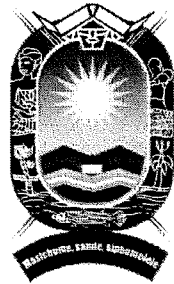


# **ANNEXURE A**



**BUFFALO CITY  
METROPOLITAN MUNICIPALITY**

**BUFFALO CITY METROPOLITAN MUNICIPALITY**

**CREDIT CONTROL BY LAW**

**2023**

## PREAMBLE

WHEREAS section 152 (1) (b) of the Constitution of the Republic of South Africa 1996 ('the Constitution') provides that one of the objects of local government is to ensure that the provision of services to communities occurs in a sustainable manner;

AND WHEREAS section 153 (a) of the Constitution provides that a municipality must structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community;

AND WHEREAS section 195 (1) of the Constitution provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution, including –

- The promotion of the efficient, economic and effective use of resources;
- The provision of services impartially, fairly, equitably and without bias; and
- The fact that people's needs must be responded to.

AND WHEREAS section 4 (1)(c) of the Local Government: Municipal Systems Act 32 of 2000 ('the Municipal Systems Act') provides that the council of a municipality has the right to finance the affairs of the municipality by:-

- charging fees for services;
- imposing surcharges on fees, rates on property; and
- charging fees to the extent authorised by national legislation, other taxes, levies and duties

AND WHEREAS section 5(1)(g), read with subsection (2)(b), of the Municipal Systems Act provides that members of the local community have the right to have access to municipal services which the municipality provides provided that, where applicable and subject to the by-law for indigent debtors, pay promptly for services fees, surcharges on fees, other taxes, levies and duties imposed by the municipality;

AND WHEREAS section 6 (2)(c),(e) and (f) of the Municipal Systems Act provides that the administration of a municipality must take measures to prevent corruption; give members of a local community full and accurate information about the level and

standard of municipal services that they are entitled to receive; and inform the local community about how the municipality is managed, of the costs involved and the persons in charge;

AND WHEREAS Chapter 9, sections 95 to 104 of the Municipal Systems Act provides for credit control and debt collection processes and procedures of the municipality, policy and by-laws that give effect to the policy, supervisory authority and implementing authority, respectively.

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### **SCHEDULE 1**

## CHAPTER 1 - INTERPRETATION

### 1. Definitions

*The following definitions apply unless the context indicates otherwise.*

*The singular will also refer to the plural.*

*Any reference to a particular gender includes the opposite gender or the neuter*

**“account”** means an account rendered, specifying charges for services provided by the municipality, or an authorised and contracted service provider, and which account may or may not include assessment rates levies;

**“arrangement”** means a written agreement entered into between the municipality and the debtor where specific repayment parameters are agreed to. Such arrangement does not constitute a credit facility envisaged in section 8 (3) of the National Credit Act 34 of 2005 (“the National Credit Act”) but is deemed to be Incidental Credit as envisaged in section 4(6)(b) read with section 5(2) and (3) of the National Credit Act;

**“arrears”** means those rates and services charges that have not been paid by the due date and for which no arrangement has been made;

**“authorised official”** means an employee of the municipality or any other person duly authorised, in writing, by the municipality to perform any act, function or duty in terms of, or exercises any power, under this By-Law;

**“billing date”** means a date upon which the monthly statement is generated and debited to the consumer’s account;

**“business premises”** means premises utilised for purposes other than residential and excludes the following: -

- (a) hospitals, clinics and institutions for mentally ill person which are not operated for gain;
- (b) museums, art galleries, libraries and botanical gardens registered in names of private persons and are not open to the public, whether administration fees are charged or not;

- (c) sports grounds used for the purposes of amateur sports and any other social activities which are connected with such sports;
- (d) any property registered in the name of an institution or organisation which, in the opinion of the municipality performs charitable work;
- (e) any property utilised for *bona fide* church or religious purposes;

**“city manager”** means a municipal manager as defined hereunder;

**“chief financial officer”** means the person appointed as chief financial officer of the municipality in terms of section 80(2)(a) of the Municipal Finance Management Act 56 of 2003;

**“consumer”** means any owner of the premises with whom the municipality has contracted to supply or is actually supplying municipal services: Provided that; only juristic persons may be tenants and further that such juristic person shall authorise a person who will sign as surety for the municipal services rendered to the juristic person as tenant;

**“credit control”** means all the functions relating to the collection of monies owed by ratepayers and the users of municipal services;

**“day/days”** means calendar days, inclusive of Saturday, Sunday and public holidays;

**“debtor”** means a consumer who owes money to the municipality;

**“debt collection”** means the activity to collect monies owed to the municipality by a debtor;

**“debt impairment allowance”** means the irrecoverable amount calculated on the billing debtor balance as at thirty (30) June of a financial year by which the debtor balance must be reduced in the Annual Financial Statements;

**“defaulter”** means any person owing the municipality arrear monies in respect of taxes and/or service charges in relation to:

- (a) rates due in respect of any immovable property, means the thirtieth (30<sup>th</sup>) day of September of the financial year for which

such rate is levied, or any other date determined by the council by notice in the provincial gazette, and

- (b) in respect of service charges due in respect of any immovable property, means the date for payment indicated on the account; Provided that if such day falls on a Saturday, Sunday or public holiday the due date shall be the next municipal day;

**“electricity smart meter”** means an electronic device that records information such as consumption of electricity energy, voltage levels, current and power factor and which communicates the information to the consumer for greater clarity of consumption behaviours and electricity suppliers for system monitoring and consumer billing;

**“fire levy”** means a fee levied to cover charges and expenses when the Fire Department responds to fire calls, in respect of dwelling, businesses and vacant land;

**“government funded properties”** means houses owned by the government in terms of the Reconstruction and Development Program;

**“immovable property”** includes

- (a) an undivided share in immovable property, and
- (b) any right in immovable property;

**“implementing authority”** means the city manager or his or her nominee, acting in terms of section 100 of the Local Government: Municipal System Act No. 32 of 2022 (the Municipal Systems Act);

**“indigent debtor”** means: -

- (a) the head of an indigent household;
  - i) who applied for and has been declared indigent in terms of the municipality’s Indigent Support By-Law for the provision of services from the municipality; and
  - ii) who makes application for indigent support in terms of the Municipality’s Indigent Support By-Law on behalf of all members of his or her household;

(b) an orphaned minor child duly represented by their legal and/or *de facto* guardian;

**“indigent support programme”** means a structured programme for the provision of indigent support subsidies to potential and/or qualifying indigent debtors in terms of the municipality’s Indigent Support By-Law;

**“Indigent Support By-Law”** means the Indigent Support By-Law adopted by the council of the municipality;

**“interest”** means a charge levied on all arrear monies with the same legal priority as service fees and calculated at a rate determined by the municipality, from time to time between the same dates in successive months;

**“month”** means one of the twelve (12) months of the calendar year or a period of time between the same dates in successive months;

**“late payment penalty”** means the penalty fee imposed on a defaulting debtor appearing on the debt collection action list, and is due and payable irrespective of whether the services have been suspended or not;

**“monthly average consumption”** means the monthly average consumption in respect of that property calculated on the basis of consumption over the preceding or succeeding twelve (12) months;

**“municipal council” or “council”** means the municipal council of the Buffalo City Metropolitan Municipality or any duly authorised committee, political office bearer or official of the said council;

**“municipal day”** means any day of the week that is not a Saturday, a Sunday or a public holiday; on which municipal offices are operating;

**“municipal pay point”** means any municipal office in the area of jurisdiction of the municipality designated by the municipality for such purposes, or any such other places as the chief financial official may from time to time designate;

**“municipal services”** means services provided either by the municipality, or by an external agent on behalf of the municipality in terms of a service delivery agreement;



**“municipality”** means the Buffalo City Metropolitan Municipality established in terms of section 12 of the Municipal Structures Act 117 of 1998 (the Structures Act);

**“municipal manager”** means a person appointed in terms of section 54A of the Municipal Systems Act;

**owner”** means:-

- (a) a person in whom the legal title to a premises is vested;
- (c) in cases where the person in whom the legal title is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative;
- (d) in the case where council is unable to determine the identity of the person in whom the legal title is vested, the person who is entitled to the benefit of such premises or building thereon;
- (e) in relation to:
  - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 95 of 1986, and without restricting the above, the developer or the body corporate in respect of the common property; or
  - (ii) a section defined in such Act, the person in whose name such section is registered under a sectional title deed and includes 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 71 of 2008, trust *inter vivos*, trust *mortis causa*,
  - (ii) a closed corporation registered in terms of the Close Corporation Act, 1984 or a voluntary association;

- (iii) any Department of State and its head office or principal place of business;
  - (iv) any council or board in terms of any legislation applicable to the Republic of South Africa; and
  - (v) any embassy or other foreign entity; and
- (f) a lessee of municipal property who will be deemed to be the owner for purposes of rendering a municipal account;

**“partially collectable debt”** means a debt that cannot be collected in full through application of debt collection processes;

**“premises”** includes any piece of land, the external surface boundaries or which are delineated on:

- (a) a general plan or diagram registered in terms of the Land Survey Act, 9 of 1927 or in terms of the Deed Registry Act 47 of 1937; or
- (b) a sectional plan registered in terms of the Sectional Titles Act 95 of 1986, which is situated within the area of jurisdiction of the municipality;

**“prescribed”** means prescribed by this By-Law and where applicable by the council, city manager or any other applicable law or directive;

**“prescribed debt”** means debt that becomes extinguished by prescription in terms of the Prescription Act 68 of 1969;

**“person”** means a natural person or juristic person; including any department of state, a public entity, a state entity, a foreign embassy or any statutory body;

**“rates”** means any tax, duty or levy imposed on property by the municipality which shall be due and payable on the thirtieth (30<sup>th</sup>) of September of each financial year;

**“reconnection fee”** means the penalty fee imposed on a defaulting debtor appearing on the debtor collection action list and is due and payable irrespective whether the services have been suspended or not;

**“reconstruction and development programme (RDP)”** means the socio-economic policy implemented by the government to deal with social problems like housing;

**“responsible person”** means any person other than the registered owner of an immovable property who is legally responsible for the payment of municipal charges;

**“service agreement”** means the application form that is completed by the owner of the property for the provision of municipal services;

**“service charges”** means the fees levied by the municipality in terms of its Tariff By-Law for the municipal services rendered in respect of an immovable property and includes any penalties, interest or surcharges levied or imposed in terms of this By-Law;

**“service delivery agreement”** means an agreement to provide municipal service between the municipality and an institution or person mentioned in section 76 (b) of the Systems Act;

**“surety”** means a person who takes responsibility for another’s performance of an undertaking;

**“sundry debtor accounts”** means accounts raised for miscellaneous charges for services provided by the municipality or charges that were raised against a person as a result of an action by a person and which was raised in terms of council’s policies, by-laws and decisions;

**“supervisory authority”** means the Executive Mayor of the municipality or his or her nominee, acting in terms of section 99 of the Municipal Systems Act;

**“tariff”** means any rate, tax, duty and levy or fee which may be imposed by the municipality for services provided either by itself or in terms of a service delivery agreement;

**“Tariff By-Law”** means a Tariff By-Law adopted by the council in terms of section 75 of the Municipal Systems Act;

**“user”** means the owner or occupier of a property in respect of which municipal services are being rendered;

**“water smart meter”** means an electronic device that records information on the consumption of water. Smart meters communicate the information to the consumer for greater clarity of consumption behaviour or monitoring and consumer billing;

**“written notice”** means: -

- (a) a notice appearing on the consumer’s consolidated account detailing the arrears due;
- (b) a notice hand delivered at the consumer’s property;
- (c) a notice delivered to the consumer by the sheriff of the court;
- (d) a notice dispatched to the consumer through the South African Postal Services;
- (e) a short message service;
- (f) an automated system generated response;
- (g) any written notice dispatched through the web portal on the Buffalo City Metropolitan Municipality website; or
- (h) any written communication from the municipality and shall include a pre-termination notice.

## CHAPTER 2 - APPLICATION FOR THE PROVISION OF MUNICIPAL SERVICES

### 2. Application for the Provision of Municipal Services

- (1) A consumer who requires the provision of municipal services must apply in writing, on the prescribed form, at least ten (10) municipal days before the date on which the service is required to be connected: Provided that outstanding debt on the premises, if any, has been settled in full.
- (2) Proof of ownership or any other form of legal title shall accompany an application for the provision of municipal services, however, an application from a tenant or any other person who is not the owner of the property shall not be entertained.
- (3) On receipt of the application the municipality shall cause the readings of metered services to be taken on the municipal day preceding the date of occupation and for this purpose the applicant shall ensure access to the metering device/s.
- (4) Consumers who fail to register and who consume services illegally will be subjected to such administrative, civil or criminal action as may be deemed appropriate and the absence of a service agreement shall not absolve the owner from the responsibility to settle the rates and/or service charges rendered on the property.
- (5) The service agreement between the municipality and the applicant for municipal services constitutes:-
  - (a) an acknowledgement by the applicant that accounts will become due and payable by the due date notwithstanding that the applicant did not receive the account;
  - (b) an undertaking that the applicant shall ensure that he/she in possession of an account before the due date;
  - (c) an undertaking that the applicant will be liable for collection costs including administration fees, interest, disconnection and reconnection

- costs, and any other legal costs occasioned by his/her failure to settle accounts by the due date;
- (d) in the case of a juristic person, an undertaking by the directors, members, partners or trustees that in the event of the juristic person or entity defaulting on payment of the account, they shall be liable for the account, jointly and severally; and
  - (e) an undertaking by the municipality to provide the service to the best of its ability and render accounts timeously.
- (6) The service agreement does not constitute a credit facility envisaged in section 8 (3) of the National Credit Act but shall be an incidental credit agreement as envisaged in section 4 (6)(b) of the National Credit Act and the National Credit Act will only apply to the extent stipulated in section 5 thereof.
- (7) Notwithstanding section 2 (2) above:-
- (a) individuals and businesses having lease agreements with the municipality will be allowed to apply for municipal services and enter into service agreements in the name of the lessee;
  - (b) registered indigent tenants will be allowed in terms of Deceased Estates provisions and Absconded Owners Scheme to apply for municipal services and enter into service agreements in their own name in order to benefit from rebates offered by the municipality;
  - (c) a tenant account may be opened in the name of government departments, state owned entities and other public entities who lease property as tenants; and
  - (d) an agent may, by proxy, apply for municipal services and enter into a service agreement in the name of the consumer if all the requisite information of the consumer is supplied.
- (8) The first account for services will be rendered after the first meter reading following the signing of the service agreement.

- (9) The owner must inform the municipality when the purpose or extent of the municipal service used is changed.

## **CHAPTER 3 - DEPOSITS AND GUARANTEES**

### **3. Deposits and Guarantees**

- (1) When applying for the provisions of municipal services the applicant shall pay the deposit determined by the council annually and contained in the tariff book.
- (2) The municipality may, upon written notice: -
  - (a) increase or decrease the deposit paid if found that the deposit is not commensurate with the estimated charges for the supply of electricity and water for a period of three (3) months; or
  - (b) increase the deposit paid where the electricity and/or water supply has been disconnected at least twice during the proceeding period of twelve (12) months on account of default or wrongdoing on the part of the consumer.
- (3) Upon conditions determined by the municipality at the time of an application by a business for municipal service, the municipality may accept a guarantee in lieu of a deposit.
- (4) The deposit or any portion thereof will be dealt with as contemplated in section 5 (12), in the event of termination of services by the consumer.
- (5) A deposit may be forfeited to the municipality if an act of tampering, illegal connection or illegal reconnection has been committed.

## **CHAPTER 4 - RECIPROCAL DUTIES OF THE MUNICIPALITY AND CONSUMERS**

### **4. Reciprocal Duties of the Municipality and Consumers**

- (1) The municipality has a duty to provide a consumer with the prescribed municipal services and collect all monies due to it by the consumer.
- (2) A consumer has a duty to pay for all municipal services consumed, update their information details with the municipality as and when they change and if the consumer has not received the monthly account, to obtain an account by: downloading it from the municipality website or visiting one of the municipal finance offices or contacting the consumer call centre.

### **5. Accounts and Billing**

- (1) The municipality must, on a monthly basis and in cycles of approximately thirty (30) days, provide all consumers with consolidated accounts of services rendered which shall include the property rates charges, where applicable, and such accounts shall be due and payable on the due date stated in the account.
- (2) Notwithstanding the provisions of section 5 (1) above, an owner of immovable property who intends to be billed on an annual basis must submit a written application to that effect and such annual account will be issued in July of each year and be due and payable on or before thirtieth (30<sup>th</sup>) September of the same year.
- (3) The tariff for rates and services is determined and approved by council annually and published in an annual tariff book.
- (4) All accounts issued shall be payable on the due date and any accounts that remain unpaid after the due date shall attract interest irrespective of the reason for such non-payment.



- (5) Charges in unoccupied and vacant properties are payable by the registered owner.
- (6) The municipality may from time to time, send to all consumers a pre-populated document relating to the updating and verification of consumer information which must be confirmed or updated by the consumer or a proxy and returned to the municipality within the prescribed period.
- (7) Failure to respond to the document seeking to update and verify consumer information may result in with-holding; disconnection of services or any other appropriate action.
- (8) The municipality must bill an owner of a property, monthly for property rates, refuse and sewerage charges.
- (9) Electricity and Water Charges are as follows:
  - (a) Consumption of electricity and water is billed in terms of metered consumption.
  - (b) In the absence of metered consumption, the municipality may charge an estimate based on historical consumption of a consumer.
  - (c) In the absence of historical consumption, the municipality shall bill an interim charge, as determined by the council from time to time.
  - (d) At the next instance of a metered consumption the estimated historical consumption shall be altered to indicate the true state of affairs of the account.

(10) Fire Levy

The fire levy is charged monthly in the consolidated account produced by the municipality.

(11) Sundry Debtor Accounts

Sundry Debtor accounts are included in the monthly consolidated account and are raised:-

- (a) for miscellaneous charges for services provided by the municipality;
- (b) charges that are raised against a debtor as a result of an action by a debtor;
- (c) charges that are raised by a person which necessitate a charge to be raised by the municipality against the debtor;
- (d) charges raised against a person in terms of the council's policies, by-laws and decisions; or
- (e) where possible the stand alone sundry debtor account should be consolidated to the consumers rates and services account.

(12) Final Accounts

- (a) On receipt of an application for termination of services
  - (i) the final reading of metered services must be taken by the municipality and the accounts will be finalised.
  - (ii) the consumer deposit must be appropriated to cover any outstanding debts and if a credit balance remains it shall be refunded to the consumer on condition that the consumer has provided the municipality with a forwarding address.
- (b) Where the municipality is not able to obtain a final reading from the metering devices, the municipality may charge a final reading based on the average daily consumption up to the date of termination, appropriate the service deposit or part thereof and proceed to produce a final account.
- (c) The municipality will not pay interest on any security deposit held in respect of service charges.

(13) The due date for payment of any account in the Buffalo City Metropolitan area is the 15<sup>th</sup> day of the month and in the event of the 15<sup>th</sup> day of the month falling on a Saturday, Sunday or a public holiday the due date shall be the next ensuing municipal day.

(14) Back Charges

- (a) If it is found that a consumer has been undercharged or unbilled for any service, except property rates which will be charged for the full period,

the municipality must amend the undercharged or unbilled amount for a period not exceeding six (6) months, counting backwards, from the date the municipality becomes aware.

- (b) The consumer may settle the back charge in equal instalments over the same period in relation to the period of the back charge if such undercharge or unbilling is not due to meter tampering, or any other unlawful action or inaction by the consumer.
- (c) If the consumer has been undercharged or unbilled due to meter tampering the full amount undercharged or unbilled must be recovered and no repayment agreement shall be entered into and the service shall be suspended until the undercharged or unbilled amount is settled in full.
- (d) Where the consumer has deliberately prevented access to read the meter supplied by the municipality, the consumer must be billed for the full amount for any of the charges due.

#### (15) Availability Charges

The municipality may impose an availability charge which is a monthly charge in respect of any vacant property within the municipality supply area, which is not connected to the electricity supply of the council and which in the opinion of the council can reasonably be so connected and where the capital costs of the associated electricity network upgrades needs to be recovered by the owner of the property.

#### (16) Billing of Government Funded Properties (RDP)

- (a) The municipality may only commence to raise charges in respect of rates and services once a government funded property has been officially handed over to the beneficiary and the applicable service agreement has been entered into.
- (b) Availability charges must not be raised on Government Funded Properties.

(17) Mortgage Bond

An amount due for municipal services fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property,

**6. Metering of Municipal Services**

- (1) Electricity and water consumption is measured with either pre-paid or post-paid metering devices, where applicable.
- (2) The consumer is responsible to ensure access to metering equipment for the purpose of obtaining meter readings for billing purposes.
- (3) The municipality reserves the right, within its financial capacity, to install smart pre-paid meters and convert all post-paid meters to prepaid supply within a period that will be stipulated in the credit control policy.
- (4) Consumers shall grant access to the municipal staff to change any existing metering equipment to any new metering equipment.
- (5) For certain businesses as may be determined by the municipality, as well as residential consumers who are in arrears for municipal services measured by post-paid meter and which shall have been disconnected, the post-paid meter shall upon reconnection and at the cost of the consumer be converted into a prepaid meter after the arrears have been settled in full.
- (6) Post-paid meters: -
  - (a) Post-paid electricity and water meters are read in cycles of approximately thirty (30) days.
  - (b) If for any reason, the post-paid electricity and water meters cannot be read, a written notice to that effect must be left at the premises.
  - (c) In the situation envisaged in (b) above the consumer shall provide a reading of the relevant meters to the municipality within seven (7)

working days of the notice and, if the consumer fails to do so, an estimated account shall be rendered.

- (d) Consumers, for reasons of non-accessibility to their property by meter readers, can provide the municipality with meter readings for billing purposes: Provided that an audit reading must be obtained by the municipality once in every six (6) months and further that a final reading can be obtained when the consumer vacates the property.
- (e) If any calculation, reading or metering error is discovered in respect of any account rendered to a consumer:-
  - (i) the error shall be corrected in a subsequent account and such correction shall be based on the tariffs applicable during the period and shall apply in respect of accounts for a maximum period of six (6) months preceding the date on which the error in the account was discovered;
  - (ii) the application of this section shall not prevent a consumer from claiming overpayment or rebates for any longer period where the consumer has fully complied with section 6 (8)(b).
- (f) Where a consumer vacates a property and a final reading of the meter is not possible, an estimation of the consumption may be made in terms of section 5 (8)(a) and the final account rendered accordingly.

(7) Pre-paid metering:-

- (a) Prepaid services are purchased at prepaid vending points for consumption; after the time of purchase the amounts tendered for purchase of prepaid services shall not be refunded but consumer copies of previous prepaid meter tokens may be produced on request.
- (b) The municipality may appoint vendors for the sale of prepaid services but cannot guarantee the continued operation of any vendor.
- (c) The municipality shall not be liable for the reinstatement of credit lost in a prepaid meter due to tampering, incorrect use or abuse of a prepaid meter; and in the event of a consumer, for any reasons, vacating the premises, any remaining credits in the prepaid meter shall not be refunded.

- (d) The municipality shall apply all debt collection action available on a prepaid system to collect debt in the account of the consumer.

(8) Water Leaks

- (a) A water leak, on the consumer's side of the meter, is the responsibility of the consumer; however, the municipality may at the consumer's cost repair such leak to prevent further water losses, and the municipality may by council resolution adopt a particular position in order to solve a water management challenge in a particular area or areas.
- (b) When a water leak has resulted in excessive water charges, the consumer shall be entitled to a water leak tariff rebate if: -
  - (i) the consumer submits, within ten (10) days of the leak having been repaired, a certificate from a registered plumber or sworn affidavit from any other person who has repaired the leak;
  - (ii) the said certificate clearly states the cause of the leak, that the leak was not discernible from the surface and the date on which the leak was repaired;
  - (iii) If it is certified that the leak occurred on a pipe listed on the schedule of approved pipes and fittings prescribed by the Director responsible for Infrastructure Services;
  - (iv) the leak has been repaired within forty-eight (48) hours after detection or within ten (10) days of a notice by the municipality or within three (3) months of high consumption identified against the actual reading on the monthly statements.
- c) The adjustment period for the water leak rebate shall not exceed thirty-six (36) months from date of repairs of the leak.
- d) The excess charge for water on the account of the consumer due to water leak shall only be adjusted after three (3) consecutive monthly readings, following the repair of the water leak, to determine the average consumption during the period the leak occurred.

- e) During the period that the water leak occurred the charge for water shall be based on average consumption of water as envisaged at section 5(8)(a).

## **7. Payments of Accounts**

- (1) It is the responsibility of the consumer to ensure that he/she receives the consolidated account on a monthly basis to determine payment due by such consumer.
- (2) The consolidated account may be received by: -
  - (a) Electronic mail or via the postal services;
  - (b) Downloading the account from the website of the municipality, styled [www.buffalocity.gov.za](http://www.buffalocity.gov.za);
  - (c) Contacting the consumer call centre; or
  - (d) Visiting and enquiring from one of the finance offices of the municipality.
- (3) Accounts must be paid at any cash-office of the municipality or any pay point as determined by the municipality and shall be payable by the consumer without prejudice to any claim the municipality may have against any other person.
- (4) Save where a dispute has been lodged with the municipality in respect of either the rates or service accounts: -
  - (a) payments tendered and received in respect of rates and services may be allocated to any of the consumer's accounts, entirely on the discretion of the municipality and any part payments shall be allocated, first to reduce any accrued penalty charges, thereafter to interest charges and finally to capital charges raised in relation to a specific service, respectively.
  - (b) where there is a pending dispute in respect of the rates or services account, the payment tendered and received shall be allocated as

provided for hereabove in paragraph (4)(a) only in respect of the undisputed account.

- (5) All payments made by cash, stop order or electronic transfer, by consumers or through an agent, shall be receipted by the municipality by the close of business on the day of payment but payment by negotiable instrument or by direct debit may only be receipted on being honoured by the bank.
- (6) Where any payment made by negotiable instrument or by direct debit is later dishonoured by the bank, the municipality: -
  - (a) shall recover the bank charges incurred relating to such dishonoured negotiable instrument against the account of the consumer;
  - (b) reserves the right to take legal action on the dishonoured instrument or for recovery of arrears;
  - (c) may opt to regard such dishonoured negotiable instrument as a default on payment and deal with the account as an arrear account; and / or
  - (d) reserves the right, in future, not to accept that consumer's payment by negotiable instrument.
- (7) The municipality reserves the right to cancel any contract with a defaulting consumer and no new services will be installed and provided until all debts are paid in full.
- (8) Where any property is owned by more than one person, each such person shall be held to be jointly and severally liable, each paying the other to be absolved, for all municipal charges.
- (9) The municipality will accept a proof of payment issued by a bank as *prima facie* evidence of payment and, subject to such proof, a consumer may be refunded for an overpayment.
- (10) The municipality reserves the right to list consumers on Credit Bureaux for bad payment patterns.



## **8. Interest on Debt**

- (1) Amounts on accounts, which remain unpaid after the due date, shall attract interest irrespective of the reason for non-payment.
- (2) The interest rate charged on overdue debt will be the interest rate charged to the municipality by its banker on its primary bank account, plus one (1) percentage point.
- (3) The following debts shall not attract interest on arrears:
  - (a) indigent debt;
  - (b) closed accounts;
  - (c) deceased estates;
  - (d) insolvent estate;
  - (e) debtors under administration;
  - (f) debt under debt review; or
  - (g) any other category of debt as determined by the municipality.
- (4) No interest shall be charged on any outstanding amounts in respect of which an agreement had been concluded for the payment by way of instalments: Provided that each instalment is paid in full plus the monthly current account, by the due date.

## **9. Account Disputes**

- (1) Where a consumer disputes a service charge of a particular service, a formal dispute must be lodged with the municipality and the service charge disputed must be placed on suspension pending the dispute results from the municipality.
- (2) The dispute must be lodged via the "customer account queries" on the Buffalo City Metropolitan Municipality website which is [www.buffalocity.gov.za](http://www.buffalocity.gov.za): Provided that where a consumer cannot read or

write, or is computer illiterate, a staff member of the municipality must give such person reasonable assistance.

- (3) Within ninety (90) days of the dispute being lodged, the consumer must be notified of the process of the dispute and where the municipality dismisses the dispute including any outcome of the internal appeal process stipulated in section 62 of the Systems Act, 2000, the supply shall be disconnected within thirty (30) days thereafter, without any further notice to the consumer.
- (4) Within thirty (30) days of being aware of the outcome of the dispute the consumer may give notice in writing which will be styled the Review Notice, of their intention to institute review proceedings in a court of law and such Review Notice:-
  - (a) must briefly set out the facts giving rise to the dispute that are within the knowledge of the consumer;
  - (b) must be served on the Buffalo City Metropolitan Municipality by delivering it by hand, facsimile or electronic mail to the Head of Legal Services Department;
- (5) Upon receipt of the Review Notice the municipality will suspend the service charge pending the courts decision; and the consumer has the responsibility to pay and keep up to date the consolidated account including a reasonable estimate of the disputed service until the dispute is resolved, whereupon the actual billed amount shall be payable.
- (6) Where the municipality decides that a dispute lodged is a duplication of a previously disputed service charge such will not be subjected to the account suspension process and the consumer has the right to review such decision in a court of law.
- (7) A debt that is subject to an account dispute will not be handed over for debt collection.

## 10. Debt Collection

- (1) Debt collection action shall be taken on the total amount outstanding on the account after due date which shall include property rates, refuse, sewerage, water, electricity, fire levy and sundry debtor charges as well as handed over debt for which settlement arrangements have not been entered into.
- (2) Save where there is a dispute lodged by the affected debtor on a particular account, in which event the following steps shall be taken only in respect of undisputed accounts, where a consolidated account is not paid by the due date the municipality has a right to apply recovery purchase restrictions whereby a purchase of any municipal services may be restricted to recover the total amount outstanding, including unpaid amounts handed over for collection by a collection agent.
- (3) The purchase restriction for the non-payment of an account will be effective for a period of six (6) months and if the outstanding amount is not fully collected in that period the municipality may resort to other debt collection processes.
- (4) Handover of debt to Collection Agents for legal collection  

Any debt by a consumer, including non-indigent consumers living in RDP houses, which is more than one hundred and twenty (120) days old and for which no payment arrangement has been made, shall be handed over for collection.
- (5) A person may apply for the administration of his/her estate in terms of section 74 of the Magistrate Court Act, 32 of 1944; and a debt under administration or debt review shall not be handed over for debt collection.
- (6) On notification that an administration order has been granted, the municipality shall manage the debt that is part of the administration order separately to the current account; and any arrangements shall be made with the administrator.

(7) A debtor under administration or debt review shall be responsible for the payment of the current monthly account; and if the debtor defaults on the payment of the account, debt collection action shall be implemented.

(8) A debtor shall not be handed over to more than one collection agent irrespective of the period that the debt relates to.

(9) Withholding or offsetting grants-in-aid

The municipality provides annual grants-in-aid to institutions on approval of application. If an institution is in arrears with its services account, then the municipality shall withhold the grant-in-aid or the grant-in-aid shall be off set against the arrear debt with the municipality.

(10) Withholding or offsetting payment on contracts

Institutions or individual persons, who are in contract with the municipality to provide a service, and who are in arrears with their services account, may have payments due to them withheld; and the payments due to them may be offset against the debt in order to satisfy such debt.

(11) The municipality shall not issue a certificate contemplated in section 118 of the Municipal Systems Act unless all the amounts due to the municipality have been paid in full.

(12) The municipality shall not accept letters of undertaking and shall only release the clearance certificate once the municipal debt has been paid in full whether in cash, irrevocable bank guaranteed cheque or an Attorney's Trust account cheque.

(13) Withholding approval of building plans

A person who applies to the municipality for the approval of a building plan, and who is in arrears with their rates and services account, shall have approval of the building plan withheld until the debt is settled.

- (14) Subject to the consent of the municipal council, the municipality may invoke any other legal debt collection mechanisms available to it.
- (15) Any costs, which include collection costs, charges, disbursements and legal fees to any of the debt collection methods applied to collect the debt, shall be charged to the account of the defaulting debtor.

## **11. Pre-termination Notice**

- (1) Any municipal service may be disconnected for outstanding payment regardless of what such outstanding payment is for.
- (2) A consumer against whom the municipality intends to disconnect any municipal service shall be served with a written notice of the intended disconnection by the sheriff, by hand or registered certified mail.
- (3) The sheriff must serve the consumer with the written notice of the disconnection within ten (10) working days of having been put in possession of such written notice and submit a return of service to the municipality within four (4) municipal days of such service.
- (4) If delivered by hand, the pre-termination notice shall be deemed to have been effectively and sufficiently served on the consumer –
  - (a) when it has been delivered to them personally;
  - (b) when it has been left at their place of residence or business with a person apparently above the age of sixteen (16) years old; or
  - (c) when it cannot be delivered as contemplated in (a) and (b) above, if it is placed in a conspicuous place on the immovable property to which it relates.
- (5) The notice shall be deemed to be served when it has been posted by registered or certified mail to consumers last known residential or business address in the Republic and acknowledgement of the posting thereof is obtained from the Post Office.

- (6) The disconnection shall be effected at no less than fourteen (14) working days after service.

## **12. Arrangements to Pay Debt**

- (1) The municipality may only permit a debt settlement in instalments for a debt that is more than thirty (30) days old and such debt shall not be handed over for debt collection.
- (2) A debt that is being paid off as per arrangement with the debtor shall not be handed over for debt collection.
- (3) Save under exceptional circumstances, where there is an existing debt settlement arrangement no further arrangement may be permitted.
- (4) When the debt has been handed over to a collection agent, the municipality may only accept one (1) settlement arrangement and in the event of a default no further arrangement may be permitted.
- (5) The consumer, by signing the arrangement with the municipality or a collection agent, acknowledges that: -
  - (a) a debt is owed to the municipality and is older than thirty (30) days;
  - (b) the full amount of the debt is due and payable;
  - (c) other debt collection methods may be invoked on failure by the consumer to honour the arrangement;
  - (d) the consumer consents to the magistrate's court jurisdiction; and
  - (e) the consumer will be liable for all costs, including legal costs, incurred in collecting the debt.
- (6) Arrangements by Residential Consumers
  - (a) an arrangement may be entered into by a residential consumer to settle a debt of more than sixty (60) days in equal instalments up to twenty-four (24) months plus the monthly current account; and
  - (b) only written arrangements shall be accepted and must be entered into by the account holder or proxy.

(7) Arrangements by Non-Residential Consumers

- (a) An arrangement may be entered into by a non-residential consumer to settle a debt older than ninety (90) days in equal instalments up to twelve (12) months plus the monthly current account.
- (b) Debt not older than ninety (90) days must be paid in full and no arrangements or payment extension will be allowed.
- (c) A debt by state departments; public entities and other state entities must be settled in full on or before the due date and no arrangement shall be permitted.
- (d) Where there is non co-operation by any state department; public entity; state entity or any other juristic person for any of its sub offices or any institution under its control, with the municipality's efforts to ensure payment of their debts, as required by law, the municipality shall have a right to disconnect at the principal place of business of such state department; public entity; state entity or juristic person within the area of jurisdiction of the municipality.

(8) Debt Incentive Scheme

Consumers who are in arrears for one hundred and twenty (120) days or older may apply to the municipality for a once-off debt settlement discount as may be approved by the municipality in a Debt Incentive Scheme.

(9) Arrangements on Partially Collectable Debt

- (a) The municipality may accept part payment of a debt as a full and final settlement where the full debt is not collectable after the process of debt collection has been followed up to the stage of sale in execution and no interest is shown to purchase the property at the auction.
- (b) If the situation referred to in (a) above exists, the debt collector may adopt other legally acceptable processes, including offers to purchase the immovable property in order to settle the debt, and approach court for permission to accept such offer to settle the debt and submit a report with recommendations to the municipality.
- (c) The council must take a decision whether to accept any offer as full and final settlement of the debt, after having taken account of the market

value of the property and resolve to write off the remaining debt on the property as irrecoverable.

### **13. Indigent Consumers**

- (1) A consumer may apply, for indigent support as prescribed in the Indigent Support Policy of the municipality.
- (2) Where the applicant is an heir apparent, they must submit together with their application in terms of 1 above, the letters of authority or letters of executorship issued to them by the master of the high court.
- (3) Indigent consumers are required to pay their monthly account, which is the amount after indigent subsidy has been deducted, every month on or before the due date.
- (4) The municipality reserves the right, at its own expense, to convert to smart prepaid all post-paid meters of indigent consumers.
- (5) The partial purchase restriction must be implemented where an indigent has consumed the monthly allocation for indigent consumers and has fallen in arrears for the additional services over and above the monthly allocation.
- (6) A consumer's debt shall not be handed over to debt collectors while the application for indigent support is pending and/or after the consumer has been declared indigent.
- (7) The municipality shall write off the debt of registered indigent consumers in cycles of thirty (30) calendar days and a report must be submitted to council on a quarterly basis, for noting.
- (8) The heir/s apparent of a deceased indigent consumer must report to the municipality the death of such indigent consumer within thirty (30) days of such demise.



- (9) In the event of a failure to report the death as stipulated above the municipality must charge the services consumed from the date of death of the indigent consumer at the non-indigent consumer tariff.
- (10) The occupant may, if they so qualify, submit an application as stipulated above.
- (11) In the case of a government funded property and the occupant having been approved as an indigent consumer, the Director responsible for Land Administration will, on approval of the "Affidavit: Deceased Estate" agreement, proceed with the transfer of the property from the deceased indigent estate to the name of the appointed registered indigent heir of the property at the municipality's cost.
- (12) Once the property has been transferred, the debt of the deceased indigent estate will be submitted to council for approval to write off.

#### **14. Write Off of Irrecoverable Debt**

- (1) Debt can be regarded as irrecoverable under the following circumstances:-
  - (a) debt that was subjected to all the debt collection procedures provided for in this By-Law but the collection process could not be successful and had to be abandoned;
  - (b) debt of which the cost of collection would exceed the debt amount;
  - (c) debt of deceased estates where claims were submitted to the estate of the deceased and the executor of the estate advised the municipality, in writing, that there are no funds in the estate;
  - (d) debtors who have emigrated where the debt collection procedures have been implemented and information was received that the debtor has emigrated and such information has been confirmed by the emigration authorities;
  - (e) debt that has prescribed in terms of the Prescription Act No 68 of 1969;  
or
  - (f) where the debt collection procedures were implemented and the claims were submitted to the liquidators of the insolvent estate and the

municipality was advised in writing, that there are no funds in the estate. Alternatively, the municipality had received dividends on the amount owing and was advised that the estate had been finalized and there will be no further dividends forthcoming.

- (2) Save for indigent debts, the municipality may, on the approval of council, write off any irrecoverable debt in order to have a debt book that does not reflect irrecoverable debt.
- (3) In the report to council for the write off of irrecoverable debt, the following details must be provided: -
  - (a) the debt collection procedure implemented to recover the debt and the costs incurred as a result thereof;
  - (b) the reasons why the debt collection procedures were not successful and had to be abandoned;
  - (c) the debtors financial position; if known; and
  - (d) reasons why the debt or a portion thereof is regarded as being irrecoverable.

#### **15. Municipal Staff and Councillors – Payment of Debt**

- (1) As envisaged in Item 12 (a) of Schedule 1 and Item 10 of Schedule 2 of the Municipal Systems Act, a councillor or a staff member respectively, may not be in arrears for rates and services for a period longer than three (3) months.
- (2) The municipality may deduct any outstanding municipal debts longer than three (3) months from the salary of a staff member or from the monthly remuneration of a councillor.
- (3) In the event of (2) above not being implemented, a debt longer than three (3) months will be collected from the staff or councillor in terms of the collection arrangements approved in this By-Law and the Credit Control Policy.

- (4) Municipal staff and councillors are not entitled to benefit from the Indigent Support subsidy and if it is discovered that a staff member or councillor has benefitted from the Indigent Support subsidy after the date of their employment with the municipality, a disciplinary action shall be taken against such staff member or councillor.
- (5) No owner or tenant of a property may benefit from the Indigent Support subsidy whilst a municipal staff member or councillor is residing on the same property and benefitting from such subsidy.

## **16. Certificates Required for Tenders**

- (1) A person or an institution intending to enter into a contract to either provide services or goods to the municipality shall produce a certificate, on the prescribed form, declaring that all the municipal accounts owing by the directors, owners or partners are fully paid or that acceptable settlement arrangements have been made with the municipality; and the municipality shall verify such information.
- (2) A copy of the consolidated account must be attached to the certificate and a failure to provide such certificate shall cause the tenderer to be disqualified from the tendering process.
- (3) Where a contractor's place of business or business interests are outside the jurisdiction of the municipality, the said certificate must relate to the account of the municipality having jurisdiction.
- (4) The provision of this section applies to all quotations and public tenders in terms of the Supply Chain Management Policy.

## **17. Tampering with Service Connection of Supply Mains**

- (1) No person shall in any manner or for any reason whatsoever tamper or interfere with any meter or metering equipment or service connection or

service protective device or supply mains or load control equipment or any other equipment of the municipality.

- (2) Where *prima facie* evidence exists of a consumer and/or any person having contravened sub-section (1), the municipality shall have the right to disconnect the supply of any municipal service tampered or interfered with, immediately and without prior notice and the consumer shall be liable for all fees and charges levied by the municipality for such disconnection.
- (3) Where a consumer and/or any person has contravened sub-section (1) and such contravention has resulted in the meter recording less than the true consumption, the municipality shall have the right to recover from the consumer the full cost of the estimated consumption had there been no tampering or interference.

## **CHAPTER 5 - MISCELLANEOUS**

### **18. Offences and Penalties**

- (1) Any person including any juristic person who contravenes or fails to comply with any of the provisions of this by-law shall be guilty of an offence and on conviction shall be liable to a fine not exceeding one hundred million rands (R100 000 000.00) or in the case of a natural person, to a period of imprisonment not exceeding thirty (30) years or both such fine and such term of imprisonment.
- (2) Any person including any juristic person who continues to commit an offence after notice has been served on such person to cease committing such offence or after such person has been convicted of such offence, shall be guilty of a continuing offence and on conviction shall be liable for a fine not exceeding two million rands (R2 000 000.00) for each day of the continuing offence.

- (3) For the purpose of (1) and (2), a person shall be guilty of the offence if he/she ought to reasonably have known or suspected a fact and if the conclusions that he or she ought to have reached are those which would have been reached by a reasonable, diligent and vigilant person having both –
  - (a) the general knowledge, skill training and experience that may reasonably be expected of a person in his or her position; and
  - (b) the general knowledge, skill, training and experience that he or she in fact has.
- (4) Such fines may be increased from time to time by resolution of the Buffalo City Metropolitan Municipality council.
- (5) Every person committing a breach of the provisions of this By-Law shall be liable to compensate the municipality for any actual loss or damage suffered or sustained by it in consequence of such breach.

#### **19. Income Collection Target**

Income collection targets will be set by the Chief Financial Officer to achieve the optimum debt collection ratio of receipt and billing, that will satisfy the municipality's IDP objectives.

#### **20. Application, Implementation and Review of the By-Law**

- (1) The municipality may from time to time issue ancillary instructions detailing its requirements regarding matters not specifically covered in this By-Law which are necessary for the efficient application and management of credit control and debt management in the form of, but not limited to, Circulars; Directives; Guidelines; Operational Manual; Standard Operating Procedure and/or Procedure Manuals.
- (2) The municipal council reserves the right to differentiate between different categories of rate payers, users of service, debtors, taxes, services, service

standards and other matters when applying this by-law as long as such differentiation does not amount to unfair discrimination.

- (3) No debtor may be exempted from credit control action as a sign of goodwill, a favour or compensation.
- (4) The Chief Financial Officer is the custodian of the Credit Control By-Law and responsible for the enforcement, implementation, and review thereof.

## **21. Repeal of By-Laws**

The By-Laws mentioned in the "Title" column of Schedule 1 hereunder are hereby repealed to the extent mention in the "Extent of Repeal" column.

## **22. Coming into Operation of the By-Law**

This By-Law shall come into operation on the date on which it is published in the Eastern Cape Provincial Gazette.

### Schedule 1: REPEAL OF BY-LAWS

TITLE OF BY-LAW	EXTENT OF REPEAL
The Credit Control By-Law	The whole
The Credit Control By Law 2020/21 (not gazetted)	The whole
The Credit Control By-Law 2021/22 (not gazetted)	The whole
The Credit Control By-Law 2022/23 (not gazetted)	The whole