

Swartland, South Africa

## Credit Control and Debt Collection

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# Swartland South Africa

## Credit Control and Debt Collection By-law, 2020

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**Commenced on 1 July 2019**

*[This is the version of this document from 10 June 2020 and includes any amendments published up to 5 July 2024.]*

*[Repealed by [Credit Control and Debt Collection](#) on 1 July 2024]*

Under section 156 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), Swartland Municipality enacts as follows – WHEREAS section 98 of the Local Government: Municipal Systems Act 32 of 2000 ("the Act") requires a municipality to:

- (1) A municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.
- (2) By-laws in term of subsection (1) may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair differentiation.

### 1. Definitions

"**account**" includes levies, surcharges, service charges and availability charges in respect of the following services -

- (a) electricity supply,
- (b) water supply,
- (c) refuse removal,
- (d) sewerage services,
- (e) rates,
- (f) rental,
- (g) loan instalments,
- (h) interest on arrears, and
- (i) any other levies and monies due and payable to the Municipality;

and municipal account has a corresponding meaning;

"**Act**" means the Local Government: Municipal Systems Act 32 of 2000;

"**arrears**" means any amount due and payable to the Municipality which has not been paid on or before the date of payment;

"**availability charges**" means charges that may be levied against immovable property - whether with or without improvements - that is not connected to any municipal service works, where such property can be reasonably so connected;

"**consumer**" -

- (a) with effect from 1 July 2015 and with regard to property zoned for residential purposes, the owner of the property is regarded as the consumer, irrespective of who the tenant or occupier is; provided

that, where a lease agreement in respect of such property has existed on 1 July 2015, the tenant or occupier is to be regarded as the consumer until the agreement has expired; subject to the definitions of "occupier" and "owner" in this section 1;

- (b) with regard to any other property, the person who receives or uses municipal services or benefits therefrom; and
- (c) with regard to municipal property that is leased, the person who receives or uses municipal services or benefits therefrom;

"**consumer services deposit**", as regards connection of services, means -

- (a) a deposit for residential consumer services (water, electricity, refuse removal and sewerage services), except in the case of indigents; or
- (b) a deposit for residential and business services with a prepaid electricity meter, except in the case of indigents; or
- (c) a deposit for business services (conventional electricity services); and
- (d) increased service deposits (related to arrears and nonpayment of accounts), except in the case of indigents; or
- (e) a deposit for letting a municipal stand pipe;

"**Council**" means the Municipal Council of Swartland Municipality;

"**debt**" means any monies owing to the Municipality in respect of the rendering of municipal services, including monies relating to property rates, housing, motor vehicle registration and licensing, terminated leases and any other outstanding amounts; also, any interest on amounts owed to the Municipality;

"**default**" -

- (a) if, at the end of the Municipality's financial year, an owner owes the Municipality any amount of money in respect of rates or availability charges; or
- (b) if, after 31 October of a given year, an owner is in arrears with payment of rates; or
- (c) if an owner is in arrears for a period of 60 days or more with payments for availability charges, read with the definition of "arrears" in this section 1;

"**Director: Financial Services**" means the municipal official appointed by the Council to administer its finances, regardless of the designation or title attached to the post; the incumbent, and/or any other staff member or official to whom the incumbent has delegated specific duties and responsibilities under this by-law, is responsible for the collection of any and all monies owed to the Municipality;

"**due date**" means the final date, as shown on the municipal account statement, on which payment must be made;

"**financial year**" means the period from 1 July until 30 June of each year;

"**illegal practises**" refers to any practise or trade operated on municipal premises that is in contravention of any national or provincial legislation or any by-laws or regulations of the Municipality;

"**indigent**" means a person or household as contemplated in the Indigent Policy of Swartland Municipality;

"**Municipality**" means Swartland Municipality and includes any delegated official or service provider of the Municipality;

"**Municipal Manager**" means the person appointed in that capacity by the Council under section 55 of the Act read with section 82 of the Local Government: Municipal Structures Act 117 of 1999;

"**municipal services**" has the meaning as defined in section 1 of the Act, and includes a function or a combination of functions listed in schedules 4B and 5B of the Constitution as well as any other service rendered by the Municipality;

"**occupier**" means any person who occupies or has control over any premises;owner -

- (a) as regards property in terms of section 1(a) of the definition of "property": a person in whose name ownership of the property is registered;
- (b) as regards a right in terms of section 1(b) of the definition of "property": a person in whose name the right is registered;
- (c) as regards a land tenure right in terms of section 1(c) of the definition of "property": a person in whose name the right is registered or to whom it was granted by legislation; or
- (d) as regards public service infrastructure in terms of section 1(d) of the definition of "property": the organ of state which owns or controls the public service infrastructure concerned;

provided that, for the purposes of this by-law, the Municipality also regards a person mentioned below as the "owner" of a property in the following cases -

- (i) a trustee, in the case of a property held in a trust, excluding state trust land;
  - (ii) an executor or administrator of a deceased estate;
  - (iii) a trustee or liquidator of an estate that is insolvent or under liquidation;
  - (iv) a judicial manager of the estate of a person under judicial management;
  - (v) a curator of the estate of a person under curatorship;
  - (vi) a usufructuary or other 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; and
  - (vii) a buyer, in the case of a property that was sold and of which possession was given to the buyer pending registration of ownership in the buyer's name;
- (e) as regards immovable property of which the Council is unable to determine the identity of the owner: the person who is entitled to the beneficial use thereof;
  - (f) as regards immovable property in respect of which a lease agreement of 30 (thirty) years or longer was concluded: the lessee thereof;
  - (g) in respect of -
    - (i) a portion of land demarcated on a sectional title plan and registered in accordance with the Sectional Titles Act 95 of 1986: the developer or governing body, as far as the joint property is concerned;
    - (ii) a portion of land: the person in whose name that portion is registered in accordance with a title deed, including the lawfully appointed representative of such person;
    - (iii) any person, including but not limited to -
      - (aa) a company registered in accordance with the Companies Act 71 of 2008, a trust inter vivos, a trust mortis causa, a close corporation registered in accordance with the Close Corporations Act 69 of 1984, and a voluntary association;
      - (bb) any government department;
      - (cc) any council or governing body established in accordance with any legislation in force in the Republic of South Africa; and
      - (dd) any embassy or other foreign entity;

"**person**" includes -

- (a) a natural person;
- (b) a juristic person;
- (c) for the purposes of this by-law, any industrial or commercial undertaking; and
- (d) an organ of state;

"**(this) By-law**" means the Credit Control and Debt Collection by-law of the Municipality as reflected in the Schedule to this by-law;

"**premises**" means any portion of land situated within the municipal area of jurisdiction, and the outer boundaries of which are demarcated on -

- (a) a general plan or diagram registered in accordance with the Land Survey Act 8 of 1997 or the Deeds Registries Act 47 of 1937, as amended; or
- (b) a sectional title plan registered in accordance with the Sectional Titles Act 95 of 1986;

"**property**" means -

- (a) immovable property registered in the name of a person, including - in the case of a 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, excluding a mortgage bond registered against the property;
- (c) a land tenure right registered in the name of a person or granted to a person by legislation; or
- (d) public service infrastructure;

"**standard rate of interest**" means a rate of interest equal to the prime rate as determined by the Reserve Bank of South Africa plus a percentage that the Council determines annually during the budgeting process;

"**this by-law**" includes the policy reflected in the Schedule; and

"**water demand management meter**" means a meter designed to manage the water consumption or needs of a residential property;

## 2. Duty to collect debts

All debts owing to the Municipality must be collected in accordance with applicable national and provincial legislation as referenced in this by-law.

## 3. Provision of services

New applications for services and the provision of new services must be dealt with as prescribed in this by-law.

## 4. Consumer services deposit

The Municipality requires the payment of a deposit for the provision of services. Any adjustment to the basic deposit will be determined by the debtor's municipal payment record, read with the definition of "consumer services deposit" in section 1.

## 5. Interest charges

The Municipality will charge and recover interest in respect of any arrear debt as prescribed by this by-law.

## 6. Municipal staff and councillor arrears

- 6.1 Staff arrears will be handled in accordance with Schedule 2, item 10 of the Act as well as any procedures, method or actions referred to in this by-law. Notwithstanding any other procedure, method or action that may be taken in terms of this policy, the Municipality will deduct any outstanding amount from the salary of staff members who may be in arrears for a period of 3 (three) months or longer.
- 6.2 In accordance with Schedule 1, item 12A of the Act, no municipal councillor may be in arrears more than 3 (three) months with any municipal service fees, surcharges on fees, property rates or any other municipal taxes, levies or duties levied by the Municipality. Notwithstanding any other procedure, method or action that may be taken in terms of this by-law, the Municipality will deduct any outstanding amount from such councillor's remuneration.

## 7. Arrangements to pay arrears

- 7.1 The Municipal Manager may make arrangements with a consumer to pay any arrear debt subject to the conditions prescribed in this by-law.

Should any dispute arise as to the amount of the arrear debt, the consumer must nevertheless continue to make regular payments as per the arrangement until such time as the dispute has been resolved satisfactorily and in compliance with the provisions of this by-law, the policy and all other relevant legislation.

## 8. Agreement with employer

- 8.1 The Municipal Manager may -
  - (a) with the consent of a consumer who is in arrears with payments, enter into an agreement with that person's employer to deduct from their salary or wages -
    - (i) any outstanding amounts due by the consumer to the Municipality; or
    - (ii) regular monthly amounts as may be agreed upon; and
  - (b) provide special incentives for -
    - (i) employers to enter into such agreements; and
    - (ii) consumers who consent to such agreements.

## 9. Power to restrict or disconnect supply of services

- 9.1 The Municipality may restrict or disconnect the supply of any service to any premises whenever the consumer concerned -
  - (a) fails and or neglects to make payment on the due date;
  - (b) fails and or neglects to comply with an arrangement;
  - (c) fails and or neglects to comply with a condition of supply imposed by the Municipality; or
  - (d) damages the municipal infrastructure for the supply of such service and/or tampers with any meter used regarding that service.
  - (e) fails to apply for a new service reconnection under the new consumer's name within 14 days from death of the owner or previous consumer in a bid to mitigate council's risk.
- 9.2 The Municipality may reconnect the restricted or discontinued services only -
  - (a) after the arrear debt and all costs as prescribed in this by-law have been paid in full, and any or all other conditions have been complied with; or

- (b) after an arrangement with the consumer has been concluded for payment of the amounts contemplated in subsection (a) above; and
  - (c) after the consumer has paid all levies as determined in the Municipality's Tariff Policy with regard to tampering and damaging of metering equipment.
- 9.3 The Municipality may restrict, disconnect and/or discontinue any service in respect of any arrear debt.

## 10. Recovery of debt

- 10.1 Subject to section 7, with regard to rates the Municipal Manager must, and with regard to any other debt due and owed the Municipal Manager may -
- (a) recover any debt by legal action;
  - (b) recover debt from any organ of state with due consideration of the provisions of Chapter 3 of the Constitution;
  - (c) refer debt to third-party debt collection agencies if and when so required and subject to the operational capacity or requirements of Swartland Municipality's Finance Department; and
  - (d) use any lawful and reasonable measures of tracing debtors whose information is no longer valid or correct and/or has changed and where such debtor failed to provide the Municipality with reasonable written notification of a change of address and contact details; read with section 11(b).

## 11. Recovery of costs

Where costs are incurred by or on behalf of the Municipality in order to recover monies owed to it, the Municipal Manager may recover such costs, including but not limited to -

- (a) costs and administration fees where payments made to the Municipality by negotiable instruments have been dishonoured by banks when presented for payment;
- (b) legal and administration costs, including attorney-and-client costs and tracing fees incurred in the recovery of debts;
- (c) restriction, disconnection and reconnection fees, where any service has been restricted or disconnected as a result of noncompliance with this by-law;
- (d) any losses the Municipality may suffer as a result of tampering with municipal equipment or meters; and
- (e) any collection commission incurred.

## 12. Attachment

The Municipal Manager may, in order to recover debt, approach a competent court for an order to attach a consumer's movable or immovable property.

## 13. Full and final settlement payments

- 13.1 Any amount tendered in defrayment of a debt must be accepted at any cash-receiving office of the Municipality and by any and all duly authorised vendor points.
- 13.2 No offer of payment in full and final settlement of a debt may be accepted if such amount is less than the outstanding amount, unless confirmed in writing by the Municipal Manager.
- 13.3 Notwithstanding section 13.2, the payment so offered must be credited against the consumer's account without prejudice to the Municipality's rights.



## **14. Consolidation of accounts and appropriation of payments**

14.1 The following arrangements apply in compliance with section 102 of the Act -

- (a) Any separate accounts of persons liable for payments to the Municipality may be consolidated at the Municipality's sole discretion.
- (b) A payment by such a person may be credited against any account of the person concerned.
- (c) Any of the debt collection and credit control measures provided for in this by-law may be implemented regarding any arrears on any of the accounts of the person concerned.

14.2 Section 14.1 does not apply where there is a dispute between the Municipality and a person referred to in sections 14.1(a) to (c) concerning any specific amount that the Municipality is claiming from that person.

## **15. Indigent support**

The Municipality may grant financial assistance to persons who meet the criteria as laid down in the municipal Indigent Policy.

## **16. Delegation**

The Municipal Manager and/or the Director: Financial Services may delegate and/or subdelegate their powers under this by-law to any official or service provider of the Municipality if and when so required and subject to the delegation register.

## **17. Clearance certificates**

Upon the sale of any property the Municipality must issue the required clearance certificate as prescribed in this by-law and the policy, subject to settlement of any and all outstanding municipal accounts.

## **18. Appeal**

A person whose rights are affected by a municipal decision regarding one or more delegated and/or subdelegated powers may appeal against that decision by notifying the Municipal Manager in writing of the intention to appeal and the reasons for doing so within 21 (twenty-one) days of the date of notification of the decision, as stipulated in section 62 of the Act.

## **19. Offences, penalties and the power of entry and inspection**

A person who -

- (a) under section 101 of the Act, read with section 119(3), obstructs or hinders any municipal councillor or official in the execution of their duties under this by-law or the policy;
- (b) unlawfully uses or interferes with municipal equipment or consumption of services supplied;
- (c) tampers with any municipal equipment or breaks any seal on a meter or damages a meter;
- (d) fails to comply with a notice served in terms of this by-law or the policy;
- (e) refuses a municipal official access to any premises; or
- (f) gives false information regarding the supply of services or an application for assistance as an indigent with the intention to defraud or mislead,

will be guilty of an offence and, upon conviction, liable to payment of a fine or imprisonment, imprisonment without the option of a fine, or both a fine and imprisonment as determined by a competent court.

## 20. Repeal of by-laws

The provisions of any municipal by-laws regarding credit control and debt collection are hereby repealed insofar as they relate to matters provided for in this by-law.

## 21. Short title and commencement

This by-law is to be known as the Credit Control and Debt Collection By-law and came into effect on 1 July 2019.

### Schedule

#### Swartland Municipality Credit Control and Debt Collection Policy

In compliance with sections 95, 96 and 97 of the Local Government: Municipal Systems Act 32 of 2000, read with section 156 of the Constitution, Swartland Municipality hereby adopts the following Credit Control and Debt Collection Policy:

WHEREAS section 95 of the Local Government: Municipal Systems Act 32 of 2000 ("the Act") requires a municipality to:

- (a) establish a sound customer management system;
- (b) establish mechanisms for users of services and ratepayers to give feedback to the municipality regarding the quality of services;
- (c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from services are utilised by the municipality;
- (d) take reasonable steps to ensure accurate readings of consumption of services;
- (e) ensure that persons liable for the payment of services receive regular and accurate accounts that indicate the basis on which such services have been calculated;
- (f) provide accessible mechanisms by which persons can query and verify accounts and metered consumption, as well as appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- (g) provide accessible mechanisms for dealing with complaints, ensuring prompt replies and corrective action by the municipality;
- (h) provide mechanisms to monitor the response time in dealing with complaints as set out in (g) above; and
- (i) provide accessible pay points and other mechanisms for settling accounts or for making prepayments for services;

AND WHEREAS section 96 of the Act requires a municipality to:

- (a) collect all money that is due and payable; and
- (b) for the above-mentioned purpose must adopt, maintain and implement a credit control and debt collection policy;

AND WHEREAS section 97 of the Act requires the debt policy to provide for:

- (a) credit control procedures and mechanisms;
- (b) debt collection procedures and mechanisms;
- (c) indigent debtors;
- (d) realistic targets;

- (e) interest on arrears;
- (f) extended time for payment of accounts;
- (g) termination and/or restriction of services while payments are in arrears;
- (h) measures in case of unauthorised consumption of services, theft and damages; and
- (i) any other matters that may be prescribed by regulation under section 104 of the Act.

## **Chapter 1**

### **Definitions and objectives**

The definitions below must be read together with the definition of the by-law.

#### **1. Definitions**

"**Covid-19**" means the name given by the World Health Organization (WHO) on February 11, 2020 for the disease caused by the novel coronavirus SARS-CoV-2. It started in Wuhan, China in late 2019 and has since spread worldwide. COVID-19 is an acronym that stands for coronavirus disease of 2019;

"**Lock-down**" means the confining of people to their homes or a state of isolation or restricted access instituted by the President as a preventative measure typically in order to manage a pandemic or any other disaster and to regain control of Covid-19;

"**unprecedented**" means it is in times of crisis that we are asked to question the accepted status quo and seek solutions outside the normal ambit of business as usual. In this vein, the pandemic caused by COVID-19 poses a unique challenge to both business and government to do things differently, with both parties already rising to the occasion. In the South African context, the urgency of the current crisis has broken down procedural barriers and opened doors to strong collaborative approaches, particularly between the Public and Private sector. The imperative in the coming weeks and months, as South Africa emerges from the lock-down, is to ensure that business in this country embraces a new normal.

#### **2. Objectives of this policy**

2.1 The objectives of this policy are to -

- (a) focus on all outstanding debt due and payable to the Municipality;
- (b) provide for innovative, cost-effective, efficient, appropriate and relevant methods for credit control, debt collection and indigent relief;
- (c) promote a culture of good payment habits and create a sense of responsibility towards the payment of municipal accounts and reduction of municipal debt;
- (d) provide for the subsidisation of services to indigent households where applicable and/or on application by qualifying consumers;
- (e) to provide payment relief under certain conditions of crisis and during unprecedented periods and subject to relief being requested by a consumer; and
- (f) Relief will be case specific, based on merit and for consumers affected by Covid-19.

## **Chapter 2**

### **Customer care and management**

#### **3. Communication and the conveyance of information**

- 3.1 In order to comply with sections 95(a) to (c) of the Act, the Municipality may -
- (a) establish a customer care forum where community members and Council members may meet;
  - (b) hold ward meetings where representatives of the Municipality and other service providers may consult with ward members and their ward representative; and
  - (c) implement measures to ensure that consumers of municipal services or any other service, ratepayers and residents in general are properly informed about the delivery of services, in particular about the costs involved in service provision.

#### **4. Measuring of municipal services and defective meters**

- 4.1 The Municipality must ensure that the consumption of electricity and water provided to consumers is measured by means of accurate and verifiable metering systems.
- 4.2 Meters must be read, as far as possible, at intervals of 1 (one) month or a period determined by the Municipality.
- 4.3 If for any reason meters cannot be read or have not been read, the Municipality is entitled to render an account statement based on the estimated consumption calculated on the average consumption during the 3 (three) months preceding the date on which the meter was last read; provided that the difference between actual usage and estimated usage must be set off as soon as a metered reading has been obtained. Reading of meters may not be possible under certain conditions of crisis whereby the Disaster Management Act was activated, whether nationally or provincially.
- 4.4 It may be assumed that the electricity or water usage registered by a meter has in fact been delivered; provided that, for any period that a meter is out of order, the electricity or water so delivered may be calculated according to the average usage during the 3 (three) months preceding the period in question.
- 4.5 Consumers may request a special meter reading against payment of the prescribed tariff.
- 4.6 Defective metering equipment must be handled as stipulated in the Municipality's by-laws regarding water and electricity supply.
- 4.7 The provisions of the by-laws mentioned in section 3.6 regarding defective metering equipment apply with the necessary changes.

#### **5. Municipal accounts**

- 5.1 The Municipality must render a monthly account statement to consumers of municipal services. Postal delivery of an invoice or statement may during periods of disaster, such as a national or provincial period of lock-down, not be delivered.
- 5.2 The account statement must reflect the following -
- (a) all outstanding amounts and the balance brought forward;
  - (b) amounts owing;
  - (c) total amount due; and
  - (d) meter readings, where applicable.

- 5.3 In respect of account statements rendered to a consumer who is not the owner of the relevant property, and where a lease agreement exists between the owner and the tenant, the Municipality reserves the right to switch the account to the owner of the property upon expiration of the lease agreement.
- 5.4 An account as contemplated in section 4.3 will be switched to the owner of the property if -
- (a) ownership changes; or
  - (b) a tenant or occupier fails to pay the account on 3 (three) occasions, irrespective of the period of lease between the owner and the tenant.
- 5.5 Section 4.4(b) applies also in the case of non-residential consumers.
- 5.6 Where the owner of a block of flats fails to pay their account, the Municipality must notify the tenants of such failure and grant the owner 14 (fourteen) days to settle the account, failing which the Municipality may restrict or discontinue services to the premises.
- 5.7 Upon switching of an account under section 4.3 and 4.4 above, consumer service deposits paid by a tenant or occupier must be refunded to the relevant tenant or occupier after the final outstanding balance has been calculated.
- 5.8 The Municipality will supply an owner who rents out property with a copy of the monthly account statement provided to the tenant or occupier of the property. The council will determine the cost of such duplicate statement annually and may debit the amount against the owner's account; provided that e-mailed account statements will be issued at no cost.
- 5.9 An owner who leases out property must provide the tenant or occupier upon request with a copy of the monthly account statement rendered to the owner by the Municipality.
- 5.10 The provisions of sections 4.3 and 4.4 do not apply to -
- (a) occupiers of municipal property under a lease agreement; or
  - (b) state-owned property, where one department pays the rates and another pays the services account.

## **6. Enquiry, dispute and appeal**

- 6.1 Enquiries -
- (a) Consumers may request the Municipality to review an account.
  - (b) While an account is under review, the consumer concerned must pay an amount equal to the average usage for the preceding 3 (three) months, if the history of that account is available.
  - (c) Should the history mentioned in subsection (b) above be unavailable, the consumer must pay an estimated amount before the due date until the matter has been resolved.
  - (d) The Municipality must resolve the matter within 10 (ten) working days of receipt of such request and inform the consumer concerned of the outcome of the enquiry.
  - (e) Failure to pay the amount determined under section 5.1(b) or (c) on or before the due date may result in the consumer's services being restricted or disconnected.
- 6.2 Disputes -
- (a) Consumers may dispute an account received, either in part or in full, in which case section 102 of the Act applies.
  - (b) The provisions of section 5.1(b) and (c) apply, with the necessary changes, to such disputes.

### 6.3 Appeals -

- (a) A person who feels aggrieved by a decision of the Municipality regarding delegated authority may appeal against that decision by means of written notice to the Municipal Manager within 21 (twenty-one) days of the date of notification of the decision, as stipulated in section 62 of the Act.
- (b) The grounds for appeal must be clearly set out by the aggrieved person or their duly authorised representative.
- (c) Where applicable, the costs incurred for testing any metering equipment must be included in the notice.

## 7. Payment facilities

- 7.1 The Municipality must provide and maintain strategically situated, accessible payment offices and cash points throughout its area of jurisdiction.
- 7.2 The following alternative payment facilities must also be provided or made available -
  - (a) electronic bank transfers (ACB system);
  - (b) internet transfers;
  - (c) direct deposits into the Municipality's approved bank account;
  - (d) payments at various accredited businesses and other agencies; and
  - (e) where available, credit and debit card facilities - up to R5 000 per municipal account per month, only in respect of residential property.
- 7.3 Where any of the alternative payment facilities are used, the onus is on the person using such facilities to provide proof of payment, and the Municipality does not accept liability for non-receipt of such payments, or for incorrect allocations which are due to a mistake on the part of that person.
- 7.4 Where payment is made by way of a direct deposit into the Municipality's approved bank account, the consumer must submit proof of the deposit before or on the due date.

## 8. Consolidation of accounts and appropriation of payments

- 8.1 The Municipality considers all separate accounts of a consumer to be consolidated as contemplated in section 102 of the Act, even if separate accounts should be rendered for such owner or tenant and including all prepaid services for which no account statement is issued.
- 8.2 Payments received by the Municipality will be appropriated in the order determined by the Municipality during the annual budgeting process.
- 8.3 The Municipality must appropriate payments received in date order - oldest debts first - by means of instalments as determined by the Council annually in order to prevent prescription, and must take care not to let consumers accrue more debts by neglecting to appropriate a portion of such payment(s) to current accounts.

## Chapter 3

### Credit control and debt collection measures

## 9. Application for municipal services

- 9.1 No person may receive or consume municipal services without the Municipality's approval.
- 9.2 The Municipality may render services to consumers in terms of special agreements where circumstances require special measurements.

- 9.3 Consumers who want to receive or use municipal services must apply in writing for approval as contemplated in section 8.1.
- 9.4 In respect of non-residential property where the consumers are not the owners, the owner must consent in writing to the services being supplied as requested.
- 9.5 Upon approval of an application for services to be provided, the Municipality must inform the applicant of the following -
- (a) the various levels or standards of services available, and the applicable tariffs or fees payable in respect of each level of service;
  - (b) the due date for payment of all amounts owed to the Municipality;
  - (c) the service hours of cashiers where payments may be made, and the conditions for payment at vendor points;
  - (d) the various alternative payment facilities available, and the conditions and requirements relating to each;
  - (e) the Municipality's right to terminate or restrict water or electricity services in case of non-payment of an account or any part thereof or tampering with municipal metering equipment;
  - (f) the consumer's liability for any damages caused to metering equipment or other municipal property;
  - (g) the consumer's obligation to pay for services despite possible non-delivery of an account statement;
  - (h) the owner's liability for the occupier's or tenant's arrears for municipal services;
  - (i) the Municipality's right to consolidate the various accounts of a specific consumer;
  - (j) the Municipality's right to install a prepayment meter on a property where the electricity supply was disconnected because of non-payment or tampering, in which case the meter remains municipal property;
  - (k) the installation of prepayment meters being encouraged but subject to the owner's written permission, while debtors whose electricity supply has been disconnected three times for non-payment will be compelled to install a prepayment meter before the supply will be reconnected; and all energy dispensers being installed at the owner's or tenant's expense;
  - (l) the Municipality's right to install a water demand management meter on a property because of non-payment or tampering, in which case the meter remains municipal property;
  - (m) the Municipality's right to withhold or to limit units purchased for a prepayment meter or to offset a portion of any payment against arrears in case of non-payment of debt owed the Municipality;
  - (n) the Municipality's right to levy interest on amounts not paid by the due date as stipulated on an account statement such interest will be charged and accrue from the 8th of each month;
  - (o) the Municipality's right to attach movable and immovable property;
  - (p) the Municipality's offering assistance to indigents; and
  - (q) the Municipality's having a client service charter.
- 9.6 The Municipality will be obliged to provide a specific level of a municipal service requested only if -
- (a) the Municipality already provides such level of service in the normal course of events; and
  - (b) the Municipality possesses the means and capacity to provide service at such level.

- 9.7 Consumers may apply at any time to change the level of a municipal service originally approved, provided that the level of service requested is available and that the costs and disbursements incidental to such change be borne by the applicant.
- 9.8 In the case of illiterate or similarly disabled persons, the Municipality must ensure that they are aware of and understand the contents of the application form and that they are assisted in completing it.
- 9.9 Should the Municipality -
- (a) refuse an application for the provision of municipal services or of a specific service or level of service; or
  - (b) not be in a position to provide such municipal service or level of service on the date on which it is requested; or
  - (c) not be in a position to provide such municipal service or level of service at all,
- the Municipality must inform the applicant of such refusal or inability to provide the service and the reasons for it.
- 9.10 Approval for the provision of services or any undertaking or arrangement under this policy does not constitute a credit facility contemplated in section 8(3) of the National Credit Act but is deemed to be incidental credit as contemplated in section 4(6)(b) read with section 5(2) and (3) of the National Credit Act.

## 10. Liability for payment

- 10.1 A consumer who receives, uses or benefits from the services offered or rendered by the Municipality in terms of its functions as listed in schedules 4B and 5B of the Constitution is responsible for the payment of any monies due and payable to the Municipality in respect of such consumption or benefit.
- 10.2 If for any reason service charges have not been levied, the Municipality is entitled to issue an account statement as from the date of registration of such property at the Deeds Office.
- 10.3 Rental payable in respect of the letting of state-financed housing and other municipal property is payable by -
- (a) the person with whom the lease was concluded; or
  - (b) if no agreement of lease was concluded: the person who applied to rent the premises; or
  - (c) if no such person can be identified: the head of the household occupying such premises; or
  - (d) any other person who accepts responsibility for the payment of rental due, whether they occupy the premises or not.
- 10.4 The responsibility for repaying housing loans rests on the person(s) with whom the loan agreement or instrument of debt has been concluded.
- 10.5 If an account is not paid in full, any lesser amount offered and accepted by the Municipality will not be regarded as full and final settlement of such account unless the Municipal Manager accepts such lesser amount in writing as being in full and final settlement of the account in question.
- 10.6 Non delivery of an account or an error on or omission from an account statement resulting from an administrative error on the part of Swartland Municipality does not exempt consumers from payment of any amounts owing to the Municipality.



## 11. Due date

Accounts for rates or services offered or rendered by the Municipality become due and payable as follows -

### 11.1 Rates -

- (a) Rates become due and payable on 1 July of each year for which such rates are calculated.
- (b) The Municipality will recover rates levied in 12 (twelve) equal instalments that will be payable on the date indicated on the account statement.
- (c) The Municipality will recover the rates levied in a single amount by prior arrangement, in which case the amount is payable on the date determined by the Municipality in respect of annual payments at the end of October of the year in which the amount is levied.
- (d) Where property becomes taxable after 1 July of the Municipality's financial year, the rates levied become due and payable on the date of notice to the owner of their being liable for payment thereof.
- (e) The provisions of sections 10.1(b) and (c) will apply with the necessary changes in respect of rates levied under section 10.1(d).
- (f) Applications to pay rates in a single amount must be submitted to the Municipality before 31 May of each year.

### 11.2 Availability charges -

- (a) Availability charges become due and payable on 1 July of each year for which such fees are calculated.
- (b) The Municipality will recover the availability charges levied in 12 (twelve) equal instalments that will be payable on or before the last working day of each month in respect of which payment must be made.
- (c) If a levy becomes payable after 1 July of a financial year, it becomes due and payable on the date of notice to the owner of their being liable for payment thereof.

### 11.3 Municipal services -

Monies payable in respect of municipal services are due and payable on the date indicated on the account statement that is rendered each month, and payment must be made on or before the last working day of the month in which an account was delivered.

### 11.4 Rental or loan instalment -

Payment of rental or loan instalments due in respect of state-financed housing or other municipal property must be made on the dates and in accordance with the provisions set out in the relevant lease or loan agreements.

### 11.5 Other fees or instalments -

Payment of monies other than those contemplated in sections 11.1(a) to (e) and section 11.4 must be made on the date indicated on the account, which date will be no more than 30 (thirty) days after the particular service has been rendered.

## 12. Accounts in arrears

### 12.1 Rates-

- (a) If rates that are payable in a single amount remain unpaid after the due date, the Director: Financial Services will serve a written notice on the owner demanding payment within 14 (fourteen) days from the date of notification to remedy the default.

- (b) Upon failure to comply with a notice contemplated in subsection (a) above, the Director: Financial Services will institute legal proceedings to recover such rates, subject to the provisions of section 15.
- (c) If an owner who pays rates in monthly instalments defaults on payments, the Director: Financial Services will withdraw by written notice the owner's right to pay monthly instalments, in which event the full amount of outstanding rates becomes due and payable immediately.
- (d) If rates payable in monthly instalments are not paid in full within 12 (twelve) months after the date on which such rates became due and payable, the Director: Financial Services will act as set out in subsections (a) and (b) above.
- (e) Subsections (a) and (b) above apply also with regard to recovery of rates as contemplated in subsection (c).
- (f) Businesses and other consumers affected by the lock-down will be allowed arrangements of up to 6 months on arrear accounts unless otherwise dictated by council given the severity of the situation at hand Current accounts are payable by the due date.

#### 12.2 Availability charges -

Section 11.1(c) and (d) apply, with the necessary changes, to owners who default on payments regarding availability charges.

#### 12.3 Municipal services -

- (a) If a consumer fails to pay any amount or portion thereof regarding municipal services on the due date, the Municipality may -
  - (i) disconnect the electricity supply to the premises concerned;
  - (ii) restrict the water supply to such premises by installing a water demand management meter on the service connection, which will allow the passage of at least 6 (six) kilolitres of water per month or as permitted by such management meter;
  - (iii) install a prepayment meter where the electricity supply has been disconnected because of non-payment;
  - (iv) withhold or limit units purchased for a prepayment meter or to offset a portion of any payment against arrears as result of non-payment of debt owed to the Municipality.
- (b) Notice to a consumer in respect of an account in arrears or outstanding debt may be given via direct electronic media, including but not limited to e-mail, SMS or any other available method of electronic communication determined by the Council from time to time.
- (c) The Municipality may enter into an agreement with consumers who are unable to pay their account or a portion of it in terms of which agreement the consumer will be permitted to pay the outstanding amount in monthly instalments as determined annually by the Council.
- (d) Where applicable, the Municipality may enter into an agreement with a consumer's employer under section 103 of the Act.
- (e) Should a consumer fail to comply with the conditions contemplated in section 11.1(c) or (d), the Municipality may cancel the agreement and institute any of the debt collection measures provided for in section 11.3(a).
- (f) Should a consumer be served with an account that shows an amount payable that is exceptionally high as a result of -
  - (i) an act or omission on the part of the Municipality; or

- (ii) a leakage from a water installation or electricity installation on the premises which is not part of the Municipality's service connection,

the Municipality may enter into an agreement with the consumer to pay the amount owed in monthly instalments.

- (g) If more than 30 (thirty) days have expired after the due date without an agreement having been concluded as contemplated in section 11.3(c), the Director: Financial Services will institute legal proceedings against the consumer in accordance with section 15 for the recovery of the debt.
- (h) Should a basic levy, availability charge, rates or any other cost be levied on premises of which the owner cannot be traced, the Municipal Manager and the Director: Financial Services, in consultation with the internal auditor and the Executive Mayor, may cease such levies; provided that, should the owner be traced, such levies may be recovered retrospectively.

#### 12.4 Rentals or loan instalments -

- (a) Interest payable on rentals or loan instalments in arrears will be levied in accordance with the provisions of the lease or loan agreement concerned.
- (b) Should rentals or loan instalments remain unpaid on or after the due date, a notice demanding payment as well as interest will be served on the person responsible for payment.
- (c) The Municipality may enter into an agreement with a consumer to pay the arrears by way of monthly instalments as set out in section 11.1(d), subject to the necessary changes.
- (d) If no agreement has been concluded to pay the arrears and such arrears should remain outstanding for more than 30 (thirty) days, the Director: Financial Services will take the steps set out in section 11.3(a).

#### 12.5 Other fees or instalments -

Section 11.4 applies, with the necessary changes.

### 13. Levying of interest

- 13.1 The standard rate of interest must be levied and collected in respect of all amounts due and payable for each month; on the understanding that, for the purposes of calculation, a portion of a month will be regarded as a month. Such interest will be charged and accrue from the 8th of each month.
- 13.2 Interest is levied from the first working day following the date on which an amount in arrears has become payable.
- 13.3 The Director: Financial Services, Municipal Manager and internal auditor, in consultation with the Executive Mayor, may authorise such interest to be waived.

### 14. Disconnection and reconnection of services

- 14.1 Services disconnected under section 11.3(a) will be reconnected only upon payment of -
  - (a) the amount in arrears together with interest, or an amount according to a payment agreement under section 11.3(c);
  - (b) the reconnection fees; and
  - (c) any other fees stipulated in the Municipality's Tariff Policy.
- 14.2 The onus is on the debtor to request reconnection and to prove that the full amount owing was paid, or that a payment agreement was concluded.

- 14.3 Restricted or disconnected services will be restored within a reasonable time after the debtor has produced proof of payment of the required amount, and subject to the Municipality's capacity at the time to restore such service.
- 14.4 Services disconnected under section 22 will be reconnected only upon payment of -
- (a) the reconnection fees;
  - (b) the cost of damages to equipment;
  - (c) the replacement costs of damaged equipment; and
  - (d) any other fees stipulated in the Municipality's Tariff Policy.
- 14.5 No standby service will be rendered instead of reconnection in case of non-payment or tampering with metering equipment.
- 14.6 During a period of lockdown as a consequence of a pandemic, reconnection of services may be required and disconnection of services may not proceed.

## **15. Payment of consumer services deposit**

- 15.1 A consumer as contemplated in subsections (b) and (c) of the definition of "consumer" in section 1 of this by-law must pay, upon application for municipal services, a consumer services deposit as determined by the Municipality before the requested services will be provided.
- 15.2 Should a consumer as contemplated in section 14.1 fail to pay the total outstanding debt for municipal services, or should services be disconnected or restricted as set out in section 11.3(a), the Municipality may increase the consumer services deposit.
- 15.3 The increase will be equal to the owner's average consumption over a period of 12 (twelve) months.
- 15.4 Should a consumer as contemplated in section 14.1 move to other premises within the area of jurisdiction of the Municipality, the deposit payable may be increased if such move should require that.
- 15.5 Should services be terminated upon a consumer's request, or should accounts be switched under section 4, the deposit may be utilised to cancel or reduce the owner's debt; the remainder, if any, will be refunded.
- 15.6 The Municipality may increase a deposit held under section 14.1 annually, which increase will be equal to the average of the services consumed over a period of 12 (twelve) months.
- 15.7 Should a consumer vacate the premises, the deposit will be forfeited and applied to settle any unpaid municipal accounts.
- 15.8 The Municipality is not liable for the payment of interest on deposits held.

## **16. Institution of legal proceedings**

- 16.1 The institution of legal proceedings includes but is not limited to -
- (a) issuing summons for payment of amounts in arrears;
  - (b) attachment of rent payable in respect of a property, where applicable;
  - (a) attachment of a consumer's remuneration;
  - (b) attachment and sale in execution of movable property;
  - (c) attachment and sale in execution of immovable property; and
  - (d) eviction of an occupier of any municipal property and/or attachment of an occupier's movable property in terms of a hypothec lien.

- 16.2 The institution of legal proceedings must be undertaken with due consideration of all legal requirements and in compliance with the applicable regulations and court rules as per the Magistrates' Court Act 32 of 1994 (as amended) and the Supreme Court Act 59 of 1959 (as amended).
- 16.3 Should a consumer's debt be less than R500 (five hundred rand) and older than 90 (ninety) days, the Director: Financial Services may decide whether -
- (a) the account should be handed over for collection; or
  - (b) legal proceedings should be instituted against the consumer.
- 16.4 Should the debt be more than R500 (five hundred rand) and older than 90 (ninety) days, the Director: Financial Services may determine which of the judicial measures listed in section 15.3 will be the most appropriate and effective in the particular case.

## 17. Writing off of outstanding debt

This will be dealt with case by case upon the recommendation of the Director: Financial Services, and subject to approval by the Council.

## 18. Payment agreement criteria

- 18.1 Agreements to pay outstanding debts in legal suit by means of monthly payment agreements are made with reference to the following-
- (a) the debtor's income;
  - (b) the debtor's employment status;
  - (c) the total amount outstanding;
  - (d) payment agreement concluded previously;
  - (e) the debtor's socio-economic and/or other circumstances; and
  - (f) the account history.
  - (g) consumer's affected by Covid-19 due to the lock-down.
- 18.2 Agreements to pay outstanding debt on account, not in legal suit but in current status by means of monthly payment arrangement are made with reference to the following -
- (a) the debtor's income;
  - (b) the debtor's employment status;
  - (c) the total amount outstanding;
  - (d) the debtor's socio-economic and/or other circumstances;
  - (e) the account history.
  - (f) consumer's affected by Covid-19 due to the lock-down.

## Chapter 4 General provisions

### 19. Collection costs

All legal costs, disbursements, collection commission and any other expenses incurred by the Municipality in order to recover monies owing by a consumer will be debited against the relevant account and collected from the person responsible for it.

### 20. Dishonoured payments

- 20.1 Should any payment by means of a negotiable instrument be dishonoured by a bank, the Municipality will levy costs and administration fees on the account concerned.
- 20.2 Should cheque payments be dishonoured for a third time within a financial year, the Municipality will accept no future payments per cheque from the owner or tenant concerned.

### 21. Access to premises and the power of inspection

Authorised officials of the Municipality or of a service provider have access to premises at all reasonable hours for the purposes of implementation under this policy; provided that the official concerned must provide the necessary identification upon request by the owner, tenant and/or lawful occupant, and also to the unlawful possessor or holder of the property.

### 22. Safe accommodation of service connections and appliances

Consumers are responsible for safely accommodating any service connections, meters, stopcocks and appliances and equipment for the safeguarding of services on their premises, and are liable for any costs or losses incurred or damages suffered by the Municipality in this respect that result from the consumer's failure to fulfil the aforementioned responsibility.

### 23. Unauthorised use of services

- 23.1 A consumer who -
- (a) uses or gains access to municipal services without approval under section 8.1; or
  - (b) tampers with, breaks or damages any seal, or removes any appliance or equipment which has been installed to measure, provide or restrict the supply of services, will be held liable for payment regarding any unauthorised consumption of services.
- 23.2 The Municipality has the right to disconnect water or electricity supply to premises if -
- (a) such services are used without approval as contemplated in section 22.1(a); and
  - (b) metering equipment has been wilfully damaged or tampered with as contemplated in section 22.1(b).
- 23.3 Without prejudice to the Municipality's right to institute criminal proceedings, a consumer who tampers with or damages any appliance or equipment as contemplated in section 22.1(b) is liable for the costs contemplated in section 13.4.
- 23.4 In the case of tampering with or damaging of any metering equipment, the owner will held responsible for such tampering or damages unless the owner can prove otherwise.

## 24. Signing and certification of documents

Any order, notice or other document which needs to be signed or certified by the Municipality is to be regarded as duly signed and certified if done by the Municipal Manager or a duly authorised municipal official.

## 25. Prima facie evidence

In lawsuits initiated by the Municipality, the court may accept the mere submission of a certificate reflecting the amount due and payable to the Municipality and signed by the Municipal Manager or a duly authorised municipal official as *prima facie* evidence that the amount is indeed due.

## 26. Clearance certificates

- 26.1 Upon the sale of any property the Municipality will withhold the clearance certificate required under section 118(1) of the Act until all amounts have been fully paid that became due and payable in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the 2 (two) years preceding the date of application for the certificate.
- 26.2 All payments must be allocated to the seller's municipal accounts, and all refunds will be made to the seller.
- 26.3 No interest will be paid in respect of such payments.
- 26.4 The clearance certificate validation period is stipulated to be 120 (one hundred and twenty) days under section 118(1) of the Act, and the amount due must be calculated as follows -
  - (a) applications received on 30 June must include 3 (three) months' advance payments;
  - (b) applications received on 1 July must include -
    - (i) rates and availability charges in advance for the full financial year; and
    - (ii) 3 (three) months' advance payments for water, electricity, sewerage services and refuse removal;
  - (c) all other applications must include 3 (three) months' advance payments.
- 26.5 Payments under section 25.4 must include all outstanding debts due and payable regarding the property.
- 26.6 Under section 118(3) of the Act an amount due for municipal services, surcharges on fees, property rates and other municipal taxes, levies fees and charges is a charge upon the property regarding which the amount is owed, which enjoys preference over any mortgage bond registered against the property.
- 26.7 The amount owing is for the account of the registered owner regardless of who incurred the debt.
- 26.8 The Municipality may obtain a court order to sell any property in execution to recover outstanding debt due and payable as set out in the court order.

## 27. Offences and penalties

- 27.1 The following are offences and in contravention of this policy -
  - (a) read with section 20: to refuse, obstruct or hinder access to their property to a duly authorised municipal official wishing to exercise their power to perform a municipal function or duty; or

(b) read with sections 22.1(a) and (b) and 22.4: to use unlawfully or to interfere with, tamper or damage municipal equipment.

27.2 A tampering fee applies to the offences mentioned in section 26.1.

27.3 Council may decide on further legal remedies, which may include criminal prosecution.