

11.5 ADVERTISING OF AMENDED POLICY - RECOVERY OF DEBTS, RATES AND SERVICE CHARGES POLICY

Attachments: 1. **Recovery of Debts, Rates and Service Charges Policy**

RECOMMENDATION

That Council **APPROVES** the proposed amendments to the **Recovery of Debts, Rates and Service Charges Policy**, at **Attachment 1**, for the purpose of community consultation.

PURPOSE OF REPORT:

For Council to approve, for the purpose of community consultation, the proposed amendments to the Recovery of Debts, Rates and Service Charges Policy as detailed at **Attachment 1**.

BACKGROUND:

At its 8 June 2010 meeting, Council adopted its [Recovery of Debts, Rates and Service Charges Policy 1.2.13](#) (Policy).

The Policy was developed to provide guidelines for the process of debt collection of outstanding debts, recovery of rates and service charges and the charging of interest in relation to those debts.

The requirement of provisions outlined in clause 1.3 of the [Policy Development and Review Policy](#) were presented to Council Members through the monthly Policy Paper in May 2022. No feedback was received.

DETAILS:

Residents have a shared obligation to contribute equitably to the delivery of services. The proposed Policy outlines the process for an effective and efficient collection of outstanding rates and services charges. The City will apply fundamental guidelines in facilitating the appropriate management of its debt collection practices in accordance with relevant legislation and legal requirements.

The Policy guides the process required to meet legislative obligations governing debt recovery and the possession of land in order to recover rates and service charges.

The Policy aligns with Department of Local Government, Sport and Cultural Industries (DLGSC) [operational guideline](#) for the possession of land for recovery of rates and services charges, comparative industry standard and the Western Australian Local Government Associations (WALGA's) [guidance](#) for the implementation of the financial hardship provisions.

The outcome of Administration's review of the Recovery Debts, Rates and Service Charges Policy is as follows:

1. Introduction and purpose

The Policy has been updated to align with the City's approved policy template. It includes minor amendments to the layout to facilitate these changes.

A Policy Statement has been included to note that the City will take appropriate action to ensure the collection of rates and service charges, using the relevant legislative and legal processes, in accordance with the *Local Government Act 1995* and *Civil Judgements Enforcement Act 2004*. The City will consider all requests with making payments and have regard to individuals experiencing financial hardship.

2. Updated policy objective

Administration is proposing an updated objective to align with existing principles and regulatory requirements.

3. Financial hardship

In 2020/21 the City adopted Financial Hardship Guidelines. These guidelines outline the definition and process to assist rate payers experiencing financial hardship. Clause 7 has been added to guide ratepayers in such circumstance and to outline the support that the City will offer.

4. Guidelines and Procedures

The guidelines and procedures have been removed from the Policy and replaced as a summary of the legal processes at clause 1 & 2.

Final discretionary collection action, by way of email or phone call, has been added as clause 1 & 2 to present a final opportunity to clear the debt before proceeding with further legal action.

The legal processes have not changed but are added to the Policy for clarity and transparency.

5. The Complaints process

An additional policy provision at clause 8 has been added to direct ratepayers to the complaints process and procedure.

CONSULTATION/ADVERTISING:

In accordance with the City's [Community and Stakeholder Engagement Policy](#), community consultation of all new and significantly amended policies must be provided for a period exceeding 21 days in the following ways:

- notice published on the City's website;
- notice posted to the City's social media;
- notice published in the local newspapers;
- notice exhibited on the notice board at the City's Administration and Library and Local History Centre; and

Public notice of this proposed new policy will be provided from early June 2022.

LEGAL/POLICY:

Section 2.7(2)(b) of the *Local Government Act 1995* provides Council with the power to determine policies.

The City's [Policy Development and Review Policy](#) sets out the process for the development and review of the City's policy documents.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to undertake community consultation of the proposed amended Policy.

STRATEGIC IMPLICATIONS:

This does not contribute to the City's *Strategic Community Plan 2018-2028*.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

FINANCIAL/BUDGET IMPLICATIONS:

Debts are to be pursued within the relevant statutory limitation periods to maximise recoverability. Debt is monitored regularly, and necessary regular provisions made to recognise unrecoverable debt. Actions for writing off bad debts (other than rates and service charges) should only take place where all avenues for recovery have been exhausted or it becomes unviable to keep pursuing the debt.

COMMENTS:

The amended Policy will provide clarification on responsibilities within the organisation that will ensure that the policy is understood and adhered to.

The Policy will be supported by procedures to ensure compliance with legislative requirements.

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Legislation / local law requirements	<p><i>Local Government Act 1995</i>, sections: 6.12, 6.45(3), 6.51(1), 6.56, 6.60 and 6.64.</p> <p><i>Local Government (Financial Management) Regulations 1996</i>, sections: 70, 72, 73 and 74.</p> <p><i>Rates and Charges (Rebates and Deferments) Act 1992</i>.</p> <p><i>Civil Judgements Enforcement Act 2004</i></p>
Relevant delegations	<p>2.2.22 Agreement as to payment of rates and service charges.</p> <p>2.2.24 Recovery of rates or service charges</p> <p>2.2.25 Recovery of rates debts – require lessee to pay rent</p> <p>2.2.26 Recovery of rates debts – action to take possession of the land</p>
Related policies, procedures and supporting documentation	Financial hardship guidelines

PRELIMINARY

INTRODUCTION

Residents of the City of Vincent (City) have a shared obligation to contribute equitably to our community and to funding the delivery of services. The City will take all appropriate and reasonable action to recover outstanding rates, debts and service charges in accordance with relevant legislation and legal requirements.

The City also recognises that residents' financial circumstances may change from time to time and some may experience financial hardship. The City has Financial Hardship provisions in place to support residents during these times.

The City will ensure that its debt collection procedures for outstanding rates, debts and service charges are undertaken in a fair, equitable and consistent manner and have regard to individuals' circumstances.

PURPOSE

The purpose of this policy is to outline the City of Vincent's process for efficient and effective collection of outstanding rates and services charges.

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OBJECTIVE

To establish the governance principles and guidelines for the fair, timely and efficient collection of outstanding debts, recovery of rates, service charges and the charging of interest in relation to those debts, in accordance with the provisions of the *Local Government Act 1995*.

SCOPE

This Policy applies to all:

- Employees of the City and agents authorised to perform debt recovery services on behalf of the City;
- Ratepayers with overdue balances;
- Sundry debtors with overdue balances.

POLICY PROVISIONS

DEFINITIONS

Rates Debtors

A rates debt is secured through a charge against the land.

Sundry Debtors

A sundry debt is an unsecured debt for services provided by the City.

Negotiated Special Payment Arrangement (SPA)

A negotiated Special Payment Arrangement is a binding arrangement between the Debtor or Ratepayer and the City, whereby the debt is progressively paid in agreed instalments over a period of time, by amounts that are mutually agreed between the two parties. The City commits not to commence debt recovery when an SPA is in place and complied with.

POLICY

1. Rates Debtors.

The following process is to be followed for the recovery of outstanding rates and service charges:

Final/Reminder Notice - issued to all ratepayers with an outstanding balance fourteen (14) days after the due date. Ratepayers will have fourteen (14) days in which to respond.

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Notice of Intention to Summons - issued by the City's Debt Collection Agency to rate payers who will have fourteen (14) days to pay in full or alternatively enter into a special payment arrangement with the City.

Final discretionary collection action (call, sms or email campaign) - will be the final attempt to contact the ratepayer providing a final opportunity to clear the debt before proceeding with further legal action.

General Procedure Claim (GPC) – failure to make any payment or appropriate arrangement for payment will result in the processing of a GPC. This is a court document, served by a Bailiff to initiate legal action for the collection of the unpaid debt. This action will affect the ratepayers credit rating.

When a GPC is unable to be served, or the Bailiff cannot access the property, or the property is vacant, a “skip trace” will be completed to verify the residential address of the owner. If required, a Substituted Service Claim can be filed at court to have the General Procedure Claim issued via post to the verified residential address of the owner.

Enforcement - in accordance with the *Civil Judgments Enforcements Act 2004*, if the ratepayer fails to acknowledge the service of the Claim, the Debt Collection Agency may be requested to issue a:

- a. Means Enquiry Summons (MES) if the owner resides in the Metropolitan area. The defendant is summoned to appear at Court to be examined for their ability to pay.
- b. Property Seizure & Sale Order (PSSO) over Goods will allow the Bailiff to seize goods to the value of the debt. Goods must be of significant value, this is a “paper seizure”.
- c. Property Seizure & Sale Order (PSSO) over Land will authorise the Bailiff to seize and sell interest in the debtor's land in order to pay the outstanding debt. The property can only sell where there is sufficient equity in the property.

Seizure of Rent (Section 6.60) - when a property is leased or rented a notice will be served on the lessee requiring the lessee to pay to the City of Vincent the rent due under the lease/tenancy agreement until the amount in arrears has been fully paid.

Sale of Land (Section 6.64) - where Rates and Service Charges are outstanding for a period of three (3) years or more, the City may:

- a. from time to time lease the land;
- b. sell the land;
- c. have the land transferred to the City of Vincent;
- d. have the land transferred to the Crown; or

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- e. sell the land as per the *Local Government Act 1995* - Section 6.64.

2. Sundry Debts (other than Rates and Service Charges)

This policy applies to all invoices raised in respect of non-rate and service charges debtors.

It is acknowledged that the terms of payment for each invoice may vary depending on the goods or service acquired. If the invoice is not paid by the due date, the following process will commence:

Final/Reminder Notice – to be issued to the debtor alerting them to their unpaid invoice. Payment is expected within fourteen (14) days of the issue date of this Reminder Notice.

Review debt - if invoice remains unpaid, a review of the circumstances will be discussed with the relevant department to ensure that the next actions are appropriate, giving due consideration to all issues which have led to the debt being overdue and unpaid.

Final discretionary collection action - a friendly reminder by way of a phone call or email will be the last effort requesting immediate payment before proceeding with further legal action. If invoice remains unpaid after last effort, the case is forwarded to the City's debt collection agency.

Notice of Intention to Summons - issued - a Demand Letter will be sent to the debtor advising that if payment is not made within fourteen (14) days of the date of the notice, then further action may be taken to recover the debt, which could involve legal action. The debtor will be advised that any additional fees incurred in recovering the debt will be passed on to the debtor.

Other action which may be taken

The following list of actions may also be initiated against defaulting sundry debtors, who do not respond to normal requests for payment:

- a. Commencement of Court proceedings to recover the outstanding monies;
- b. Rescinding any seasonal hall/reserve booking licence;
- c. Refusing further hire of facilities;
- d. Request "up-front" bonds for future dealings with the City, which may be used to offset against the outstanding debt;
- e. Offset of any City contributions owing to the personal entity against, any outstanding debt;
- f. Report to the Council to consider cancellation of a Lease Agreement.

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3. Debt – Fines, Prosecutions and Infringements

Should a debtor fail to pay within the initial 28 day period, the following debt collection process will commence;

Reminder Notice - the debtor's information is collected through the Department of Transport and a reminder notice is issued allowing a further 28 days to pay.

Demand letter - a final demand is issued along with an additional late fee. The City will allow a further 28 days to pay.

Other action which may be taken - failure to pay results in the infringement being forwarded to the Fines Enforcement Registry (FER) for collection along with an additional collection fee. There are serious consequences for not paying fines and infringements in WA, including driver's licence suspension, vehicle immobilisation, vehicle licence cancellation and seizure and sale of your property.

4. Application for Special Payment Arrangement

Persons experiencing difficulties in paying their debts by the specified date, can apply to the City to enter into a Negotiated Special Payment Arrangement.

- a. Applicants are required to complete a Negotiated Special Payment Arrangement form and provide sufficient documentation regarding their financial position to support their application.
- b. Where a ratepayer defaults on their arrangement, legal action will commence to collect the outstanding debt.

5. Rates or Services Charges Recoverable in Court

If a rate or service charge remains unpaid after it becomes due and payable;

- a. the City may recover the outstanding debt, as well as the cost of proceedings, if any, for that recovery, in a court of competent jurisdiction.
- b. Rates or service charges due by the same person to the City may be included in one writ, summons, or other process.

6. Interest on overdue monies

Interest may be calculated on the total outstanding debt once it has exceeded the due date. The rate of interest imposed is that as determined by the Council as prescribed in the Annual Budget and in accordance with Section 6.13 of the *Local Government Act 1995*.

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7. Financial Hardship Provisions

The City provides guidance and support to ratepayers experiencing financial hardship. You will be considered to be in financial hardship if paying your rates and service charges will affect your ability to meet your basic living needs.

The City may:

- a. Identify ratepayers in financial hardship.
- b. Establish a payment plan if you need flexibility with paying your rates.
- c. Waive interest and additional charges.
- d. Suspend debt recovery while assessing your financial hardship application if you comply with the payment plan agreed with the City.
- e. Always maintain confidential communication.
- f. Assist you to connect with financial support services provided by Federal and State Government agencies.

The City's financial hardship guidelines are reviewed annually.

8. Complaints Process

In the event of an Applicant being dissatisfied with the City's decision, they may request a review by the Chief Executive Officer in accordance with the Council's Policy No. 4.1.3 Customer Service Complaints.

OFFICE USE ONLY	
Responsible Officer	Coordinator Rates and Receivables
Initial Council Adoption	08/06/2010
Previous Title	N/A
Reviewed / Amended	29 April 2022
Next Review Date	30/06/2026