



# **DRAFT EDM CREDIT CONTROL AND DEBT COLLECTION POLICY AND BY-LAWS**

## **PREAMBLE**

**WHEREAS** Section 95(1) of the Local Government: Municipal Systems Act, 32 of 2000, provides that in relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity, establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality and where applicable a service provider.

**WHEREAS** section 64 of the Local Government: Municipal Finance Management Act, 56 of 2003 states the Accounting Officer of a municipality responsibilities for the management of the revenue of the municipality.

**WHEREAS** Section 96 of the Local Government: Municipal Systems Act, 32 of 2000, provides that a municipality must collect all money that is due and payable to the municipality and for this purpose must adopt, maintain and implement a credit control and debt collection policy which is consistent with its tariff policy and complies with provisions of this Act.

**WHEREAS** section 97(2) of the Local Government: Municipal Systems Act, 32 of 2000 further states that the credit control and debt collection may differentiate between categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.

**WHEREAS** section 98(1) of the Local Government: Municipal Systems Act, 32 of 2000 further requires the municipal council to adopt by-laws to give effect to the implementation and enforcement of its credit control and debt collection policy.

**AND WHEREAS** section 98(2) of the Local Government: Municipal Systems Act, 32 of 2000 further states that the By-Laws may differentiate between categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.

Now therefore, the Council of the Ehlanzeni District Municipality has adopted the Credit Control and Debt Collection Policy and By-Laws and as set out hereunder;

**CONTENTS OF THE POLICY AND BY-LAWS**

**CHAPTER 1 - INTEPRETATIONS AND DEFINITIONS .....4**

**CHAPTER 2 – GENERAL OBJECTIVES AND PRINCIPLES OF THE POLICY AND BY-LAWS6**

**CHAPTER 3 – DUTIES AND RESPONSIBILITIES .....6**

**CHAPTER 4 – PERFORMANCE EVALUATION AND REPORTING.....8**

**CHAPTER 5 - CREDIT CONTROL PROCEDURES .....8**

**CHAPTER 6 – DEBT COLLECTION PROCEDURES .....9**

**CHAPTER 7 – MISCELLANEOUS .....10**

**CHAPTER 8 - OTHER UNDERLYING MATTERS OF THE POLICY AND BY-LAWS .....11**

## CHAPTER 1 - INTERPRETATIONS AND DEFINITIONS

For the purpose of this policy and by-laws, any word or expression to which a meaning has been assigned in the applicable, shall bear the same meaning in this policy, and unless the context indicates otherwise;

**“Account”**: Account in the name of a customer held with the Ehlanzeni District Municipality

**“Account Statement”**: formal notification by means of a statement of account to persons liable for fees, charges, surcharges on fees and other municipal taxes and services, levies, penalties and duties, indicating the net accumulated balance of account;

**“Accounting Officer”**: means the Municipal Manager appointed in terms of Section 82 of the Local Government: Municipal Structures Act, 117 of 1998, and being the head of administration and Accounting Officer in terms of section 55 of the Municipal Systems Act;

**“Acknowledgement of debt”** - A term used to describe a document from which a Debtor’s acknowledgment of a claim or undertaking to pay a debt can be inferred.

**“Administration of Estates Act”**: means the Administration of Estates Act, 66 of 1965;

**“Arrears”**: means amount due, owing and payable in respect of fees, charges, surcharges on fees, property taxes and services, levies, penalties and duties and not paid by the due date;

**“Authorised Officer”**: means any official of the municipality who has been authorised by it to administer, implement and enforce the provisions of this policy;

**“Bad Debt”**: money owed to a person or Municipality by a Customer/ Debtor that it is unable to collect from the Debtor.

**“Chief Financial Officer”**: means the person appointed by the municipal council to administer its finances in terms of section 80(2)(a) of the Municipal Finance Management Act;

**“Collection charges”**: means collection charges which may be recovered by the Municipality in terms of Section 75A of the Act, and includes the cost;

- (a) to remind debtors of arrears; and
- (b) all legal costs, including attorney and own client costs incurred in the recovery of arrear amounts;

**“Contract”** means an agreement entered into by parties who intend to bind themselves thereby. There must be consensus between the parties as to the material terms of the contract.

**“Council”**: means the Council of the Ehlanzeni District Municipality;

**“Customer”**: means any user, consumer, debtor or service provider to which the municipality has agreed to supply or is actually supplying municipal services, or rendering services on behalf of the municipality. A customer will therefore be deemed a customer by virtue of receiving, consuming and or utilising any facility, equipment, service rendered by the municipality and/or a municipal entity or agent as appointed by the municipality;

**“Defaulter”**: any persons who is in arrears on the municipal account or owes the municipality money in excess of 30 days;

**“interest”**: means a charge levied with the same legal priority as service fees and calculated at a rate determined by the municipal council from time to time on arrear on the municipal account or monies to the municipality in excess of 30 days;

**“GRAP”**: refer to General Recognised Accounting Practices;

**“MFMA”**: means the Local Government: Municipal Finance Management Act, 56 of 2003;

**“MSA”**: means the Local Government: Municipal Systems Act, 32 of 2000;

**“Occupier”**: means any person who occupies any premises or part thereof, without any regard to the title under which he or she so occupies;

**“Owner”**: means a person in whose name ownership of the property is registered or person in whose name the right is registered or defined in terms of Section 1 of the Local Government: Municipal Property Rates Act 2004 (Act 06 of 2004);

**“PFMA”**: refer to the Public Finance and Management Act, 1 of 1999;

**“Property”**: means

- (a) immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title 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 registered in the name of a person or granted to a person in terms of legislation;  
or
- (d) public service infrastructure;

**“Stakeholder”**: means all natural and non-natural customers of the municipality and or prospective customers and or single or group of people who use services from the municipality;

**“Third party debt collection agencies”**: means a person or juristic person that collects on behalf of the municipality.

## **CHAPTER 2 – GENERAL OBJECTIVES AND PRINCIPLES OF THE POLICY AND BY-LAWS**

2.1 The objectives of this policy are to;

- (a) Provide a framework within which the district can exercise its executive and legislative authority with regard to credit control and debt collection procedures.
- (b) Ensure that all monies due and payable to the district are collected and used to deliver services in the best interests of the community and residents and in a financially sustainable manner.
- (c) Provide a framework for customer care.
- (d) Describe credit control measures and sequence of events.
- (e) Outline debt collection procedures and mechanisms.

2.2 The underlying principles of this policy is to;

- (a) The administrative integrity of the district must be maintained at all costs. The democratically elected Councillors are responsible for policy-making, while it is the responsibility of the Municipal Manager to ensure the execution of these policies.
- (b) Billing is to be accurate, timeous and understandable.
- (c) The debtor is entitled to reasonable access to pay points and to a variety of reliable payment methods.
- (d) The debtor is entitled to an efficient, effective and reasonable response to appeals, and should suffer no disadvantage during the processing of a reasonable appeal.
- (e) Enforcement of payment must be prompt, consistent and effective.
- (f) The collection process must be cost-effective.

## **CHAPTER 3 – DUTIES AND RESPONSIBILITIES**

3.1 The duties and responsibilities of the council in relation to this policy and by-laws shall be;

- (a) To approve a budget consistent with the needs of communities and the different categories of customers.
- (b) To impose and determine tariffs in consistency with the tariff policy to ensure the municipal budget is properly funded in accordance with section 18 of the MFMA.
- (c) To provide for a bad debt provision, in line with the payment record of the debtors as reflected in the accounting policies of the financial statements of the district.

- (d) To approve a reporting framework for customer care, credit control and debt collection.
- (e) To approve and maintain by-laws to give effect to this policy of the district.
- (f) To monitor the performance of the Municipal Manager regarding debtor care, credit control and debt collection.
- (g) To revise the budget should targets for customer care, credit control and debt collection not be met.
- (h) To delegate the required authorities to monitor and execute the customer care, credit control and debt collection policy to the Municipal Manager.
- (i) To provide sufficient administrative capacity to give effect to customer care, credit control and debt collection policy and bylaws in accordance with the legislative and regulatory framework.
- (j) To enforce the Municipal Code of Conduct for Councillors and Staff members in accordance with Schedules 1 and 2 of the MSA.

### 3.2 The duties and responsibilities of the Municipal Manager in relation to this policy and by-laws;

- (a) To implement and promote the EDM customer care, credit control and debt collection policy.
- (b) To install and maintain an appropriate financial and accounting systems of internal controls in accordance with the MFMA.
- (c) To demand payment on due dates.
- (d) To raise penalties for defaults.
- (e) To collect outstanding debt.
- (f) To provide different payment methods.
- (g) To determine customer care, credit control and debt collection measures.
- (h) To report all legal processes to the council (i.e. attachment and sale in execution of assets, emolument attachment orders and so on).
- (i) To set performance targets for staff members.
- (j) To delegate certain functions to heads of departments.
- (k) To determine control procedures.

### 3.3 Duties and responsibilities of the customers in relation to this policy and by-laws;

- (a) To fulfil certain responsibilities, as brought about by the privilege and/or right to use and enjoy public facilities.
- (b) To pay tariffs and duties imposed by the district on or before due date.
- (c) To comply with the by-laws and other legislation of the district.
- (d) To refrain from tampering with or damaging the property of the district.

## **CHAPTER 4 – PERFORMANCE EVALUATION AND REPORTING**

- 4.1 The municipality shall establish a mechanism to set targets for debt collection, customer care and administrative performance, evaluate and take corrective actions on a regular basis to enhance credit control and debt collection measures.
- 4.2 The reporting framework in accordance with sections 52, 71 and 72 of the MFMA shall be adhered to on the monitoring and overseeing the implementation and enforcement of the policy.

## **CHAPTER 5 - CREDIT CONTROL PROCEDURES**

### **5.1 Services, sundry and other customers' procedures**

- (a) A written service agreement or service level agreement shall be entered into with the customer provider for the services to be provided by municipality or on behalf of the municipality.
- (b) In the event of the non-existence of a written agreement, an agreement and acknowledge of debt must be completed by the customer.
- (c) The municipality shall send on a monthly account statement to the customer for the amount billed and payable for the services rendered and also indicating the due date for payment.
- (d) The municipality shall allow period of 30 days for the payment of the amount due in accordance with the account statement.
- (e) Upon non-payment of the amount due within the 30 days, the municipality shall be charged interest in accordance with its tariff policy on the amount in arrears.
- (f) If the customer fails to pay the amount in arrears within the 30 days period and the Chief Financial Officer or his or her delegated official shall;
  - (i) Sent a final notice to the customer to serve as a letter of demand for payment and the customer has 7 days to react to this final notice which serve as a letter of demand.
  - (ii) Handover the customer account to council's legal representatives for collection should the debtor still fails to pay.

## **5.2 Transfers or grants due from transferring organs of state and monies owed other municipalities**

- (a) The municipality shall adhere to the Chapter 4 of the Intergovernmental Relations Framework Act, 13 of 2005 in collecting any transfers or grants and any monies due to the municipality.
- (b) The municipality shall resort to a debt collection process in accordance to this policy if the intergovernmental relations framework and process fails to resolve the matter of transfers or grants due and any monies owed by the organs of state.

## **5.3 Councillors and staff members of the district**

- (a) Any remunerations or benefits resulting from breach of the Public Office-Bearers Act, employment related legislations and regulations and policies shall be recovered from the councillors and staff members.
- (b) The Municipal Manager or his or her delegated official shall in writing request that the liable councillor and staff member to pay the amount due within 30 days or acknowledge the debt and enter into a reasonable payment arrangement.
- (c) If the councillor or staff member fails to comply with the request, the whole amount will be deducted from his/her salary or allowance on a minimum of one to a maximum three monthly instalments.
- (d) Failure to recover the amount due through the aforementioned process, the amount due must be recovered through the debt collection process of the municipality.

# **CHAPTER 6 – DEBT COLLECTION PROCEDURES**

## **6.1 Customer Contact**

The municipality shall endeavour, within the constraints of affordability, to make personal or telephonic and any other communication system contact with all arrear customers to encourage their payment, and to inform them of their arrears status, their rights in terms of this policy to conclude arrangements.

## **6.2 Debt collection legal process**

- (a) The municipality may, when a customer is in arrears, commence legal process against that debtor, which process could involve final demands, summonses, court trials, judgments, garnishee orders and/or sales in execution of property.
- (b) The municipality shall exercise strict control over this process, to ensure accuracy and legality within it, and will require regular reports on progress from external parties, be they attorneys or any other collection agents appointed by and approved by the municipality.

- (c) The municipality will establish procedures and codes of conduct with these external parties.
- (d) Garnishee orders, in the case of employed customers, are preferred to sales in execution, but both shall form part of the system of debt collection procedures of the municipality.
- (e) All costs of this debt collection process will be for the account of the customer.
- (f) The customer account information is protected and are not the subject of scrutiny by the public or any authorities, however the municipality may, after Court judgement provide defaulting customer information for listing with credit bureaus or agencies in accordance with the section 70 of National Credit Act, 34 of 2005.

## **CHAPTER 7 – MISCELLANEOUS**

### **7.1 Interest charges**

The interest shall be charged monthly on all overdue amounts that are older than 30 days with the exception of the amount owed by the organ of state, in accordance with the interest rate determined by Council in terms of its Tariff Policy.

### **7.2 Collection Costs**

All costs in relation to credit control and debt collection legal processes shall be charged to the defaulting customer account.

### **7.3 Abandonment of collection process**

The Municipal Manager or his or her delegated official shall ensure that all avenues are utilised to collect the debt from the customers, except in some circumstances that allow for the valid termination of debt collection procedures as contemplated in section 109(2) of the MSA, such as;

- (a) The insolvency of the debtor, whose estate has insufficient funds.
- (b) A balance being too small to recover, for economic reasons considering the cost of recovery.
- (c) Where the municipality on the recommendation of the Attorneys deems that a customer is unable to pay for services rendered.
- (d) The municipality will maintain audit trails in such an instance, and document the reasons for the abandonment of the action or claim in respect of the debt.
- (e) All customer irrecoverable debts to be written off against the provision for bad debts after approval has been granted by Council.

#### **7.4 Full and final settlement of a debt**

- (a) The Council may appropriate monies received in respect of any municipal debt at its sole discretion as stipulated in terms of Section 102 of the Municipal Systems Act;
- (b) Where the exact amount due and payable to the municipality has not been paid in full, any lesser amount tendered to and accepted by Council, shall not be deemed to be full and final settlement of such an amount, unless accepted in terms of a delegated authority;
- (c) The provisions in subsection (b) above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement; and
- (d) The acceptance of a lesser amount, by an authorised officer of Council, duly delegated to act in this capacity, must be in writing and signed by both parties.

#### **7.5 Generally Recognised Accounting Practices procedures**

The accounting of the transactions relating to the receivables, written off of irrecoverable debts and provision for bad debts shall be treated in accordance with the accounting policies to the financial statements.

### **CHAPTER 8 - OTHER UNDERLYING MATTERS OF THE POLICY AND BY-LAWS**

#### **8.1 Objection and appeal**

- (a) A person or customer whose rights are affected by the provisions and enforcement of this policy shall submit the objection or appeal in writing to the Municipal Manager within 21 days of the date of the adoption of this policy.
- (b) The objection and appeal shall be dealt with in accordance with the section 62 of the MSA.

#### **8.2 Implementation and enforcement of the policy**

- (a) The policy shall be implemented with effect from 01 July 2021 after the adoption by the municipal council and subsequent to the public participation and consultation process in line with section 21 of the MSA.
- (b) The credit control and debt collection policy shall be enforceable upon conclusion of the approval and promulgation of the credit control and debt collection by-laws.

#### **8.3 Review of the policy**

The policy shall be reviewed on annual basis should there be any changes in legislative and regulatory framework, and institutional and operations settings and arrangements.

#### **8.4 Short title**

This policy shall be called the EDM Credit Control and Debt Collection Policy and By-Laws.