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## **(1) Introduction**

- (a)** As custodians of public funds, the Council has an obligation to ensure that the cash resources of the municipality are managed properly and effectively. The Council has the responsibility to spend public funds with great care and is accountable to the local community in this regard.
- (b)** This policy has been compiled in accordance with and with due regard to the provisions of:
  - (i)** The Local Government: Municipal Systems Act No. 32 of 2000 as amended;
  - (ii)** The Local Government: Municipal Finance Management Act (MFMA) No. 56 of 2003;
  - (iii)** The Municipal Investment Regulations published under Government Gazette 27431 dated 1 April 2005;
  - (iv)** The Municipal Budget and Reporting Regulations published under Government Gazette 32141 dated 17 April 2009; and
  - (v)** MFMA Circular No. 49 issued by National Treasury on “Non-payment of Obligations” dated 30 June 2009.

## **(2) Delegation of Powers**

This policy should be applied with due regard to the policy on the grant of delegated powers adopted by the Council and specifically those relating to the borrowing and verification powers of the Council and its designated political office bearers and officials.

## **(3) Purpose of this Policy**

The purpose of this policy is to ensure that borrowing forms part of the financial management procedures of the Municipality and to ensure that prudent borrowing procedures are consistently applied in a prudent and accountable manner.

## **(4) Borrowing**

### ***(a) Conditions applying to both short-term and long-term debt***

The Municipality may incur debt only if:

- The debt is denominated in Rand and is not indexed to, or affected by, fluctuations in the value of the Rand against any foreign currency; and
- Section 48 (3) of the MFMA regarding the provision of security for borrowing associated with the acquisition of assets and rights for the purpose of providing Basic Municipal services, has been complied with, in the event of security being provided by the Municipality.

***(b) Short-term Debt***

- (i) The Municipality may incur short-term debt only in accordance with and subject to the provisions of the MFMA and only when necessary to bridge:
  - (a) Shortfalls within a financial year during which the debt is incurred, in expectation of specific and realistic anticipated income to be received within that financial year; or
  - (b) Capital needs within a financial year, to be repaid from specific funds to be received from enforceable allocations or long-term debt commitments.
- (ii) The Municipality may incur short-term debt in terms of subparagraph (i) above only if:
  - (a) A resolution of the Council, signed by the Mayor, has approved the debt agreement; and
  - (b) The Accounting Officer has signed the agreement or other document which creates or acknowledges the debt.
- (iii) For the purpose of subparagraph (ii) above, the Council may:-
  - (a) Approve a short-term debt transaction individually; or
  - (b) Approve an agreement with a lender for a short-term credit facility to be accessed as and when required, including a line of credit or bank overdraft facility, provided that -
    - (i) the credit limit must be specified in the resolution of the Council;
    - (ii) the terms of the agreement, including the credit limit, may be changed only by a resolution of the Council; and
    - (iii) if the Council approves a credit facility that is limited to emergency use, the Accounting Officer must notify the Council in writing as soon as practical of the amount, duration and cost of any debt incurred in terms of such a credit facility, as well as options for repaying such debt.
- (iv) The Municipality:-
  - (a) Must pay off short-term debt within the financial year; and

- (b) May not renew or refinance short-term debt, whether its own debt or that of any other Entity, where such renewal or refinancing will have the effect of extending the short-term debt into a new financial year.

**(c) Long-term Debt**

- (i) The Municipality may incur long-term debt only in accordance with and subject to any applicable provisions of the MFMA and only for the purpose of:-
  - (a) Capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of local government as set out in section 152 of the Constitution, including costs referred to in subparagraph (iv) below; or
  - (b) Re-financing existing long-term debt subject to subparagraph (v) below.
- (ii) The Municipality may incur long-term debt only if:-
  - (a) A resolution of the Council, signed by the Mayor, has approved the debt agreement; and
  - (b) The Accounting Officer has signed the agreement or other document which creates or acknowledges the debt.
- (iii) The Municipality may incur long-term debt only if the Accounting Officer:-
  - (a) has, in accordance with section 21A of the Municipal Systems Act:-
    - (i) at least 21 days prior to the meeting of the Council at which approval for the debt is to be considered, made public an information statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided; and
    - (ii) invited the public, the National Treasury and the relevant provincial treasury to submit written comments or representations to the Council in respect of the proposed debt; and
  - (b) has submitted a copy of the information statement to the Municipal Council at least 21 days prior to the meeting of the Council, together with particulars of:-
    - (i) the essential repayment terms, including the anticipated debt repayment schedule; and the anticipated total cost in connection with such debt over the repayment period.
- (iv) Capital expenditure contemplated in subparagraph (i) above may include:-

- (a) Financing costs, including -
  - (i) capitalised interest for a reasonable initial period;
  - (ii) costs associated with security arrangements in accordance with section 48 of the MFMA;
  - (iii) discounts and fees in connection with the financing;
  - (iv) fees for legal, financial, advisory, trustee, credit rating and other services directly connected to the financing; and
  - (v) costs connected to the sale or placement of debt, and costs for printing and publication directly connected to the financing;
- (b) Costs of professional services directly related to the capital expenditure; and
- (c) Such other costs as may be prescribed.
- (iv) The Municipality may borrow money for the purpose of re-financing existing long-term debt, provided that:-
  - (a) The existing long-term debt was lawfully incurred;
  - (b) The re-financing does not extend the term of the debt beyond the useful life of the property, plant or equipment for which the money was originally borrowed;-
  - (c) The net present value of projected future payments (including principal and interest payments) after re-financing is less than the net present value of projected future payments before re-financing; and
  - (d) The discount rate used in projecting net present value referred to above, and any assumptions in connection with the calculations, must be reasonable and in accordance with criteria set out in a framework that may be prescribed.
- (v) The Municipality's long-term debt must be consistent with its capital budget referred to in Section 17(2) of the MFMA.

**(d) *Security***

- (i) The Municipality may, by resolution of the Council, provide security for:-
  - (a) Any of its debt obligations;
  - (b) Any debt obligations of a Municipal Entity under its sole control; or
  - (c) Contractual obligations of the Municipality undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the Municipality or such other person for the purpose of achieving the objects of local government in terms of section 152 of the Constitution.

- (ii) The Municipality may in terms of subparagraph (i) above provide any appropriate security, including by:-
  - (a) Giving a lien on, or pledging, mortgaging, ceding or otherwise hypothecating, an asset or right, or giving any other form of collateral;
  - (b) Undertaking to effect payment directly from money or sources that may become available and to authorize the lender or investor direct access to such sources to ensure payment of the secured debt or the performance of the secured obligations, but this form of security may not affect compliance with section 8 (2) of the MFMA;
  - (c) Undertaking to deposit funds with the lender, investor or third party as security;
  - (d) Agreeing to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders or investors, including revenue intercepts, payments into dedicated accounts or other payment mechanisms or procedures;
  - (e) Ceding as security any category of revenue or rights to future revenue;
  - (f) Undertaking to have disputes resolved through mediation, arbitration or other dispute resolution mechanisms;
  - (g) Undertaking to retain revenues or specific Municipal tariffs or other charges, fees or funds at a particular level or at a level sufficient to meet its financial obligations;
  - (h) Undertaking to make provision in its budgets for the payment of its financial obligations, including capital and interest;
  - (i) Agreeing to restrictions on debt that the Municipality may incur in future until the secured debt is settled or the secured obligations are met; and
  - (j) Agreeing to such other arrangements as the Municipality may consider necessary and prudent.
- (iv) A Council resolution authorising the provision of security in terms of giving a lien on, or pledging, mortgaging, ceding or otherwise hypothecating, an asset or right, or giving any other form of collateral:-
  - (a) Must determine whether the asset or right with respect to which the security is provided, is necessary for providing the minimum level of basic municipal services; and
  - (b) If so, must indicate the manner in which the availability of the asset or right for the provision of that minimum level of basic municipal services will be protected.
- (iv) If the resolution has determined that the asset or right is necessary for providing the minimum level of Basic Municipal Services, neither the party to whom the municipal security is provided, nor any successor or assignee of such party, may, in the event of a default by the Municipality, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum level of basic municipal services.

- (v) A determination in terms of subparagraph (iv) above that an asset or right is not necessary for providing the minimum level of basic Municipal services is binding on the Municipality until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.

***(e) Disclosure***

- (i) Any person involved in the borrowing of money by the Municipality must, when interacting with a prospective lender or when preparing documentation for consideration by a prospective investor:-
  - (a) Disclose all information in that person's possession or within that person's knowledge that may be material to the decision of that prospective lender or investor; and
  - (b) Take reasonable care to ensure the accuracy of any information disclosed.
- (ii) A lender or investor may rely on written representations of the Municipality signed by the Accounting Officer, if the lender or investor did not know and had no reason to believe that those representations were false or misleading.

***(f) Municipal Guarantees***

- (i) The Municipality may not issue any guarantee for any commitment or debt of any organ of state or person, except on the following conditions:-
  - (a) The guarantee must be within limits specified in the Municipality's approved budget;
  - (b) A Municipality may guarantee the debt of a Municipal Entity under its sole control only if the guarantee is authorized by the Council in the same manner and subject to the same conditions applicable to a Municipality in terms of Chapter 6 of the MFMA if it incurs debt;
  - (c) The Municipality may guarantee the debt of a Municipal Entity under its shared control or of any other person, but only with the approval of the National Treasury, and then only if:-
    - (i) The Municipality creates, and maintains for the duration of the guarantee, a cash-backed reserve equal to its total potential financial exposure as a result of such guarantee; or
    - (ii) The Municipality purchases and maintains in effect for the duration of the guarantee, a policy of insurance issued by a registered insurer, which covers the full amount of the Municipality's potential financial exposure as a result of such guarantee.

## **(5) Implementation and Review of this Policy**

- (i)** This policy shall be implemented once approved by Council.
- (ii)** All future borrowing transactions must be made in accordance with this policy.
  - (ii)** This policy constitutes a budget-related policy which must be reviewed on an annual basis and the reviewed policy must be submitted to Council for approval in terms of section 17(3) (e) of the Municipal Finance Management Act No. 56 of 2003 as part of the annual budgetary process.

## **(6) Council Resolution**

**The Borrowing Policy to be reviewed**