

Swartland, South Africa

Credit Control and Debt Collection

Legislation as at 14 June 2024

FRBR URI: /akn/za-wc015/act/by-law/2024/credit-control-and-debt-collection/eng@2024-06-14

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PDF created on 2 July 2024 at 08:32.

Collection last checked for updates: 28 June 2024.

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Credit Control and Debt Collection

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Swartland South Africa

Credit Control and Debt Collection By-law, 2024

Published in Western Cape Provincial Gazette 8939 on 14 June 2024

Commenced on 1 July 2024

[This is the version of this document from 14 June 2024 and includes any amendments published up to 28 June 2024.]

To give effect to the Credit Control and Debt Collection Policy of the Swartland Municipality, and to provide for matters incidental thereto.

WHEREAS, in terms of section 98 of the Local Government: Municipal Systems Act 32 of 2000 ("the Act"):

- (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; and
- (2) by-laws in term of subsection 98(1) of the Act 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,

BE IT THEREFORE ENACTED by the Council of the Swartland Municipality under section 156 of the Constitution of the Republic of South Africa ("the Constitution"), as follows:—

1. Definitions

In this by-law, the English text prevails in the event of any conflict with the Afrikaans text. Any word or expression to which a meaning has been assigned in the Act, shall bear the same meaning in this by-law, and unless the context indicates otherwise, the following words or expressions shall have the meanings as herein defined:—

"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, as amended from time to time;

"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 non-payment of accounts), except in the case of indigents; or
- (e) a deposit for letting a municipal stand pipe;

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

"Credit Control and Debt Collection Policy" means a policy adopted by the Council for purposes of credit control and debt collection of all monies due and payable to the 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" means—

- (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 the 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 54A of the Act;

"**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;

"**POPIA**" means the Protection of Personal Information Act 4 of 2013;

"**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.

2. Credit Control and Debt Collection Policy adopted by the Council

The Council has adopted a Credit Control and Debt Collection Policy to deal with and regulate the matters as prescribed in Chapter 9 of the Act, the contents of which policy are hereby incorporated into this by-law by reference and *mutatis mutandis* assigned the status of a by-law in as far as it is required for its implementation, enforcement and to be given effect to in terms of the provisions of sections 12 and 13 of the Act.

3. 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.

4. Provision of information

An owner, consumer, occupier or debtor within the municipal area must provide the Municipality with accurate information requested by the Municipality that is reasonably required by the Municipality for the implementation or enforcement of this by-law. No person shall make a false statement or furnish false information to the Municipality or falsify a document issued in terms of this by-law. The Municipality shall process all personal information subject to the minimum conditions for lawful processing in terms of the provisions of POPIA.

5. Municipal staff and councillor arrears

- 5.1 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 the Credit Control and Debt Collection 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.
- 5.2 In accordance with Schedule 7, item 14 of the Local Government Municipal Structures Act 117 of 1998, no municipal councillor may be in arrears for 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 and the Credit Control and Debt Collection Policy, the Municipality will deduct any outstanding amount from such councillor's remuneration.

6. Power to restrict or disconnect supply of services

- 6.1 The Municipality may restrict or disconnect the supply of any service to any premises whenever the owner, consumer or occupier 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;
 - (d) damages the municipal infrastructure for the supply of such service and/or tampers with any meter used regarding that service; or
 - (e) fails to apply for a new service reconnection under the new consumer's name within 14 (fourteen) days from death of the owner or previous consumer.
- 6.2 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
- 6.3 The Municipality may restrict, disconnect and/or discontinue any service in respect of any arrear debt.

7. Recovery of debt

Subject to section 6, 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 Financial Services Directorate; 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, and shall all personal information be processed subject to the minimum conditions for lawful processing in terms of the provisions of POPIA.

8. 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 non-compliance with this bylaw;
- (d) any losses the Municipality may suffer as a result of tampering with municipal equipment or meters; and
- (e) any collection commission incurred.

9. 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.

10. Indigent support

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

11. Delegation

The Municipal Manager and/or the Director: Financial Services may delegate and/or sub-delegate their powers under this by-law and the Credit Control and Debt Collection Policy as amended and approved by the Council from time to time to any official or service provider of the Municipality if and when so required and subject to the Municipality's system of delegation.

12. Clearance certificates

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

13. Appeal

A person whose rights are affected by a municipal decision regarding one or more delegated and/or sub-delegated 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.

14. 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 Credit Control and Debt Collection 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 Credit Control and Debt Collection 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.

15. Repeal of by-laws

The Swartland Municipality Credit Control and Debt Collection By-law as published in *Provincial Gazette* 8246 of 10 June 2020 is hereby repealed.

16. Short title and commencement

This by-law shall be known as the Credit Control and Debt Collection By-law and shall come into operation on 1 July 2024.