



DRAFT 3: 19 MARCH 2019

CREDIT CONTROL AMENDMENT BYLAWS

The Msunduzi Municipality, acting in terms of section 98 of the Local Government: Municipal Systems Act, 32 of 2000, read with section 13 of the said Act, hereby amends the Credit Control Bylaws, promulgated in Provincial Gazette No 1297 of 15 January 2015 under Municipal Notice No 10 of 2015, and the Electricity Supply Bylaws published under Municipal Notice 99 of 2015 in the Provincial Gazette No 1393 of 25 June 2015, as follows:

1. Substitution of Section 11 of the Credit Control Bylaws:

Section 11 of the Credit Control Bylaws is substituted as follows:

11. Disconnection and/or restriction of services: -

(1) The Municipality shall be entitled to disconnect, terminate or restrict the services of consumers who are in arrears in accordance with the provisions below.

(2) Prior to disconnecting, terminating or restricting such services based on arrears, the Municipality shall give the consumer 14 (fourteen) days' notice of its intention to so disconnect, restrict or terminate.

(3) Such notice to disconnect, terminate or restrict shall invite the consumer to make written representations to the Municipality within 5 (days), stating the reasons why the Municipality should not proceed with such disconnection, termination or restriction.

(4) The Municipality shall consider all relevant information contained in such representation in deciding whether to proceed with the intended disconnection, termination or restriction and shall advise the account holder of the outcome thereof by sending such outcome by means of a data message communicated to a cell phone number or email address nominated by the consumer.

(5) Any person aggrieved by a decision of the Municipality to disconnect, terminate or restrict services based on arrears shall be entitled to lodge an appeal against such decision with the Municipal Manager.

(6) Such person shall lodge a written memorandum of appeal, with the Municipal Manager and a copy thereof with the Chief Finance Officer, within 10 (ten) days of being notified of the decision to disconnect, terminate or restrict.

(7) The right of appeal to the Municipal Manager against such a decision to disconnect, terminate or restrict lapses if an appellant fails to lodge a memorandum of appeal within 10 (ten) days of being notified of the decision.

- (8) A memorandum of appeal must –
- (a) provide the essential facts of the matter;
 - (b) state the grounds of appeal and the relief sought;
 - (c) raise any issues, which the appellant wants the Municipal Manager to consider in making his or her decision.

(9) The Municipal Manager –

- (a) must determine the procedure to deal with such appeals which may include the holding of an appeal hearing where he or she deems such a hearing necessary,
- (b) determines the procedure of the appeal hearing, where applicable; and
- (c) decides on all matters of law, arising during the appeal, including whether a matter is a question of fact or of law.

(10) The Municipal Manager must reach a decision on the outcome of an appeal heard by him or her within 14 (fourteen) days of receiving the memorandum of appeal or where an appeal hearing was held, within 14 (fourteen) days of such a hearing, or within such extended period as agreed to by the appellant.

(11) The Municipal Manager may –

- (a) uphold and confirm the decision against which the appeal is brought;
- (b) alter the decision to disconnect, restrict or terminate;
- (c) set the decision to disconnect, restrict or terminate aside, and
 - (i) replace the decision to disconnect, restrict or terminate with his or her own decision; or
 - (ii) remit the matter to the decision maker for reconsideration in the event that a procedural defect occurred,

Provided that the Municipal Manager shall provide reasons for such decision within 14 (fourteen) days from the date of his or her decision.

(12) The Municipal Manager may make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal.

(13) The Municipal Manager shall be entitled to appoint any other person to hear and decide any appeal lodged in terms of these provisions, in which case these provisions shall apply mutatis mutandis to such person, provided that no person responsible for taking the decision against which the appeal has been lodged, shall be entitled to hear such appeal, and provided further that the Municipal Manager and the Municipality shall be bound by any decision taken by such other person.

(14) These bylaws shall not detract from any other appeal provision provided for in any other applicable law, provided that an appellant who has lodged an appeal in terms of these bylaws against a decision to disconnect, restrict or terminate, shall not be entitled to also lodge and pursue an appeal against the same decision provided for in such other applicable law.

(15) The Municipality shall be entitled to levy and determine a charge or tariff in respect of any appeal lodged pursuant to these bylaws.

(16) Where any document is required to be served on any person in terms of these Bylaws or where any notice is required to be given to any such person in terms of these Bylaws, such document shall be regarded as having been served and such notice shall be regarded as having been given if the Municipality, or any other person appointed by the Municipality, has served such document or given that notice in one or more of the following ways:

(a) when it has been delivered to that person personally, provided that where the addressee refuses delivery of such document or notice, it shall be sufficient for the Municipality to leave such document or notice at the premises and the Municipality shall certify such refusal on a copy of the original document or notice; or

(b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years, provided that where the aforesaid person refuses delivery of such document or notice, it shall be sufficient for the Municipality to leave such document or notice at the premises and the Municipality shall certify such refusal on a copy of the original document or notice;

(c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained, in which case such document shall be deemed to have been served and such notice shall be deemed to have been given 2 (two) days after the date of postage thereof; or

(d) when an electronic copy thereof has been registered and sent by the South African Post Office Limited to an electronic address as contemplated in section 19(4) of the Electronic Communications and Transactions Act, 25 of 2002; or

(e) when it has been posted in a conspicuous place on the property or premises, if any, to which it relates; or

(f) when it has been communicated to that person by means of a data message as defined in section 1 of the Electronic Communications and Transactions Act, 25 of 2002, provided that:

(i) an acknowledgement of receipt shall not be required for that data message to have legal effect;

(ii) such data message shall identify the Msunduzi Municipality as the sender thereof and shall certify that such data message reflects the Accounting Officer's, Chief Finance Officer's or, where delegated to another person by the Accounting Officer or Chief Finance Officer, such other person's approval of the information communicated by means of such data message; and

(iii) the information contained in such data message shall be readily accessible so as to be usable for subsequent reference; or

(g) when it has been posted by ordinary post to that person's last known residential or business address in the Republic, provided that where this method of service or notification is utilised, the Municipality shall, in addition, also send such notification or serve such document within 3 (three) days of such postage by means of a data message as contemplated above, provided further that in such case such document shall be deemed to have been served and such notice shall be deemed to have been given 3 (three days) after the date of postage thereof; or

(h) when it has been published in accordance with the provisions of s21 of the Local Government: Municipal Systems Act, 32 of 2000, provided that such publication shall also be simultaneously displayed at the Municipality's head and satellite offices and simultaneously published on the Municipality's website,

provided also that if such notice or document relates to the disconnection or restriction of services, it shall also be competent for the Municipality, or another person appointed by the Municipality to, in addition to any of the above methods of service or notification, give notice or serve by:

(i) leaving such notice or document with a person apparently over the age of sixteen years at the property or premises where such services are being provided; provided that where the aforesaid person refuses delivery of such document or notice, it shall be sufficient for the Municipality to leave such document or notice at the premises and the Municipality shall certify such refusal on a copy of the original document or notice; or

(ii) by posting it by registered or certified mail to the address where such services are being rendered and an acknowledgement of the posting thereof from the postal service is obtained.

(17) When any notice or other document must be authorised or served on the owner, occupier or holder of any property or right in any property in terms of these bylaws, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question and it is not necessary to name that person.

(18) Every owner who has been served with a document or has received notice pursuant to these bylaws shall, in the event that the rights of any lessee or occupier are potentially affected by such document or notice, immediately inform any such lessee or occupier of the service or receipt of such document or notice.

(19) (a) To the extent that the Municipality may be in possession of the information referred to in bylaw 19(b) below at the time of promulgation of these bylaws, any document served at or notice given to a person at an address or on a number or email address so in possession of the Municipality at the time of promulgation of these bylaws, shall be deemed to have been properly served or given unless amended by the person pursuant to bylaw 19(b) below.

(b) Without detracting from bylaw 19(a) above, every consumer shall, within 30 (thirty) days from the publication of these bylaws, unless and to the extent exempted in writing by the Municipality, provide to the Municipality the following information to enable the Municipality to serve documents or give notice:

- (i) An email address to which data messages can be sent for the purpose of these bylaws;
- (ii) Business Address, both physical and postal;
- (iii) Residential address; both physical and postal;
- (iv) A cell phone number to which data messages can be sent for the purpose of these bylaws.

(20) Without detracting from the provisions of bylaw 16 above, any document served at or notice given to a person at an address, on a number or email address provided by such person in accordance with bylaw 19(b) shall be deemed to have been properly served or given and the obligation shall be on such person to inform the Municipality, in writing, of any changes in any of the details provided in terms of bylaw 19(a) or 19(b) above.

(21) The Municipality shall be entitled to levy and recover fees, charges or tariffs in respect of any notice given or document served pursuant to these bylaws.

(22) Notwithstanding anything to the contrary in the Electricity Supply Bylaws published under Municipal Notice 99 of 2015 in the Provincial Gazette No 1393 of 25 June 2015, or any other bylaw, the provisions of these bylaws shall apply when the Municipality gives notice or serve documents as contemplated in bylaw 6 or intends to disconnect the supply of electricity, respectively, as contemplated in bylaws 21 (1) and (2) of the aforesaid Electricity Supply Bylaws.

(23) Notwithstanding anything to the contrary in the Water Services Bylaws published under Municipal Notice 58 of 2014 in the Provincial Gazette No 1163 of 24 June 2014, or any other bylaw, the provisions of these bylaws shall apply when the Municipality serves any notice, order or other document relating to legal proceedings as contemplated in bylaw 103 or intends to terminate an agreement for the supply of water or intends to limit or discontinue water services as contemplated in bylaws 10 (2) and 11 of the aforesaid Water Services Bylaws.

2. Section 56(9)(d) of the Electricity Supply Bylaws is substituted as follows:

56(9)(d). If the Chief Finance Officer, or a person delegated or appointed by him or her, decides, after having considered the representations made by the consumer that such representations do not establish a case warranting an amendment to the monetary value established in terms of subsection (6), the Municipality shall be entitled to adjust the account as notified in terms of subsection (9)(a)(i), subject to the consumer's right to appeal the decision of the official in accordance with the provisions of the Credit Control Bylaws.

3. Title and Commencement:

These bylaws may be referred to as the Credit Control Amendment Bylaws, 2019, and shall come into effect on the day of promulgation in the Provincial Gazette.