipal Council, pre-paid meters may be zero costed.
- 6.11 In former cluster dwellings that are owned by the Municipality, where 80% of the electricity is serviced via pre-paid meters, the remaining credit meters are to be converted to the pre-payment system.
- 6.12 In relation to low cost housing schemes, the Municipality may charge a fixed rate for property rates, which charge may be deducted via the pre-payment system.
- 6.13 The owner of the property may be held liable for tampering with the electricity metering equipment or the water metering equipment on the property as well as charges that arise therefrom.
- 6.14 Subject to the operation of the law, where any subsidiary company of a holding company is indebted to the Municipality, the liability for such arrears may be extended to the holding company; and where any holding company is indebted to the Municipality, the liability for such arrears may be extended to any subsidiary company
- 6.15 Debtors may be referred to a third party debt collector and tracing agent.



6.16 The Municipality may enter into a Credit Authority for the liquidation of a debt by a person other than the debtor, where such person offers to settle the debt and meeting the qualifying criteria as contained in this policy or as prescribed by the CFO.

## **7 PAYMENT OPTIONS**

7.1 The Municipality will endeavour to establish a payment network to ensure that wherever practically possible, Customers have access to a payment site within a reasonable distance of their home.

7.2 The Municipality shall accept payment under the following circumstances–

- a. Payment by cheque – provided it is a Bank cheque in ALL instances.
- b. Payment via , electronic funds transfer (EFT) or Cash for Settlement of final accounts.
- c. Subject to a. and b. above, the following payment methods are also available:
  - (i) EFT;
  - (ii) Internet Transfers;
  - (iii) Third party collectors appointed from time to time by the Municipality;
  - (iv) Direct Debit; and
  - (v) Debit Order payments.
- d. The following shall apply for all EFT payments of the Customer's arrears accounts:
  - (i) Only proof of payments from customers will be accepted.
  - (ii) The proof of payment will be verified, where applicable, for authenticity (through the submitting bank's website).
  - (iii) All reconnection requests where services have been disconnected will ONLY be actioned once payments have been cleared and or receipted to the respective consumer accounts.

- e. Customers whose accounts are in arrears are encouraged to pay at online sites in the Municipality's banking halls.
- 7.3 Under no circumstances will a cheque be accepted by the Municipality except as contemplated in section 7.2 (a) of this Policy.
- 7.4 Where any direct debit or payment made to the Municipality or an authorised official is later dishonoured by the bank, the Municipality or its authorised official–
- a. will recover the bank charges incurred relating to that dishonoured payment against the account of the Customer;
  - b. may regard such an event as default on payment and the account shall be dealt with as an arrear account; and
  - c. reserves the right to take legal action for recovery of arrears.
- 7.5 Where the payment is made by debit or credit card, such payments are limited to R2 500 **per account per month**. Payments made in excess of this value, including multiple payments which value exceeds R2500, will result in an administration charge.
- 7.6 The methods of payment shall be determined by the CFO from time to time.
- 7.7 Where a Customer signs a Credit Authority with the Municipality, payment shall, as far as possible, only be accepted via a direct debit procedure.

## **8 FULL AND FINAL SETTLEMENT**

- 8.1 Where the exact amount due and payable has not been paid in full, any lesser amount tendered and receipted, shall not be in full and final settlement of such an account, except when duly accepted in terms of a delegated authority.
- 8.2 The CFO must be consulted on any settlement, out of court or otherwise, that has a budgetary implication on the Municipality.

## **9 CASH ALLOCATION**

- 9.1 The Municipality may–
- a. consolidate any separate accounts of persons liable for payments to the Municipality;
  - b. credit a payment by such a person against ANY accounts of that person; and
  - c. implement any of the debt collection and credit control measures provided for in this Policy and the By-law in relation to any arrears on any of the accounts of such a person.
- 9.2 Any amounts paid may be appropriated to the oldest debt first.
- 9.3 Any amount paid by the Customer in excess of an existing debt may be held in credit for the Customer in anticipation of future rates and fees for Municipal services, and no interest will be payable on that amount.
- 9.4 The Municipality's allocation of payment is not negotiable and the Customer may not choose which account to pay.

## **10 INTEREST AND ADMINISTRATIVE CHARGES**

- 10.1 Subject to section 10.8, interest charges are raised on arrears which appear on the accounts.
- 10.2 The legal rate of interest raised on arrears is equivalent to the rate of interest as determined in Municipal Property Regulation 9 of the Rates Regulations, 2006 or applicable legislation.
- 10.3 Interest shall accrue 30 days from date of account on unpaid accounts. Interest shall accrue for each completed month in respect of any arrears remaining unpaid after 30 days of the account. A part of a month shall be deemed to be a completed month on the basis that interest is charged as from the first day of the account being in arrears.

- 10.4 Payments on assessed or estimated charges, where the final amount has not been determined but which would have been due and payable had the amount been determined, shall attract interest from the date when it would have been so due and payable. For example, 30 days from date of account.
- 10.5 Where a debtor qualifies for a full reduction in the value of his property, and where such debtor enters into an Acknowledgement of Debt with the Municipality to pay off arrears for service charges, no further interest will be added to the arrears outstanding if during the period, the debtor adheres to the agreement.
- 10.6 Interest may only be reversed under the following circumstances—
- a. exemptions as determined by Council from time to time;
  - b. if the Municipality has made an administrative error on the account;
  - c. Where any debt has arisen as a result of a faulty meter or the Municipality has applied an incorrect charge, meter constant or tariff due to an administrative error;
  - d. where an owner takes over the debts of the tenant; or
  - e. where the Council approves such reversal from time to time;
- 10.7 Where the Municipality has instituted legal action against a debtor to recover any amount in arrears, an administrative charge as determined by a Resolution of Council, shall be levied.
- 10.8 Municipal entities and departments of the Municipality are exempt from interest charged on arrears owed to the Municipality.

## **11 PROCUREMENT OF GOODS AND SERVICES AND PAYMENTS IN TERMS OF CONTRACTS**

- 11.1 When submitting a tender for the provision of services or the delivery of goods, each potential tenderer must prove to the satisfaction of the Municipality that all accounts for which the tenderer is liable, have been paid up to date, and that all accounts for which each and every director, member, owner, partner or trustee of the tenderer is liable for are also up to date.
- 11.2 The Municipality shall at its own discretion check whether all the municipal accounts of the tenderer are up to date. Copies of all current accounts sent to the tenderer and to each director, member, owner, partner or trustee must be attached to the tender documents.
- 11.3 Where a tenderer's place of business or business interests are outside the jurisdiction of the Municipality, a Revenue Clearance Certificate from the relevant Municipality must be produced.
- 11.4 Before awarding a tender, the Municipal debts of the tenderer and of each director, member, owner, partner or trustee of the tenderer must be paid in full.
- 11.5 Where payments are due to a creditor of the Municipality, or in terms of any contractual arrangement with the Municipality, any arrear amount owing to the Municipality may be set off against such payments.
- 11.6 The provisions of this Policy also apply to quotations, public tenders and tenders in terms of section 36 of the Municipality's Supply Chain Management Policy.

## **12 AGREEMENT WITH EMPLOYERS INTERMS OF SECTION 103 OF THE SYSTEMS ACT**

- 12.1 Section 103 of the Systems Act reads as follows—

A Municipality may—

- (a) with the consent of a person liable to the Municipality for the payment of rates or other taxes or fees for Municipal services, enter into an

agreement with that person's employer to deduct from the salary or wages of that person-

- (i) any outstanding amounts due by that person to the Municipality;
- or
- (ii) regular monthly amounts as may be agreed.

12.2 In the event that the employee voluntarily chooses to use the method of payment as contemplated in subsection 12.1 for the payment of his or her municipal accounts, the employee may approach the Municipality for an agreement to be concluded.

12.3 A collection commission may be payable to the employer as determined from time to time.

### **13 STAFF, COUNCILLORS AND WARD COMMITTEE MEMBERS IN ARREARS**

- 13.1
- a. Item 10 of Schedule 2 to the Systems Act (Code of Conduct for Municipal Staff Members) states that–
    - i. a staff member of the Municipality may not be in arrears to the Municipality for rates and service charges for a period longer than three (3) months; and
    - ii. a Municipality may deduct any outstanding amounts from a staff member's salary after this period; and
  - b. The Municipality shall liaise with the relevant staff on repayment of their arrears.
  - c. The staff member must sign a Credit Authority and direct debit deduction form in accordance with this Policy
  - d. No special treatment shall be afforded to staff members whose accounts are arrears.

- e. Any staff member who has breached the code will be dealt with in accordance with the disciplinary procedures adopted by the Municipality or as prescribed by Law or determined by a Collective Agreement.
- 13.2
- a. Item 12A of Schedule 1 to the Systems Act states that a Councillor may not be in arrears to the Municipality for a period longer than three months.
  - b. The Municipal Manager shall liaise with the Speaker and issue the necessary salary deduction instruction where appropriate.
- 13.3
- Where the Municipality is satisfied with the reasons supplied by the staff member or Councillor or Ward Committee Member stating why the account is in arrears, the staff member or Councillor or Ward Committee Member must pay such arrears within a period of 3 months with interest.
- 13.4
- On appointment to a higher post, employees who have signed a Credit Authority shall increase their instalments on the Credit Authority in accordance with their new salary increase.
- 13.5
- Staff and Councillors do not qualify for the Debt Relief Program under section 16 of this Policy.
- 13.6
- The Council reserves the right to deduct any arrears from the stipend or any other amounts payable to ward committee members.

## **14 ARREAR ACCOUNTS**

### **Disconnection and Reconnection of Services**

- 14.1 Arrears on rates, services or any other consolidated debt may result in disconnection of ANY service or in a restriction of use of municipal facilities.
- 14.2 A disconnection fee, as determined by the Council, from time to time, will be raised on all accounts printed for disconnection.
- 14.3 A reconnection fee will be raised on reconnection of services

- 14.4 Any official or contractor appointed by the Municipality for the purposes set out herein, may, at all reasonable times enter any premises to which services are supplied by the Municipality, in order to inspect pipes, wires or any apparatus used for the supply of services and belonging to the Municipality, for the purpose of ascertaining the quantity of services supplied or consumed, or to disconnect or terminate such supply or remove any apparatus belonging to the Municipality.
- 14.5 Should the owner fail to allow access to the premises or the property to which services are supplied by the Municipality on three consecutive occasions, the CFO may, having given due notice, disconnect, stop, restrict or discontinue the provision of any service, and the owner, at his or her cost should opt for a pre-paid meter.
- 14.6 The owner of the property remains liable and responsible for all instances of unauthorised reconnections and disconnections, illegal connection, tampering, damage or theft of municipal infrastructure, and services installed in the property. Furthermore, the onus is upon the owner to ensure that tenants on the premises or the property refrain from such acts. Nothing precludes the Municipality from recovering charges from a previous owner where tampering is proven by the Municipality, or in a court of law, to have predated a current owner's title to the property, or where the application of the laws allows from both the previous and current owner, jointly or severally, the one paying the other to be absolved (given that the debt attaches by law to the property).
- 14.7 An unauthorised reconnection or illegal connection of, or tampering with a service supply is prohibited and shall constitute a criminal offence which shall result in legal action being taken against the owner and disconnection of Municipal services or removal of the entire services supply being effected.
- 14.8 Subject to applicable legislation, the Municipality may refuse the supply of water or electricity to a consumer who is found guilty of fraud, theft or any other criminal offence related to Municipal services, or, where it is evident that such criminal offence has occurred, until such time as the total costs, penalties, other fees, illegal consumption and any applicable tariffs and rates due to the Municipality have been paid in full.
- 14.9 Reconnections of Municipal services will only be allowed when all applicable penalties and fees have been paid and the debt has been extinguished or suitable arrangements have been made to settle the debt.



- 14.10 In addition to the other circumstances in which a Municipal service may be disconnected in terms of this policy or the By-law, services may be disconnected , after due notice has been given –
- a. Where the owner or tenant is deceased and such has not been reported to the Municipality; or
  - b. Where a company, close corporation or trust has been deregistered and such has not been reported to the Municipality, or
  - c. Where a company or close corporation is deregistered and continues to trade but fails to settle debt owed to the Municipality.
- 14.11 Reconnection of services where services have been disconnected in terms of subsection 14.10 above will be authorised when–
- a. an executor has been appointed; or
  - b. the Company or Close corporation has been re-registered.
- 14.12 The services of Customers on pre-paid meters, who tamper with their services, will be disconnected and any amounts due to the Municipality will become payable immediately.
- 14.13 Where a Municipal service, which is not in the name of the registered owner, has been restricted, disconnected or discontinued, the CFO may, subject to the principles of administrative justice, insist that the service be transferred into the name of such property owner; and
- a. Notwithstanding subsection 14.13, the CFO may at any other time insist that the service be transferred into the name of such property owner.
- 14.14 Where a Municipal service is to be disconnected or restricted, as contemplated in subsection 14.1, due notice of intention to disconnect or restrict such Municipal service will be given not only to the debtor but also to the owner of the property, or the tenant/occupier, as the case may be, in line with the Constitutional Court decision in Joseph and Others v City of Johannesburg and Others CC 43/09.
- 14.15 Any additional grounds for disconnecting Municipal services as set out in the Bylaw, shall be deemed to form part of this Policy.

## **15 DOMESTIC WATER AND SEWAGE DISPOSAL CUSTOMERS**

15.1 Flow restrictors or flow limiters shall be installed in water connections of Customers who have not paid the total charges for water services (i.e. supply of potable water, and, where applicable, the disposal of sewage) for sixty (60) days or more, and who owe the Municipality more than the amount determined by the CFO from time to time, for water used and sewage discharged and who have not responded to written notification from the Municipality to–

- a. pay the outstanding amount;
- b. meet with officials of the Municipality; or
- c. make arrangements to settle the debt.

15.2 Flow limiters are installed on application and in compliance with the conditions as set out in section 15.3.

15.3 On restriction of the water supply via a flow restrictor washer, Customers have the following payment options–

- a. pay the outstanding arrear amount in respect of water service charges plus all relevant charges in full;
- b. apply for a flow limiter and sign a Credit Authority, subject to subsection 15.7 ; or
- c. sign a Credit Authority for the arrears.

15.4 In the event of tampering of a restricted supply on two occasions, the Municipality may remove the entire water connection. Customers have two options to facilitate the reinstatement of the water supply–

- a. pay the outstanding debt in respect of water services charges in full (including all charges) plus the prevailing costs of a new water connection and penalty charges; or

- b. apply for a flow limiter and sign a Credit Authority. The connection costs and penalty charges must be paid immediately.
  
- 15.5 If a Customer has received a new connection and then tampers with it again, the connection will be removed and will not be replaced until all outstanding water debts have been paid.
  
- 15.6 All illegal connections that are found will be removed and owners and occupiers may be prosecuted by a court of law.
  
- 15.7 The following applies to customers whose water supply has been limited using a flow limiter device—
  - a. They are obliged to attend a 15 minute training session. The training programme is vital as it makes Customers aware of how to manage with the free basic water per day. The Customer is also made aware that if the flow limiting device is tampered with in any way and the supply of water to the property increases above the free basic water per day and the tampering is detected by the Municipality before it has been reported to eThekweni Water and Sanitation Unit by the Customer, then the supply of water to the property will be permanently disconnected until the amounts owing have been paid in full (including the cost of a new water connection). In this regard, interest will again be due from the date that the tampering is detected by the Municipality.
  
  - b. They must sign a Credit Authority. The debt may not attract further interest for the duration of the Credit Authority.
  
  - c. They must pay a minimum amount, as determined from time to time by the CFO, towards the Credit Authority.
  
  - d. The flow limiting device shall be removed once the outstanding amount is paid in full and the charge to remove the device is paid.

- e. The Credit Authority shall be cancelled on application for a revenue clearance certificate and all debts on the property shall become due, owing and payable.

15.8 In the event of a funeral or other function associated with the death of a family member, or a family wedding, an application may be made for temporary relief whereby the flow limiter may be removed for a specific period of up to seven days only. The application must be supported by a letter from the ward or PR Councillor and the payment of a prescribed fee must be made to the Municipality as per the approved schedule of tariffs. The flow limiter will be reinstated after seven days.

## **16 DEBT RELIEF PROGRAMME**

16.1 The debt relief programme is aimed at assisting Customers who are in arrears for water services charges, for a period of sixty (60) days or more. Customers, excluding staff and Councillors, eligible for the debt relief programme are those families–

- a. who reside on property with a rateable value as determined by the Municipality at its annual budget; or
- b. who, irrespective of the property value, are confirmed by the Head: Water and Sanitation as being too poor to be able to afford their current water services debt; after having taken into consideration an assessment report from a Municipal Social worker in terms of subsection 16.2.b; or
- c. where the Customer has temporarily lost employment and has been assessed by a social worker in terms of subsection 16.2.b.

16.2 The following criteria must be met before a Customer will be regarded as eligible for debt relief:

- a. a comprehensive report by the ward or PR councillor on the Customer and status as contemplated in 16.1 b. and/or 16.1 c must be submitted to the Municipality;

- b. an assessment and report by the municipal social worker who would present his or her opinion, based on a site visit, on whether the family qualifies for debt relief;
  - c. a verification report by a water and sanitation official;
  - d. approval by the Deputy Head: Customer Services (Water) in respect of municipal property values allowed for rates relief; and
  - e. approval by the Head: Water and Sanitation, in respect of municipal property values exceeding the values allowed for rates relief.
- 16.3 Upon approval of the Customer's eligibility for debt relief by the Head: Water and Sanitation and notification to the CFO, the debt must be written off. The CFO must report the writing off of all debt in terms of this section to the Municipal Council by compiling a report in terms of with the Section 71 of the MFMA.
- 16.4 Municipal debts, which have been suspended in respect of former municipal owned property, will be reinstated on application for the issue of a revenue clearance certificate. ["Parked off debt" per Council Resolution date 29 June 2006]
- 16.5 Where residential properties are situated in non-cadastral areas and do not appear in the Valuation Roll, such properties will be valued above R 250 000 if the dwellings on each property have a total floor area of more than 50 square metres.

## **17 DOMESTIC WATER INSURANCE**

- 17.1 It is the responsibility of the Owner of property to take out a water loss insurance policy against undetected underground leaks. Where the Municipality has contracted with a private insurance Company for the provision of Domestic Water insurance for its Customers, a Customer may opt to participate in such insurance arrangement (currently restricted to individually metered dwelling units). In such event, the monthly premium payable, will be raised on the consolidated account, and forwarded to the private insurance company. If the private insurance company, in question, is satisfied that the leak was underground and was repaired correctly, it will process the Customer's claim

and pay directly to the Municipality. Customers are given sixty (60) days after the leak has been repaired to submit a claim. Customers are referred to the actual Insurance policy document for a detailed explanation on the conditions of Indemnity or Basis for Cover.

- 17.2 The Customer's account may be suspended for disconnections to water for a period of sixty (60) days to facilitate the insurance process.
- 17.3 Accounts shall not be suspended where there are disputes in respect of the amount paid or rejected by the insurance company.
- 17.4 Disputes must be lodged, in writing, within thirty (30) days of the claim being paid.
- 17.5 An adjustment, determined in accordance with the terms and conditions of the water loss insurance policy for individually metered dwelling units, will be made in respect of sewage disposal charges raised against any domestic or non-domestic Customer where the sewage disposal charges arise from any underground water leaks which were repaired correctly and timeously.
- 17.6 Customers who are covered by Domestic Water Insurance referred to in section 17.1 will have an item on their account which reads "Water Loss levy".

## **18 TERMINATION OF SERVICES AND SERVICES AGREEMENT**

- 18.1. At least fourteen (14) days' notice is required from the Customer upon termination of an account, to enable the Municipality to take final meter readings and process account adjustments.
- 18.2. Once the account is terminated, the account must thereafter be linked to the owner's rates account.
- 18.3. Unless otherwise directed by an order of court, the Municipality will not terminate or disconnect water and or electricity supply, at the request of a Landlord or owner, where there are occupiers on the property or premises and the Landlord or the owner is not a Customer in respect of such supply.

- 18.4. A Customer who wishes to terminate, disconnect or remove a water and or electricity supply where there are occupiers on the property or premises, must, before such an application may be considered:
- (a) Provide the Municipality with proof that the occupiers have been given 14 days' notice of the proposed termination (not later than 30 days prior to the lodging of an application with the Municipality); and
  - (b) Settle all amounts owing to the Municipality or make a suitable arrangement to liquidate the debt as contemplated in section 24 of this Policy.
- 18.5. The requirement to give 14 days' notice mentioned in subsection 18.4 above, is in line with the Constitutional Court decision in Joseph and Others v City of Johannesburg & Others CCT 43/09 and the principles of administrative justice.
- 18.6. The Municipality may exercise its common-law right where a tenant on a property is in breach of his or her contract with the Municipality, and link the debt to the owners' account. The tenant shall forfeit his or her deposit to the owner where the outstanding debt is paid by the owner.
- 18.7. The Municipality may terminate a service agreement, having given a 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 the Credit Control and Debt Collection By-law.

## **19 UNALLOCATED CONSUMPTION**

- 19.1 A registered owner remains liable to monitor his /her property as well as meter readings even if all electricity or water services have been disconnected. Accordingly when electricity and water consumption is recorded on a property during a period for which there is no registered Customer against whom a bill can be raised, the relevant charges for electricity and water services shall be raised against the registered owner on his or her consolidated bill. Furthermore, the Municipality has the right to remove relevant

Municipal infrastructure (and other components) at the cadastral boundary of the property to ensure that ongoing electricity and or water consumption, is terminated.

## **20 METER READINGS**

The Municipality may estimate readings and read meters in accordance with the period prescribed in the respective water and electricity Policies and By-laws.

## **21 DEBT RECOVERY USING THE PRE-PAYMENT METERING SYSTEM (RESIDENTIAL CUSTOMER ONLY)**

- 21.1 A person whose account is in arrears, may apply to the CFO on a prescribed form for the 50/50 pre-payment debt recovery facility, and, subject to section 21.9 and 21.10 below, for the 80/20 pre-payment debt recovery facility.
- 21.2 In order to qualify for the 50/50 pre-payment debt recovery facility, the following minimum criteria must be met:
- a. A Customer's account must be in arrears in an amount exceeding R500;
  - b. The Municipal valuation of the Customer's property must not exceed R250 000, save that in the case of a Senior Citizen, the Municipal property valuation must not exceed R460 000;
  - c. A Customer must be a Residential Customer; and
  - d. A Customer must sign an Acknowledgement of Debt in favour of the Municipality in respect of the total outstanding debt.
- 21.3 The CFO is not obliged to grant an application for the 50/50 pre-payment debt recovery facility.
- 21.4 When concluding the Acknowledgement of Debt, the customer's deposit will be appropriated towards reducing the outstanding debt.
- 21.5 Where an application for the 50/50 pre-payment debt recovery facility is approved, **NO** connection fee in respect of the prepaid meter and or additional charges or additional



deposit shall be raised for the Customer whose electricity meter was not tampered with and or was not removed on account of tampering.

- 21.6 A Customer whose account is in arrears and whose meter has been tampered with, shall be liable to pay a connection fee and sign an Acknowledgement of Debt before a prepaid meter can be installed on site. Such connection fee may, in the discretion of the CFO, be added to the principal debt owing under the Acknowledgment of Debt.
- 21.7 Upon conclusion of an Acknowledgment of Debt, it will be incumbent upon the Customer to complete such documents as maybe required by the eThekweni Electricity Department for the installation of the pre-payment metering system.
- 21.8 Child - Headed Households must meet the requirements as set out in the Municipality's Rates Policy and an application must be made with the consent of the Social Worker appointed by the Municipality.
- 21.9 In order to qualify for the 80/20 pre-payment debt recovery facility, the following minimum criteria must be met:
- a) A customer must be registered as a residential customer;
  - b) A customer must not be indebted to the Municipality for any other amount (ie other than the electricity debt);
  - c) A customer must be an occupier of, and not the owner of, immovable property.
  - d) A customer must sign an Acknowledgement of Debt in favour of the Municipality in respect of the total outstanding indebtedness.
- 21.10 The 80/20 pre-payment debt recovery facility is only available to a Customer who has incurred electricity debt and is not indebted to the Municipality for any other debt (i.e. other than the electricity debt). In the event of the Customer falling into arrears in respect of any other debt when the Customer is currently benefitting from the 80/20 pre-payment debt recovery facility, the 80/20 pre-payment debt recovery facility will immediately lapse and the facility will be deemed henceforth to be a 50/50 pre-payment debt recovery facility. The Customer may opt for a prepaid system.

## 22 REVENUE CLEARANCE CERTIFICATES

Subject to Sections 118(1) and (1A) of the Systems Act, the following shall apply to the issue of a revenue clearance certificate for the purpose of effecting transfer of a property to a new owner.

### 22.1 Assessments–

- a. an application shall be made by a conveyancer, in the prescribed form. Each application must be accompanied by the relevant application fee. The application will not be processed until the fee is paid.
- b. copies of all current accounts must accompany any application made manually or electronically, as the case may be. If the relevant information is not provided, the application will be returned to the conveyancer.
- c. the Municipality does not accept responsibility for errors on manual applications. The Conveyancer must check that all details on the application, assessment and the revenue clearance certificate are correct.
- d. assessed figures are calculated in advance based on the period determined by the CFO. Municipal charges are estimated based on previous consumption, taking into account any existing Property Rates Rebate. However, in the case of a transfer of a share in a deceased estate property to the heir and holder of the other share/s, assessment figures may be calculated thirty (30) days in advance if all arrear debt is paid or will be paid when the assessment is paid by the Conveyancer and the heir is already registered on the system as a Customer in respect of such property. Should the Conveyancer opt for the reduced assessment period, he/she must indicate this when making application for a revenue clearance certificate.
- e. Where an assessment is requested and there is Section 118(1) debt, and other outstanding amounts that have arisen during ownership of a property (“Section 118(3) debt”), the Municipality shall notify the

Conveyancer, in writing and request an indication of the manner in which the whole of the debt will be settled. The Conveyancer must inform both the seller and the purchaser of the outstanding debt due to the Municipality.

- f. The only acceptable modes of settlement of Section 118(3) debt, other than in the case of insolvency, are: (1) full payment or (2) the furnishing of a Financial Guarantee in favour of the Municipality for the Section 118(3) debt payable on date of registration of transfer of the property.
- g. The Conveyancer must indicate to the Municipality in writing, which of the two settlement modes referred to in 22.1(f) will be used in order to settle the Section 118(3) debt. Such notification must be furnished as soon as possible but no later than 2 days after the date of issue of a revenue clearance certificate in terms of Section 118(1) of the Systems Act.
- h. an "Attorneys' Report" in respect of all amounts owing and the assessed figures, shall be issued upon the receipt of the request for the report.
- i. the assessment shall remain valid for a period of thirty (30) days from the issue date. If payment has not been received within this period, a re-assessment may be required and payment of a further application fee will apply.
- j. prior to the issue of a revenue clearance certificate for a subdivision which is still held under the title of the parent property, the owner/seller must pay all debt on the parent property. The onus rests with the owner/seller to ensure that on new sub-divisions, the debts on the parent property are fully paid.
- k. any discrepancies may result in delays in the issuing of a revenue clearance certificate, and in addition may result in the levying of additional backdated rates, penalties or charges.
- l. any amounts paid shall be appropriated to the oldest debt first.

- m. a separate application is required for each transfer.
- n. an assessment in terms of S118 (1) of the Systems Act will only be issued on request by a Conveyancer.
- o. The Municipality shall exercise its rights to recover such debt as guided by the law on the application of Section 118 of the Systems Act.
- p. the onus is on the Conveyancer to advise the seller of the provisions of section 22.1.o above.
- q. where the Municipal account is in respect of a debt consolidated under Section 102 of the Systems Act, the said consolidated account will be deconsolidated on application for a revenue clearance certificate. An account for the property subject to the Revenue Clearance application will be rendered together with the full interest that accrued on the consolidated account.
- r. Assessed figures **must** be based on, and will be issued only, once an actual reading has been done.
- s. Subject to section 22.7 of this Policy, a revenue clearance certificate shall be issued within ten (10) days of the date of payment of the amount requested in the "Attorneys' Report".
- t. Where simultaneous transfers of a property are contemplated, the Conveyancer must apply for a separate revenue clearance certificate in respect of each new transfer.
- u. A conveyancer must, when requesting an assessment in respect of a property to be transferred to a minor, submit an affidavit in the prescribed form providing such particulars of the minor and of the minor's guardian as may be prescribed.

## 22.2 Revenue Clearance Certificates–

- a. Payment of the assessment must be made in cash, EFT payments, direct debit, bank transfers, bank cheques or other instruments accepted by the CFO from time to time.
- b. There shall be no refunds on the cancellation of a sale or otherwise.
- c. The Certificate shall be valid for a period of sixty (60) days from date of issue.
- d. The certificate shall be endorsed with the balance owing as a charge against the property in order to bring the same to the attention of the seller, buyer and conveyancer. The onus is on the conveyancer to advise his or her clients accordingly.
- e. The Municipality reserves the right to follow any of the legal mechanisms available to it in order to recover the balance of the debt, including, lodging an urgent application to interdict the sale of the property until the debt is paid in full.
- f. All Collection Charges incurred in pursuing recovery of arrears, shall be levied against the debtor's account.

22.3 Information and contact details of the purchaser provided on the revenue clearance certificate shall be used as details of the new owner (purchaser) for the purposes of billing for rates, services and consolidated accounts, until the same has been changed by the purchaser.

22.4 On the date of ownership transfer, the previous owner's (the Seller) service agreement will be deemed to have lapsed, and the new owner (purchaser) must conclude a new service agreement with the Municipality in terms of this policy and By-law.

22.5 The seller shall furnish to the Municipality new contact details, in writing, comprising a postal and physical address and such further information as may be determined by the CFO from time to time, prior to the Municipality issuing the rates clearance certificate. The seller shall continue to keep the Municipality informed of any change in contact details until such time as the Municipality has confirmed in writing that all amounts that

became due whilst the property was in the ownership of the seller (whether or not raised at the time of the rates clearance certificate) have been paid up. Non-compliance with this section will be regarded as an offence.

22.6 Subject to the application of the law, where, subsequent to the transfer of ownership of a property, the Municipality becomes aware of any Municipal Charges that ought to have been raised in terms of any Legislation (e.g. the MPRA) or this Policy against a predecessor in title to the property, the Municipality will be entitled to hold such predecessor in title liable for such Municipal Charges. If, by law, the Municipality is entitled to continue raising such Municipal Charges post transfer, the new owner will only become liable for those Municipal Charges that become due and payable with effect from the date of transfer.

- a. An example will be the levying of adjusted rates in terms of Section 78 of the MPRA on account of an event on the property (e.g. illegal building works) or a change of category (e.g. an illegal use of the property) that occurred prior to transfer and continues post transfer.

22.7 Where an application has been made for a revenue clearance certificate, in respect of a property on which unauthorised development has taken place, or unauthorised /illegal activities have been conducted, the application will not be processed further until such time as the Municipality has re-assessed the valuation of the property.

## **23 LEGAL ACTION.**

23.1 Legal proceedings may be instituted by the Municipality to recover arrear amounts on service accounts, where—

- a. disconnection action yielded no satisfactory result;
- b. disconnection action is not possible due to the nature of the services for which the account has been rendered; or
- c. the arrears are older than ninety (90) days.

- 23.2 The Municipality may, in terms of Sections 28 and 29 of the MPRA, recover arrear rates from tenants in occupation of the relevant property, or managing agents, but only to the extent of the rent payable or amount due by the tenant but not yet paid to the owner of the property. This does not preclude further legal action against the owner.
- 23.3 For residential properties occupied by owners, all reasonable steps shall be taken to ensure that the ultimate sanction of judgment and sale-in-execution is avoided or taken as the last resort. The Municipality, however, has total commitment to follow the legal process through to judgment and sale-in-execution should the debtor fail to make use of the alternatives provided for by the Municipality from time to time.
- 23.4 Once judgment is obtained the properties will be advertised and sold through public auction, unless appropriate settlement has been made to the satisfaction of the Municipality. The Municipality shall assess annually, the appropriate minimum amount below which it will not attach homes.
- 23.5 All Collection Charges shall be debited to the relevant debtor's account.
- 23.6 Proceeds of the Sale in Execution may be appropriated to any of the debtor's accounts in arrears.
- 23.7 Metering and connection equipment remain in the ownership of the Municipality at all times and the owner of the property, on which such meters and connection equipment is installed, shall be held responsible for all instances of tampering, damage or theft. Accordingly, the owner of the property concerned is liable for any breach of this duty and may be prosecuted.
- 23.8 Where a Sectional Title Body Corporate is in arrears, the CFO may apply to court for the appointment of an administrator in terms of Section 16 of the Sectional Titles Management Scheme Act 8 of 2011, as amended, or for the joinder of the members of the Body Corporate, in their personal capacities as joint judgment debtors in respect of a judgment debt in favour of the Municipality in terms of section 15 of such Act.

## **24 CREDIT AUTHORITIES IN RESPECT OF ARREARS IN TERMS OF SECTION 58 OF THE MAGISTRATES COURTS ACT**

- 24.1 The Municipality may, at its discretion, enter into a Credit Authority in the prescribed form, incorporating a consent to judgment in terms of section 58 of the Magistrates Courts Act, with Customers and owners in arrears with municipal service fees, surcharges on fees, property rates and other municipal taxes, levies, duties and sundry charges, after consideration of an application submitted by such persons as prescribed by the Municipality.
- 24.2 The Municipality may conduct a credit check and request certain information from a Customer or owner in order to satisfy itself that the Customer or owner will be able to honor the agreement. Such credit check may include a full risk analysis of the Customer or owner concerned to determine his/hers/it's:
- (a) Risk profile as an individual/entity;
  - (b) Interests in any Juristic person;
  - (c) Affordability of the proposed debt instalments; and
  - (d) Court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments
- 24.3 Before any Credit Authority is concluded, all municipal service fees, surcharges on fees, property rates and other municipal taxes, levies, duties and sundry charges must be consolidated onto one account (if not done previously) and a Credit Authority concluded for the full debt.
- 24.4 The customers' current account must be paid in full, and maintained, for the duration of the Credit Authority.
- 24.5 The owner of a property must consent in writing to a Credit Authority being entered into between the Municipality and his or her tenant.



- 24.6 Should the tenant breach the Credit Authority referred to in subsection 24.5 above, the Credit Authority and the account shall be terminated immediately with the tenant and linked to the owner's rate account.
- 24.7 Re-connection and disconnection fees, where applicable, must be paid in full before any Credit Authority can be entered into.
- 24.8 By entering into a Credit Authority, the debtor(s), and where applicable, the owner, acknowledges that failure to meet any installment will, subject to the provision of the Bylaw, result in prompt disconnection action being taken, without prejudice to any legal action that the Municipality may take to recover the arrears.
- 24.9 Credit authorities to be concluded with Juristic persons shall require;
- a. documentation and information as set out in section 3.12 above as maybe applicable;
  - b. the financial situation of the Juristic person to be reviewed taking into account latest audited financial statements and other supporting documentation relevant to their financial position;
  - c. Deeds of suretyship in favour of the Municipality, by the persons referred to in subsection 3.12 (b) above, as the case maybe; in an amount equivalent to the value of the debt plus current accounts; and
  - d. the deposit to be reviewed.
- 24.10 A Credit Authority may **not** be granted where—
- a. arrears have arisen due to dishonoured cheques or direct debit reversals;
  - b. instances of repeated meter tampering or illegal connections have been identified;
  - c. the services have been removed;
  - d. a customer has failed to honour a previous acknowledgement of debt for the payment of arrears to the Municipality, unless the CFO otherwise decides on good cause shown;

- e. the CFO determines that the customer will be unable to afford the debt repayments under the Credit Authority; or
- f. Any other relevant factors as determined by the CFO from time to time.

24.11 Where any debt has arisen as a result of a faulty meter or the Municipality having applied an incorrect charge or tariff, the Customer may arrange to pay the debt over a maximum period at the discretion of the CFO.

24.12 The amount of the down payment and the period of the Credit Authority shall be at the discretion of the CFO.

24.13 The Credit Authority shall be terminated if a debtor relocates from the property. The balance owing shall become immediately due and payable.

24.14 The monthly installments on a Credit Authority are payable within twenty one (21) days from the date of the account notwithstanding any further extension of time printed on the face of the account.

24.15 A Credit Authority shall be cancelled upon application for a revenue clearance certificate on the property, and the whole debt shall become due, owing and payable, notwithstanding any agreement to the contrary.

24.16 Where the Credit Authority is based on interim readings, the amounts on the Credit Authority will accordingly be adjusted once the actual readings are taken. The Customer must sign any additional documentation relative to this.

24.17 A Credit Authority for staff and councilors shall be in accordance with section 13.

24.18 The customer who signs a Credit Authority may make payment to the Municipality via a Debit Order.

24.19 The Municipality is not a Credit Provider within the meaning of the National Credit Act, 2005 (Act No 34 of 2005). Nothing in this Policy should be construed as conferring such status on the Municipality.

## 25 DISPUTES

- 25.1 A Person who wishes to lodge a dispute in respect of an account must submit the dispute in writing, on the prescribed form, to the Authorised Official as defined in this Policy stating the reasons for such dispute and any relevant facts, information or representation which the Authorised Official should consider to resolve the dispute.
- 25.2 The dispute must be submitted within twenty one (21) days of the account. If a dispute is raised after this period, it will be treated as an enquiry, the account will not be suspended and normal credit control procedures will apply.
- 25.3 The dispute must relate to a specific amount on the account. Amounts not in dispute must be paid in full. If the amounts not in dispute remain unpaid, services may be disconnected.
- 25.4 Should any dispute arise with respect to the amount owing, the debtor must continue to make regular payments based on the average charges for the preceding three (3) months prior to the dispute, plus interest where applicable. A debtor may not raise a dispute under this Policy in relation to rates levied on a property due to its categorization of Unauthorised or Illegal Development in terms of the MPRA. The legal remedies to object or appeal against such categorization, are contained in the MPRA
- 25.5 A query is not regarded as a dispute. A query is a verbal inquiry whereas a dispute must be in writing and lodged with the relevant municipal department or section.
- 25.6 Proven tampering charges are not regarded as a dispute. Where a charge or penalty has been legally raised in relation to an Illegal Connection, a person may not raise a dispute in terms of this section 25. Any legal remedies must be invoked under the legislation that gave rise to the charge or penalty. The charge or penalty remains payable unless reversed by law.
- 25.7 The person contemplated in 25.1 above must provide the Authorised Official with the account alleged to be in dispute, which includes incorrect readings, misallocation of payments, incorrect tariffs charged and incorrect property values used and any other relevant information that may be required.

- 25.8 The Authorised Official:
- a) May investigate or cause the dispute to be investigated within thirty (30) days , or as soon as possible after such dispute is received;
  - e) May call for additional information /documentation from a Customer who disputes an account;
  - f) Must inform the person in question , promptly, in writing, of his or her finding after conclusion of the investigation; and
  - g) Must take a decision, based on the spirit of the Policy.
- 25.9 A dispute submitted above shall not stop or defer the continuation of any credit control and legal procedure already instituted for the recovery of arrear payments relating to such dispute.
- 25.10 A Person has the right to appeal to the CFO against the decision of the Authorised Official. The CFO may hear representations and either confirm, vary or revoke the decision of the Authorised Official and must communicate his decision within 30 days of date of receipt of the appeal or as soon thereafter as possible.
- 25.11 A person whose rights are affected by the decision of the CFO may lodge an appeal against that decision within 21 days of the date of notification of the decision, to the Municipal Manager in terms of section 62 of the Systems Act. The appeal must be lodged on the prescribed form.
- 25.12 Disputes regarding the General Valuation Roll must be submitted to the Municipality's Real Estate Unit in the form of an objection or appeal as envisaged by Sections 50 and 54 of the MPRA. The account must be paid in full until an objection or appeal outcome is reached where after the account will be credited or debited accordingly.

## **26 REFUNDS**

- 26.1 Credits on accounts shall only be refunded:
- 26.1.1 On application and subject to all the Customer's accounts being fully paid,
- a. to the account holder, on a water services or electricity account; or
  - b. to the owner; or

- c. to the conveyancer to pay the buyer or seller, on/after transfer of a property,  
unless otherwise directed by an order of Court.
- 26.2 The provisions of subsection 26.1.1 above shall also apply to any credits that may arise from an objection or Appeal process.
- 26.3 A refund shall be forfeited after 3 years if it remains unclaimed.

## **27 DECEASED ESTATES**

- 27.1. Subject to subsection 27.7, the Executor or representative of a Deceased Estate shall be liable for payment of all debts on the property.
- 27.2. Notwithstanding the provisions of section 3, for the purposes of liability for an account, including a consolidated account, the occupier or occupiers of a property which vests in a deceased estate where neither an executor nor representative has been appointed, will be regarded as the Deemed Owner. The CFO may request a deemed owner to sign a Service agreement. Where there is more than one occupier on the property, every occupier will be jointly and severally liable for an account or consolidated account.
- 27.3. “Deemed Ownership” does not confer any rights on an occupier other than the liability to pay the accounts or as contemplated in this policy.
- 27.4. In accordance with subsection 14.10, failure to inform the Municipality that the property forms part of a deceased estate may result in the disconnection of services, until an executor or representative has been appointed.
- 27.5. Where a deceased estate is insolvent (liabilities exceed all assets) and a property is sold by the executor pursuant to section 34 of the Administration of Deceased Estates Act, 1965 (Act 66 of 1965), the Municipality enjoys preferent creditor status in terms of section 118 (1) of the MSA. Accordingly, no revenue clearance certificate will be issued until all amounts assessed for the prescribed 2 year period, have been paid. The

balance of the debt will be dealt with as guided by the law on the administration of deceased estates.

27.6 Where a deceased estate has not been wound up within a period of 3 years, then the Municipality, without derogating from such other rights as may exist in law, may disconnect a Municipal service to the property, or review the provisions of any applicable Service Agreement.

27.7 The Municipality may conclude a Credit Authority with any person who wishes to settle a deceased person's debt or a portion thereof. This provision is intended to assist family members of a deceased person or an occupier of property that is vested in a deceased estate, to receive Municipal services pending the winding up of an estate.

## **28 HOUSING**

28.1 This Policy shall apply equally to Social Housing tenants.

28.2 Where the Municipality has sold a property in a suspensive sale agreement to a Social Housing tenant and that owner or tenant is responsible for the rates and service charges on that property, the accounts will be consolidated with rates, and services will be disconnected for non-payment.

28.3 Where Social housing tenants are substituted in terms of any Municipal Policy, Legislation or agreement, the substituted tenant shall assume the rights and obligations of the one so substituted, including all debts, credit authorities and deposits.

## **29 IRRECOVERABLE DEBT**

29.1 Debt will only be considered as irrecoverable if it complies with one or more of the following criteria–

- a. all reasonable notifications and cost-effective legal avenues have been exhausted to recover a specific outstanding amount;

- b. any amount equal to or less than R500.00, or as determined by Council from time to time, will be considered too small, after having followed basic checks, to warrant further endeavours to collect it;
- c. the cost to recover the debt does not warrant further action;
- d. it has been proven that the debt has prescribed;
- e. the debtor is untraceable or cannot be identified so as to proceed with further action;
- f. the debtor has emigrated leaving no assets of value to cost-effectively recover the Municipality's claim;
- g. it is not possible to prove the debt outstanding;
- h. a court has ruled that the claim is not recoverable;
- i. the claim is subject to any order of court;
- j. the claim is subject to an out of court settlement agreement;
- k. the debt is subject to a settlement in terms of section 109 of the Systems Act;
- l. the Municipality has resolved that the debt is irrecoverable;
- m. if an offer of Full and Final Settlement is accepted and confirmed in writing by the Head: Legal and CFO if it has financial implications;
- n. the outstanding amount is–
  - i. as a result of an administration error;
  - ii. an interest as a result of a property debt that arose prior to the current owner taking transfer and successive transfers before his;  
or

- o. expenditure incurred in respect of internal accounts raised in the name of the Municipality, in any previous financial year;
- p. conversion of old dormant account balances of debtors, inherited from the previous municipalities which now form part of the Municipality, and where reasonable steps have been taken to recover these debts; or
- q. where the Municipality-
  - i. expropriates any property; or
  - ii. purchases any property in terms of its Sales in Execution.

29.2. Provided there is sufficient provision for bad debt, the CFO shall write off any revenue which is irrecoverable or the recovery of which is considered not to be reasonably practicable.

29.3. The CFO must report to Council all amounts that have been written off as irrecoverable with the Section 71 MFMA report.

### **30 LEASES**

30.1 Persons who lease property from the Municipality for the purposes of any business or trade must provide a deed of suretyship in favour of the Municipality for the due and punctual payment or performance of all such person's obligations arising from the agreement of lease. Such deed of suretyship must be in the prescribed form and be furnished either before or upon date of signature of the agreement of lease by the last party signing. Where a surety is not the registered owner of property, the CFO will be entitled to conduct a credit check on such person in order to ensure that the Municipality's interests are properly safeguarded, in such event, the provisions of subsection 24.2 will apply, mutatis mutandis. If the CFO is not satisfied with the outcome of the credit check, the CFO may reject such surety. In such event, a prospective tenant must produce another surety to the satisfaction of the CFO.



- 30.2 Where the person referred to in 30.1 above, is a juristic person, the directors, members, trustees or executive officers, as the case may be, must sign a personal surety covering all debt and other obligations arising from the lease or an account in the name of such juristic person.
- 30.3 Subject to section 30.4 below, service accounts must be opened in the name of the municipal tenant only. The rates and services accounts will be consolidated.
- 30.4 Sub-lessees of a municipal tenant may open service accounts in their names with the consent of the Head: Real Estate and provided that the account is consolidated with the rates account.
- 30.5 Upon termination of a lease relating to municipal property through effluxion of time or for any other valid reason, all Municipal services to such property will likewise terminate. Where a natural person or any person occupying residential premises through him/her, is required to vacate such municipal property due to termination of the lease, for whatsoever reason, but refuses to do so, such person's right to access a water and or electricity supply, shall be guided by the law.
- 30.6 The Municipality will not provide a Municipal service to a person who occupies or uses a municipal property without having first obtained the prior written permission of the Municipality.
- 30.7 The leasing of property to a person contemplated in Section 12 (1) of the Diplomatic Immunities and Privileges Act, 2001 (Act No 37 of 2001), as amended, will be guided by the requirements of such Act and the policies and protocols determined by the National Department of International Relations and Cooperation.

## **31 BUSINESS RESCUE**

- 31.1 In terms of Section 118 (3) of the Systems 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. Accordingly
- 31.1.1 Where in terms of the Companies Act, 2008, a company is required to publish a notice in terms of subsection (3)(a) or (4)(b) of Section 129 relating, respectively to the adoption of a resolution to be placed under business rescue or the appointment of a business rescue practitioner, it must simultaneously give

notice to the Municipality by pre-paid registered post to the Correspondence Department, attention **Head of Revenue**, 1<sup>st</sup> Floor Atrium Building, Smart Exchange, Walnut Road, Durban, 4001, and by electronic communication to [revline@durban.gov.za](mailto:revline@durban.gov.za), clearly headed "Business Rescue" for the attention of **Head of Revenue**.

## **32 HOSTELS**

### **Sanctions and collections**

- 32.1 Where an account rendered to a debtor remains outstanding for more than ninety (90) days the defaulting debtor's name may, at the option of the Municipality, be listed with a credit bureau or any other equivalent body as a defaulter,
- 32.2 Emolument attachment orders in the case of employed debtors, and eviction processes may be implemented as part of the debt collection procedures.

## **33 CLAIMS IN RESPECT OF DAMAGE TO SERVICE INFRASTRUCTURE AND MUNICIPAL PROPERTY**

- 33.1 Where a contractor has been engaged to provide services or to deliver goods on behalf of the Municipality and the contractor damages/destroys service infrastructure or Municipal property, the following will apply:
- 33.1.1 The contractor must forthwith notify the relevant department within the Municipality, e.g. eThekweni Electricity Department whose service infrastructure or Municipal property was damaged/destroyed, so that a claim can be submitted to the Municipality's Insurance section or where applicable, to the Municipality's Insurance Company in order to quantify and recover the damages sustained.
- 33.1.2 The contractor shall remain liable for the damage caused to the service infrastructure or Municipal property notwithstanding that its contract with the Municipality may have terminated or been cancelled.

33.1.3 Upon quantification of the damages sustained, the CFO shall issue a certification of the quantum. Such certification shall be deemed to be a liquid document for purposes of recovery of the damages.

33.1.4 The damages shall become a collectable debt in terms of this Policy.

### **34. MISREPRESENTATION**

34.1 Any person who has received any benefit or relief in terms of this Policy and who has misrepresented themselves in order to qualify for such benefit or relief commits an offence and, in addition to criminal proceedings, remedial measures will be taken in a manner as determined by the Municipality from time to time, and the CFO–

- (a) Will reverse all benefits and relief received;
- (b) Will raise any fee, as determined by Council from time to time, as set out in the Tariff Policy; and
- (c) Will cancel any Credit Authority and all amounts due to the Municipality will become payable immediately.

34.2 The Municipal Manager shall report any misrepresentation in terms of this Policy to the South African Police Services.

### **35. POLICY EVALUATION AND REVIEW**

To be in a position to measure the outcome of the Policy, the Municipality believes that the output of this Policy should be measured in terms of general recognised accounting practices and the following benchmarks will be applicable:

	<u>Total amount outstanding</u>		<u>365</u>
DEBT COLLECTION PERIOD	= revenue	X	1

$$\text{ANNUAL DEBTORS COLLECTION RATE} = \frac{\text{last 12 months receipts from debtors}}{\text{last 12 months billing}} \times \frac{100}{1}$$

The norm on the debt collection period is set at 60days and the collection rate is set at 95%

## **ANNEXURE A**

### **ASSISTANCE TO THE POOR**

#### **Electricity:**

eThekwini Electricity implemented a Free Basic electricity (FBE) tariff . This tariff applies to indigent Customers who consume less than 150kWh per month.

#### **Qualifying Criteria**

1. The Customer's consumption must be equal to or less than an average of 150 kWhs per month, calculated over a period of the preceding 11 months (the vending system determines the period of usage, with respect to a meter, and if this period is less than 11 months, the average is calculated over this reduced period).
2. The average consumption is calculated at each purchase or enquiry at the vendor.
3. A person who has zero consumption does not qualify for a FBE token.
4. The FBE tokens must be collected in the current month only, and cannot be carried-forward to the next month.

The above automated-functioning of the system is supported by a manual enabling/disabling of Customers that consume below 150 kWhrs, when required.

#### **Exclusions**

The free basic electricity is meant for the law-abiding indigent customers. The following are excluded from the FBE tariff:

1. Commercial Accommodation as defined in the current Rates Policy of the Municipality;
2. General lighting supplies in residential complexes;
3. Security huts and automated-gate supplies;

4. All business connections; and
5. Indigent citizens who have tampered with their supplies

### **Credit Customers**

All credit Customers that fit the above criteria are required to fill a change-over form to convert to pre-payment metering, at no cost to the Customer. Each of these Customers will be audited for compliance using the above criteria.

### **Prepaid Customers**

All Customers will be audited for compliance and the system of those not fitting the above criteria will be disabled on the vending system. It will be during this auditing process that a formal address will be assigned to each Customer and uploaded onto the prepaid data-base.

### **Free Basic Water:**

- a. No charge for the supply of water is raised for domestic residential Customers for the first 6 kl of water per month for those Customers:
  - i) With a full pressure connection where the property value is less than or equal to the threshold value as approved by the Municipal Council at its annual Budget;  
or
  - ii) With a water supply via a low pressure roof tank.All other domestic residential Customers will be charged for the volume of water supplied at the tariff for residential customers.
- b. All water supplied via a standpipe is free of charge (standpipes are installed subject to the conditions as stipulated in the Water Policy).

### **Sewage Disposal**

There are three levels of service available to Domestic Residential Customers based on certain conditions–

- a. Where the water supply to a Customer is limited to 300 litres per day via a ground tank or yard tap, the only acceptable sewage disposal option is a Urine Diversion toilet, (or some approved alternative thereof ) which is provided at no cost to the householder but then remains the responsibility of the householder for all maintenance items including periodic emptying;
- b. A connection to the Municipal waterborne sewerage system which offers a nil sewage disposal charge for water usage below 300litres per day, a stepped tariff (which provides reduced tariffs for lower sewage disposal volumes ) and a reduced tariff where the water is by means of a semi- pressure service and the water is between 300 litres and 833 litres per day consumption; and
- c. Where a Municipal waterborne sewerage reticulation system is not available an on – site privately owned sewage disposal system ( a conservancy tank, a septic tank or a privately owned low volume treatment plant ) is permitted where the full costs are met by the householder who will not be subject to any Municipal charges for sewage disposal.

These tariffs may be amended by the Municipal Council at its annual budget.

Informal communities are served by communal toilet blocks which are both provided and serviced at no cost to the community.

Where an informal community is located on privately owned land, the consent of the private land owner may be sought before such a service can be provided. Such consent may not be unduly with-held.

### **Refuse Removal**

Property less than the threshold value as approved by the Municipal Council at its annual Budget will be not be charged for refuse and removal.

Property above the threshold value as approved by the Municipal Council at its annual Budget; is based on a sliding scale.

## **Rates**

In addition to the R15 000 reduction in value of residential property imposed by the MPRA, the Municipality may grant an additional rebate by resolution of the Municipal Council at its annual budget. This further rebate is aimed primarily at persons owning low-cost properties and is an integral part of the Municipality's indigent relief measures.

## **Acknowledgement of Debt**

Where a debtor occupies property of the kind referred in this Annexure A, and qualifies for a full reduction in the value of his/her property, and where such debtor enters into an Acknowledgement of Debt with the Municipality to pay off arrears for service charges, no further interest will be added to the arrears outstanding if during the period, the debtor adheres to the Agreement.