



**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA
ON THE eTHEKWINI METROPOLITAN MUNICIPALITY: CREDIT CONTROL AND DEBT
COLLECTION AMENDMENT BY-LAW, 2021**

The Law Society of South Africa (LSSA) constitutes the collective voice of the approximately 30 000 attorneys within the Republic. It brings together the Black Lawyers Association, the National Association of Democratic Lawyers and nine provincial attorneys' associations, in representing the attorneys' profession.

The LSSA has considered the proposed eThekwini Metropolitan Municipality: Credit Control and Debt Collection Amendment By-law, 2021, and hereby submits the following comments:

1. The insertion of Chapter 6A in the eThekwini Municipality: Credit Control and Debt Collection By-law 2017 is not supported as the proposed amendment is a breach of the principle of legality.
2. Municipal Councils may not exercise powers or perform functions that are not given to them by the law.
3. The Legal Practice Act, 28 of 2014 is applicable to all legal practitioners and all candidate legal practitioners.
4. In terms of the Legal Practice Act, "conveyancer" means any practicing attorney who is admitted and enrolled to practice as a conveyancer in terms of this Act.
5. The purpose of the Legal Practice Act is, inter alia, to create a single, unified, statutory body to regulate the affairs of all legal practitioners and all candidate legal practitioners in pursuit of the goal of an accountable, efficient and independent legal profession and to provide a fair, effective, efficient and

transparent procedure for the resolution of complaints against legal practitioners and candidate legal practitioners.

6. A Municipal Council does not have the authority to impose duties on a conveyancer, nor is it entitled to delegate its functions to a conveyancer or to adjudicate on the conduct of a conveyancer.
7. In terms of section 151(3) of the Constitution of the Republic of South Africa, 1996 (the Constitution), a municipality has the right to govern, on its own initiative, the local government affairs of its community subject to national and provincial legislation, as provided for in the Constitution.
8. In terms of section 156(2) of the Constitution, a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.
9. In terms of section 156(3) of the Constitution, a by-law that conflicts with national or provincial legislation is invalid.
10. In terms of section 160(6) of the Constitution a Municipal Council may make by-laws which prescribe rules and orders for:
 - (a) its internal arrangements;
 - (b) its business and proceedings; and
 - (c) the establishment, composition, procedures, powers and functions of its committees.
11. In terms of section 97(1) of the Local Government Municipal Systems Act, 2000 (the Municipal Systems Act) a credit control and debt collection policy must provide for:
 - (a) credit control procedures and mechanisms;
 - (b) debt collection procedures and mechanisms;
 - (c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents;
 - (d) realistic targets consistent with:
 - (i) general recognised accounting practices and collection ratios; and
 - (ii) the estimates of income set in the budget less an acceptable provision for bad debts;
 - (e) interest on arrears, where appropriate;
 - (f) extensions of time for payment of accounts;

- (g) termination of services or the restriction of the provision of services when payments are in arrears;
 - (h) matters relating to unauthorised consumption of services, theft and damages; and
 - (i) any other matters that may be prescribed by regulations in terms of section 104.
12. The contents of the policy do not sanction the imposition of duties to conveyancers or the conduct of conveyancers and the establishment and/or operation of a Revenue Management Blacklisting Committee.
13. It therefore follows that the proposed insertion of Chapter 6A in the eThekweni Municipality: Credit Control and Debt Collection By-law 2017 is untenable and legally indefensible. It offends the principle of legality and is inconsistent with the Constitution. It is also in conflict with the Legal Practice Act and the Municipal Systems Act.
14. The following is an extract of Sections 95(e), (f) and (g) of the Municipal Systems Act which provides that, in relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity:
- (e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
 - (f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts; and
 - (g) provide accessible mechanism for dealing with complaints from persons, together with prompt replies and corrective action by the municipality.
15. Section 64(1) of the Local Government Municipal Finance Management Act, 2003 (MFMA), provides that the accounting officer is responsible for the management of the revenue of the municipality. It prescribes that the accounting officer must, in terms of section 64(2)(a), take all reasonable steps to ensure that the municipality has effective revenue collection systems consistent with section 95 of the Municipal Systems Act and the municipality's credit control and debt collection policy.
16. Section 65(1) of the MFMA, provides that the accounting officer of a municipality is responsible for the management of the expenditure of the municipality. It prescribes that the accounting officer must, in terms of section 65(2)(a), take all reasonable steps to ensure inter alia that the municipality has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds.

17. Conveyancers are not employees of the municipality. The municipality has no jurisdictional or regulatory authority over conveyancers. The municipality has certain duties and fundamental obligations in terms of the Constitution, the Municipal Systems Act and the MFMA and must fulfil such obligations. If the municipality does not have the administrative capacity to fulfil its obligations, then it should employ capable persons with the requisite skills and expertise and make every attempt to improve its internal control procedures. The figures for the issue of rates certificates are furnished by municipal staff under the direct control of the municipality. The prescribed certificate referred to in section 118(1) of the Municipal Systems Act is issued by the municipality and not by a conveyancer. If the municipality is unable to fulfil its duties and obligations, then it should seek assistance from provincial or national government.

18. It is respectfully submitted that the proposed amendment be withdrawn, as it will not pass constitutional muster.