

DRAKENSTEIN MUNICIPALITY

Drakenstein Municipality, by virtue of its powers vested in it by section 156(2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) as amended, read with sections 95 to 98 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as amended, read with section 64(2)(a) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) as amended, has made the following by-law set out in the schedule below:-

SCHEDULE

BY-LAW NO. 1/2006: CUSTOMER CARE, CREDIT CONTROL & DEBT COLLECTION

PREAMBLE

Whereas the Municipal Council of Drakenstein has adopted a Customer Care, Credit Control and Debt Collection Policy on 29 June 2006;

And whereas section 98 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) provides that a municipal Council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement;

Now therefore the Municipal Council of Drakenstein resolved to adopt the following by-laws:-

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1. DEFINITIONS

For the purpose of these by-laws any word or expressions to which
a meaning has been assigned in the Act shall bear the same meaning

in these by-laws and unless the context indicates otherwise -

(Act "Act" means the Local Government: Municipal Systems Act, 2000

32 of 2000), as amended from time to time;

"apparatus" includes a building, structure, pipe, pump, wire, cable, meter, machine or any fitting;

"billing" means proper formal notification on an account to persons liable for payments of amounts levied for assessment rates and other taxes by the municipality and the charges of the fees for municipal services and indicating the net accumulated balance of the account;

"chief financial officer" means a person appointed by the Council to manage the Council's financial administration;

"council" the municipal Council of the municipality of Drakenstein;

"credit control and debt collection" means the functions relating to the collection of all money that is due and payable to the municipality;

"customer" means any occupier of any premises to which the municipality has agreed to supply or is actually supplying services, or if there is no occupier, then the owner of the premises;

"customer care" means focussing on the client's needs in a responsive and pro-active way to encourage payment and to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and when applicable, a service provider, thereby limiting the need for enforcement;

"defaulter" means a person owing the municipality money in respect of taxes and/or municipal service charges not paid on the due date for payment;

"engineer" means a person in charge of the civil or electrical departments of the municipality;

"interest" constitutes a levy equal in legal priority to service levies and is equivalent to the prime banking rate applicable from time to time;

"municipal account" shall include levies or charges in respect of the

following services and taxes:-

- (a) electricity consumption,
- (b) water consumption,
- (c) refuse removal,
- (d) sewerage services,
- (e) rates and taxes,
- (f) interest, and
- (g) miscellaneous and sundry charges.

"municipal manager" means the person appointed by the Municipal Council as the Municipal Manager of the municipality in terms of section 82 of the Local Government Structures Act, 1998 (Act 117 of 1998) and includes any person:

- (a) acting in such position; and
- (b) to whom the municipal manager has delegated a power, function or duty in respect of such delegated power, function or duty;

"municipal services" those services, rates and taxes reflected on the municipal account for which payment is required by the municipality.

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

"owner" means:-

- (a) the person in whom the legal title to the premises is vested;
- (b) in a case where the person in whom the legal title is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- (c) in any case where the Council is unable to determine the identity of such person, a person who is entitled to the benefit of such premises or a building thereon;

- (d) in the case of premises for which a lease of 30 years or more has been entered into, the lessee thereof;
- (e) in relation to:-
 - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 1986, (Act 95 of 1986), and without restricting the above the developer or the body corporate in respect of the common property, or
 - (ii) a section as defined in such Act, the person in whose name such section is registered under a sectional title deed and includes the lawfully appointed agent of such a person;
- (f) any legal person including but not limited to:-
 - (i) a company registered in terms of the Companies Act, 1973 (Act 61 of 1973), *trust inter vivos*, *trust mortis causa*, a closed corporation registered in terms of the Closed Corporations Act, 1984 (Act 69 of 1984), a voluntary association;
 - (ii) any department of state;
 - (iii) any council or board established in terms of any legislation applicable to the Republic of South Africa;
 - (iv) any embassy or other foreign entity.

"policy document" means the approved Customer Care, Credit Control and Debt Collection Policy of the Municipal Council as approved on 29 1 June 2006 and as amended from time to time;

"premises" includes any piece of land, the external surface boundaries of which are delineated on-

- (a) a general plan or diagram registered in terms of the Land Survey Act 1927 (Act 9 of 1927) or in terms of the Deeds

Registry Act 1937 (Act 47 of 1937), or

- (b) a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act 95 of 1986, which is situated within the area of jurisdiction of the Council.

2. GENERAL PROVISIONS

2.1 Signing of notices and documents

A notice or document issued by the municipality in terms of these by-laws and signed by municipal official shall be deemed to be duly issued and must on its mere production be accepted by a court as evidence of that fact.

2.2 Authentication and service of documents

- (a) Every order, notice or other document requiring authentication by the municipality shall be sufficiently authenticated, if signed by the municipal manager or the head of the relevant department that issued the notice or document, or by a duly authorised municipal official; such authority being conferred by resolution of council by a by-law.
- (b) Service of a copy of a document shall be deemed to be delivery of the original.
- (c) Service of a notice or other document in terms of the by-laws, shall be done in terms of sections 115(1) and (2) of the Act.

2.3 Full and final settlement of an amount

- (b) The chief financial officer, in terms of section 102 of the Act, may credit any payment received from a person in respect of any municipal services, as the chief financial officer deems fit, against any account of that person;
- (c) Where the amount due and payable to the municipality has not been paid in full, any lesser amount tendered to and accepted by any municipal official, except the chief financial officer al treasurer or his or her fully authorised delegate, shall not be deemed to be in full and final settlement of such an amount.

- (d) The provisions in section 2.3(a) above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.
- (e) The chief financial officer or his or her delegate shall consent to the acceptance of such a lesser amount in writing.

2.4 Interest charges

The chief financial officer shall charge and recover interest in respect of any arrears due and payable to the municipality at a rate fixed from time to time by the Council.

2.5 *Prima facie* evidence

In legal proceedings by or on behalf of the municipality, a certificate reflecting the amount due and payable to the municipality, under the hand of the municipal manager or the chief financial officer, or suitably qualified municipal official authorised thereto by the chief financial officer, shall upon mere production thereof be accepted by any court of law as *prima facie* evidence of the indebtedness.

3. POWER OF MUNICIPALITY TO RECOVER COSTS

3.1 Dishonoured payments

Where any payment made to the municipality by negotiable instrument is later dishonoured a bank or financial institution, the chief financial officer may levy costs and administration fees against the account of the defaulting debtor at the rate determined by Council from time to time.

3.2 Legal fees

All legal costs, including attorney and own client costs incurred by the municipality in the recovery of amounts in arrears shall be levied by the chief financial officer against the arrears account of the debtor.

3.3 Surcharge for cost to remind debtors of arrears

A surcharge may be levied against the account of a debtor at a rate determined by Council from time to time in respect of

any action taken in demanding payment from the debtor or reminding the debtor, by means of telephone, fax, e-mail, letter or otherwise, that payments are in arrear.

3.4 Limitation and disconnection fees

Where any service appears on the cut-off list because of it having to be limited or disconnected by the municipality as a result of non-compliance with these by-laws by the person liable for the payments, the chief financial officer shall levy and recover the standard limitation and disconnection fee as determined by Council from time to time.

3.5 Customer care, credit control and debt collection measures

The chief financial officer may, in respect of accounts of the municipality, take any steps contemplated in section 102(1) of the Act within the framework of the Council's Customer Care, Credit Control and Debt Collection Policy.

3.6 Meter or seal of meter broken or damaged

Where on any premises, any seal or meter, or any equipment used by the municipality for service rendering has been tampered with, or broken, or for any reason a meter is caused not to properly register the service used, the chief financial officer shall charge the customer for usage of the service in question based on the estimated average use of such service and based on the use during the corresponding period the previous year.

3.7 Pre-paid electricity supply

- (i) If electricity is bought on a prepaid basis, a portion or percentage of the amount tendered, determined by Council from time to time, for the buying of pre-paid electricity supply, can be used to offset and recover any outstanding amount in respect of services metered by conventional meters (electricity or water). The larger the amount of the outstanding debt, the larger the portion of the amount tendered for pre-paid electricity can be utilised to recover the outstanding debt on a percentage basis as determined by Council from time to time.

- (ii) If pre-paid electricity is paid by cheque which is thereupon returned by the bank, the electricity supply can immediately be cut off and a reconnection fee shall be payable.
- (iii) If any moneys for municipal services are outstanding and due, the prepaid electricity supply of the debtor may be blocked off and the indebted account of the debtor can be credited with available funds.

4. SERVICE AGREEMENT AND GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF MUNICIPAL SERVICES

4.1 No services shall be supplied to new applicants, unless and until application has been made and a service agreement, in the prescribed form in the format, or as close as possible to the format as decided by

Council from time to time, has been entered into between the client and the municipality and a deposit paid in cash or with a bank guaranteed cheque as security equal to an amount determined by Council from time to time, has been paid in full.

4.2 No supply of services to defaulters shall be rendered unless and until application has been made and a service agreement, in the prescribed form in the format or as close as possible to the format, as decided by

Council from time to time, has been entered into and a deposit as security equal to an amount and in the form of either cash or a bank guaranteed cheque as determined by Council from time to time, has been paid in full.

4.3 The general terms and conditions of supply of municipal services set out in Council's policy document, shall apply to the provision of municipal services to customers.

4.4 The parties must give written notice to each other of the intention to terminate the service agreement.

4.5 Existing municipal customers may be required by the municipal

manager to enter into new service agreements with the municipality and to deposit moneys as contemplated in subsection (1).

- 4.6 If a municipal customer of services fails or refuses to comply with a request to enter into a services agreement, or to make a deposit as contemplated in subsections 4.2 or 4.5, the supply of any municipal service may be terminated or limited to such customer until the agreement has been entered into and the deposit paid in full.

5. COLLECTION OF ARREARS

5.1 Customer Care, Credit Control and Debt Collection Policy

On 29 June 2006 Council has adopted a written policy on customer care, credit control and debt collection, which provides for the following matters set out in section 97 of the Act:

- (a) credit control procedures and mechanisms;
- (b) debt collection procedures and mechanisms;
- (c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents;
- (d) realistic targets consistent with:-
 - (i) generally recognised accounting practices and collection ratios; and
 - (ii) the estimates of income set in the budget less an acceptable provision for working capital reserves;
- (e) interest on arrears;
- (f) extensions of time for payment of accounts;
- (g) termination of services or the restriction of the provision of services when payments are in arrears;
- (h) differentiation between categories of persons, clients, debtors and owners as the Council may determine from time to time; and
- (i) any other matters that may be prescribed by regulation in

terms of section 104 of the Act.

5.2 Power to restrict or disconnect supply of services

- (a) The municipal engineer or any duly appointed agent of the municipality may, on request by the municipal manager or the chief financial officer, limit, restrict or disconnect the supply of water and electricity in terms of the municipality's disconnection procedures, or discontinue or restrict any other municipal service to any premises whenever a user of any service:
- (i) fails to make full payment on the due date or fails to make acceptable arrangements for the repayment of any amount for services, rates or taxes;
 - (ii) fails to comply with a condition of supply imposed by the municipality;
 - (iii) obstructs the efficient supply of electricity, water, gas or any other municipal services to another customer;
 - (iv) supplies such municipal service to a customer who is not entitled thereto or permits such service to continue;
 - (v) causes a situation, which in the opinion of the municipal engineer is dangerous, or a contravention of any relevant legislation;
 - (vi) in any way bridges, connects or reconnects the supply of previously disconnected services or uses without authority or commits theft in respect of municipal services;
 - (vii) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act, 1936 (Act 24 of 1936);
 - (viii) is subject to an administration order granted in terms of

section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944) in respect of such user.

- (b) On the written authority of the chief financial officer, the municipal engineer or any duly appointed agent of the municipality shall reconnect or restore full levels of supply of any of the restricted or discontinued services only after the full amount outstanding, including the costs of such disconnection and reconnection, if any, have been paid in full or any other arrangements have been made in line with the municipality's policy for the full payment thereof.
- (c) The right of the municipal engineer or any duly appointed agent of the municipality to restrict water supply to any premises or customer shall be subject to the provisions of section 4 of the Water Services Act, 1997 (Act 108 of 1997).
- (d) The right of the municipality to restrict, disconnect or terminate any service due to non-payment for any other service or assessment rates shall be in respect of any service rendered by the municipality, and shall prevail notwithstanding the fact that payment has purportedly been made in respect of any specific service and shall prevail notwithstanding the fact that the person who entered into the agreement for supply of services with the municipality and the owner are different entities or persons, as the case may be.

5.3 Municipality's right of access to premises

The municipality and a service provider may exercise its right of access to premises in terms of section 101 of the Act through the municipal manager, any head of department or any written authorised official or any duly appointed agent or service provider.

5.4 Arrangements to pay outstanding and due amounts in consecutive installments

- (a) The chief financial officer may enter into a written agreement with a debtor to repay any outstanding and due amounts to the municipality under the following conditions:-

- (i) the outstanding balance, costs and any interest thereon shall be paid in regular and consecutive monthly installments;
 - (ii) the written agreement has to be approved and signed on behalf of the municipality by a duly authorised municipal official.
- (b) Should any dispute arise as to the amount owing by an owner in respect of municipal services the owner shall notwithstanding such dispute proceed to make regular minimum payments based on the calculation of the average municipal account for the corresponding period during the previous year, prior to the arising of the dispute and taking into account interest and surcharges as well as the annual amendments of tariffs of the municipality.

5.5 Reconnection of services and/or recovery of arrears

The chief financial officer may authorise the reconnection of services or reinstatement of service delivery only after satisfactory payment or a satisfactory arrangement for payment of outstanding debt, at 10% of the outstanding amount as determined by Council from time to time, with a maximum as determined by Council from time to time (currently R500-00) has been made according to the municipality's Customer Care, Credit Control and Debt Collection Policy.

6. INDIGENT SUPPORT

- 6.1 Indigent debtors who qualify for indigent support in terms of the municipality's policy on indigent support shall apply to the municipality in writing by completing, signing and submitting the form "Application for Household Indigent Subsidy".
- 6.2 The "Conditions of Indigent Household Subsidy" as determined by Council from time to time shall be attached to or on the back of the "Application for Household Indigent Subsidy", and shall apply to all successful applicants for household indigence subsidy.
- 6.3 A municipal official shall counter-sign the application and attest that the consequences of the declaration made by the applicant were

explained to him/her and he/she indicated that:-

- (a) the contents of the declaration was understood; and
- (b) if the application is approved, the providing of subsidies will commence with the next cycle for the processing of municipal accounts;
- (c) that if the statement is found to be false, he/she would automatically be disqualified from receiving any subsidy. He/she will be liable for the immediate repayment of any subsidy received and may have criminal proceedings instituted against him/her as the municipal manager may deem fit.

6.4 The chief financial officer shall ensure that regular and random local on-site audits are carried out by municipal officials or any other duly appointed agent to verify the information supplied by applicants on application forms. The verification of information supplied shall be done by municipal officials or any other duly appointed agent visiting the properties occupied by households receiving indigent support and by gathering the relevant information and completing the form "Verification of Information Supplied".

7. ASSESSMENT RATES

7.1 Amount due for assessment rates

- (a) All assessment rates due by property owners are payable by a fixed date as determined by the municipality.
- (b) Joint owners of property shall be jointly and separately liable for
payment of assessment rates.
- (c) Assessment rates may be levied as an annual single amount, or in equal monthly installments.
- (d) Payment of assessment rates may not be deferred beyond the fixed date by reason of an objection to the valuation roll.

7.2 Claim on rental for assessment rates in arrears

The municipal manager may apply to court for the attachment of any rent, due in respect of rateable property, to recover in part or in full any amount outstanding in respect of assessment rates for a period longer than three months after the fixed date.

7.3 Liability of company directors, trustees or members of a body corporate for assessment rates

Where a company, trust, close corporation or a body corporate in terms of the Sectional Titles Act, 1986 (Act 95 of 1986) is responsible for the payment of any arrears amount to the municipality, the liability of such entity shall be extended to the directors, trustees or members thereof jointly and separately, as the case may be.

7.4 Disposal of Municipality's property and payment of assessment rates

- (a) The purchaser of municipal property is pro rata to the financial year liable for the payment of assessment rates on the property as from the date of registration in the name of the purchaser in respect of the financial year in which the purchaser becomes the new owner.
- (b) In the event that the municipality repossesses the property that was sold, any outstanding and due amount in respect of assessment rates shall be recovered from the purchaser.
- (c) The decision to repossess property should first be approved by Council.

7.5 Assessment rates payable on municipal property

- (a) The lessee of municipal property is responsible for payment of any general assessment rates payable on the property for the duration of the lease, as if the lessee is the owner of such property.
- (b) The chief financial officer may elect to include the assessment rates in respect of municipal property in the rent payable by the lessee, instead of billing it separately as in the case of owners of properties.

8. RELAXATION, WAIVER AND DIFFERENTIATION

- 8.1 The municipality may differentiate between different categories of ratepayers, users of services, customers, debtors, taxes, services, service standards and other matters.
- 8.2 The municipality may, in a specific instance and for a particular owner or customer, relax or waive in writing the requirements of a provision of these by-laws.
- 8.3 Any such differentiation or relaxation shall be upon such conditions as it may deem fit to impose, if the Council is of the opinion that the application or operation of that provision in that instance would be unreasonable.

9. REPORTING OF DEFAULTERS

The municipal manager may in his discretion report any debtors who owe the municipality monies, to bodies such as a credit bureau that collate and retain such information. The information that would be included in such a report shall be the available personal information of the defaulter, or in the event of a legal person, the available statutory details, including information pertaining to the responsible officers of such legal person.

10. REPEAL OF COUNCIL CREDIT CONTROL BY-LAWS

The provisions of any by-laws relating to the control of credit by the municipality are hereby repealed insofar as they relate to matters provided for in these by-laws.

11. OFFENCES

11.1 Any person who:-

- (a) fails to give access to premises required by an officer or duly appointed agent in terms of these by-laws;
- (b) obstructs or hinders a municipal official or duly appointed agent in the exercising of the powers or performance of functions or duties under these by-laws;
- (c) tampers or interferes with municipal equipment or without

authority uses municipal services;

- (d) fails or refuses to give a municipal official or duly appointed agent such information as may reasonably be required for the purpose of exercising the powers or functions under these by-laws or gives such an officer or agent false or misleading information, knowing it to be false or misleading;
- (e) contravenes or fails to comply with a provision of these by-laws;
- (f) fails to comply with the terms of a notice served upon him/her in terms of these by-laws;

shall be guilty of an offence and liable upon conviction in a court of law to a period of imprisonment not exceeding six months or community service or a fine not exceeding R 20 000-00, or a combination of the aforementioned.

12. CONFLICT OF LAWS

12.1 When interpreting a provision of these by-laws, any reasonable interpretation which is consistent with the purpose of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), as set out in Chapter 9, on credit control and debt collection, must be preferred over any alternative interpretation which is inconsistent with that purpose.

12.2 If there is any conflict between these by-laws and any other by-laws of the Council, these by-laws will prevail.

13. SHORT TITLE

These by-laws are called the Customer Care, Credit Control and Debt Collection By-laws of the Municipality of Drakenstein.
