

LAINSBURG MUNICIPALITY

CREDIT CONTROL

AND

DEBT COLLECTION BY-LAWS

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PREAMBLE

Whereas the Council has adopted a credit control and debt collection policy on 13 June 2003,

And whereas section 98 of the Act on Local Government : Municipal Systems, 2000 (Act No. 32), provides that the Municipal Council must adopt a policy on credit control and debt collection and formulate by-laws to give effect to the policy and the implementation and enforcement thereof;

And whereas, and notwithstanding any other act with relation to credit control and debt collection, this Municipality has adopted the following by-laws on Credit Control and Debt Collection.

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1. DEFINITIONS

For the purpose of these by-laws any word or expression 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, and shall be the following:

“Act” the Act on Local Government : Municipal Systems, 2000 (Act No. 32 of 2000), as amended from time to time;

“accounting” the proper formal notice by means of an account to persons who are accountable for charges levied for rates and taxes or other taxes and the levies or the fees for municipal services and reflecting the net accumulated balance on the account;

“clientele care” as stipulated in section 95 of the Act on Local Government : Municipal Systems, 2000 (Act 32 of 2000); to focus on the needs of the consumer on a responsible and pro-active way in order to encourage payment and to create a positive and co-operating relation between persons responsible for the payment of services and the Municipality, as well as, when applicable, to limit the necessity of legal action by a supplier as far as possible.

“consumer” any occupant of any premises to which the Municipality has agreed to supply services or has already supplied services, or if there is no occupant, then the owner of the premises;

“council” the Municipal Council of the Municipality of Laingsburg;

“credit control and debt collection” any function related to the collection of any monies owing or payable to the Municipality;

“defaulter” a person owing the Municipality money in respect of taxes and/or services received for a period of more than 30 (thirty) days from date of account;

“engineer” the person in charge of the civil or electrical components of the Municipality;

“equipment” including a building, structure, pipe, pump, wire, cable, meter, machine or any fittings;

“financial director” a person appointed by the Council to manage the finance of the Council, including any other person duly authorized to act on his behalf;

“interest” constitutes a levy equal in legal priority to service levies and is calculated at a rate determined by the Council on all amounts in arrears, where applicable;

“municipal account” shall include levies or charges in respect of the following services and taxes:

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

“municipal manager” the person appointed by the Municipality as the Municipal Manager of the Municipality in terms of the provisions of section 82 of the Act on Local Government : Municipal Structures, 1998 (Act 117 of 1998) and includes any person -

- (a) acting in such a position; and

- (b) to whom the Municipal Manager has delegated any powers, functions or duties in so far as it concerns the execution of those powers, functions or duties;

“municipal services” those services, rates and taxes reflected on the municipal account for which payment is required by the Municipality;

“occupier” any person who occupies any premises or part thereof, without regard to the title under which he occupies;

“owner”

- (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 disqualification whatsoever, the person in whom the administration or 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 delimited on a sectional plan and registered in terms of the Sectional Titles Act, 1986 (Act 95 of 1986), and without restricting the developer or 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 including 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 the 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;

“person” any natural person, local government body or similar authority, a company or closed corporation incorporated in terms of any Act, a body of persons whether incorporated or not, a statutory body, public utility body, voluntary association or trust;

“premises” any piece of land, the external surface boundaries of which are delimited 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 title 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 an official of the Municipality 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 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 by a duly authorized officer of the Municipality; such authority being conferred by resolution of the Council or by a by-law.
- (b) Delivery of a copy of such document shall be deemed to be delivery of the original.

2.3 Full and final settlement of an amount

- (a) The Financial Director shall be at liberty to appropriate any monies received in respect of any municipal services deemed fit.
- (b) Where the exact amount due and payable to the Municipality has not been settled in full, and any lesser amount is tendered and accepted by

any municipal official, except the Financial Director or fully authorized delegate, such an amount shall not be deemed to be in final settlement of any outstanding debt.

- (c) The provisions of paragraph 2.3(a) above shall prevail notwithstanding the fact that such lesser payment was tendered and/or accepted in full settlement.
- (d) The Financial Director or his delegate shall consent to the acceptance of such a lesser amount in writing.

2.4 Interest charges

Interest shall be charged and recovered by the Director Finances in respect of any arrears due and money payable to the Municipality at a rate fixed from time to time Council.

2.5 *Prima facie* evidence

In legal proceedings instituted by the Municipality, a certificate reflecting the amount due and payable to the Municipality, signed by the Municipal Manager, or suitably qualified municipal official authorized thereto by the Municipal Manager, shall upon mere production thereof be accepted by any court of law as *prima facie* proof of the indebtedness.

3. POWER OF THE MUNICIPALITY TO RECOVER COSTS

3.1 Dishonored payments

Where any payment made to the Municipality by a negotiable instrument is later dishonored by a bank, the Financial Director 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 client costs incurred in the recovery of amounts in arrears shall be levied by the Financial Director against the arrears account of the debtor.

3.3 Costs incurred to remind debtors of arrears

A penalty may be levied on the accounts of a debtor at a rate determined by Council from time to time in respect of any action taken to claim payment by the debtor or in reminding the debtor by means of telephone, fax, e-mail, letter or otherwise that his payments are overdue.

3.4 Disconnection costs

If any service is disconnected, blocked, discontinued or placed on trickle feed as a result of non-compliance with these by-laws or policy by the person liable for the payments, the Financial Director may levy and recover the connection fees as determined by Council from time to time.

3.5 Accounts

- (a) The Financial Director dispatches to every consumer an account statement in respect of each meter reading period wherein the amount due for water and electrical consumption calculated in terms of the consumer tariff is reflected, which amount must be paid to Council before or on the date of payment referred to in the account statement.

- (b) The Financial Director can, during any meter reading period, furnish the consumer with a preliminary account statement in respect of a portion of such a period, which portion must be as close as is practically possible equal to a period of thirty days. The amount appearing on such an account statement is determined as stipulated in paragraph c(i) and the Financial Director must furnish the consumer with an account statement as soon as possible after the reading of the meter at the end of such a period, based on the actual measured consumption during that period, taking into account any amount paid by him on a preliminary account, as referred to.

- (c)
 - (i) The amount referred to in the preliminary account statement in paragraph (b) is determined by the Financial Director with reference to such previous consumption on the same or another similar premises or sites which, in his opinion, can serve as a reasonable guide for the amount of electricity used over the period as covered by the preliminary account; with the understanding that if it should appear that the actual consumption is much higher or lower than the consumption on which the preliminary account was based, the Financial Director may at any time during the first twelve months of occupation amend the amount appearing in the preliminary account.

 - (ii) After expiry of the first twelve months of occupation the amount appearing in the preliminary account referred to in paragraph (b) is determined by the Financial Director according to the average consumption of the previous four meter reading periods and in

order to provide for tariff increases or possible higher consumption during a specific period, the Financial Director can make an addition of not exceeding 50% to the amount appearing in such preliminary account.

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

- 4.1 No services to new applicants shall be supplied 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 consumer and the municipality and a deposit equal to an amount and in the format determined by Council from time to time, has been paid in full.
- 4.2 No services are rendered to defaulters until a new application for such delivery, in the format, or as close as possible thereto, as determined by Council from time to time, has been concluded and a deposit in cash or by means of a bank guaranteed cheque equal to the amount determined by the Council from time to time, as security has been paid in full.
- 4.3 The general terms and conditions of supply of municipal services as contained in the policy document of the Council, shall apply to the provision of municipal services to consumers.
- 4.4 The party shall give notice in writing to terminate a service agreement.
- 4.5 Existing municipal customers can be requested by the Municipal Manager to enter into services agreements and to deposit the monies as contemplated in paragraph 4.1.
- 4.6 If a customer of municipal services fails or refuses to comply with a request to enter into a services agreement, or to make a deposit as contemplated in

paragraph 4.2 and 4.5, any municipal service may be terminated to such customer until the agreement has been entered into and the deposit paid in full.

5. COLLECTION OF ARREARS

5.1 Credit control and debt collection policy

Council on 13 June 2002 adopted a written policy on credit control and debt collection, which provides for the following matters set out in section 97 of the Act on Local Government: Municipal Systems, 2000 (No. 32 of 2000).

- (a) credit control procedures and mechanisms;
- (b) debt collection procedures and mechanisms;
- (c) provision assistance for indigent cases that are consistent with that of the Council's rates and taxes and tariff policies and any national policy on indigent cases;
- (d) realistic targets consistent with –
 - (i) generally recognized accounting practices and collection ratios;
and
 - (ii) the estimates of income set out in the budget and acceptable provision for bad debts;
- (e) interest on arrears where relevant;
- (f) extension 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 Council may determine from time to time; and
- (i) any other matters that may be prescribed by bylaws in terms of section 104, the Act on Local Government: Municipal Systems, 2000 (No. 32 of 2000).

5.2 Power to restrict or Disconnect Supply of Services

- (a) The Municipal Engineer may, on request by the Municipal Manager or the Financial Director, disconnect or discontinue the supply of water and electricity or discontinue any other 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, property rates or taxes;
 - (ii) fails to comply with the conditions of supply as determined by the Municipality;
 - (iii) obstructs the efficient supply of electricity, water, 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 in contravention of any relevant legislation;
 - (vi) in any way bridges the supply of previously disconnected services;

- (vii) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act of 1936 (Act No. 32 of 1936);
 - (viii) is subject to an administration order granted in terms of article 74 of the Magistrates Court Act of 1944 (Act No. 32 of 1944) in respect of such user.
- (b) The Municipal Engineer *or any lawfully appointed agent* has the power to reconnect or to restore full service levels, if the supply of such services has been suspended or limited, as soon as the amount outstanding, including the cost of such disconnection and reconnection, if any, has been paid in full or arrangements have been made in terms of the Municipality's credit control policy for repayment thereof.
 - (c) The power of the Municipal Engineer *or any lawfully appointed agent* to restrict water to any premises or customer shall be subject to the provisions of section 4 of the Water Services Act, 1997 (Act No. 108 of 1997).
 - (d) The power of the Municipality to discontinue the provision of electricity to any consumer shall be subject to the provisions of the Electricity Act, 1987 (Act No. 41 of 1987).
 - (e) The power of the Municipality to restrict, disconnect or terminate services due to non-payment for any other service or assessment rates shall be valid for 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 agreement and the owner are different entities or persons, as the case may be.

5.3 Municipality's right of access to premises

- (a) The occupant of the premises in a municipality must at all reasonable hours permit an authorized representative of the Municipality or of a service supplier access to the premises in order to read any meter or service connection for distribution, to inspect, to install or to repair or to lock or limit the supply of any service.
- (b) A person who is guilty of an infringement in terms of paragraph (a) is guilty of an offence and if found guilty is punishable by a fine or imprisonment as determined in section 119(3) of the Act on Local Government : Municipal Systems, 2000 (Act No. 32 of 2000).
- (c) The Municipality can terminate the service of a consumer who is guilty of the transgression in question, until the matter has been settled to the satisfaction of Council.

5.4 Repayment Arrangements

- (a) The Financial Director may enter into a written agreement with a debtor to repay any outstanding and due amounts under the following conditions:
 - (i) the outstanding balance, costs and any interest thereon, shall be paid in regular and consecutive monthly instalments;
 - (ii) the written agreement has to be approved and signed on behalf of the Municipality by a duly authorized official.

5.5 Reconnection of Services

The Financial Director shall authorize the reconnection of services or reinstatement of service delivery after satisfactory payment or a satisfactory

arrangement for payment has been made according to the Municipality's Debt Collection and Credit Control Policy.

6. INDIGENT SUPPORT

6.1 Indigent debtors who qualify for 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 Indigence Subsidy*".

6.2 The "*Conditions of Indigent Household Subsidy*" as determined by Council from time to time must be attached to the *Application Household Indigence Subsidy* and shall apply to all households which qualify for such 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 and he indicated that -

(a) the contents of the declaration was understood; and

(b) if the declaration is found to be untrue, he would automatically be disqualified from receiving any subsidy and he will be liable for the immediate repayment of any subsidies received and may have criminal proceedings instituted against him as the Municipal Manager may deem fit.

6.4 The Financial Director shall ensure that on regular random in situ audits are carried out by municipal officials or duly appointed agents to verify the information supplied by applicants on application forms. The verification of information supplied shall be done by municipal officials or duly appointed agents visiting the properties occupied by households receiving indigent support. The officials must gather the relevant information by completing the form "*Verification of Information Supplied*".

7. ASSESSMENT RATES

7.1 Amount Due for Assessment Rates

- (a) All property rates assessment due by property owners are payable by a fixed date as determined by the Municipality.
- (b) Joint owners of property shall be jointly and severally liable for payment of assessment rates.
- (c) Property rates assessment may be levied as an annual single amount, or in equal monthly instalments.
- (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 Arrears Assessment Rates

If the owner who in the first place is responsible for any rates fails to pay such rates on or before the date such rates are due and payable any person who at any time thereafter is or was –

- (a) the occupant of the property in question is responsible for such rates;

if he is occupying or did occupy it by virtue of a lease, to the amount of the rental due by him but not paid as yet; and

if he is occupying or did occupy it without a lease, to the amount of such rates; or

- (b) as agent or otherwise is receiving or has received the rental in respect of the property in question, responsible for such rates to the amount of rental paid or payable to him in respect of such property less any commission due to him for collecting thereof, subject to and limited to the provisions of the Estate Agents Act (Act No. 112 of 1976); and
- (c) the agent or otherwise, shall upon request, furnish the Municipality with a written specified statement reflecting all amounts received by the agent or otherwise during a period.

7.3 Liability of Company Directors for Assessment Rates

Where a company, trust, close corporation or a body corporate in terms of the Sectional Titles Act, 1986 (Act No. 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 of the body corporate thereof jointly and severally, as the case may be.

7.4 Alienation of Municipality Property and Payment of Assessment Rates

- (a) The purchaser of any municipal property is *pro rata* 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, the purchaser is responsible for any outstanding and due amount in respect of assessment rates and shall be recovered from him.

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 Financial Director has the power 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

The Municipality has the power to differentiate between different categories of ratepayers, consumers of services, clients, debtors, rates, services, service standards and other matters, provided the difference does not come down on unreasonable discrimination.

9. REPORTING OF DEFAULTERS

The Municipal Manager may in his discretion report any debtors who owe the Municipality monies to bodies, such as credit bureau's who's function it is to 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; provided that such provisions shall be deemed not to have been repealed in respect of any such by-laws which have not been repealed and which are not repugnant to these by-laws on the basis as determined by the relevant by-laws.

11. TRANSGRESSIONS

- (a) If any person tampers or meddles with municipal equipment or illegally uses services which are provided; or tampers with any seal on a meter or any equipment belonging to the Municipality, steal or damage or in any way causes a meter not to properly register the service used, the engineer must investigate the matter thoroughly, gather evidence, take down sworn declarations and he can submit criminal charges where applicable.
- (b) If Council suffers damage as a result of the transgression(s) as referred to in paragraph (a) the person responsible must be afforded an opportunity to pay an admission of guilt equal to the actual cost the Municipality inevitably had to incur to repair the damage, or an amount as determined by the Council from time to time, over and above any amount due for the use of the relevant service based on the estimated average use of such a service.
- (c) The power supply to the relevant premises, whether provided by a conventional or prepaid meter is cut off as well as the water supply being washered.
- (d) The services will be restored as soon as the following has been done:
 - (i) the court making a ruling or an admission of guilt has been paid as envisaged in paragraph (b) and subject to a cost ruling by the court:
 - (ii) all monies due, arrears service charges, rates, costs has been paid;
 - (iii) a deposit or additional deposit is paid; and

- (iv) the reconnection charges are paid.

12. CONFLICTING LAWS

- 12.1 When interpreting a provision of these by-laws, any reasonable interpretation which is compatible with the purpose of the Act on Local Government Municipal Systems, 2000 (Act No. 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 the purpose of the Act in question.
- 12.2 If there is any conflict between these by-laws and any other by-laws of Council, these by-laws will prevail.

13. SHORT TITLE

These by-laws are called the *Credit Control and Debt Collection By-laws: Municipality of Laingsburg*.