



DR NKOSAZANA DLAMINI ZUMA MUNICIPALITY

# Dr. Nkosazana Dlamini Zuma Municipality Credit Control and Debt Collection Policy

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## 1. DEFINITIONS

In this Policy, unless the context indicates otherwise, a word or expression, to which a meaning has been assigned in the Municipal Finance Management Act (MFMA) No. 56 of 2003, has the same meaning:

**“Accounts”** mean the municipal account for services rendered and for assessment rates levied by the municipality.

**“Agreement”** means the arrangement made with customers with regards to arrears.

**“Arrears”** mean any amount due, owing and payable in respect of municipal services not paid by due date.

**“Credit control”** is the process utilized by a municipality to ensure collection of revenue from rates, fees levied and for services rendered and entails in the main, metering/measurement, billing/invoicing and debt collection. It can also involve limiting of further sales of services to debtors in arrears and the negotiation for payment in exchange for normalizing further service delivery.

**“Customer”** means any person liable to the Municipality for taxation or other charges.

**“Due date”** means the date indicated on an account statement by which time payment of the amount on the statement is required.

**“Indigent”** means a household customer qualifying and registered with the Municipality as an indigent in accordance with the Indigent Management Policy;

**“Municipality”** for the purpose of this policy it means the Dr. Nkosazana Dlamini Zuma Municipality.

**“Municipal services”** for purposes of this policy mean services provided by the municipality or its authorized agent, including refuse removal and rates, or any one of the above.

**“This Policy”** means the Credit Control and Debt Collection Policy.

## 2. INTRODUCTION

In terms of the Bill of Rights, everybody has the right of access to certain municipal services. A local authority can therefore not refuse a person his/her constitutional rights on the basis that he/she constitutes unacceptably high credit risk. It is in any event, not in the spirit of transformed local government in South Africa to exclude people from basic services, especially those residents in the long-neglected communities.

However, it is in nobody's interest that these basic rights be abused (for example, by not paying or abusing usage). A national disaster could follow in the wake of a general collapse in local government. The right of access to basic services should be protected but, on the other hand, local government should be given protection against abuse.

The Constitution states in section 152 (1)(b), that local government must strive within its financial and administrative capacity, to ensure the provision of services to communities in a sustainable manner.

Services should be rendered within the following eight principles, as outlined in the White Paper on Transforming Public Services:

- a) Consultation with community;
- b) Agreement on service standards;
- c) Equal access to services
- d) Courtesy in rendering of services;
- e) Provision of information to all
- f) Openness and transparency regarding cost of services;
- g) Communities' right to redress; and
- h) Value of money

The above could only be realized if local government obtains sufficient revenue to fund its activities and tasks in order to provide services.

Presently, local revenue comes from two sources, namely;

- a) Own generation through taxes, levies and tariffs.
- b) An equitable share of revenue raised nationally in terms of section 214 and 227 (1)(a) and (b) of the Constitution.

Section 227 (2), of the Constitution also states that additional revenue raised by the municipalities may not be deducted from their equitable share of revenue raised nationally or from any other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.

The National Credit Control Guidelines issued by the Department of constitutional development on 13<sup>th</sup> March 1998, expresses the following concerns:

- a) Tariffs in many cases are not cost reflective, and therefore the true potential debtors is substantially reduced;
- b) Extending service delivery to the low income communities in the form of basic service, without accompanying improvement in economic circumstances, will increase the negative result;
- c) In many cases, amalgamation has placed immense pressure on the municipal administrative structures. Adjustments to accommodate the changed circumstances may be lagging in favour of showing progress with service delivery;
- d) Lenient approach to debtors, in terms of extended payment periods, is contributing to the debtors' accumulation and is not producing any improvement to the situation on the ground or to substantial cash inflows.

It is therefore critical that municipalities make every effort to collect all the revenues due to them. An effective credit control and debt collection policy is an important tool to enable municipalities to collect revenues due.

### **3. BACKGROUND**

Dr. Nkosazana Dlamini Zuma Municipality has inherited a massively increased population that it must serve in the face of a culture of non-payment of taxes and tariffs by residents.

Combined with service backlogs, collapsed and deteriorating infra-structure and deteriorating credit worthiness, municipalities are experiencing financial stress, and in some instances crisis. The deterioration of infra-structure and service levels then becomes part of a downward spiral as more residents withhold payment leading to further deterioration.

In the absence of a clear and standardized credit control and debt collection policy, municipal officers are left on their own trying to recover debts without, or very limited, support in the face of, quite often, well organized resistance. This invariably leads to a situation where outstanding debts are not recovered leading to the financial collapse of the municipality.

In order to fulfill its Constitutional responsibilities and render services based on the principles outlined in point one above, it is imperative for the Dr. Nkosazana Dlamini Zuma Municipality to optimally exploit its own revenue sources.

#### **4. CREDIT CONTROL PRINCIPLES**

The following principles should be considered;

- a) Enforcement is a local matter subject only to relevant legislation,
- b) The municipal manager who is entrusted with the determination and execution of credit control measures must report to the municipal council;
- c) Enforcement and policy-making must be independent to ensure accountability;
- d) Credit control must be understandable, uniform, fair and consistently applied;
- e) Credit control must be effective, efficient and economical;
- f) The credit control measures employed must be sustainable in the long term; and
- g) A proper indigence policy must be in place to ensure that the circumstances of the poor are accommodated.

## **5. EXPECTED FUTURE PAYMENT LEVELS**

- 5.1 In accordance with commonly accepted best practice, the Municipality will strive to ensure that payment levels in respect of all amounts legitimately owing to the Municipality (inclusive of the balance of the monthly accounts payable by registered indigents) are maintained at an annual average of at least 95%.
- 5.2 In order to deal with the ongoing problem of non-payment by residents who can afford their monthly commitments to the Municipality, the Municipality will follow a dual approach:
- a) To promulgate credit control and debt collection by-laws which deal stringently with defaulters,
  - b) At the same time, through the formal political structures of the Municipality, and in the administration's general dealings with the public, to make the community aware of its legal obligations towards the Municipality, and to emphasize the negative consequences for all if non-payment continues. The Municipality's structures and ward committees are particularly charged with this responsibility.

## **6. KEY ELEMENTS OF CREDIT CONTROL POLICY**

### **6.1 Metering/Measurement**

Service metering or measurement is the determination of the amount of services rendered to each customer in each category. This may vary from flat rates, such as refuse removal, to metered consumption of water and electricity to deemed consumption such as sewerage disposal.

### **6.2 Billing/Invoicing**

Billing refers to the process of preparing and presenting a claim or invoice to each consumer which is based on the quantity of service which is consumed by, and delivered to the consumer in a specified time. Interest will be levied on overdue accounts at the rate of 18% per annum. In addition, a 10% collection charge will accrue two months after the said date on accounts handed over to Debt Collectors/Municipal Attorneys.

- 6.2.1 Customers will receive an understandable and accurate bill from the Municipality which will consolidate all levy charges for that property.
- 6.2.2 Accounts will be rendered monthly in cycles of approximately 30 days at the address last recorded with the Municipality or its authorized agent.
- 6.2.3 It is the customer responsibility to ensure that postal address and other contact details are correct. Consumers are encouraged to provide the municipality with e-mail addresses where accounts could be sent to, rather than traditional postal addresses.
- 6.2.4 Settlement or due dates will be as indicated on the statement.
- 6.2.5 Where an account is not settled in full, any lesser amount tendered and accepted shall not be deemed to be in full and final settlement of such an account.
- 6.2.6 Where any payment is made by a negotiable instrument and is later dishonored by a bank, the Municipality or its authorized agent
  - a) May recover the bank charges related to the transaction against the account of the customer.
  - b) Shall regard such an event as a default on a payment.

### 6.3 Arrear Collection

Arrear collection, commonly known as credit control in local government, refers to the process of recovery of outstanding amounts from customers by taking the necessary steps and actions which include among other, interruption of services, litigation and attachment of assets.

- 6.3.1 Consumers shall not be entitled to interest on deposits lodged with municipality.
- 6.3.2 Upon termination of the consumer agreement with the municipality, the deposit shall first be offset against any outstanding balances and the remaining balance of the deposit (if any), refunded to the consumer.
- 6.3.3 The municipality will operate and maintain suitable and accessible payment facilities.
- 6.3.4 The municipality will, at its discretion allocate payments between service debts and debtors may not specify that payments are for specific portions of the account.

6.3.5 With the consent of a customer the municipality may in terms of section 103 of the Systems Act, approach an employer to secure a debit- or stop order arrangement.

6.3.6 The municipality may provide for special incentives as contemplated in section 103 of the Systems Act.

6.3.7 The customer will acknowledge, in the customer agreement, if he/she uses agents to transmit payments to the municipality for which the customer will still be responsible for late and non-payments.

## **7. RENDERING OF ACCOUNTS**

7.1 The municipality shall render a regular account for the amount owing by a debtor for rates, fees and service charges but failure by the municipality to render such accounts shall not absolve the debtor of his obligation to pay for rates, fees and/or services received. Accounts must show the following:

- a) If measured, details of consumption for the period being charged and the amount due;
- b) If flat rate, the amount due in terms of services rendered;
- c) The amount due for other services rendered;
- d) Other amounts due;
- e) The amounts due;
- f) The amount due for property tax
- g) The final date for payment of amount due, which shall not be more than 7 days from date of invoice.

7.2 The municipality or its authorised agent must, if administratively possible, issue a duplicate account to a customer on request, at a cost as determined by Council.

## **8. CREDIT CONTROL PROCEDURE**

If payment for the amount due is not received by the municipality by the due date, then the following procedure shall be instituted:

8.1 Posting or delivering of a final notice to the debtor demanding payment within seven (7) days of the date of notice;

8.2 The final notice shall contain the following information;

- a) Final date for payment to be made;

- b) Total amount due for payment;
- 8.3 At this stage, the procedure for collection of arrears shall be instituted against debtor.

## **9. PROCEDURE FOR COLLECTION OF ARREARS**

- 9.1 It shall be at the discretion of the Chief Financial Officer whether or not to allow defaulting accountholders to make arrangements for the payment of arrear accounts.
- 9.2 Arrangements entered into must be both affordable to the consumer and protect the Municipality's interest.
- 9.3 Arrangement for payment of arrears should be made as follows but only after an acknowledgement of Debt (the agreement), has been signed by the debtor who should provide positive proof of identity or an authorized agent with Power of Attorney.
- 9.4 The agreement must be completed entailing details of all arrangements for paying off arrear account as set out below. A copy of the agreement must be handed to the client and a copy filed in the debtor's file by the CFO.
- 9.4.1 The municipal manager or the CFO shall decide on an arrangement to settle the balance in equal installments over a maximum period of 36 months. Should the extent of the amount owing be such that repayment cannot be affected as set out above, the matter shall be referred to the Council with a recommendation from the MANCO for an extended period on condition that the recommended period does not exceed 60 months.
- 9.4.2 A 20% upfront payment is required for any application with a repayment period greater than thirty-six (36) months will be referred to the Municipal Council.
- 9.4.3 The payment arrangement may be subject to the supply of proof of income, the previous years audited financial statements, six months' bank statements, valid tax clearance certificate and any other documentation deemed relevant.
- 9.4.4 The first payment (initial payment) to be made after the signing of the agreement shall be made within 30 days. Agreement will lapse if first payment is not received within 30 days.

- 9.4.5 No interest will be charged on arrear amount from the time the agreement is entered into provided that the agreement is honored by the debtor.
- 9.4.6 The CFO when notified by a debtor of his failure to comply with the arrangement, shall consider the merit of the debtor's circumstances in reviewing the arrangement. This could result in either an extension of the period of repayment; or increase the monthly repayments to maintain the repayment period, or temporarily freeze repayments until the debtor's circumstances improve provided the debtor keeps the CFO informed on a monthly to month basis of his circumstances. The CFO in conjunction with the Municipal Manager shall either consider freezing further services or allowing the services to continue for a limited period to be agreed upon depending upon the circumstances. Merit cases must be dealt with individually and could amongst others include the following categories:
- a) Unemployed persons
  - b) Deceased estates
  - c) Liquidated companies or CC's
  - d) Private persons under administration
  - e) Pensioners
  - f) Indigent person
- 9.4.7 Any of the above arrangements will automatically include the condition that all future monthly accounts are paid by the debtor on due date except in case of merit which will be at the discretion of the CFO.
- 9.4.8 A debtor who fails to comply with any of the above arrangements without notifying the CFO, automatically forfeits the benefit of the arrangement made and shall have his/her services discontinued with immediate effect and will be dealt with in terms of 14.2 below. A "refer to drawer" Cheque shall be regarded as a failure to comply.
- 9.4.9 Arrangements should be final and no person will be allowed to enter into a second agreement if the first agreement was dishonored.
- 9.4.10 The CFO is not obliged to notify the debtor of the failure to comply.
- 9.4.11 Should a debtor not settle his/her account in full, after having made the arrangements, fail to comply with the arrangements, Council shall take all

necessary legal steps to recover amount owing including such as attachment of the debtor's assets as per the litigation Procedure

9.4.12 In terms of the Magistrate's Court Act No. 32 of 1944 (as amended) and/or listing with credit bureau.

9.4.13 The Municipal manager/CFO shall consider to waive penalties on overdue rates accounts at his own discretion in order to streamline and speed up the debt collection without bringing each individual proposal to council for approval.

9.4.14 Business Licenses would not be granted to those who have outstanding municipal accounts.

9.4.15 The municipality will deal with arrear debt through section 58 of the Magistrate Court Act.

## **10. QUERIES BY ACCOUNTHOLDERS**

10.1 Consumers have the right to query accounts. In order to ensure the correctness of accounts and the satisfaction of consumers, all queries must be attended to swiftly and effectively.

10.2 Claims of not having received an account do not constitute a valid reason for non-payment of accounts. Queries regarding such non-receipt must be followed up with the Revenue Section in order for same to be addressed. A consumer liable for any services rendered by, or rates due to the Municipality must furnish the Municipality with an address where correspondence can be directed to.

10.3 In the event of an accountholder reasonably querying any item or items on the monthly municipal account, no action shall be taken against the accountholder as contemplated in paragraph 6 provided the accountholder has paid by due date an amount equal to the monthly average monetary value of the three most recent unquarried accounts in respect of the service under query, as well as all disputed balances on such account, and provided further such query is made in writing by the accountholder or is recorded in writing by the Chief Financial Officer on behalf of the accountholder on or before the due date for the payment of the relevant account.

## **11. RIGHT OF ACCESS**

Municipal officials have the right of access to any property occupied by a consumer for the purposes of reading or inspecting meters or connections or to disconnect, discontinue or restrict supply of service and for the evaluation of the property.

## **12. RIGHT OF APPEAL**

- 12.1 An appeal must be submitted to the Municipal Manager prior to the final due date of the contested amount, and must contain details of the specific items, on the account which are the subject of appeal, with full reasons. The debtor's obligation to pay that portion of the total amount due represented by the items appealed against, is suspended until the appeal has been finalized.
- 12.2 The debtor must, however, immediately pay the balance of account together with an amount representing the average cost of the item appealed against over the preceding three months, or an amount determined by the municipal manager.
- 12.3 Whilst the appeal of the debtor is being dealt with, any further amounts accruing for services rendered to the debtor, shall be payable on due date.

## **13. RESPONSIBILITY FOR CREDIT CONTROL**

- 13.1 In terms of chapter 6, section 29 (d) (1), of the Municipal Finance Management Bill, 2000, of the Municipal Finance Management Bill, 2000, the Municipal Manager must take effective and appropriate steps to collect all moneys due to the municipality.
- 13.2 The Local Government Transitional Act determines in Section 10G (2) that, "if a person who is in the employ of the Municipality causes or caused the Municipality a loss or damage because he/she failed to collect money owing to the Municipality for the collection of which he/she was responsible, the Municipal Manager, or, if the Municipal Manager was responsible for such loss or damage, the Council, shall determine the amount of such loss or damage and take disciplinary action where and in appropriate cases recover the loss or damage.

13.3 If any undue interference by a council or councilors inhibits the Municipal Manager from executing his/her responsibilities, he/she should report this to the relevant MEC in terms of section 10H (4) of the Local Government Transition Act.

#### **14. FINANCIAL IMPLICATIONS**

14.1 Implementation of the credit control policy has to be financed from the operating budget of a municipality. If this has an incremental impact on the budget, it should be offset by the improved cash flow as a result of an efficient collection system.

#### **15. PERSONNEL IMPLICATIONS**

15.1 Where credit control function does not exist in a municipality, the responsibility of the function rests with the CFO who should ensure that the function is properly delegated to a responsible official.

#### **16. INDIGENT SUPPORT POLICY**

Indigents are defined as those people, who due to a number of factors, are unable to make a full monetary contribution towards basic services.

Typical examples are, pensioners, students, unemployed, disabled persons etc.

16.1 The Municipality has instituted an indigent support policy that will on an individual basis, subsidize those who are unable to pay the full charges for the services rendered to them.

16.2 In regard to the payments expected from registered indigents, and the credit control and debt collection actions contemplated in respect of such residents, this policy must be read in conjunction with the municipality's approved policy on indigent management.

#### **17. POLITICAL SUPPORT**

17.1 It is clear that without good Administrative processes, good communication and an earnest attempt to change the culture of non-payment and very importantly, total "buy in" from all politicians, no credit control policy will be effective.

**18. BY-LAWS TO BE ADOPTED**

18.1 By-laws shall be adopted to give effect to the Council's credit control and debt collection policy.

**19. COMPLIANCE AND ENFORCEMENT**

- a) Violation of or non-compliance with this policy will give a just cause of disciplinary steps to be taken.
- b) It will be the responsibility of Chief Financial Officer to enforce compliance with this policy.

**20. EFFECTIVE DATE**

The Policy shall come to effect upon approval by Council.

**21. COUNCIL APPROVAL**

Approval of Policy by Council and Effective date: -----

MUNICIPAL MANAGER

DATE

.....

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**ANNEXURE A**

## Litigation Procedure

**LITIGATION PROCEDURES (SIMPLIFIED), IN TERMS OF THE MAGISTRATE'S COURT ACT NO 32 OF 1944 (AS AMENDED, HEREIN AFTER REFERRED TO "THE ACT")****1. LETTER OF DEMAND**

- a. Produce registered letters of demand, for the payment within 14 days from the date of the letter, to the domicile citandi executandi of all debtors' accounts in arrears.

**ALL COSTS OF LITIGATION ARE TO BE DEBITED TO THE ACCOUNT OF THE DEBTOR****2. ARRANGEMENT FOR EXTENSION OF PAYMENT**

- a. In terms of section 57 of "the Act", a person may acknowledge and undertake to pay any debt in installments or otherwise.
- b. This in turn empowers the creditor to obtain judgment and emoluments attachment order, garnishee against the debtor, without having issued summons, provided that a registered letter of demand and a letter of acceptance by the creditor of such acknowledgement and undertaking has been forwarded to the debtor.

**3. DEFAULT JUDGEMENT**

- a. When a matter is undefended within 5 days from issue of summons, an application for default judgment is made.
- b. The application is prepared and the original summons and return of service is attached to the application and taken to the clerk of the court in order to obtain judgment by magistrate.
- c. Once default judgment is obtained from the magistrate, the original documentation is filed at Court and duplicate of judgment returned to the plaintiff.

#### **4. WARRANT OF EXECUTION**

Documentation may be prepared simultaneously with default judgment in order to save time and documentation is also then returned to the plaintiff.

#### **5. ATTACHMENT**

- a. Sufficient copies of the warrant of execution are to be attached to the original for service on each defendant by sheriff.
- b. The Sheriff serves and attaches movable property and the plaintiff receives a return of service and inventory of goods attached, or returns a “Nulla Bona” service.
- c. A notice to remove attached property is then given to the sheriff who will then remove and store movable goods on request.
- d. If goods sold in execution do not cover the amount owed, or “Nulla Bona” return on warrant of execution of movable property is received.
- e. In the case of immovable property, sufficient copies of the Warrant of Execution, describing the immovable property, are to be attached to the original document, for service by the sheriff, on the Registrar of Deeds, the Bondholder, Local Authority and Defendant/s of such attachment of immovable property after which the Sheriff will supply “Returns of Service”.

#### **6. SALE IN EXECUTION**

##### **A. MOVABLE PROPERTY**

- i. Notice of date of sale is prepared in conjunction with- and submitted to the sheriff, three weeks prior to the date of sale.
- ii. Should the goods attached exceed the amount of R3000, as currently prescribed in “The Act”, a notice of sale in execution must be published in the press.

**B. IMMOVABLE PROPERTY**

- i. Notices of date of sale is prepared in conjunction with the sheriff, and published in the press.

**B. SECTION 65 PROCEEDINGS-TO BE DEALT WITH BY MUNICIPAL ATTORNEY**

Once default judgement is obtained and a warrant of execution produces a “Nulla Bona” return of service, and a Deeds search reveals that a defendant owns immovable property, proceeds with section 65 of “The Act” by sending registered notice in terms of section 65, notifying the defendant of the financial enquiry at court.