



**KNYSNA**  
Municipality  
Munisipaliteit  
uMasipala

# REVENUE PROTECTION AND THE LAW

“Legally protected”



Where people and nature prosper



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# LEGAL FRAMEWORK

## *A legal means to protect*

Section 151(2) of Constitution of the Republic of South Africa

- The executive and legislative authority of a municipality is vested in its Municipal Council

Section 152 of Constitution – Objects of Local Government

- to ensure provision of services in sustainable manner
- to promote a safe and healthy environment

Section 11(3) of Municipal Systems Act, Act 106 of 2000

A municipality exercises its legislative or executive authority by-

- Developing and adopting policies, plans, strategies and programmes, including setting targets for delivery.....
- Providing services to the local community..
- Passing by-laws and taking decisions on any of the above mentioned matters.....

# LEGAL FRAMEWORK

## A legal means to protect

Chapter 9 of Municipal Systems Act provides for:

The debt collection responsibility of Municipalities through the adoption of credit control and debt collections policies

Section 97 of the Municipal Systems Act provides that these policies must provide for:

- Credit control procedures and mechanisms
- Debt collection procedures and mechanisms
- Provision for indigent debtors
- Interest on arrears
- Extension of time for payment of accounts
- Termination of services or restrictions of the provision of services when accounts are in arrears
- Matters relating to unauthorised consumption, theft and damages
- Any other matter as may be prescribed

# LEGAL FRAMEWORK

## A legal means to protect

Section 98 of the Municipal Systems Act requires the adoption of by-laws to give effect to the Credit Control and Debt Collection policy.

This also provides the legal framework for prosecution of offenders and the imposition of fines for transgressions of by-laws as fines may not be imposed by way of tariff (see *Radius Projects (Pty) Ltd v City Tshwane*).

Sections 12,13,14 & 15 sets out the procedures for the adoption of by-laws

Section 101 of the Municipal Systems Act

the right to access premises of an occupier , at all reasonable hours in order to read, install, inspect, install or repair any meter or service connection for reticulation or to disconnect, stop or restrict the provisions of any service

Section 112 of the Municipal Systems Act - right of a municipal staff member authorised in terms of Section 22(8)(b) of the NPA to institute criminal proceedings and conduct prosecutions for contravention or failure to comply with a by-law

# ENFORCEMENT

## By- laws or bye law?????

- The adoption of by-laws is an imperative
- The implementation and enforcement of by-laws are executive obligations
- The implementation of by-laws is important from the perspective of fulfilling other obligations, the reduction of crime and revenue enhancement
- Section 5(2)(e) of Municipal Systems Act – community must comply with by-laws
- Legislation makes sufficient provision for the protection of revenue and local government has the executive powers to make revenue protecting legislation
- By-laws remain largely unenforced and Council in breach of a statutory obligation to enforce

# ENFORCEMENT

## By-laws or bye law??????

A case study:

NMBMM

- Has an established Municipal Court at PE Law courts –
- Very infrequent receipt of control documents
- Courts bundle by-law enforcement fines with traffic fines
- Municipality do not realise the potential of income that can be generated and revenue protected through by-law enforcement
- Improper oversight by Councils over the enforcement of by-laws- very few questions asked-mostly reactionary
- Not on agenda of most MPAC`s

# ENFORCEMENT

## BY-LAW OR BYE LAW

BEST PRACTICE

### MOSSELBAY MUNICIPALITY

*Revenue Protection and Revenue enhancement policies:*

- Credit Control Policy
- Customer care
- Credit Control
- Debt collection
- Indigent
- Irrecoverable debt
- Water Conservation policy
- Tamper policy



# ENFORCEMENT

## BY-LAW OR BYE LAW

### MOSSELBAY MUNICIPALITY

- Adopted by-laws to give effect to policies
- Established Municipal Court
- Dedicated Municipal Prosecutor dedicated to by-law enforcement
- Revenue from payment of fines even if deferred fines
- More frequent payment of fines and less contraventions

# LIABILITY

## Revenue Protection ,the CPA and Delictual liability

Are Municipalities bound by the CPA???????

*Afriforum vs Minister of Trade and Industry* court held:

- Based on PAJA Minister overlooked relevant considerations
- Rights and concerns of citizens cannot be deferred indefinitely
- Minister ordered to list names of municipalities who have difficulty to comply with CPA
- Minister ordered to publish list by July 2014 of low capacity municipalities exempted from complying with CPA

### **Sections of CPA most relevant to to Municipalities**

- Section 54 – Consumer`s right to demand quality service
  - Timely performance, timely notice of any unavoidable delay
  - Use and delivery of goods free from defects and of quality consumer can reasonably expect

# LIABILITY

## Revenue Protection, the CPA and Delictual liability

CPA continued.....

### **Section 54 (2)**

- If a supplier fails to perform a service to standard contemplated in subsection(1), consumer may require:
- Remedy of defect
- Refund to the consumer of reasonable portion of the price paid for the service, having regard to the extent of the failure

### **Section 55 – Consumer`s rights to safe, good quality goods**

*Consumer has right to goods that are:*

- Reasonably suitable for the purpose for which they are generally intended;
- Are of good quality and in good working order
- Will be usable and durable for reasonable period, having regard to use to which they would normally be put

# LIABILITY

## Revenue Protection and the CPA Delictual liability

*A delict is the act of a person which in a wrongful and culpable way causes damages/harm to another. Damage can be cause by act or omission.*

The value of accountable government is promoted by ensuring that citizens have some form of relief against government when the latter causes them harm. The public will therefore always have recourse against a public official whose negligent conduct causes them harm, financial or otherwise.

*Judd vs Nelson Mandela Bay Municipality CA149/2010* – court dealt with delictual liability based on a failure to take preventative action.

NMBMM was found liable for an omission and court held that a duty existed to prevent harm.

Legal convictions of the community are now firmly established as the criterion for wrongfulness in all cases

# LIABILITY

## Revenue Protection and the CPA Delictual liability

Delictual liability continued.....

In municipal liability cases, the failure on the part of the municipality to repair, maintain infrastructure will be held to be unlawful only if the legal convictions of the community demand that it takes preventative action.

If it is found that an incident was reasonably foreseeable, if the procedures were not followed, and if a municipality could have taken reasonable steps to prevent harm, it could be delictually liable.

From the above it is clear that municipalities can be delictually liable if the elements of delict are proven and especially where the legal convictions of the community imposes a legal duty to prevent harm.

**THANK YOU....**

QUESTIONS ??????