

MANYAME RURAL DISTRICT COUNCIL DEBT MANAGEMENT BY-LAWS 2023

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IT is hereby notified that the Minister of Local Government and Public Works, in terms of section 90 of the Rural District Councils Act [*Chapter 29:13*], approved the following by-laws made by Manyame Rural District Council

Tittle

- This by-law may be cited as the Manyame Rural District Council Debt Management bylaw 2023.

2. Application

- This bylaw shall apply in respect of money due and payable to Council as defined in section 118 of the Rural District Councils Act chapter 29:13 and reviewed annually in terms of the Council budget;

3. Interpretation

In this by-law, unless the context otherwise requires-

3.2“Account(s)” means any account that includes Council rates and/or taxes and/or services; customer account

3.3“AOD” means Acknowledgement of debt, which means a legal document signed by both the account holder and the Council where the account holder acknowledges liability for an outstanding debt and agrees to pay the debt offering instalment payments until such debt (and any interest thereon if any) is repaid in full;

3.4“Agreement” means a legal document signed by the account holder that consents to the supply of Council services.

3.5“Arrears” means an amount that is due, owing and payable to the Council and includes inter alia; (a) the principal **debt**(b) **collection** costs, (c) interest, (d) default administration charges, (d) connection fees;

3.6 “Customer” means anyone who is liable to pay any monies due to Council in-terms of this by-law, the Rural District Councils Act or any other enactment which mandates such payments to Council.

3.7“The Council” means Manyame Rural District Council;

3.8“**Clearance Figure**” refers to an amount which an account holder and/or rate payer has to pay to the Council.

3.9 “**Collection charges/costs**” means **collection** charges/costs which may be Recovered by the Council in terms of the Rural District Council’s Act. **Collection** charges include Default Administration Charges;

3.10 “**Default administration charges**” means a charge that may be imposed by the Council to recover administration costs incurred as a result of an account holder’s default.

3.11 “**Interest**” means a charge levied on all arrear monies and calculated at a rate determined by the Council from time to time.

3.12 “**Law**” includes a by-law;

3.13 “**bylaw**” means this document;

4. Opening of customer Accounts

4.1 An account for the provision of services will be opened for all customers at Council offices.

4.2 The Council will only register accounts for account holders those who will be receiving or providing Council services.

5. Billing management

(5.1) All monies due to Council are due and payable to the date on the statement by Council.

(5.2) All payments, whether made by cash, cheque, stop order, electronic payments or payments made through agents should be receipted by the Council by the close of business on the due date.

(5.3) Monies dues to the Council can be paid at any Council cashier’s office and any other pay point as determined by the Council, from time to time.

(5.4) Customers who use electronic payments shall notify Council of the payment and provide proof of payment by the close of business for cash payments and upon verification.

(5.5) Failure to attend to the obligations mentioned in 5.2 and 5.2 above may act against the account holder in full and final settlement negotiations with the account holder.

6. Full and final settlement of an amount

(a) The Council shall be at liberty to appropriate monies received in respect of any of its Council services as it deems fit.

(b) Where the exact amount due and payable to the Council has not been paid in full, any lesser amount tendered to and accepted by any Council employee, shall not be deemed to be in final settlement of such an amount.

7. Arrangements to pay outstanding and due amount in instalments

(a) A debtor may enter into a written agreement with the Council to repay any outstanding and due amount to the Council under the following conditions:

(i) the outstanding balance, costs and any interest thereon shall be paid in regular and consecutive installments;

(ii) the written agreement has to be signed on behalf of the Council by a duly authorized officer.

(b) Should any dispute arise as to the amount owing by any customer in respect of Council dues, the customer shall, notwithstanding such dispute proceed to make regular minimum payments based on the calculation of the average Council dues for the preceding three months prior to the arising of the dispute and taking into account interest as well as the annual amendments of tariffs of the Council.

(c) Should any dispute arise on the billing method in respect of Council dues, the customer shall, notwithstanding such dispute, proceed to make payments based on the calculation of the average Council dues for the preceding three months prior to the arising of the dispute and taking into account interest as well as the annual amendments of tariffs of the Council.

8. Relaxation, Waiver And Differentiation

8.1 The Council may differentiate between different categories of ratepayers, users of services, customers, debtors, taxes, services, service standards and other matters.

8.2 The Council may, in a specific instance and for a particular owner or customer, relax or waive in writing the requirements of a provision of these by-laws.

8.3 Any such differentiation or relaxation shall be upon such conditions as it may deem fit to impose, if it is of the opinion that the application or operation of that provision in that instance would be unreasonable.

9. Debt Recovery

(9.1) At the beginning of each year or any time of the year Council shall proceed to issue out statements to customers depicting amounts owing to Council, which should be settled within the stipulated timelines.

(9.2) In the event that the customer fails to settle their dues within time stipulated in 9.1, Council shall serve the customer with a written reminder outlining the demand for such payment within seven days.

(9.3) In the event that the customer fails to settle their dues within time stipulated in 9.2, Council shall serve the customer with a second written reminder outlining the demand for such payment within seven days.

(9.4) A final letter of demand shall be served to a customer outlining the demand of payment of Council dues within seven working days from the date of delivery of such demand.

(9.5) The address for service for statements, notices, demands and reminders as outlined above shall be the address provided by a customer in Council's official records.

10. Litigation Against Defaulters

(10.1) The Council may at its discretion commence its litigation against defaulters or customers who have failed, neglected and/or refused to settle their debts or Council dues within the stipulated time.

(10.2) The costs of recovery of debts and payments shall be recovered from the customer at the scale determined by the courts of law.

11. Debt Write Off

(11.1) The Council has the discretion to write off **debt** if irrecoverable.

(11.2) All **debt** write offs shall be referred to the **Finance Committee and To Council**.

(11.3) **Debt** shall be considered irrecoverable if:

(11.3a) legal recourse has been exhausted and the Council is still unable to secure payment of the outstanding **debt**; or

(11.3b) the success of future legal action by the Council to recoup the outstanding **debt** is compromised due to actions or inactions.

(11.3c) the costs of instituting legal action for the recovery of the outstanding **Debt** would be higher than the value of the outstanding **debt**; or

(11.3d) the debtor in question cannot be traced and a tracing agency has

rendered a non-traceable report on the debtor in question; or

(11.3e) if the amount outstanding is the residue after payment of a dividend in the dollar from an insolvent estate; or

(11.3f) a deceased estate is insolvent and has no liquid assets to cover the outstanding amount; or

(11.3g) a competent Plea of Prescription has been raised by the defendant in the Plea, or alternatively if the Plea of Prescription is raised *ex facie* the Plea but carries the real risk that it would be upheld if raised properly in the Plea; or

(11.3h) if, as a result of the lack of evidence, it is not possible to prove the **debt** outstanding; or

(11.3i) if the outstanding amount is due to an irreconcilable administrative error by the Council; or

(11.3j) If the Sheriff of the Court has rendered a *Nulla Bona* return on movables and the debtor has no immovable property.

The above factors do not constitute an exhaustive list of factors that may be taken into account, and the Council may, in its opinion, consider any other factor.

(11.4) In exercising its discretion, the Council must act lawfully and reasonably having regard to the principles of fairness and equity.

(11.5) An official who knowingly participates in fraudulent conduct with an accountholder in the write off of a **debt** shall be subjected to the disciplinary action as set out in the Council's Disciplinary Code of Conduct, as well as civil or criminal prosecution in a competent court of law.

12. Write backs

12.1 The Council shall be entitled to reverse any amount written off as a bad **debt** where it is later found that an account holder has misrepresented (whether intentional or negligently) any information whatsoever in order to motivate such write-off of debt.

12.2 The Council shall be entitled to effect the write back immediately against the account holder's Council account upon noting the fraud or misrepresentation.

12.3 The Council may write back any amount previously written off on behalf of an account holder if the account holder at any time has a credit balance reflected against any of his/her Council accounts and requests a refund from the Council for such credit balance. The write back principle will apply to all other account holders, including indigent account holders.

13. Interest charges

13.1 All outstanding debts of more than one month shall be considered overdue and accrue interest.

13.2 Interest shall be charged on all overdue accounts at a rate fixed by Council provided it does not exceed one per centum above the rate of interest charged by the State in respect of loans made to local authorities as specified in section 108 of the Rural District Council's Act chapter [29:13].

14 Interest Reversals

14.1 An account holder may apply to the Council, in the prescribed form, for interest on an account to be reversed.

14.2 Interest on outstanding debt may be reversed when:

14.2.1 an account holder has applied for relief from interest in order to facilitate the final settlement of all outstanding debt on his account;

14.2.2 before embarking on litigation to recover outstanding debt, interest reversal is used as a tool to persuade the account holder to settle his outstanding debt in full;

14.2.3 in the course of litigation, the reversal of interest is used as a negotiating point for the settlement of the matter in court;

14.2.4 Interest reversal may also be initiated by authorized officials in instances where errors with billing have occurred and outstanding arrears should not have accrued interest in the first instance.

15. Refunds

15.1 Any account holder may apply, in the prescribed manner, for a refund on any credit balance on their account.

15.2 The refund application will be considered and verified by the Council in terms of its internal procedures

15.3 The Council reserves the right to periodically determine a bottom threshold for when it is entitled to decline to issue a refund where the cost and administrative burden of issuing the refund is out of balance with the amount to be refunded.

15.4 Any arrears on any account of the account holder requesting or entitled to a refund may be set off against any debit balance due to that account holder on any of his accounts before the refund is effected.

15.5 There is an obligation on all account holders to ensure that their contact details on the Council's system are correct and updated at all times.

15.6 The Council shall be entitled to write back or appropriate any unclaimed money arising from a credit balance of an account holder account, if such amount is not claimed by the account holder within a period of one year from the date when it became due to him/her.

16. Clearance figures

16.1 In order to obtain a rates clearance certificate, an account holder must accurately complete a rates clearance application form in full, either manually or electronically upon payment of a rates clearance certificate application fee.

16.2 The Council will provide the full outstanding amount owing on the account as a clearance figure as it is this figure that will clear the account.

16.3 An account holder may also apply for a clearance certificate, in the prescribed manner, in terms of section 282 of the Rural District Councils Act.

16.4 Any dispute/query regarding a clearance figure or the incomplete/incorrect completion of a clearance application form may result in a delay of the furnishing of the clearance certificate.

16.5 An administration fee shall be charged together with clearance application fee.

16.6 The issued certificate should be in the prescribed form and must be signed by the Council or a duly authorized official.

16.7 The prescribed clearance certificate is valid for a period of 120 days from the date of issue and the process for application of a clearance figure will have to be repeated if clearance amounts are not paid timeously.

17. Multiple account management

17.1 The Council may:

17.1.1 Consolidate any separate accounts of any account holder liable for Payments to the Council, and/or separate an account of any account holder liable for payments to the Council; provided that the accounts involved relate to the same account holder.

17.1.2 Appropriate, any credit balance on one account against an arrear amount on another account instead of issuing a refund for such credit balance, provided that the accounts involved relate to the same account holder.

17.2 The rule in 18.1 above does not apply in the instance where attorneys pay in moneys on behalf of their clients for the purposes of obtaining a clearance certificate.

18 Actions to secure payment

18.1 The Council may use any other credit control methods, which are permitted in law. This includes but is not limited to the following:

18.1.1 Reference Checking;

18.1.2 Credit bureau, Deeds Office,

18.1.3 Deposit taking

18.1.4 Requirement to sign Account holder Agreements

18.1.5 Monthly statements

18.1.6 Statement reminder messages

18.1.7 Telephone calls

18.1.8 Notices and Final Notices

18.1.9 Termination or Restriction of Services Notices

18.1.11 Letters of demand

18.1.12 Legal Action

18.1.13 Invoke section 151 of the Rural District Councils Act [Chapter: 29:13] for recovery of rates.

18.1.14 The Council reserves the right to name and shame bad debtors.

19 Cost of credit control & debt collection.

19.1 Any costs incurred by the Council in collecting amounts owing to it shall be recovered from the relevant account holder including administration and collection Charges.

20 Costs of termination of services

Where any service is terminated as a result of non-payment of outstanding amounts, the Council shall be entitled to levy and recover the standard **credit control** fees as determined by the Council, from time to time, from the account holder.

21 Restriction or termination of services

21.1 The Council may restrict or terminate the supply of water and refuse removal or discontinue any other service whenever a user of any service:

21.1.1 Fails to make full payment on the due date or fails to make acceptable Arrangements for the repayment of any amount for services, rates or taxes or other amounts due;

21.1.2 Fails to comply with a condition of supply determined by the Council;

21.1.3 Fails to repair a leak to supply that causes wastage of supply after having been advised to do so and having been given reasonable notice to comply;

21.1.4 Obstructs the efficient supply of water or any other Council services to another customer; or

21.1.5 Supplies such Council service to a customer who is not entitled thereto or permits such service to continue.

21.1.6 Causes a situation which in the opinion of the Council is dangerous or a contravention of relevant legislation;

21.1.7 Is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act; and

21.1.8 if an administration order is granted in terms of the relevant section of the Magistrate court Act, in respect of such user.

21.2 The right to restrict, disconnect or terminate service due to non-payment shall be in respect of any services rendered by the Council and shall prevail notwithstanding the fact that payment has been made in respect of any specific service and shall prevail notwithstanding the fact that the person who entered into agreement for supply of services with the Council and the owner are different entities or parties, as the case may be.

22 Reconnection of services

22.1 The Council shall reconnect and/or restore full levels of supply of any of the restricted or discontinued service only after the full amount outstanding is paid, including the costs of such disconnection and reconnection or acceptable arrangements having been made for payment of such outstanding amounts in terms of this Bylaw , or any other condition(s) of this Bylaw have been complied with.

22.2 Only an authorized official shall authorize the reconnection of services or reinstatement of service delivery after satisfactory payment and/or arrangement for payment has been made according to this Bylaw

23 Full and final settlement of an account

23.1 The Council may negotiate a settlement of an arrear account at any stage of the collection process.

23.2 The Council shall appropriate monies received in respect of any of its debts in line with the relevant statutes.

24 Arrangements to pay arrears

24.1 A debtor may enter into a written agreement with the Council, to repay any overdue amount by signing an acknowledgment of debt (AOD) wherein the account holder or duly authorized representative:

24.1.1 Admits liability for all outstanding amounts owing and payable to the Council;

24.1.2 Offers to pay all outstanding amounts together with any collection costs that may have been incurred by the Council;

24.1.3 undertakes to pay collection fees for which the Council is liable in respect of the recovery of such instalment;

24.1.4 includes a consent to judgment and shall entitle the Council to obtain default judgment against the account holder should the account holder default in terms of the conditions as set out in the AOD.

24.2 Should the account holder fail to act in accordance with the written offer made, the Council shall then be entitled to proceed to obtain default judgment against the account holder and proceed to collect any amount due owing and payable by the account holder;

24.3 Should the Council accept this offer, the acceptance shall be in writing and forwarded to the account holder.

24.4 Should the account holder fail to pay the agreed instalments, after having been advised by the Council or his attorney in writing that his offer is accepted, the Council may proceed to obtain judgment against him/her.

24.5 The written agreement has to be signed on behalf of the Council by a duly authorized official.

24.6 Should any disputes arise as to the amount owing, the debtor will continue to make regular payments, based on the average charges for the preceding three months prior to the dispute, plus interest.

25 Interest on arrangements

Once an agreement has been concluded the amount in arrears will be reflected as current and no further interest will be added. In the event of default, interest will again be levied from date of default.

26 Fraud, forgery, tampering & other criminal activity

The Council shall at its discretion be entitled to withhold the services to a debtor who is found guilty of fraud, theft or any other criminal action relating to the supply of services or if it is evident that fraud, theft or any other criminal action has occurred relating to such supply, until the total costs, penalties, other fees, tariffs and rates due to the Council have been paid in full.

27. Payment methods

27.1 The Council reserves the right from time to time to introduce new payment methods in line with the advancements of technology, and to:

- Recover the costs of the introduction of such payment methods from the account holders; and
- Discontinue the use of existing payment methods in the case of but not limited to the following circumstances:
- Susceptibility of payment method to fraud and corruption,
- Difficulty with tracking payments and appropriating payments to the correct account,
- Cost of sustaining payment method

28 Excessive payments

28.1 The Council reserves the right not to accept excessive payments as payment in circumstances where such cash payment will entitle the account holder to a refund for a period of 1 (one) year following payment of the cash into the account holder's account.

28.2 In furtherance of 33.1 above, the Council may withhold the refund of amounts under circumstances described in 33.1 above for a period of 1(one) year from the payment of the cash into the account holder's account.

29 Appeals

29.1 All appeals to Council must be in the required form, failing which such may not be considered by Council

29.2 The decision of the Council, shall be final, and any further recourse should be sought through the judicial system.

30. Offences

30.1 A person who –

- (a) fails to give the access required by an officer in terms of these by-laws;

- (b) obstructs or hinders an officer in the exercise of his or her powers or performance of functions or duties under these by-laws;
- (c) uses or interferes with Council equipment or consumption of services supplied;
- (d) tampers or breaks any seal on a meter or on any equipment belonging to the Council, or for any reason as determined by the Council
- (e) causes a meter not to properly register the service used, shall be charged for usage, estimated by the Council based on average usage;
- (f) fails or refuses to give an officer such information as he or she may reasonably require for the purpose of exercising his or her powers or functions under these by-laws or gives such an officer false or misleading information knowing it to be false or misleading;
- (g) contravenes or fails to comply with a provision of these by-laws;
- (h) fails to comply with the terms of a notice served upon him or her in terms of these bylaws; shall be guilty of an offence and liable to a fine as prescribed in the Council budget or prosecution or both such fine and prosecution.