

PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

**Provincial Gazette
Igazethi Yephondo
Provinsiale Koerant**

Vol. 16 BISHO/
KING WILLIAM'S TOWN, 28 APRIL 2009

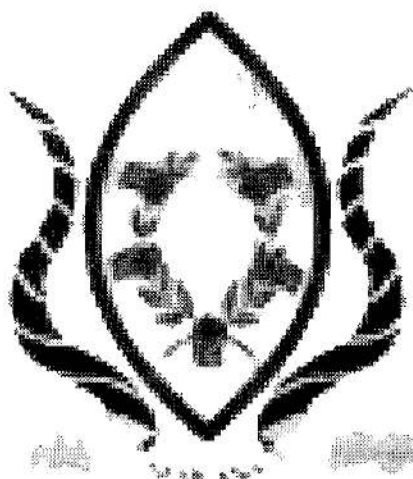
No. 2115
(Extraordinary)

CONTENTS • INHOUD

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
LOCAL AUTHORITY NOTICES			
67	Makana Municipality: Assistance to the Poor/Indigent By-law	3	2115
68	do.: Credit Control and Debt Collection By-law	11	2115
69	do.: Liquor Trading Hours By-law	25	2115
70	do.: Rates By-law	34	2115

LOCAL AUTHORITY NOTICES

LOCAL AUTHORITY NOTICE 67



ASSISTANCE TO THE POOR / INDIGENT BY-LAW

FOR

MAKANA MUNICIPALITY

NB: Adopted by Council – 10 June 2008

PREAMBLE

In an attempt to ensure that the indigent communities residing within the Makana Municipal area of jurisdiction, the Makana Municipality hereby approves Assistance to the Poor / Indigent By-Law, in order that all communities can have access to basic services that are provided by the municipality, as required by the Constitution of the Republic of South Africa (Act 108 of 1996) read in conjunction with the Municipal Systems Act No. 32 of 2000 and other government regulations.

DEFINITION OF KEY WORDS

In this policy the following words shall have the meanings assigned as follows: -

1. **“Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003),
2. **“Accounting Officer”** refers to the Municipal Manager of the municipality,
3. **“By-law”** refers to the legislation passed by the council of a municipality binding in the municipality on the persons to whom it applies,
4. **“Chief Financial Officer”** refers to the head of the Budget and Treasury Business Unit,
5. **“Equitable Share”** an allocation made by the National Government during a financial year, in its fiscal allocation, gazetted through the Division of Revenue Act (DORA) in order to assist municipalities to fund various expenses including expenses such as indigent subsidy costs,
6. **“Finance Department”** refers to the municipal department dealing with the financial affairs of the municipality,
7. **“Finance and Service Delivery Committee”** refers to the committee of council dealing with the financial affairs of the municipality,
8. **“Indigent Households”** These are households or ratepayers that fall within the qualifying criteria of being declared a poor household and qualify for financial assistance through the Assistance to the Poor / Indigent Policy,
9. **“Policy”** refers to the Assistance to the Poor or Indigent Policy of the Makana Municipality.

TABLE OF CONTENTS

Page No.

1. Legal Compliance	4
2. Scope of the Policy	4
3. Background – Right to basic Services	4 - 5
4. Indigent <i>By-Law</i> Principles?	5 - 6
5. Determination of Poor Households	6 - 7
6. Basis of payment of subsidy	7
7. Penalties resulting from a false claim of an indigent status	7
8. Non-compliance of an indigent registered consumer	7
9. Indigent consumer in arrears at time of granting of subsidy	7
10. Implementation procedures for indigent households	7
11. Other conditions applicable to this <i>By-Law</i>	8
12. How will this <i>By-Law</i> be successfully communicated?	8
13. Reviewal of the Assistance to the Poor / Indigent Policy	8

1. LEGAL COMPLIANCE

The Constitution of the Republic of South Africa Act No.108 of 1996, read in conjunction with the Municipal Systems Act No. 32 of 2000 and other government regulations, requires developmental Local Government to ensure the following is obtained by all residents within the municipality's area of jurisdiction, in order to achieve the aim of providing a "better life by all South Africans": -

- (i) An access to at least the minimum level of basic municipal services, such as water/sanitation/electricity/primary health care/basic housing and security within a safe and healthy environment.
- (ii) Ensure that the "needy or indigent households" have access to the basic services as anticipated in point (i) above, and
- (iii) Give priority to the basic needs of the local community, as well as promoting the development of the local community.

In an attempt to assist all municipalities in the Republic of South Africa to achieve the above, the National Government, through its fiscal policy makes available grant funding, in the form of Equitable Share, on an annual basis and is gazetted in annual Division of Revenue Act (DORA) so that **deserving or approved indigent households** within a municipal area of jurisdiction can get access to the basic services that are provided by the municipality free of charge.

2. SCOPE OF THE BY-LAW

This By-Law applies to the Makana Municipality's area of jurisdiction, and is only applicable to the deserving communities or deserving ratepayers of Makana Municipal area, as determined by the due processes followed by the municipality in confirming their qualification criteria, in terms of the municipality's Assistance to the Poor / Indigent Policy. The deserving ratepayers must be registered as South African citizens, having provided proofs to that effect.

3. BACKGROUND – RIGHT TO BASIC SERVICES

Municipalities in the Republic of South Africa have been constitutionally charged with the responsibility of providing access to basic services to all residents, residing in their area of jurisdiction.

The Constitution of South Africa requires municipalities to: -

- Make provision for access by all persons residing within their area of jurisdiction to clean water, sanitation, transport facilities, electricity, primary health services, education, housing and security within a safe and healthy environment,
- Be competent to levy and recover such property rates, levies, fees, taxes and tariffs as may be necessary to exercise their powers and perform their functions,
- Be entitled to an equitable allocation of funds,
- Provide such services in a sustainable, financially and physically practicable manner.

The basic services mentioned in the Constitution inter-alia include the following services: -

- Access to a minimum safe water and sanitation supply (as defined by the White Paper on Water and Sanitation, 1994),
- Solid Waste Removal,
- Access to Household Energy,

- Mobility (Locally and to areas of economic opportunity in the form access to and availability of safe roads and public transport),
- Protection from flooding (through adequate drainage and stormwater management),
- Facilitation of community activities (access to libraries, community halls and recreation facilities).

4. INDIGENT BY-LAW PRINCIPLES

In order to ensure that poor households are not denied their constitutional right of access to basic services, the municipality is required to implement an Assistance to the Poor / Indigent Policy, which must be in line with its Indigent By-Law, and makes adequate financial provision to ensure the provision of efficient and sustainable basic services to all residents within its area of jurisdiction.

The Indigent Policy should complement and be an integral part of the municipality's tariff policy that is developed and implemented in a transparent manner to ensure the sustainability of local public services to all of its citizens at an affordable cost. The Indigent Policy is intended to provide poor households ongoing access to a minimum and nationally specified level of service. However, the subsidies contained in the policy should not compromise the quality or efficiency of service delivery (**i.e. providing inferior service to indigent communities**).

This implies that the Indigent Policy of Council should be: -

- Targeting primarily at poor consumers in a manner that maximises the benefit of the subsidy to the intended beneficiaries,
- Transparent in its application, in that it should be visible to all and easily understood,
- Set at a sustainable level to ensure the viability of services,
- Linked to a clear revenue stream, in order to ensure sustainability.

In order to institute an appropriate subsidy framework, it is necessary to determine who should benefit from the operating subsidies, what benefits they should receive, how they should receive the subsidies and how the revenue required to provide the subsidies should be raised.

The onus for applying or declaring an indigent status rests with the consumer, who cannot afford to pay for the full municipal tariff for services received. Such deserving consumer will have to apply by completing a prescribed application form, and submit it together with the necessary supporting documentation to the Chief Financial Officer of the municipality.

The supporting documents that must accompany the application form are - **(NB: Also consult the Indigent Policy in this regard):** -

- Certified copy of the applicant's Identity Document,
- Proof of ownership of property being supplied with municipal services,
- Proof of income (e.g. signed letter from employer, salary advice / payslip, pension card, stamped UIF card or any acceptable proof of income)
- Sworn affidavit from authorised government institution confirming the accuracy of the documents and information submitted.

The following **must** at all times be noted regarding the access or qualification to Indigent Support / Assistance to the Poor Scheme: -

- (i) Indigent Subsidy will not apply to households owning more than one property,
- (ii) Indigent Subsidy applies to households not to individuals,

- (iii) Indigent Subsidy applies to the cost of services rendered only, and is based or determined as per the Assistance to the Poor Policy / Indigent Policy,
- (iv) The Chief Financial Officer will place an advertisement on the local media and other suitable communication channels inviting indigent households to apply, through an application form, on an annual basis,
- (v) Households with properties operated as business sites shall not be allowed access to free basic services, nor will those with other additional income from other sources, either than sources as contemplated in terms of paragraph 4 of the Assistance to the Poor / Indigent Policy, such as (i) Child Foster Care Grant, (ii) Care Dependency Grant, and (iii) Child Support Grant,
- (vi) Incomplete application forms or application forms with incomplete attachments will not be considered or will be rejected,
- (vii) Where the aggregate income (excluding such income as mentioned in point (v) above) of the members of the household exceeds the applicable subsidised levels, such household will not be entitled to subsidy,
- (viii) It is the responsibility of the respective household to inform the Chief Financial Officer when his / her indigent status has changed (e.g. is employed with monthly household income exceeding the income levels stipulated in the Indigent Policy, such as "less than two state pension"), as failure to do so will result to penalties or charges as per the Indigent Policy,
- (ix) The indigent status or qualifying levels are based on the conditions determined in the Assistance to the Poor / Indigent Policy,
- (x) The granting of the indigent subsidy is the sole prerogative of the Municipal Council and its decision is final,
- (xi) An indigent register will be made available at public places, such as Public Libraries, Municipal Halls, Municipal Cash Centres, etc. The purpose of the indigent register is to give members of the public and ward councilors access to it, and for them to verify accuracy of the names listed in the register.

The granting of the subsidy to a qualifying consumer shall be for the remaining period of the current financial year ending 30 June of each year. Should the consumer be eligible for continuation of the subsidy, the onus is on the consumer to re-apply during the period of the month of March (1st to 31st March), each year.

The letter issued by the Chief Financial Officer to the qualifying consumer confirming the subsidy for which the consumer qualified, must clearly state the period for which it is valid and by which date the consumer must re-apply.

5. DETERMINATION OF POOR HOUSEHOLDS

In order to determine the number of households in the municipal area who would qualify for indigent support, the Chief Financial Officer shall, on an annual basis to coincide with the annual budgeting process, but not later than the 1st February of each year, invite applications from the indigent households, request information that will enable the municipality to make adequate financial provision in its budget to subsidise the indigent households, in terms of the municipality's Indigent Policy / Assistance to the Poor Policy.

All consumers applying for an indigent subsidy must have completed and returned the application forms within the stipulated time period.

NB: It is pivotal that all Councillors, through their Ward and Street Committee structures, play an active role in explaining the Indigent Policy / By-Law and also encourage deserving or qualifying households to come forward and disclose their status through application.

The municipality shall undertake a research in order to assess the indigent levels within its jurisdiction. The granting of indigent subsidy shall be the sole responsibility / prerogative of the Council and whose decision shall be final.

6. BASIS OF PAYMENT OF SUBSIDY

The subsidy will only be given to a consumer if he/she has completed the necessary application form, provided that all the necessary documents are completed, and submitted his/her application forms on or before due dates to the office of the Chief Financial Officer. The amount of the subsidy granted will be reflected on the consumer's monthly account issued by the Chief Financial Officer, and the conditions of the subsidy granted will be stated in the letter forwarded to the consumer regarding his/her successful application for subsidy, issued by the Chief Financial Officer.

The household limits or the extent of the grant awarded per household will be determined as per the Assistance to the Poor / Indigent Policy of Council.

7. PENALTIES RESULTING FROM A FALSE CLAIM OF AN INDIGENT STATUS

In an instance where the false claim has been made by the subsidy recipient in order for him/her to qualify for an indigent subsidy, the municipal council reserves the right to reverse all charges that were subsidised to his/her consolidated billing account, and add back interest and other charges incurred by the municipality as a result of such false claim. Such consumer may also be blacklisted for all future indigent subsidy qualifications.

8. NON-COMPLIANCE OF AN INDIGENT REGISTERED CONSUMER

Before a consumer is handed over to Council's attorneys, the Chief Financial Officer must first establish whether or not the consumer qualifies for indigent subsidy. Legal action must be suspended in cases where consumers who, whilst legitimately qualifying for an indigent subsidy, have been handed over to Council's attorneys, due to their arrear status.

Where a consumer who has been granted a subsidy in terms of the municipality's indigent policy fails to meet his/her payment portions (e.g. in case of 75% subsidy instead of 100% subsidy) for services received by due date for payment, he/she will be dealt with in terms of the municipality's Credit Control and Debt Collection Policy, and there-after will be required to re-apply for subsidy.

9. INDIGENT CONSUMER IN AREARS AT TIME OF GRANTING OF SUBSIDY

In the event that a consumer who qualifies for a subsidy is in arrears with his/her payments of the municipal account on the effective date of his/her subsidy, the Chief Financial Officer will evaluate such applicant's financial position and will decide whether to assist such applicant, retrospectively.

10. IMPLEMENTATION PROCEDURES FOR INDIGENT HOUSEHOLDS

The timetable as indicated on paragraph 10 of the Assistance to the Poor / Indigent Policy will be used as a guide for the above, in order for the Chief Financial Officer to evaluate the merits of each case, and his recommendations must be subject to the endorsement by the relevant portfolio committee (i.e. Finance and Service Delivery Committee), and lastly, by the Municipal Council. In order to fast track this process and curtail red-tapes, the Municipal Council will delegate the powers to approve an indigent list to the Chief Financial Officer, provided that adequate budget provision to cover the subsidy has been made in the budget.

11. OTHER CONDITIONS APPLICABLE TO THIS BY-LAW

- The onus is on the indigent subsidy recipient to notify the municipality through the Office of the Chief Financial Officer as soon as his/her status changes, resulting to him/her no longer eligible for the indigent subsidy through his/her improved financial position. **Failure to do so will result to the municipality applying all stringent conditions that are available at its disposal.**
- Any type of business conducted in the premises of the subsidy recipient / qualifying household will disqualify the applicant from receiving the Indigent Subsidy.
- Services that are allowed for Indigent Grant are Water, Electricity, Sanitation and Refuse Removal Services, and Rates (based on the limits stipulated in the Assistance to the Poor or Indigent Policy),
- Subsidies will be applied in a manner determined by Council, based on monthly household income, as determined by Council from time-to-time, and
- Consumers who benefit from the water and electricity in terms of Council's tariff policy (i.e. first ten (10kl) of water and first fifty (50Klw) kilowatts free respectively) shall not be entitled to any further subsidy on water and electricity usage in excess of the stipulated monthly free usage.

12. HOW WILL THIS BY-LAW BE SUCCESSFULLY COMMUNICATED?

The success of this By-Law will depend on various key stakeholders that exist within the Makana Municipal area of jurisdiction, including the following: -

- Political Leadership (e.g. Executive Mayor, Councillors and Ward Committee Members),
- Administrative Leadership (e.g. Municipal Manager and Directors of various Directorates or Business Units),
- All Employees of Council have the responsibility of being the mouthpiece of the municipality or their employer, in as far as informing the members of the public about their benefits resulting from this policy,

Lastly, this *By-Law* must be communicated to the communities residing at Makana Municipal area of jurisdiction through community newspapers, notices in the notice boards, municipal websites, door-to-door campaigns, Imbizo/Gatherings, municipal accounts, booklets, and any other means of communication deemed to be effective.

13. REVIEWAL OF THE ASSISTANCE TO THE POOR / INDIGENT BY-LAW

This *By-Law* will be reviewed at least once a year, and such reviewal must firstly be submitted to the Finance and Service Delivery Committee by the Chief Financial Officer, as well as the Mayoral Committee, and be finally endorsed by the Municipal Council before it can be implemented. This By-Law supersedes any other one adopted by Council previously, including any other resolutions taken.

LOCAL AUTHORITY NOTICE 68



CREDIT CONTROL AND DEBT COLLECTION

BY-LAW

FOR

MAKANA MUNICIPALITY

NB: Adopted by Council: 10 June 2008

PREAMBLE

In an attempt to ensure that the communities residing within the Makana Municipal area of jurisdiction pay for services rendered by the municipality, the Makana Municipality hereby approves the Credit Control and Debt Collection *By-Law*, in order to ensure that all communities who are not considered to be indigent cases pay for basic services that are provided by the municipality, as required by the Municipal Systems Act No. 32 of 2000 and other government regulations, and also to ensure that the levels of non-payment for municipal services are minimized. Payment for services rendered by the municipality will enable the municipality to provide services as planned in its annual Budget and the annual Integrated Development Plan (IDP).

DEFINITION OF KEY WORDS

In this policy the following words shall have the meanings assigned as follows: -

1. **“Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003),
2. **“Accounting Officer”** refers to the Municipal Manager of the municipality,
3. **“By-law”** refers to the legislation passed by the council of a municipality binding in the municipality on the persons to whom it applies,
4. **“Chief Financial Officer”** refers to the head of the Budget and Treasury Business Unit,
5. **“Dishonoured Cheque”** a cheque rejected by the bank due to various reasons, such as insufficient funds in the account, incorrect cheque signatory, amount incorrect, etc.
6. **“Finance Department”** refers to the municipal department dealing with the financial affairs of the municipality,
7. **“Finance and Service Delivery Committee”** refers to the committee of council dealing with the financial affairs of the municipality,
8. **“Indigent Households”** These are households or ratepayers that fall within the qualifying criteria of being declared a poor household and qualify for financial assistance through the Assistance to the Poor / Indigent Policy.

TABLE OF CONTENTS

	Page No.
1. Legal Compliance	4 - 6
2. Scope of the Policy	6
3. Objectives of the Policy	6
4. Definition of Credit Control	6
5. Credit Control Principles	6 - 7
6. Elements of Credit Control	7
7. Contract of Agreement for the supply of services	7
8. Rendering of accounts	7
9. Credit Control Procedures	8
10. Procedures for collection of arrears	8 - 10
11. Right of Access	10
12. Right of Appeal	10
13. Steps to be taken before effecting disconnection	11
14. Commencement and or resumption of service	11
15. Unauthorised consumption, theft or willful damage to Municipal Property	11 - 12
16. Disconnection of services	12
17. Responsibility for Credit Control	12
18. Financial Implications	12
19. Personnel Implications	12
20. Arrear accounts for municipal employees and councillors	13
21. Indigent Consumers	13
22. Political Support	13
23. Control / Working Documents	13
24. How will this By-Law be successfully communicated?	13 - 14
25. Reviewal of the Credit Control and Debt Management By-Law	14

1. LEGAL COMPLIANCE

In terms of the Constitution of the Republic of South Africa, everybody has the right of access to certain municipal services. A local authority can therefore not refuse a person his or her constitutional right on the basis that he/she constitutes an unacceptably high credit risk. It is in any event, not in the spirit of the developmental local government in South Africa to exclude people from basic services, especially those residents in the long neglected communities.

However, it is in nobody's interest that these basic rights be abused (for example, by not paying or by abusing usage). A national disaster could follow in the wake of a general collapse in local government. The right of access to basic services should be protected but, on the other hand, local government should be given protection against abuse and "misconduct". The Constitution states in section 152 (1) (b) that local government must strive within its financial and administrative capacity, to ensure the provision of services to communities in a sustainable manner.

Services should be rendered within the following eight principles, as outlined in the White Paper on Transforming Public Services (**Batho Pele Principles**):

- o Consultation with community;
- o Agreement on service standards;
- o Equal access to services;
- o Courtesy in rendering of services;
- o Provision of information to all;
- o Openness and transparency regarding cost of services;
- o Communities' right to redress; and
- o Value for money.

The above could only be realised if local government obtains sufficient revenue to fund its activities and tasks in order to provide services.

Presently, local revenue comes from two sources, namely:

- o Own generation through taxes, levies and tariffs.
- o An equitable share of revenue raised nationally in terms of section 214 and 227 (1)(a) and (b) of the Constitution.

Section 227 (2), of the Constitution also states that additional revenue raised by the municipalities may not be deducted from their equitable share of revenue raised nationally or from any other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.

The National Credit Control Guidelines issued by the Department of Constitutional Development on 13 March 1998, expresses the following concerns:

- o Tariffs in many cases are not cost reflective, and therefore the true potential debtors is substantially reduced;
- o Extending service delivery to the low income communities in the form of basic services, without an accompanying improvement in economic circumstances,

will increase the negative result;

- o In many cases, amalgamation has placed immense pressure on municipal administrative structures. Adjustments to accommodate the changed circumstances may be lagging in favour of showing progress with service delivery;
- o Lenient approaches to debtors, in terms of extended payment periods, is contributing to the debtor's accumulation of debt and is not producing any improvement to the situation on the ground or to substantial cash inflows.

Chapter 9 of the Municipal Systems Act (MSA) No. 32 of 2000 deals with the subject of "Credit Control and Debt Collection" by municipalities in the Republic of South Africa, and states inter-alia the following: -

- (i) Section 95 of the MSA obliges the municipalities to establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality,
- (ii) Section 96 of the MSA provides that a municipality must collect all monies due and payable to it, and for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent to its rates and tariffs policy,
- (iii) Section 97 of the MSA provides that the credit control and debt collection policy of the municipality must provide for credit control and debt collection procedures and mechanisms as well as provision for indigent debtors that is consistent with its policies on indigent households and any national policies or government regulations on indigent households.

Section 97(1) of the MSA requires that the credit control and debt collection policy of the municipality to provide for the following: -

- (i) Credit control procedures and mechanisms,
- (ii) Debt collection procedures and mechanisms,
- (iii) Provision for indigent debtors that is consistent to its indigent policy, and any other government regulations relating to indigent households,
- (iv) Realistic targets consistent with (a) General Recognised Accounting Practices and collection ratios, and (b) the estimates of income as set in the budget less an acceptable provision for bad debts.
- (v) Interest on arrears, where appropriate,
- (vi) Extension of time for payment of accounts,
- (vii) Termination of services or the restriction of the provision of services when payments are in arrears,
- (viii) Matters relating to unauthorised consumption of services, theft and damages, and
- (ix) Any other matters that may be prescribed by regulation in terms of Section 104.

Section 97(2) of the MSA further states that the municipality's credit control and debt collection policy may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.

Section 99 of the MSA places the legal responsibility on the executive mayor or executive committee, of monitoring and supervising the application of the credit control and debt collection policy, and of reporting to council on the extent and success of credit control actions. Section 99 of the MSA assigns the legal responsibility for implementing the credit control and debt collection policy and by-laws to the municipal manager.

2. SCOPE OF THE BY-LAW

This *By-Law* applies to the Makana Municipality's area of jurisdiction, and is only applicable to the ratepayers of Makana Municipal area, who are excluded from the Assistance to the Poor / Indigent Policy of the municipality, as determined or revised from time to time by Council.

3. OBJECTIVES OF THE BY-LAW

The objectives of the Credit Control and Debt Collection By-Law of the Makana Municipality are as follows: -

- (i) Ensuring that households pay for the basic services that they are afforded by the municipality,
- (ii) Ensuring that the municipality is able to provide services as approved in its annual budget or its annual Integrated Development Program (IDP), and
- (iii) Ensuring that the non-payment of services is minimised.

4. DEFINITION OF CREDIT CONTROL

Credit control is the process utilised by a municipality to ensure collection of revenue from rates, fees levied and for services rendered and entails in the main, metering/measurement, billing/invoicing and debt collection.

5. CREDIT CONTROL PRINCIPLES

The following principles are to be considered:

- o Enforcement is a local matter subject only to relevant legislation;
- o The municipal manager who is entrusted with the determination and execution of credit control measures must report to the municipal council;
- o Enforcement and policy-making must be independent to ensure accountability;
- o Credit control must be understandable, uniform, fair and consistently applied;
- o Credit control must be effective, efficient and economical;
- o The credit control measures employed must be sustainable in the long term; and

A proper indigence policy must be in place to ensure that the circumstances of the poor are accommodated.

6. ELEMENTS OF CREDIT CONTROL

6.1 Metering/Measurement

Service metering or measurement is the determination of the amount of service rendered to each customer in each category. This may vary from flat rates, such as refuse removal, to metered consumption of water and electricity, to deemed consumption such as sewerage disposal.

6.2 Billing / Invoicing

Billing refers to the process of preparing and presenting a claim or invoice to each consumer, which is based on the quantity of service, which is consumed by, and delivered to the consumer in a specified time.

6.3 Arrear Collection

Arrear collection, commonly known as credit control in local government, refers to the process of recovery of outstanding amounts from customers by taking the necessary steps and actions which include among others, interruption of services, litigation and attachment of assets.

7. CONTRACT OF AGREEMENT FOR THE SUPPLY OF SERVICES

Before being supplied with a service, a consumer must enter into a contract of agreement. The contract must stipulate and be accompanied by a deposit as determined by Council from time to time (**on a financial year basis**).

Consumers shall not be entitled to interest on deposits lodged with the municipality. Upon termination of the consumer agreement with the municipality, the deposit shall first be offset against any outstanding balances and the remaining balance of the deposit (if any), refunded to the consumer.

8. RENDERING OF ACCOUNTS

The municipality shall render a regular account for the amount owing by a debtor for rates, fees and service charges but failure by the municipality to render such accounts shall not absolve the debtor of his obligation to pay for rates, fees and/or services received.

Accounts must show the following:

- o If measured, details of consumption for the period being charged and the amount due;
- o If flat rate, the amount due in terms of services rendered;
- o The amount due for other services rendered;
- o Other amounts due;
- o The amount due for property tax;

- o The final date for payment of amount due, which shall not be more than 14 days from date of invoice.

9. CREDIT CONTROL PROCEDURE

If payment for the amount due is not received by the municipality by the due date, then the following procedure shall be instituted:

- 9.1 Hand delivering of a final notice to the debtor demanding payment within fourteen (14) calendar days of the date of the notice;

- 9.2. The final notice shall contain the following information:

- o Final date for payment to be made;
- o Notice of termination of services should payment not be made;
- o Total amount due for payment;
- o Reconnection fee applicable in case of disconnection of service;
- o In the event of disconnection, the review of amount of deposit at the discretion of the Chief Financial Officer

- 9.3 If no payment is received after the expiry of the fourteen (14) day period of grace, arrangements shall be made to have the service discontinued by means of a "cut-off" letter posted at the debtor's property;

- 9.4 Should payment still not be received after "cut-off", relevant municipal official shall visit the premises to ensure that unauthorised consumption is not taking place;

- 9.5 At this stage, the procedure for collection of arrears shall be instituted against the debtor.

10. PROCEDURES FOR COLLECTION OF ARREARS

Arrangement for payment of arrears should be made as follows but only after an Acknowledgement of Debt (the Agreement), has been signed by the debtor who should provide positive proof of identity or an authorised agent with a Power of Attorney.

The agreement must be completed entailing details of all arrangements for paying off arrear account **(as detailed hereunder)**. A copy of the agreement must be handed to the client and a copy filed in the debtor's file by the Chief Financial Officer.

For consumers earning between R1 741 - R2 500,00 per month or less, the following is to apply:-

(Consumers refer to the entire household)

- 10.1 Consumers in arrears for 1, 2 or 3 months must pay a minimum amount equal to 25% of their arrears with the remaining 75% to be settled in six equal instalments commencing from the month following the month in which the initial 25% payment was made. The reconnection fee is also to be paid over and above the 25% payment in order for the service to be reinstated.

- 10.2 Consumers in arrears for longer than three months up to six months must pay a minimum payment equal to 20% of their arrears with the remaining 80% to be settled in eight equal monthly instalments commencing from the month following the month in which the initial 20% payment was made. The reconnection fee is also to be paid over and above the 20% payment in order for the service to be reinstated.
- 10.3 Consumers in arrears for a period exceeding six (6) months must pay a minimum payment of 10% of their arrears with the remaining 90% of their arrears to be settled in 12 monthly instalments commencing from the month following the month in which the initial payment was made. The reconnection fee is also to be paid over and above the 10% payment in order for the service to be reinstated.

For consumers earning more than R2 500,00 per month, the following is to apply:

- 10.4 Consumers in arrears for 1, 2 or 3 months must pay a minimum amount equal to 50% of their arrears with the remaining 50% to be settled in three equal monthly instalments commencing from the month following the month in which the initial 50% payment was made. The reconnection fee is also to be paid over and above the 50% payment in order for the service to be reinstated.
- 10.5 Consumers in arrears for longer than three months up to four months must pay a minimum payment equal to 40% of their arrears with the remaining 60% to be settled in four equal monthly instalments commencing from the month following the month in which the initial 40% payment was made. The reconnection fee is also to be paid over and above the 40% payment in order for the service to be reinstated.
- 10.6 Consumers in arrears for longer than four months up to six months must pay a minimum payment equal to 30% of their arrears with the remaining 70% of their arrears to be settled in five equal monthly instalments commencing from the month following the month in which the initial 30% payment was made. The reconnection fee is also to be paid over and above the 30% payment in order for the service to be reinstated.
- 10.7 Consumers in arrears for a period exceeding six months must pay a minimum payment of 25% of their arrears with the remaining 75% of their arrears to be settled in six (6) equal monthly instalments commencing from the month following the month in which the initial payment was made. The reconnection fee is also to be paid over and above the 25% payment in order for the service to be reinstated.
- 10.8 If a consumer fails to comply with any arrangement, the services will once again be discontinued/restricted and the total arrears due will have to be paid prior to having the services restored. A consumer who fails to comply with any arrangement is automatically excluded from the right to be considered for a further arrangement for a period of twelve months.

- 10.9 All arrangements will automatically include the condition that any future monthly accounts plus interest levied are paid by the standard due date.
- 10.10 All arrangements are to be entered into and signed by the consumer on a prescribed form designed by the Finance Directorate. No telephonic or verbal arrangements will be entertained.
- 10.11 A consumer whose cheque is returned marked "refer to drawer" for a second time will be informed that in future only cash payments will be accepted. A list of such consumers will be handed to the cashiers.
- 10.12 The first payment (initial payment) to be made after the signing of the agreement shall be made within 30 days. Agreement will lapse if initial payment is not received within 30 days.

The Chief Financial Officer is allowed to apply his / her mind in cases of debtors who cannot afford making these arrangements, due to their financial reasons.

11. RIGHT OF ACCESS

Municipal officials have the legal right of access to any property occupied by a consumer for the purposes of reading or inspecting meters or connections or to disconnect, discontinue or restrict supply of service and for the evaluation of the property.

12. RIGHT OF APPEAL

An appeal must be submitted in writing to the Municipal Manager prior to the final due date for payment of the contested amount, and must contain details of the specific items on the account which are the subject of appeal, with full reasons. The debtor's obligation to pay that portion of the total amount due represented by the items appealed against, is suspended until the appeal has been finalised. The debtor must, however, immediately pay the balance of the account together with an amount representing the average cost of the item appealed against over the preceding three months, or an amount determined by the Municipal Manager.

Whilst the appeal of the debtor is being dealt with, any further amounts accruing for services rendered to the debtor, shall be payable on due date. If the appeal is in respect of a metered consumption amount, the meter must be tested within 14 days of lodgement of appeal, or as soon as possible thereafter, in order to establish the accuracy. The debtor must be informed in writing of the results of the test of the meter, and of any adjustment to the amount due by him as a result of the meter having been found NOT to be faulty together with the cost of testing the meter. If the meter is found to be faulty, the municipality shall make the necessary adjustments to the debtors account based on the average usage for the past three months prior to the malfunctioning of the meter and shall bear the cost incurred in having the meter tested. If no error is found with the meter, the debtor will be liable for the cost of testing the meter.

13. STEPS TO BE TAKEN BEFORE EFFECTING DISCONNECTIONS

The municipality should as far as is practically possible, ensure that the following steps

are in place before effecting disconnections:

- o Reputable and efficient billing distribution systems to ensure that all consumers receive their monthly accounts is available;
- o Sufficient pay points exist;
- o Councillors should consult widely with their constituencies in order to encourage them to pay for services provided;
- o Consumers who fail to honour their debts should be given reasonable written warnings and notices for them to pay their accounts;
- o Restriction of services and/or termination should be done within the ambit of the relevant legislation.

14. COMMENCEMENTS AND OR RESUMPTION OF SERVICES

The underlying principle in the provision of services by the municipality is that the service is provided to a property. Any change in tenancy, shall not compromise the municipality's right to demand payment for outstanding amounts due for services rendered before a new connection or a reconnection is made in terms of the following clauses.

14.1 New Service Connections

Connections and supply of a new service shall only be effected after all charges in respect of deposits and connection fees, and any arrears that may have accrued for services rendered to the property by the municipality, have been paid.

14.2 Resumption of discontinued services

If the debtor has:

- o Paid the full amount outstanding, or
- o Made a suitable arrangement with the Chief Financial Officer for the payment of the amount in arrears, then the service will be resumed, subject to clause 7.2 of this policy.

15. UNAUTHORISED CONSUMPTION, THEFT, OR WILFULL DAMAGE TO MUNICIPAL PROPERTY

The following shall constitute UNAUTHORISED consumption, theft or damage:

- o Any connection to, or consumption from, an electricity line that has not been provided to the consumer by the Council;
- o Any consumption of water from, or connected to, a municipal pipeline that has not been provided to the consumer by the Council;
- o Any damage to, or adjustment of any metering instrument which may result in inaccurate data being obtained by the Council or which may lead to a reduced charge being payable by the consumer;
- o Any removal of any metering instrumentation by any person other than a municipal officer or authorised agent;
- o Any tampering with or wilful or malicious damage to any component or any reticulation or metering system as installed by Council.

Where any such illegal activity is detected, the municipal supply shall be immediately suspended. The debtor shall be held responsible for payment of all deemed or calculated consumption on the basis determined by Council as well as for penalties determined by Council from time to time. Such penalties shall be in addition to any

penalties imposed by a court of law arising from criminal prosecution for offences committed. For the purposes of this policy, the penalties as stipulated by the Council, from financial year to financial year, shall apply. The municipality shall have the right to review these penalties at its discretion.

16. DISCONTINUATION OF SERVICES

- o Debtors who have ceased to make use of municipal services and still have an outstanding amount owing to the municipality, are classified as inactive debtors;
- o Immediate steps shall be taken to recover outstanding amounts to ensure that debt does not become irrecoverable;
- o Upon discontinuation of service, the deposit held shall be appropriated to off-set outstanding amounts owing and if insufficient to cover debt, a letter of demand shall be written to the debtor demanding payment within 14 days for the balance owing;
- o If no payment is received within the 14-day period, legal action shall be instituted.

The municipality will exercise its rights, in terms of the Credit Control Policy, to disconnect supply (e.g. electricity) or restrict services (e.g. water), in cases of debtors who fail to respond to the reminders forwarded to them. This paragraph must be read in conjunction with the Credit Control and Debt Management Policy. Nothing stops the municipality in disconnecting / restricting services (i.e. water and electricity) when the accountholder fails to pay for other services such as rates, refuse charges, sewerage charges, etc.

17. RESPONSIBILITY FOR CREDIT CONTROL

In terms of Chapter 6, section 29 (d) (1) of the Municipal Finance Management Act No: 56 of 2003, the Municipal Manager must take effective and appropriate steps to collect all moneys due to the municipality.

18. FINANCIAL IMPLICATIONS

Implementation of the credit control policy has to be funded from the operating budget of a municipality. If this has an incremental impact on the budget, it must be offset by the improved cash flow as a result of an efficient collection system.

19. PERSONNEL IMPLICATIONS

Where a credit control function does not exist in a municipality, the responsibility for the function rests with the Chief Financial Officer who must ensure that the function is properly delegated to a responsible official.

20. ARREAR ACCOUNTS FOR MUNICIPAL EMPLOYEES AND COUNCILLORS

The code of conduct in the Municipal Systems Act No. 32 of 2000, for municipal employees and councillors requires municipal employees and councillors not to have

arrear municipal accounts for a period in excess of 90 days. The Municipal Manager is permitted to deduct such arrears, without any warning from the affected party.

Also, Section 124(b) of the Municipal Finance Management Act No. 56 of 2003 requires the municipality to disclose in the financial statements councillors whose accounts were in arrears for a period in excess of 90 days, during the financial year under review.

21. INDIGENT CONSUMERS

Indigent consumers are defined as those people who, due to a number of factors or circumstances (**including their income levels**), are unable to make a full monetary contribution towards basic services.

The municipality must handle indigent consumers in terms of its Assistance to the Poor / Indigent Policy.

22. POLITICAL SUPPORT

It is clear that without good administrative processes, good communication and an earnest attempt to change the culture of non-payment and very importantly, total "buy in" from all politicians, no credit control policy will be effective.

23. CONTROL / WORKING DOCUMENTS

The following forms, letters or documents are listed as a guide:

- o Application/Agreement for Supply of Services Form;
- o Indigent Support Application Form;
- o Acknowledgement of Debt Form;
- o Application for Termination of Services Form;
- o Fee Structure Document (penalties, service deposits, connection fee, reconnection fee, etc.)
- o Credit Control Monthly Planner;
- o Final Notice Form;
- o Cut Off List Form;
- o Cut Off Letter;
- o Reconnection List Form
- o Register to record "Arrangements for Payment".

24. HOW WILL THIS BY-LAW BE SUCCESSFULLY COMMUNICATED?

The success of this By-Law will depend on various key stakeholders that exist within the Makana Municipal area of jurisdiction, including the following: -

- o Political Leadership (e.g. Executive Mayor, Councillors and Ward Committee Members),
- o Administrative Leadership (e.g. Municipal Manager and Directors of various Directorates or Business Units),
- o All Employees of Council have the responsibility of being the mouthpiece of the municipality or their employer, in as far as informing the members of the public about their benefits resulting from this policy,

Lastly, this *By-Law* must be communicated to the communities residing at Makana Municipal area of jurisdiction through community newspapers, notices in the notice boards, municipal websites, municipal accounts, booklets, and any other means of communication deemed to be effective.

25. REVIEWAL OF THE CREDIT CONTROL AND DEBT MANAGEMENT BY-LAW

This *By-Law* will be reviewed at least once a year, and such reviewal must firstly be submitted to the Finance and Service Delivery Committee by the Chief Financial Officer, as well as the Mayoral Committee, and be finally endorsed by the Municipal Council before it can be implemented. This *By-Law* supersedes any other one adopted by Council previously, including any other resolutions taken.

MAKANA MUNICIPALITY LIQUOR TRADING HOURS BY-LAWS

Under the provisions of section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and sections 22(2)(d)(i) and 42(b) of the Eastern Cape Liquor Act, 2003 (Act 10 of 2003), the Makana Municipality, enacts as follows:-

TABLE OF CONTENTS

1. Definitions
 2. Purpose of By-law
 3. Application of By-law
 4. Ward committee consultative meetings
 5. Trading hours
 6. Selling of liquor at other times
 7. Enforcement
 8. Offences relating to official
 9. Appeal
 10. Penalties
 11. Repeal
 12. Short title and commencement
- Schedules

1. Definitions

In this By-law, unless the context otherwise indicates –

"Act" means the Eastern Cape Liquor Act, 2003 (Act 10 of 2003);

"casino" means a casino operated in terms of the National Gambling Act, 2004 (Act 7 of 2004);

"Council" means the Makana Municipal Council or any other committee or official acting by virtue of any powers delegated by Council;

"hotel" means premises wherein or whereon the business of supplying lodging and meals is conducted or is intended to be conducted, and includes a motel, inn, bed and breakfast concern, caravan and camping park, guest-house, a lodge and a house boat;

"Liquor Board" means the Eastern Cape Liquor Board established in terms of section 4 of the Act;

"official" means any person authorised by Council to perform the function of an officer under this By-law and includes any member of the South African Police Services and any person appointed in terms of the Act;

"premises" includes any place, land, building or conveyance or any part thereof which is registered or which is seeking to be registered to trade in liquor;

"**registered premises**" means premises on or from which a trader conducts his or her business;

"**Regulations**" means the regulations, published as Notice No. 1143 of 8 April, 2004, made under the Act;

"**selling hours**" means the time during which a trader is allowed to sell liquor in terms of Schedule 1;

"**trader**" means a person who is registered in terms of section 19 of the Act, and any other word or expression to which a meaning has been assigned in the Act and the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), carries that meaning;

"**trading**" means the selling of liquor; and

"**ward committee**" means a committee as contemplated in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998).

2. Purpose of By-law

The Council, acting in terms of the powers granted to it in the Act adopts this By-law with the aim of regulating the hours during which liquor may be sold.

3. Application of By-law

This By-law applies to all premises, situated within the area of jurisdiction of the Council, on which liquor is traded or intended to be traded.

4. Ward Committee consultative meetings

(1) A Ward Committee must within 30 days of receipt of a notice of application for registration, in terms of section 22(2)(d)(i) of the Act hold a consultative meeting with the community of the area where the premises that are sought to be registered are situated to discuss and solicit their views with regard to the application that the applicant intends to lodge with the Liquor Board.

(2) The Ward Committee must compile and submit a report to the Council and the Liquor Board, stipulating the date of the consultative meeting referred to in subsection (1), the time of the meeting, the names and the addresses of the people who attended, indicate whether it objects to or recommends the application and what additional conditions it proposes, if any.

(3) The Council may consider a report submitted to it by a ward committee in terms of subsection 22(2)(d)(i)¹ of the Act and item 3(2)² of the Regulations.

¹ Section 22(2)(d) of the Act reads as follows:

"An application for registration contemplated in subsection (1) must be made by submitting to the board –

(d) proof of service of the notice contemplated in the prescribed manner on the –

5. Trading hours

- (1) The trading hours, as listed in Column 2 of Schedule 1 to this By-law of the different kinds of registrations, as contemplated in section 20 of the Act, as listed in Column 1 of the Schedule, have been determined by the Council and may be reviewed by the Council from time to time.
- (2) Subject to section 6, no trader may sell liquor to a person at a time other than those hours stipulated as trading hours under subsection (1).
- (3) A trader who contravenes subsection (2) commits an offence.

6. Selling of liquor at other times

- (1) The Council may grant written consent to a trader to sell liquor at hours other than those hours stipulated as trading hours in section 5(1), and a trader who wishes to sell liquor at such hours must, before he or she sells such liquor, obtain such written consent of the Council.
- (2) A trader who wishes to obtain the consent of the Council must complete a form similar to the form entitled "Application For Departure With Respect To Trading Hours" as contained in Schedule 2 and submit the form and other particulars as the Council may request, to the office of the municipal manager.
- (3) For the purpose of considering whether to grant consent as contemplated in subsection (1), Council may require an official to undertake an investigation or request information as he or she may deem necessary for consideration by the Council, and such official must submit his or her findings to the Council.
- (4) The Council may, after consideration of the application and the report contemplated in subsection (3), refuse to grant consent or grant consent, and should the Council grant consent, it may do so subject to any condition or restriction it may deem necessary, which consent and condition or restriction, if imposed, shall be entered in Part C of the form contained in Schedule 2.
- (5) A trader who has been granted consent in terms of subsection (4), must display, in a conspicuous place on the premises regarding which the

(i) ward committee which must on receipt of the notice consult the community of the area where the premises are situated and simultaneously submit a report to the board and the relevant municipal council; and

(ii) governing body of every education institution or place of worship within a radius prescribed by the MEC from the premises in respect of which the application is made."

Item 3 of the Regulations reads as follows:

"(1) An applicant must within seven days of lodgment, serve a notice substantially in the form of Form 2 of Annexure 2 on the ward committee of the area where the premises are situated, every governing body of every educational institution and place of worship within a radius of 100 metres from the premises in respect of which the application for registration is made.

(2) A ward committee contemplated in sub-regulation (1) must, within thirty days of receipt of the notice, submit a report on the consultation with the community to the board and to the relevant municipal council."

consent has been granted and during those times for which the consent has been granted, a copy of the form on which the consent of the Council has been entered.

(6) A trader who contravenes subsection (1) or (5), or who sells liquor in contravention of a condition or restriction imposed in terms of subsection (3), or who displays a forged form, commits an offence.

7. Enforcement

(1) Members of the South African Police Service and liquor inspectors appointed in terms of the Act may enforce this By-law.

(2) An official, acting within the powers vested in him or her by subsection 6(3) of this By-law must, upon request by a member of the public, produce proof of identity and the capacity in which he or she purports to conduct his or her business.

(3) An official, acting in terms of the mandate contemplated in subsection (2) may –

- (a) enter upon premises and conduct an inspection; and
- (b) request any person to provide such information as deemed necessary by the official.

8. Offences relating to official

(1) A person commits an offence if he or she –

- (a) hinders or interferes with an official in the execution of his or her duties;
- (b) falsely professes to be an official;
- (c) furnishes false or misleading information when requested by an official; or
- (d) fails to comply with a request of an official.

(2) A person who contravenes subsection (1) commits an offence.

9. Appeal

A person whose rights are affected by a decision of the Council may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

10. Penalties

A person who has committed an offence in terms of these by-laws is guilty of an offence and, on conviction, liable to the penalties prescribed in section 61(1)(b) and section 61(2) and (3) of the Act.

11. Repeal

The By-law set out in Schedule 3 is hereby repealed to the extent set out in the third column of that Schedule.

12. Short title and commencement

This By-law may be cited as Makana Municipality Liquor Trading Hours By-law, and come into force upon publication in the Provincial Gazette.

SCHEDULE 1
(Section 5(1))

TYPE OF REGISTRATION ¹	TRADING HOURS
Registration in terms of Section 20(a) of the Act for the retail sale of liquor for consumption off the premises where liquor is sold. <i>(Bottle store, retail shop, wholesaler)</i>	09:00-21:00 Mon-Sat 09:00-13:00 Sun/Pub Holidays
Registration in terms of Section 20(b) of the Act for the retail sale of liquor for consumption on the premises where liquor is sold. <i>(Restaurant, sports club, pool bar, pub)</i> <i>(Night club)</i> <i>(Hotels)</i>	11:00-24:00 Mon- Thurs 10:00-02:00 Fri – Sat 11:00-22:00 Sun/Pub Holidays 24 hours
Registration in terms of Section 20(c) of the Act for the retail sale of liquor for consumption on and off the premises where liquor is sold. <i>(Taverns, shebeens)</i>	11:00-24:00 Mon-Thurs 10:00-02:00 Fri-Sat 11:00-22:00 Sun/Pub Holidays
Registration in terms of Section 20(d) of the Act for the retail sale and consumption of liquor at a special event	Council and SAPS will determine
Registration in terms of Section 20(d) of the Act for micro manufacturing.	Council and SAPS will determine

¹ The following serve as examples of outlets or establishments:

- (a) Section 20(a): Retail warehouse, retail liquor or bottle store, shop, off-sales, house shop.
- (b) Section 20(b): Nightclub, sports bar, sports club, poolbar, discotheque, jazz club, escort agency, pub and grub, pub, bar, casino, licensed restaurant, guest house, hotel, motel.
- (c) Section 20(c): Tavern, shebeen.
- (d) Section 20(d): Concert, festival, sporting event, and entertainment event.
- (e) Section 20(e): Wholesale warehouse and micro manufacturing.

SCHEDULE 2**PART A****APPLICATION FOR DEPARTURE WITH RESPECT TO TRADING HOURS**

(In terms of section 6(2) of the Liquor Trading Hours By-law)

Name of applicant:

Allotment Area: Erf No. of Premises:

Address of premises where liquor will be sold:

.....

Postal address of applicant:

.....

Contact telephone no (.....) Fax no (.....)

Dates and hours on which liquor will be sold or supplied (Be specific, e.g. 14:00 to 23:00 on 3 June, 2005):

Reason why this application is made:

.....

.....

Anticipated volume of liquor that will be consumed:.....

Nature of liquor that will be sold or supplied:

Other particulars (as requested by the Council):

Do the premises have Special Land Use Consent? (provide proof) YES NO

Do premises have a business licence? (provide proof) YES NO

Do premises have noise attenuation equipment installed? (provide details) YES NO

Does applicant possess a Liquor Licence? (provide copy) YES NO

Distance to nearest residence metres

Signed Date

(Applicant)

PART B***Official use*****Does The Business Meet The Following Requirements?:**

- | | | |
|---|-----|----|
| 1. Land use permission | YES | NO |
| 2. Valid business license (if applicable) | YES | NO |
| 3. Compliance with noise regulations | YES | NO |
| 4. Possession of a valid liquor licence | YES | NO |
| 5. Premises suitably located | YES | NO |

INSPECTION REPORT:

.....

.....

.....

.....

.....

Name of official :

Date of inspection :

PART C**RECOMMENDATION BY ENVIRONMENTAL HEALTH DEPARTMENT:**

.....

.....

.....

.....

Name of Official:

DATE:

Designation:

CONDITIONS:

.....

.....

.....

.....

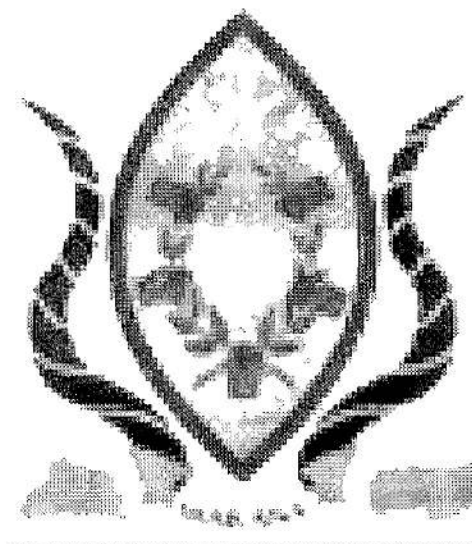
SIGNATURE

DATE

SCHEDULE 3

Number and year of bylaw	Title	Extent of repeal
P.N		The whole

LOCAL AUTHORITY NOTICE 70



RATES BY-LAW
FOR
MAKANA MUNICIPALITY

NB: To Finance and Service Delivery Committee: 19 March 2008

Adopted by Council: 10 June 2008

PREAMBLE

In an attempt to ensure that the ratepayers residing within the Makana Municipal area of jurisdiction, are levied property rates in a fair and equitable manner, the Makana Municipality hereby approves the Property Rates By-Law, as required by section 156(2) of the Constitution of the Republic of South Africa (Act 108 of 1996), section 11(3)(m) of the Municipal Systems Act 32 of 2000.

DEFINITION OF KEY WORDS

1. In these by-laws, unless the context indicates otherwise –

“**agricultural purpose**”, in relation to the use of a property, excludes the use of a property for the purpose of ecotourism or for the trading in or hunting of game;

“**annually**” means once every financial year;

“**category**” –

- (a) in relation to property, means a category of property determined in terms of section 4 of these by-laws;
- (b) in relation to owners of property, means a category of owners of property determined in terms of section 5 of these by-laws;

“**exemption**”, in relation to the payment of a rate, means an exemption granted in terms of section 8 of these by-laws;

“**land tenure right**” means an old order right or a new order right as defined in section 1 of the Communal Land Rights Act, 2004 of 2004

“multiple purposes”, in relation to property, means the use of property for more than one purpose;

“municipal council” or **“council”** means a municipal council referred to in section 18 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“municipality” means the Makana Municipality established in terms of section 155(6) of the Constitution, 1996, and established by and under section 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

“owner” –

- (a) in relation to property referred to in paragraph (a) of the definition of “property”, means a person in whose name ownership of the property is registered;
- (b) in relation to a right referred to in paragraph (b) of the definition of “property”, means a person in whose name the right is registered;
- (c) in relation to a land tenure right referred to in paragraph (c) of the definition of “property”, means a person in whose name the right is registered or to whom it was granted in terms of legislation, or
- (d) in relation to public service infrastructure referred to in paragraph (d) of the definition of “property”, means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of “publicly controlled”,

provided that a person mentioned below may for the purposes of these By-laws be regarded by the municipality as the owner of the property in the following cases –

- (i) a trustee, in the case of a property in a trust excluding state trust land;

- (ii) an executor or administrator, in the case of property in a deceased estate;
- (iii) a trustee or liquidator, in the case of property in an insolvent estate or in liquidation;
- (iv) a judicial manager, in the case of property in the estate of a person under judicial management;
- (v) a curator, in the case of property in the estate of a person under curator ship;
- (vi) a usufructuary or other person in whose name a usufruct or other personal servitude is registered, in the case of property that is subject to a usufruct or other personal servitude;
- (vii) a lessee, in the case of a property that is registered in the name of the municipality and is leased by it; or
- (viii) a buyer, in the case of a property that was sold by a municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer;

“permitted use”, in relation to property, means the limited purposes for which the property may be used in terms of –

- (a) any restriction imposed by –
 - (i) a condition of title;
 - (ii) a provision of a town planning or land use scheme; or
 - (iii) any legislation applicable to any specific property or properties; or
- (b) any alleviation of any such restrictions;

“property” means –

- (a) immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;

- (b) a right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation; or
- (d) public service infrastructure.

“property register” means a register of properties referred to in section 23 of the Act;

“protected area” means an area that is or has to be listed in the register referred to in section 10 of the National Environmental: Protected Areas Act, 2003 (Act No. 57 of 2003);

“public benefits organization” means an organization conducting specified public benefit activities as defined in the Act and registered in terms of the Income Tax Act, 1962 (Act No. 58 of 1962) for a tax reduction because of those activities;

“publicly controlled” means owned or otherwise under the control of an organ of state, including –

- (a) a public entity listed in the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) a municipality; or
- (c) a municipal entity as defined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“public service infrastructure” means publicly controlled infrastructure of the following kinds:

- (a) national, provincial or other public roads on which goods, services or labour move across the municipal boundary;

- (b) water or sewer pipes, ducts or other conduits, dams, water supply reservoirs, water treatment plants or water pumps forming part of a water or sewer scheme serving the public;
- (c) power stations, power substations or power lines forming part of an electricity scheme serving the public;
- (d) gas or liquid fuel plants or refineries or pipelines for gas or liquid fuels, forming part of a scheme for transporting such fuels;
- (e) railway lines forming part of a national railway system;
- (f) communication towers, masts, exchanges or lines forming part of a communications system serving the public;
- (g) runways or aprons at national or provincial airports;
- (h) breakwaters, sea walls, channels, basins, quay walls, jetties, roads, railway or infrastructure used for the provision of water, lights, power, sewerage or similar services of ports, or navigational aids comprising lighthouses, radio navigation aids, buoys, beacons or any other device or system used to assist the safe and efficient navigation of vessels;
- (i) any other publicly controlled infrastructure as may be prescribed; or
- (j) rights of way, easements or servitudes in connection with infrastructure mention in paragraphs (a) to (i).

“rate” means a municipal rate on property envisaged in section 229(1)(a) of the Constitution, 1996;

“rateable property” means property on which a municipality may in terms of section 2 of the Act levy a rate, excluding property fully excluded from the levying of rates in terms of section 17 of the Act;

“rebate”, in relation to a rate payable on property, means a discount in the amount of the rate payable on the property granted in terms of section 9 of these by-laws;

“reduction”, in relation to a rate payable on property, means the lowering of the amount for which the property was valued and the rating of the property at that lower amount granted in terms of section 10 of these by-laws;

“residential property” means property included in a valuation roll in terms of section 48(2) of the Act as residential;

“sectional title scheme” means a scheme as defined in section 1 of the Sectional Titles Act;

“sectional title unit” means a unit as defined in section 1 of the Sectional Titles Act

“specified public benefit activity” means an activity listed in item 1 (welfare and humanitarian), item 2 (health care) and item 4 (education and development) of Part 1 of the Ninth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962);

“the Communal Land Rights Act” means the Communal Land Rights Act, 2004 (Act No. 11 of 2004);

“the Communal Property Associations Act” means the Communal Property Associations Act, 1996 (Act No. 28 of 1996);

“the Provision of Land and Assistance” means the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993);

“the Restitution of Land Rights Act” means the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);

“the Sectional Titles Act” means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

“the Act” means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

“vacant land” means land on which no immovable improvements have been erected.

TABLE OF CONTENTS

	Pg. No.
1. Rates policy	10
2. Principles	10
3. Categories of property	10-12
4. Categories of owners of property	12-13
5. Properties used for multiple purposes	13-14
6. Differential rating	14-15
7. Exemptions	15-16
8. Rebates	16-17
9. Reductions	17
10. Property used for agricultural purposes	17-18
11. Process for granting exemptions, rebates and reductions	18
12. Rates increases	18-19
13. Short title and reviewal of Rates By-Law	19
14. Commencement	19

1. Rates Policy

The municipal council is expected by resolution, to adopt a policy on the levying of rates on ratable property in the municipality. The rates policy adopted by the municipal council must comply with the provisions of the Property Rates Act No. 6 of 2004. The municipality adopted the Rates Policy on the **27 November 2007**, and Rates By-Law must support this policy.

2. Principles

The rates policy adopted by the municipal council must comply with the following principles –

- (a) All ratepayers within a specific category, as determined by the municipal council from time-to-time, must be treated equitably.
- (b) A fair and transparent system of exemptions, rebates and reductions must be adopted and implemented by the municipality.
- (c) Relief measures in respect of the payment of rates may not be granted on an individual basis, other than by way of exemption, rebate or reduction.
- (d) Exemptions, rebates and reductions must be used to alleviate the rates burden on –
 - (i) the poor;
 - (ii) public benefit organizations; and
 - (iii) public service infrastructure.
- (e) Provision must be made for the promotion of local, social and economic development.

3. Categories of Property

For the purpose of levying different rates on different categories of property, the municipal council must –

- (a) determine different categories of property; or
- (b) provide criteria for determining different categories of property.

The different categories of property determined by the municipal council in terms of the above paragraphs; or the criteria for determining different categories of property provided by the municipal council should be specified in the rates policy adopted by the municipal council in terms of paragraph 1.

The different categories of property determined by the municipal council may include, but not limited, to those set out below –

- (a) residential properties;
- (b) industrial properties;
- (c) commercial properties;
- (d) farm properties used for agricultural purposes;
- (e) farm properties used for commercial purposes;
- (f) farm properties used for residential purposes;
- (g) farm properties used for any other purpose;
- (h) farm properties not used for any purpose;
- (i) state-owned properties:
 - (i) state properties that provide local services;
 - (ii) state properties that provide district services;
 - (iii) state properties that provide metropolitan services;
 - (iv) state properties that provide provincial services; or
 - (v) state properties that provide national services;
- (j) municipal properties;
- (k) public service infrastructure;
- (l) privately owned towns;
- (m) formal and informal settlements;
- (n) communal land as defined in the Communal Land Rights Act;
- (o) state trust land;
- (p) property acquired in terms of the Provision of Land and Assistance Act;
- (q) property acquired in terms of the Restitution of Land Rights Act;
- (r) property subject to the Communal Property Associations Act;

- (s) protected areas;
- (t) national monuments;
- (u) property used for a specified public benefit activities
- (v) multiple-use properties;
- (w) vacant land.

The criteria for determining different categories of property provided by the municipal council may include, but not limited, to those set out below –

- (a) the actual use of the property;
- (b) the permitted use of the property;
- (c) the size of the property;
- (d) the geographical area in which the property is located.

4. Categories of Owners

For the purpose of levying rates on different categories of property or for the purpose of granting exemptions, rebates or reductions, the municipal council must –

- (a) determine different categories of owners of property; or
- (b) provide criteria for determining different categories of owners of property.

The different categories of owners of property determined by the municipal council or the criteria for determining different categories of owners of property provided by the municipal council must be specified in the rates policy adopted by the municipal council in terms of paragraph 1.

The different categories of owners of property determined by the municipal council may include, but not limited, to the following categories –

- (a) indigent owners;
- (b) owners dependent on pensions or social grants for their livelihood;
- (c) owners temporarily without an income;

- (d) owners of property situated within an area affected by a disaster or any other serious adverse social or economic condition;
- (e) owners of residential property whose market value is below the amount indicated in the municipality's rates policy before the first R15 000 mandatory exclusion;
- (f) owners of agricultural property who are *bona fide* farmers.

The criteria for determining different categories of owners of property provided by the municipal council may include, but not limited, to the following criteria –

- (a) income of the owner of the property;
- (b) source of income of the owner of the property;
- (c) occupation of the owner of the property;;
- (d) market value of the property;
- (e) use of the property;
- (f) disasters or any other serious adverse social or economic condition.

5. Multiple-use Properties

The municipal council must determine the criteria in terms of which multiple-use properties must be rated. It is important that the criteria determined by the municipal council be specified in the rates policy adopted by the municipal council in terms of paragraph 1.

The criteria determined by the municipal council in terms of the previous paragraph must be either –

- (a) the permitted use of the property;
- (b) the dominant use of the property; or
- (c) the multiple-uses of the property

If the municipal council adopts the criterion set out in the above section, the rates levied on multiple-use properties must be determined –

- (a) by apportioning the market value of such a property to the different purposes for which the property is used; and
- (b) by applying the relevant cent amount in the rand to the corresponding apportioned market value.

It is imperative to ensure that when the property valuer is appointed for the purpose of conducting valuation the information regarding the multiple use of property is detailed.

6. Differential Rating

Subject to and in conformity with the Act, the municipality may levy different rates on different categories of property. If the municipality chooses to levy different rates on different categories of property, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(i) of the Act. The criteria determined by the municipal council in terms of section 3(3)(b)(i) of the Act must be specified in the rates policy adopted by the municipal council in terms of paragraph 1.

The criteria which must be determined by the municipal council in terms of section 3(3)(b)(i) of the Act may include, but are not limited, to those set out below –

- (a) the nature of the property;
- (b) the sensitivity of the property to rating;
- (c) the extent to which the property has been developed;
- (d) the promotion of social and economic development.

If the municipal council chooses to levy different rates on different categories of property, it must determine the method in terms of which different rates will be levied against different categories of property.

The method determined by the municipal council in terms of the above paragraph must be based on one of the methods set out below –

- (a) setting a different cent amount in the Rand for each category of property;
- (b) granting rebates for different categories of property; or
- (c) granting reductions for different categories of property.

The method determined by the municipal council in terms of the above paragraphs must be specified in the rates policy adopted by the municipal council in terms of paragraph 1. Differential rating must be levied in consultation with the communities affected, as the majority of them must agree with the principle.

7. Exemptions

Subject to and in conformity with the Act, the municipality may exempt –

- (a) the owners of any specific category of property; and/or
 - (b) any specific category of owners of property,
- from the payment of rates.

If the municipality chooses to exempt the owners of any specific category of property or any specific category of owners of property from the payment of rates, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(ii) of the Act. The criteria determined by the municipal council in terms of section 3(3)(b)(ii) of the Act should be specified in the rates policy adopted by the municipal council in terms of paragraph 1.

The criteria which must be determined by the municipal council in terms of section 3(3)(b)(ii) of the Act may include, but not limited, to those set out below –

- (a) age of the owner of the property;
- (b) income of the owner of the property;
- (c) source of the income of the owner of the property;

- (d) economic, physical and social condition of the property;
- (e) public service infrastructure;
- (f) property used for specified public benefit activities;
- (g) market value of the property.

8. Rebates

Subject to and in conformity with the Act, the municipality may grant a rebate –

- (a) to the owners of any specific category of property; and/or
 - (b) to any specific category of owners of property,
- on the rate payable in respect of their properties.

If the municipality chooses to grant a rebate to a specific category of property or to a specific category of owners of property from the payment of rates, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act. The criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act should be specified in the rates policy adopted by the municipal council in terms of paragraph 1 above.

The criteria which must be determined by the municipal council in terms of section 3(3)(b)(iii) of the Act may include, but not limited, to those set out below –

- (a) age of the owner of the property;
- (b) physical health of the owner of the property;
- (c) nature of the property;
- (d) ownership of the property;
- (e) market value of the property;
- (f) property used for the following specified public benefit activities:
 - (i) welfare,
 - (ii) health care, or
 - (iii) education;
- (g) extent to which municipal services are provided to the property;

- (h) extent to which the property contributes to local, social and economic development.

9. Reductions

Subject to and in conformity with the Act, the municipality may grant a reduction:

- (a) to the owners of any specific category of property; and/or
 - (b) to any specific category of owners of property,
- in the rate payable in respect of their properties.

If the municipality chooses to grant a reduction to a specific category of property or to a specific category of owners of property from the payment of rates, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act. The criteria determined by the municipal council in terms of section 3(3)(b)(iii) of the Act must be specified in the rates policy adopted by the municipal council in terms of paragraph 1 above.

(4) The criteria which must be determined by the municipal council in terms of section 3(3)(b)(iii) of the Act may include, but not limited, to those set out below –

- (a) fire;
- (b) floods;
- (c) lightning;
- (d) storms;
- (e) other artificial or natural disasters.

10. Property used for agricultural purposes

When considering the criteria to be applied in respect of any exemptions, rebates or reductions on properties used for agricultural purposes, the criteria listed below must be taken into account –

- (a) the extent of services provided by the municipality in respect of such properties;
- (b) the contribution of agriculture to the local economy;
- (c) the extent to which agriculture assists in meeting the service delivery and development obligations of the municipality; and
- (d) the contribution of agriculture to the social and economic welfare of farm workers.

11. Process for granting exemptions, rebates and reductions

Applications for exemptions, rebates and reductions must be made in accordance with the procedures determined by the municipal council. The procedures determined by the municipal council should be specified in the rates policy adopted by the municipal council. As Ward Councillors and Ward Committee members are in daily contact with the communities, it is advisable for them to be vigilant and bring forth cases of this nature, even the "child headed households" to the Office of the Chief Financial Officer or the Municipal Manager, so that they can be attended to speedily.

The municipality retains the right to refuse an application for an exemption, rebate or reduction if the details supplied in support of such an application are incomplete, incorrect or false.

12. Rates increases

Subject to and in conformity with the Act, the municipality may increase the rates it levies on property in the municipality. If the municipality chooses to increase the rates it levies on properties in the municipality, it must exercise this power in accordance with the criteria determined by the municipal council in terms of section 3(3)(b)(iv) of the Act.

The criteria determined by the municipal council in terms of section 3(3)(b)(iv) of the Act must be specified in the rates policy adopted by the municipal council in terms of paragraph 1.

The criteria which must be determined by the municipal council in terms of section 3(3)(b)(iv) of the Act may include, but are not limited, to those set out below –

- (a) priorities of the municipality reflected in its Integrated Development Plan;
- (b) the revenue needs of the municipality;
- (c) the need for the management of rates shocks;
- (d) affordability of rates to ratepayers.

13. Short title and reviewal of Rates BY-Law

These by-laws will be called the Makana Municipality Rates By-Laws, and must be read in conjunction with the municipality's Rates Policy. The Rates By Laws and the Rates Policy will be reviewed on an annual basis, preferably during the budget process, or on or whenever it is necessary to do so.

14. Commencement

These by-laws come into force and effect on 1 July 2008, and any issue that is not addressed on these By-Laws will be dealt with according to the Rates Policy, Municipal Property Rates No. 6 of 2004, and any Government Regulations issued about Property Rates.
