



**Revenue Shared Service
Credit Control Policy Presentation
Date: 26 November 2018**

Municipal systems act:

- ❖ Purpose of Systems Act (“the Act”): To provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities. To provide for the manner in which municipal powers and functions are exercised and ensure universal access to essential services that are affordable to all.
- ❖ The debt collection and credit control provisions are set out in Chapter 9 of the Act.

Section 95 – Customer care // billing

❖ In relation to the levying of rates and the charging of fees for municipal services, a municipality must *inter alia*:

- ❖ establish a sound customer management system;
- ❖ where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;
- ❖ ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
- ❖ provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- ❖ provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality.

Municipal systems act

- Section 96(a): obliges the municipality to collect all money that is due and payable to it, subject to the Act and any other applicable legislation
- Section 96(b): requires the municipality to adopt, maintain and implement a credit control and debt collection, which is consistent with its rates and tariff policies with the provisions of the Act.
- ❖ Section 97(1): set out what a credit control and debt collection policy must provide for. This includes, mechanisms for the termination of services or the restriction of the provision of services when payments are in arrears
- ❖ Section 98: **By-laws to give effect to policy** - a municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.

Section 102 of the municipal systems act

- ❖ An important empowering provision in the debt collection and credit control process.
- ❖ Section 102 empowers a municipality to implement any of its debt collection and credit control measures in relation to any arrears on any of the accounts held by the indebted customer.
- ❖ This includes: consolidating any separate accounts of a person liable for payments to the municipality and credit a payment by such a person against any account of that person.

HOWEVER...

- ❑ In terms of section 102(2) of the Act, a municipality cannot implement its debt collection and credit control measures to an account, if there is a dispute between the municipality and the account holder regarding a specific amount claimed by the municipality from that person.
- ❑ The above provision must be read with Section 95 of the Act, which requires a municipality to provide an accessible mechanisms for those persons who wish to query or verify accounts and/or metered consumption.
- ❑ The Act also requires all queries or appeals to receive prompt redress. This requirement is mirrored in the by-laws.

By-laws – pre-termination notice

- ❖ Section 7 and 13 of the By-law require the City to afford an account holder no less than 14 days notice before services are disconnected.
- ❖ The Constitutional Court has found that a notice of intended termination of supply (commonly referred to as a Pre-Term Notice) must be given to those parties who will be effected by the termination of supply – that is not only the account holder, but the occupier of the property - *Joseph and Others v City of Johannesburg Metropolitan Municipality 2010 (4) SA 55 (CC)*.
- ❖ A Pre-Term Notice does not interrupt prescription.
- ❖ The purpose of a Pre-Term is simply to inform all effected parties of the municipalities intention to terminate the supply of services.

By-laws – pre-termination notice

- ❖ A Pre-Term Notice must constitute “*adequate notice*” for the purposes of administrative justice. For this purpose, the Constitutional Court has held that 14 days notice would be fair and that the notice must contain:
 - *all relevant information, including the date and time of the proposed disconnection,*
 - *the reason for the proposed disconnection,*
 - *the place at which the affected parties can challenge the basis of the proposed disconnection.*
 - *it must afford the [occupiers] sufficient time to make any necessary enquiries and investigation, to seek legal advice and to organise themselves collectively if they so*

By-laws – pre-termination notice

- ❖ On its Pre-Term Notices the City does not indicate the date for disconnection.
- ❖ We are of the view that a Pre-Term Notice would probably not justify the termination of supplies if there has been any material change in circumstances between the date of the notice and the time of disconnection.
- ❖ The passing of time itself could constitute such a circumstance and the City should be wary of relying on very old Pre-Term Notices.
- ❖ In a recent Court matter it was found that a Pre-Term Notice given 3½ months before the date of termination still complied with the above requirements. This was, however, in circumstances where there had been no material change in circumstances.

Section 11: by-law

- **Queries or complaints in respect of accounts:**

- Section 11 of the By-Law should be read with Section 95 of the Act.
- In terms of the By-law, the City should resolve a query in respect of the accuracy of any amount due and payable in terms of an account rendered to him or her, within 14 days or as soon as possible thereafter.
- Once a query has been resolved, the City must inform the customer in writing of its decision – section 11 (5)(b).
- Even when it has resolved a query, the City seldom ever informs the customer of its findings in writing or at all. This leads to customers arguing that their queries have not been resolved, thus further slowing down the collection process.

Action to secure payment

- ❖ The By-law empowers the City to institute legal proceedings to secure payment;
- ❖ The added bonus of litigation is that it interrupts prescription.
- ❖ The termination or restriction of the provision of any municipal service in terms of section 15 of the By-law; and
- ❖ the allocation of the whole or a portion of a payment of an account, or the whole or a portion of a pre— payment for future accounts as contemplated in section 8(4)(a) of the By-law, as payment for arrear municipal service fees or rates, in terms of section. This is subject to section 102(2) of the Act.

CLEARANCE

- The Rates Clearance Certificate process is legislated in the Municipals Systems Act 32 of 2000, Section 118.
- A Clearance Certificate is required in the Transfer of Property between Sellers and Purchasers. The seller is responsible to pay all arrear charges on his/her account before a certificate may be issued. In this section of the MSA the seller is only required to pay for service charges for the last 24 months to obtain a Certificate. The debt older than the 24 months still remain due and payable by the seller and is not Written-off.
- A Clearance Certificate will be issued 48 working hours after payment is received and confirmed by our Bankers.

REFUNDS

City is entitled to :

- **decline to issue a refund where the cost and administrative burden of issuing the refund is out of proportion with the amount to be refunded. The Current threshold is R100.00.**
- **Set off against any credit balance due to the customer on any arrears on any account of this customer before a refund is effected**
- **To appropriate to its general revenue any unclaimed money arising from a credit balance of an account, if such amount is not claimed by the customer within a period of three years from the date when the credit arose.**
- **Write back any amount previously written off on behalf of a customer if the customer has a credit balance reflected against any of his/her municipal accounts and requests a refund from the City for such credit balance.**