



CITY OF VINCENT

**RECOVERY OF DEBTS, RATES AND
SERVICE CHARGES**

POLICY NO. 1.2.13

(Adopted at the Ordinary Meeting of Council held on 8 June 2010)

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RECOVERY OF DEBTS, RATES AND SERVICE CHARGES

OBJECTIVES

To provide guidelines and to prescribe the process for the collection of outstanding debts, recovery of rates and service charges and the charging of interest in relation to those debts.

POLICY STATEMENT

The City will:

- take all appropriate action to ensure the maximum amount of rateable income is received in any one financial year;
- recover all outstanding debts, rates and service charges, utilising the relevant legislation and legal processes, in accordance with the *Local Government Act 1995* and *Civil Judgements Enforcement Act 2004*, and the Guidelines and Policy Procedures;
- have regard to individuals “*Serious Hardship*” and/or “*Exceptional Hardship/Circumstances*” relating to outstanding debts, rates and service charges, when administering this Policy, Guidelines and Policy Procedures; and
- consider all requests from person’s experiencing difficulties with making payments for debts or rates and service charges. Such persons will be required to make a written application to the Chief Executive Officer to enter into a Negotiated Special Payment Arrangement, detailing their “*Serious Hardship*” and/or “*Exceptional Hardship/Circumstances*”, to warrant the City’s consideration and leniency.

Definitions

In the administration of this Policy, the following will be apply:

“*Serious Hardship*” and/or “*Exceptional Hardship/Circumstances*” has no statutory definition in case law and will normally be at the discretion of the courts to decide if circumstances warrant leniency. However, many agencies use these terms when considering applications for leniency. In effect it can mean a level of hardship that will also impact on innocent parties.

Circumstances will vary in each situation, however, there are common elements which can be considered by a statutory authority/local government. These can include (but not limited to) the following:

What is “*Serious Hardship*”?

“*Serious Hardship*” exists when a person is unable to provide adequate food, accommodation, clothing, medical treatment, education or other necessities for themselves, their family or other people for whom they are responsible.

(Source: Australian Taxation Office).

Consideration will be given as to whether a person’s current financial difficulties are short term, when deciding whether a person is suffering *Serious Hardship*.

Financial Assets

There are several types of assets that are generally regarded as a normal and reasonable possession. A person is not expected to sell these to meet a payment. These assets include a motor vehicle and “tools of trade”.

Also, a person will not be expected to use any cash on hand or in a bank balance which they need to meet the cost of their basic necessities, to pay a payment.

If a person has assets such as rental property, shares or other investments, this may be regarded as having the capacity to make the payment, without suffering serious hardship.

What are other “*Exceptional Hardship/Circumstances*”?

These cover any unusual or exceptional circumstances that do not qualify as *Serious Hardship*, but make it fair and reasonable for a person not to make a payment at a specific time. If a person considers that there are other special reasons why they should not have to make their payment, they should specify these in writing to the Chief Executive Officer.

Some examples of what may constitute Exceptional Hardship/Circumstances include (but not limited to):

- a serious accident;
- sudden bereavement within a family;
- severe/life threatening illness or medical condition;
- an impact on a dependent or family member who has a serious disability or health problem and who relies on the affected person for their financial support;
- prolonged imprisonment;
- temporary physical or mental incapacity; or
- or any other matters considered acceptable by the Chief Executive Officer.

Exceptional Hardship/Circumstances are not limited to the above examples.

Note:

The temporary loss of a job will not normally in itself qualify as *Exceptional Hardship* unless a convincing case can be put forward that the impact would be so exceptional as to warrant leniency.

What is a Negotiated Special Payment Arrangement (NSPA)?

A Negotiated Special Payment Arrangement is a non legal (but binding) arrangement between the Debtor/Ratepayer and the City, whereby the debt/outstanding money is progressively paid in agreed instalments over a period of time, by amounts that are mutually agreed between the two parties.

Date Adopted:	8 June 2010
Date Amended:	-
Date Reviewed:	-
Date of Next Review:	June 2015

**GUIDELINES AND POLICY PROCEDURES
RELATING TO RECOVERY OF DEBTS, RATES AND SERVICE
CHARGES
POLICY NO. 1.2.13**

1. RATES AND SERVICE CHARGES

1.1 Debt Recovery Process

The following process is to be followed for the recovery of rates and service charges. Legal proceedings will continue until outstanding rates and service charges are paid in full or otherwise determined by the Chief Executive Officer and/or the Council.

1.2 Final Notice

- (a) Where the rates remain outstanding fourteen (14) days after the due date shown on the Annual Rates Notice and the ratepayer has not elected to pay by the instalment option, a Final Notice shall be issued requesting payment in full within fourteen (14) days.
- (b) Eligible pensioners registered under the *Rates and Charges (Rebates and Deferments Act) 1992* are exempt as they are entitled to pay by the 30th June under the legislation.

1.3 Notice of Intention to Summons (Demand Letter)

- (a) Rates remaining unpaid after the expiry date shown on the Final Notice will be examined for the purposes of issuing a Demand Letter (Notice of Intention to Summons).
- (b) The Demand Letter is to be issued within sixty (60) days of the expiry date on the Final Notice and must specify that the ratepayer has fourteen (14) days to pay in full or alternatively enter into a special payment arrangement with the City.
- (c) Failure to enter into an agreed payment arrangement will result in a General Procedure Claim being issued without further notice.

1.4 General Procedure Claim

- (a) Where a Demand Letter has been issued and remains unpaid and the ratepayer has not elected to enter into an agreed special payment arrangement, a General Procedure Claim will be issued.
- (b) Legal costs and the costs of proceedings will be added to the ratepayers account upon issue of a General Procedure Claim, in accordance with Section 6.56 of the *Local Government Act 1995*.

- (c) Ratepayers are required to pay in full or by instalments once they receive a General Procedure Claim. If they choose to pay by instalments, they must sign the “*Admission of Claim*” on the reverse of the General Procedure Claim and state the amount they agree to pay for each instalment. This Negotiated Special Payment Arrangement is subject to acceptance by the City’s Rates Section, (and as approved by the Director Corporate Services). Negotiated Special Payment Arrangement forms will be prepared by the City and posted to the owner/s to confirm this arrangement, if accepted.
- (d) The signed “*Admission of Claim*” must be returned to the City for the Negotiated Special Payment Arrangement to be accepted. If it is returned unsigned, the Admission of Claim will be returned with a letter requesting that it be fully completed and returned to the City. A Special Payment Arrangement will not be accepted if the signed Admission of Claim is not returned to the City.
- (e) A person who is experiencing difficulty in making a payment, can apply to the City to make a Negotiated Special Payment Arrangement (as specified in Clause 4).
- (f) When a ratepayer has elected to enter into Negotiated Special Payment Arrangement and instalments are not paid as per the arrangement or three consecutive payments are missed, a Default Letter will be issued for payment in full within fourteen (14) days. Rates remaining unpaid will be issued with a General Procedure Claim or the City may proceed straight to Enforcement, if a General Procedure Claim has previously been issued.
- (g) Following the issue of a Claim and the addition of the costs of proceedings to the rates assessment, a reasonable offer to discharge a rate account will not be refused.
- (h) If the General Procedure Claim is paid in full before entering into Judgement, then a Notice of Discontinuance (NOD) may be requested by the ratepayer and granted at the discretion of the Director Corporate Services – based on the circumstances of each case. The request must be received in writing and a NOD will only be issued to any one ratepayer once (as a matter of goodwill). No further Notices of Discontinuance will be issued in any subsequent financial years to that same ratepayer, unless the City is advised of exceptional circumstances.
- (i) If a General Procedure Claim proceeds to Judgement and was not issued in error, then the matter will not be granted a Notice of Discontinuance, nor permission granted to have the matter set aside.

1.5 Non-Service of General Procedure Claim

- (a) When a General Procedure Claim is unable to be served, the Bailiff may advise whether the property is a rental property or may provide an alternative address for the General Procedure Claim to be re-issued. In the case of a rental property, the Managing Agent will be contacted to ascertain the owner/s new residential address. If the Managing Agent is responsible for payment of rates, then a Rates Notice will be re-issued to the managing agent for payment in full within fourteen (14) days.
- (b) If a new address is supplied for the owner/s of the property, the address will be recorded and a Rates Notice re-issued for payment within fourteen (14) days. If payment is not received, the General Procedure Claim will be re-issued to the new address.
- (c) Where an owner resides in a property which cannot be accessed by the Bailiff 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.

1.6 Property Sale and Seizure Order

- (a) Where a General Procedure Claim has been issued and served and the amount remains outstanding fourteen (14) days after the issue date of the Claim, legal proceedings will continue until payment of rates is received. This includes Judgement and Enforcement of the Claim. Enforcement of the Claim may include a Property Sale and Seizure Order of goods and or land.
- (b) The Property Sale and Seizure Order is at first a Goods Order and if the Property Sale and Seizure Order is returned “*Nulla Bona*” (no goods), then a land warrant will be issued.
- (c) If a Property Sale and Seizure Order against goods and or land is proposed to collect outstanding rates due on a property, the Council’s prior approval shall be obtained before the Property Sale and Seizure Order is lodged.

1.7 Rates or Service Charges Recoverable in Court (Section 6.56)

- (a) If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, 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 local government may be included in one writ, summons, or other process.

1.8 Seizure of Rent (Section 6.60)

In cases where the owner of a leased or rented property on which rates outstanding cannot be located, or refuses to settle rates owed, a Notice will be served on the lessee under the provisions of the *Local Government Act 1995* - Section 6.60, requiring the lessee to pay to the City of Vincent the rent due under the lease/tenancy agreement as it becomes due, until the amount in arrears has been fully paid.

1.9 Sale of Land (Section 6.64)

Where Rates and Service Charges are outstanding for a period of three (3) years or more, the Council 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
- (e) sell the land as per the *Local Government Act 1995* - Section 6.64. Council approval will be obtained prior to the above course of action being undertaken.

The above action under Section 6.64 of the *Local Government Act 1995*, will be reported on a confidential basis to the Council, for approval.

2. DEBTS (OTHER THAN RATES AND SERVICE CHARGES)

These Guidelines and Policy Procedures will apply to all those invoices raised in respect of non rates and service charges debtors.

2.1 Debt Management

It is acknowledged that the terms of payment for each invoice may vary depending on the goods or service rendered to the debtor.

If the invoice is not paid by the due date then the following procedure will take place:

2.2 Recovery Procedure

- (a) A letter or Reminder Notice will be issued advising the debtor that if there exists a dispute or query to contact the City's Administration, otherwise payment is expected within fourteen (14) days of the issue date of the letter;

- (b) If no response is received from the debtor, then following a review of the circumstances with the relevant City employees involved, a Demand Notice may 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.
- (c) Before any external party (Debt Collection Agency) is engaged to recover an outstanding debt, the relevant City employee involved will be consulted to ensure that this action is appropriate, given due consideration to all issues which have led to the debt being overdue and not paid.

2.3 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 (as prescribed in Clause 4).

2.4 Write-Off

- (a) Once all reasonable attempts to either locate the Debtor or to obtain payment have failed, or the cost of recovery exceeds the Debt amount the City employee responsible for raising the debt and/or their Manager will submit a written request to the Director Corporate Services, for the invoice to be considered for write off.
- (b) Approval will be sought from the Chief Executive Officer and subsequently Council (if required) for approval for the debt to be written off. Once approval has been received, the appropriate entries will be made in the Debtors System.

2.5 Debt Raised in Error or Debt Adjustment

If a debt has been raised in error or requires an adjustment, then an explanation will be sought from the relevant City employee. Once this has been received, a credit note request will be raised which is to be authorised by both the employee who raised the initial invoice and their Manager, where applicable.

2.6 Other Action Which Maybe Taken

The following list of actions may also be instituted at the discretion of the Director Corporate Services, against defaulting sundry Debtors, who do not respond to normal requests for payment:

- (a) Issue a Letter of Demand;
- (b) Commencement of Court proceedings to recover the outstanding monies;

- (c) Rescinding any seasonal hall/reserve booking licence (if applicable);
- (d) Refusing further hire of facilities (if applicable);
- (e) Request “up-front” bonds for future dealings with the City, which may be used to offset against the outstanding debt;
- (f) Offset of any City contributions owing to the personal entity against, any outstanding debt;
- (g) Report to the Council to consider cancellation of a Lease Agreement (if applicable).

3. INTEREST ON OVERDUE MONIES

- (a) Interest can be calculated on the total outstanding debt/rates once it has exceeded the due date. The decision to impose interest is at the discretion of the Director Corporate Services. 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.
- (b) Should the ratepayer default in the Negotiated Special Payment Arrangement, the waiving of the interest will cease and interest, will be calculated from the date that the rates, or debt default has occurred within the Negotiated Special Payment Arrangement.

4. APPLICATION FOR A NEGOTIATED SPECIAL PAYMENT ARRANGEMENTS

- (a) Applicants are required to complete an Application Form for a Negotiated Special Payment Arrangement, giving information regarding their financial position and provide any additional documentation, verifying the financial position of the applicant(s) to substantiate the information supplied.
- (b) Following an assessment by the City Finance Officers, the Application will be referred to the Director Corporate Services for approval.
- (c) In the event of an Applicant being dissatisfied with the decision of a City Finance Officer/Director Corporate Services, they will have access rights for a review to the Chief Executive Officer in accordance with the Council’s Policy No. 4.1.3 Customer Complaints Management and Procedures.

5. DELEGATED AUTHORITY

The Chief Executive Officer will administer and enforce this Policy, Guidelines and Procedures, in accordance with the Council Delegated Authority Register.