

BELA – BELA LOCAL



MUNICIPALITY

DRAFT CREDIT CONTROL AND DEBT COLLECTION BY-LAW 2020/2021

CREDIT CONTROL AND DEBT COLLECTION BY-LAWS

The Municipal Manager of Bela-Bela Local Municipality acting in terms 13(a) of the Local Government: Municipal Systems Act, 2000 (No.32 of 2000) hereby publishes the Credit Control and Debt Collection By-Laws for the Municipality as approved by Council as set out hereunder.

PREAMBLE

WHEREAS section 156(2) of the Constitution of the Republic of South Africa, 1996 requires a municipality to make and administer by-laws for the effective administration of the matters which it has the right to administer;

AND WHEREAS section 98 of the Local Government: Municipal Systems Act 2000, requires a municipality to adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement;

AND WHEREAS section 13 of the Local Government: Municipal Systems Act 2000, read with section 162 of the Constitution require a municipality to promulgate municipal by-laws by publishing them in the gazette of the relevant province;

AND WHEREAS section 96 of the Municipal Systems Act 2000, requires a municipality to collect all monies due and payable to the municipality and to provide for the matters incidental thereto;

NOW THEREFORE BE IT ENACTED by the Council of the Bela-Bela Local Municipality, as follows:

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1. Definitions

In these by-laws, unless the context indicates otherwise—

"**Council**" means the council of the Bela-Bela local Municipality;

"**Councillor**" means a member of the council;

"**debt**" means any monies owing to the Municipality and includes monies owing in regard to property rates, housing, motor vehicle registration and licensing, leases and any other outstanding amounts, inclusive of any interest thereon, owing to the Municipality;

"**debtor**" means any person who owes a debt to the Municipality;

"**due date**" means the final date on which a payment, as shown on the debtor's municipal account or in terms of a contract is due and payable;

"**indigent debtor**" means a debtor who meets certain criteria of indigency, as determined by the Municipality from time to time;

"**Municipality**" means the Bela-Bela municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"**service**" means "municipal service" as defined in section 1 of the Systems Act, and includes a function listed in Schedules 4B and 5B of the Constitution of the Republic of South Africa, 1996 and any other service rendered by the Municipality; and

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

2. PURPOSE

To give effect to the municipality's credit control and debt collection policy, its implementation and enforcement as outlined in section 98 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

3. APPLICATION FOR MUNICIPAL SERVICE AGREEMENT

- (a) A customer must make an application in writing through a Rendering-of-Service form for services provided by the municipality.
- (b) The municipality, when an application for the provision of municipal services has been made to it, must inform the applicant of the levels of services that are available and the applicable tariffs or the charges and if it be known, the future tariffs or charges, associated with each level of service.
- (c) An application for services that has been submitted by a customer and approved by the municipality shall constitute a written agreement between the municipality and the customer and such agreement shall take effect on the date referred to or stipulated in the agreement.
- (d) The municipality is only obliged to provide a level of service specifically requested by the applicant and to the extent that the municipality has the resources and provides those services.
- (e) If, at the commencement of these by-laws or at any other time, municipal services are provided and received and no written agreement exists in respect of such services, it shall, until the customer enters into an agreement, be deemed that—
 - i. an agreement as envisaged exists; and
 - ii. the level of services rendered to that customer is at a level of services elected by the customer.

- (f) A customer may at any time apply for alterations to the level of services that was elected in terms of an agreement, and, if the customer does so, the municipality may approve the application if it has the capacity and resources to provide the requested level of service, altering the level of services subject to the condition that the customer shall be liable for the cost of effecting the alteration and, if it be feasible to calculate the cost, to pay it before the alteration commences.
- (g) The municipality must take reasonable steps to ensure that an illiterate person who wishes to complete an application form understands the document as well as the consequences of entering into the agreement, and must also notify the customer of the possibility of registering as an indigent customer.
- (h) If the municipality—
- i. refuses an application for the provision of municipal services or a specific service or level of service;
 - ii. is unable to render municipal services, or a specific service or level of service, when the customer wants it; or
 - iii. is unable to render municipal services, a specific service, or a specific level of service;

it must, within 7 (seven) days of refusing the application or of becoming aware of its inability, inform the customer about the refusal or its inability, and must furnish the reasons for its refusal or inability and, if it is able to do so, inform the customer of when the municipal services, or a specific service shall be resumed.

Except as otherwise determined in sub (5) above or elsewhere in this by-law, no services may be supplied until an agreement has been entered into by the Municipality and the user for the supply of a service.

4. DEPOSITS

- (1) Upon approval of the application and before the service is made available, the municipality may require the applicant-
 - a) to make a deposit for municipal services with the municipality;
 - b) to provide any other form of security; or
 - c) to agree to special conditions regarding payment of the municipal account and monies so deposited with the municipality to serve as security and working capital.
- (2) A municipal council may require the applicant to pay a deposit that has been determined by it and may determine that different deposits be paid by different categories of customers, users of services and debtors as well as for different services and standards of service.
- (3) The municipal council may specify acceptable forms of deposits, which may include:
 - a) cash;
 - b) bank guaranteed cheques;
 - c) electronic payment methods;
 - d) Staff deductions
- (4) A deposit determined by the Municipal Council must be paid by a customer when applying for a municipal service and no service will be rendered until it has been paid.
- (5) No interest shall be payable by the municipality on any deposit, or part of a deposit, held by it.
- (6) The municipality may annually review a deposit to be paid.

- (7) On termination of the supply of services, the amount of such deposit, as determined by the municipality, less any payments due to the municipality, must be refunded to an account holder.

5. APPLICABLE CHARGES FOR MUNICIPAL SERVICES

- (1) All applicable charges payable in respect of municipal services, (including but not limited to the payment of connection charges, fixed charges or any additional charges) shall be set by the municipal council from time to time in accordance with—

a) its tariff policy;

b) the by-laws; and any legislation and regulations made in terms of national or provincial legislation.

- (2) Applicable charges may vary for different categories of customers, users of services, types and levels of services, quantities of services, infrastructural requirements and geographic areas.

6. DUTY TO COLLECT

All debt owing to the municipality must be collected in accordance with this Bylaw and policy.

7. MEASUREMENT OF CONSUMPTION

- (1) The municipality must conduct or cause to be conducted an accurate measurement of the municipal services at intervals determined by the municipality, provided that nothing prevents the municipality from making an estimate of the consumption of municipal services for any relevant period if-

- (a) the reading of the meter could not be obtained in respect of the period in question;
- (b) no meter has been installed to measure the consumption on the premises concerned;
- (c) for any other reason the meter could not be accessed to be read; or
- (d) as a result of an illegal connection, a reading could not be obtained.

8. RESPONSIBILITY FOR PAYMENT OF ACCOUNT:

- (1) It is the responsibility of the customer to ensure that his/her account is paid timeously and that such account does not fall into arrears.
- (2) Where a customer is a tenant of property concerned, the owner of property shall be held jointly and severally liable with the tenant for debts on the property.
- (3) Subsection (2) does not apply to the payment of rates, which payment shall be the sole responsibility of the owner of such property.

9. ACCOUNTS AND PAYMENT

- (1) Accounts shall be rendered monthly to customers at the customer's last recorded address.
- (2) Where in the opinion of the municipality it is not reasonably possible or cost effective to render accounts to consumers who consume only subsidised services, the municipal council may, notwithstanding subsection (1), decide not to render accounts to those consumers.

- (3) Failure by the customer to receive or accept an account does not relieve a customer of the obligation to pay any amount that may be due and payable.
- (4) The municipality shall, if it is reasonably possible to do so, issue a duplicate account to a customer on request.
- (5) Accounts must be paid not later than the last date for payment specified on it.
- (6) Accounts for municipal services shall—
 - (a) reflect at least the—
 - i) services rendered;
 - ii) consumption of metered services or the average, shared or estimated consumption;
 - iii) period addressed in the account; iv) applicable charges;
 - v) subsidies;
 - vi) amount due (excluding the value added tax payable) vii) value added tax;
 - viii) adjustment, if any, to metered consumption which has been previously estimated;
 - ix) arrears;
 - x) interest payable on any arrears; xi) final date for payment; and
 - xii) methods, places and approved agents where payment may be made; and
 - (b) state that—

- i. the customer and the municipality may enter into an agreement at the municipal offices in terms of which the customer will be permitted to pay arrears in instalments;
- ii. if no such agreement is entered into, the municipality will limit or disconnect the services, after sending a final demand notice to the customer;
- iii. legal action may be instituted against any customer for the recovery of any amount more than 60 (sixty) days in arrears
- iv. a claim for arrears may be ceded to a debt collector for collection; and
- v. proof of registration, as an indigent customer, in terms of the municipality's indigent policy, which may form part of the municipality's credit control and debt collection policy, must be handed in at the offices of the municipality before the final date for payment.

10. ARREARS

- (1) If a customer fails to pay the account on or before the due date, a final demand notice may be hand delivered or sent by registered post to the most recent recorded address of the customer within 7 (seven) working days of the arrears having accrued.
- (2) Failure to deliver or to send a final demand notice within 7 (seven) working days does not relieve a customer from paying arrears.
- (3) If one account is rendered for more than one municipal service provided, all arrears due and payable by a customer constitute a consolidated debt, and any payment made by a customer of an amount less than the total amount due, will be allocated in reduction of the consolidated debt in the following order:

- (a) towards payment of the current account; (b)
towards payment of arrears; and
- (c) towards payment of interest.

11. POWER TO RESTRICT, DISCONNECT OR DISCONTINUE

- (1) The Municipality may limit, restrict or disconnect the supply of any services to any premises whenever a debtor:
 - (a) fails to make full payment on the due date or fails to make acceptable arrangements for the repayment of any arrears;
 - (b) fails to comply with a condition of supply imposed by the municipality;
 - (c) obstructs the efficient supply of electricity, water, gas or any other municipal services to another customer;
 - (d) supplies such municipal service to a customer who is not entitled thereto or permits such service to continue;
 - (e) causes a situation which in the opinion of the Municipality is dangerous or a contravention of relevant legislation;
 - (f) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act, (Act 24 of 1936);
and
 - (g) is granted an administration order in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944).
 - (h) Tenders a negotiable instrument which is dishonoured by a bank when presented for payment.

- (2) The Municipality shall reconnect supply of any of the limited, restricted or discontinued services after the amount outstanding and due, including the costs of such disconnection and reconnection, if any, have been paid or after any other condition or conditions of the municipality's credit control and debt collection policy have been complied with.
- (3) The right of the municipality to restrict water to any premises or customer shall be subject to the provisions of the Water Services Act, 1997(Act 108 of 1997) and related guidelines from national government.
- (4) The right to limit, restrict, disconnect or terminate a service to a property due to non-payment of any municipal account or due to unauthorized usage of municipal services shall be in respect of any municipal service to that property, and shall prevail notwithstanding the fact that payment was intended to have been made in respect of any specific municipal service and shall also prevail notwithstanding the fact that the person who entered into agreement for supply of municipal services with the municipality and the owner are different entities or persons, as the case may be.

12. RECOVERY OF COSTS

- (1) The municipality may recover the following costs in instances where such costs are incurred by or on behalf of the municipality:
 - a) costs and administration fees where payments are made to municipality via negotiable instrument and are 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 such service had to be effected as a result of non-compliance with the Bylaw.

d) any losses the municipality may suffer as a result of tampering with municipal equipment or meters, and any collection commission incurred.

13. ATTACHMENT

The municipality may in order to recover debt and or as a last resort approach a competent court for an order to attach a debtors movable or immovable property.

14. CLAIM ON RENTAL FOR OUTSTANDING DEBT

The Municipality may in terms of section 28 of the Municipal Property Rates Act, 2004 (Act No 6 of 2004), attach any rent due in respect of any rateable property, to cover in part or in full any amount in respect of outstanding rates after the due date.

15 AGREEMENTS WITH A DEBTOR'S EMPLOYER

(1) The municipality may- subject to section 103 of the Municipal Systems Act with the consent of a debtor, enter into an agreement with his/her employer to deduct from the salary or wages of that debtor:

a) any outstanding amount due by the debtor to the municipality; or

b) regular monthly amounts as may be agreed; and

(2) The municipality may provide special incentives for employers to enter into such agreements and debtors to consent to such.

16. FULL AND FINAL SETTLEMENT PAYMENTS

1. No offer of payments in full and final settlements of a debt when such amount is less than the outstanding amount must be accepted, unless confirmed in writing by the Municipal Manager.
2. Notwithstanding the above, payments so offered must be credited against debtors account, without prejudice to Municipality's rights.

17. FAILURE TO HONOUR AGREEMENTS

- (1) If a customer fails to comply with an agreement for the payment of arrears in instalments, the total of all outstanding amounts, including arrears, any interest, administration fees, costs incurred in taking relevant action, and penalties, including payment of a higher deposit, will be immediately due and payable without further notice or correspondence and the municipality may—
 - a) limit or disconnect the municipal services specified in the final demand notice sent to the customer;
 - b) institute legal action for the recovery of the arrears; and
 - c) hand the customer's account over to a debt collector or an attorney for collection.

18. TERMINATION OF AGREEMENTS FOR MUNICIPAL SERVICES

- (1) A customer may terminate an agreement for municipal services by giving at least 21 (twenty-one) days written notice to the municipality.
- (2) The municipality may terminate an agreement for municipal services by giving at least 21 (twenty-one) days written notice to a customer where—

- (a) municipal services were not utilised for a consecutive period of 2 (two) months and without an arrangement, to the satisfaction of the municipality, having been made for the continuation of the agreement; or
 - (b) premises by a customer have been vacated by the customer, who owns or has occupied them and no arrangement for the continuation of the agreement has been made with the municipality.
- (3) A customer shall remain liable for all arrears and applicable charges that are payable for municipal services rendered prior to the termination of an agreement.

19. INTEREST

- (1) Interest may be levied on arrears.

20. RECONNECTION OF SERVICES

- (1) An agreement for payment of the arrears amount in instalments, entered into after municipal services were limited or disconnected, will not result in the services being restored until—
 - a) the current account, the first instalment payable in terms of the agreement for payment of the arrears in instalments and all recoverable administration fees, costs incurred in taking relevant action and any penalties, including payment of a higher deposit, are paid in full; or
 - b) a written appeal by the customer, on the ground of having made timeous and full payment of instalments and current amounts due and payable for a period of at least 6 (six) months has been approved by the municipality.

- (2) In addition to any payments referred to in subsection (1), the customer must pay the standard re-connection fee, as determined by the council from time to time, prior to the re-connection of municipal services by the municipality.
- (3) Municipal services shall be restored within 7 (seven) working days after a customer has complied with the provisions of subsections (1) and (2).

21. OFFENCES AND PENALTIES

Any person who:

- a) fails to give the access required by an official in terms of this bylaw;
- b) obstructs or hinders an official in the exercise of his or her powers or performance of functions or duties under this by-law;
- c) uses or interferes with measuring tools/meter or consumption of services supplied;
- d) tampers or breaks any seal on a meter or on any equipment belonging to the Municipality, or for any reason as determined by the Municipal Manager causes a meter not to properly register the service used;
- e) fails or refuses to give an official such information as he or she may reasonably require for the purpose of exercising his or her powers or functions under this by-law or provides the Municipality or such an official with false or misleading information knowing it to be false or misleading;
- f) fails to comply with the terms of a notice served upon him or her in terms of this by-law;
- g) contravenes or fails to comply with any provision of this by-law shall be guilty of an offence and be liable upon conviction to a fine or to

imprisonment or both such a fine and imprisonment and, in addition, may be charged for usage, as estimated by the Municipal Manager based on average usage during the previous 6 (six) months or as may be determined by resolution of the Council from time to time.

- (2) Every person committing a contravention or breach of the provisions of this by-law shall also be liable to compensate the Municipality for any expenditure incurred and any loss or damage suffered or sustained by the Municipality in consequence of such breach.

22. PROCESS OF GRIEVANCES AND QUERIES

- (1) An aggrieved person may lodge a grievance or query regarding service charges to the municipality in writing and in the prescribed form.
- (2) The aggrieved person shall clearly state the basis of his or her dissatisfaction and the desired outcome.
- (3) The lodging of a grievance or query shall not relieve the aggrieved person of the responsibility to settle the account, provided that the municipality may, on application in writing and in his or her sole discretion, direct that interim payments may be made pending the finalisation of the grievance or query.
- (4) The Municipality shall respond to such grievance or query in writing within 30 (thirty) days from the date of the lodgement of the grievance or query.

23. APPEALS

- (1) A person aggrieved by any decision taken in terms of these by-law and in terms of a power or duty delegated or sub-delegated, may appeal against such decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) by giving written notice of the appeal and the reasons to the Municipal Manager within 21 (twenty-one) days of the date of the notification of the decision.

- (2) The municipality shall consider the appeal and confirm, vary or revoke the decision.
- (3) The Municipal Manager must commence with an appeal within 6 (six) weeks and decide the appeal within a reasonable period.

24. REPEAL OF BYLAW

N/A

25. SHORT TITLE

This by-law is called the Credit Control and Debt Collection by-law and shall come into operation on the date of publication in the *Provincial gazette*.