

CORPORATE POLICY

SUBJECT: FINANCIAL HARDSHIP POLICY



OVERVIEW:

The purpose of this Policy is to enable a person (liable for rates and other charges) and experiencing “hardship”, to make application to Council for assistance relating to any unpaid rates or charges levied on a property under the **Local Government Act 1989** (The Act). This Policy will also apply in cases of financial hardship where homelessness has been cited as a “necessitous circumstance” for not paying Council imposed infringement notices.

RESPONSIBILITIES:

Director Corporate Services:

For the corporate implementation, review and interpretation of this policy.

Chief Financial Officer:

Is authorised (under delegation) to administer all aspects of this policy (other than provisions that relate to infringements) and to approve or not approve recommendations made in relation to hardship applications submitted under this policy.

Director City Development

Is authorised (under delegation) to waive fees and charges related to the administration of infringement notices where homelessness has been accepted as a necessitous circumstance made in relation to hardship applications submitted under this policy.

RELATED MATERIAL:

Local Government Act 1989 Sections 170-172
Australian Accounting Standards
Municipal Association of Victoria, Hardship Policy Guidelines
(November 2013)

REVIEW:

31st March 2019

APPROVED BY:

Council

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30 June 2015
(Updated) September 2016
(Updated) March 2020 – COVID-19 Addendum
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1

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CITY OF MONASH FINANCIAL HARDSHIP POLICY

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HARDSHIP POLICY

Application and Assessment Process

1 PURPOSE

The purpose of this Policy is to enable a person (liable for rates and other charges) and experiencing “hardship”, to make application to Council for assistance relating to any unpaid rates or charges levied on a property under the **Local Government Act 1989** (the Act). This Policy will also apply in cases of financial hardship where homelessness has been cited as a “necessitous circumstance” for not paying Council imposed infringement notices.

This Policy is an extension of Council’s existing internal Debt Management Procedures (DMP). The DMP is operational in nature and provides guidance to the processes that are to be undertaken in the debt recovery program for outstanding rates and charges. The DMP does not extend to include the management of Hardship Applications, as these require more specialised personal attention with outcomes requiring a decision of Council or by an Authorised Officer of Council by delegation.

The Policy defines hardship and provides the framework and guidelines to Council (in accordance with The ACT), relating to the possible granting of a deferral of the payment of levied rates or charges, or waiver of all or part of those levied rates and charges.

As a general principle, Hardship assistance should only be granted to individuals experiencing hardship, with regard to the rates on their primary residence. Applications for hardship assistance for residential investment, commercial or industrial properties should generally not be granted.

2 POLICY OBJECTIVES

The key objectives of this policy are to:

- provide a mechanism that enables people to feel comfortable in approaching Council about outstanding debts;
- reduce the number of vulnerable people being sued for unpaid rates and charges by Council;
- provide a policy that encourages a consistent and proactive approach in identifying and assisting ratepayers who may be experiencing difficulty paying their rates due to personal or financial hardship, before the debt is referred to the undertaking of legal proceedings;
- Provides a policy that enables the revocation of infringement notices and associated charges upon a special circumstances application being made which cites homelessness as the reason for that “necessitous circumstance”;
- encourage people experiencing financial hardship, to access earlier, legal and financial counselling support services;
- enable more appropriate ways for Council to seek payment of rates arrears other than through the legal system;
- reduce court proceedings and associated court and legal costs being added to rate arrears;
- provide a lower rate of interest on overdue rates where a deferral has been granted; and
- minimise risk in terms of:

- inconsistent and non-transparent decisions made outside of a determined framework; and
- non-compliance with legislation and poor governance practices.

3 DEFINITION OF HARDSHIP

3.1 Individual

A person is considered to be in serious hardship when they would be left unable to provide for themselves, their family or other dependents the following:

- food;
- accommodation;
- clothing;
- medical treatment;
- education; and
- other basic necessities.

Factors contributing to serious hardship generally include: family tragedy; financial misfortune; serious illness; impacts of natural disaster; and other serious or difficult circumstances.

3.2 Business

Serious financial hardship can also apply to businesses. Serious hardship means financial difficulty associated with:

- business closure;
- disconnection of an essential service;
- repossession of a vehicle used for business purposes;
- imminent legal action pending for non-payment of debts;
- period of review limitations;
- court orders;
- settlements; and
- other necessities for the business or people you are responsible for.

4 POLICY FRAMEWORK

The Policy framework is founded on the “Legislative Provisions” contained in the Act. These provisions enable people experiencing hardship to seek assistance in the payment of rates and other charges, and enables Council to respond to requests for assistance. The policy framework also provides an “Assistance Charter” and “Operational Framework” on how assistance can be provided to those in need.

4.1 Legislative Provisions Framework – Rates and Charges

The payment and collection of rates is subject to provisions of the Act. Sections 170, 171 & 171A of the Act give Council the power to defer and / or waive in whole or part the payment of rates and charges, if Council determines that enforcement of the requirement to pay would cause hardship to the ratepayer.

The difference between a deferral and a waiver is that:

- a deferral suspends payment for a period of time; whereas
- a waiver permanently exempts payment of the fee or charge under discussion.

Applications for waiver and deferral will be individually assessed against the criteria stated in this policy.

4.1.1 Deferment (Section 170)

Under the Monash Manual of Delegation, authority to defer payments is given to the Chief Financial Officer. (Refer to policy guidelines – APPENDIX A)

4.1.1.1 Deferring Rates and Charges and Interest (Residential Properties)

Ratepayers may have rates and charges, or part thereof, deferred (although rates and charges will continue to be levied), subject to compliance with the following conditions:

1. the property is the ratepayer’s principal place of residence;
2. the ratepayer is either a pensioner who is eligible to claim a pensioner rate rebate, or is unemployed; or
3. the ratepayer is able to provide evidence of severe financial hardship as certified by an assessment carried out by an independent financial counsellor; and
4. an application is submitted to the Council by the ratepayer or the ratepayer’s representative providing evidence of such circumstances referred to in 1 to 3 above.

In all applications for rate deferrals, the applicant will be encouraged to continue to pay the portion of rates that is affordable given their individual circumstances. This will be mutually agreed on a case-by-case basis.

In the case of a deferral, if approved, the balance of rates owing will be deferred for a period of 12 months at which time a review will be carried out with the ratepayer to determine the ratepayer’s circumstances.

Interest – Penalty Interest (Section 172)

A rates and charges deferral may be accompanied by a reduction in the penalty interest rates for the ratepayer. However, interest, where applicable, will continue to accrue on the deferred rates and charges. Section 172 of the Act permits Council to require a person to pay interest on any amounts of rates and charges which a person is liable to pay. The interest rate is fixed under section 2 of the **Penalty Interest Rates Act 1983**.

Council recognises that setting a penalty interest rate which is consistent with the Penalty Interest Act 1983 could have a negative effect on the finances of ratepayers, which prolongs their hardship.

As such, where hardship is established;

- the interest rate applied will be 2.5% on the deferred amount; and
- the interest rate charged on deferred rates for eligible recipient pensioners will be 0% where a person is over the age of 65 and can prove they have lived in their home for more than 10 years.

Interest on outstanding rates will be levied at the penalty interest rate unless a deferment is granted and a reduced interest rate approved.

Centrepay

Council also enables payment arrangements for Centrelink clients via Centrepay, a service provided by Centrelink to facilitate automatic deduction of bills and charges from their Centrelink payments. Anyone on Centrelink can apply to have a designated amount of their Centrelink payment directed to the Council. This facility is free to the Centrelink customer (there is a small charge to Council for each transaction).

4.1.1.2 Rate Deferral Arrangements – (Non Residential Properties)

Council acknowledges that a significant proportion of its rate revenue is derived from the non-residential sector.

As a consequence, this Policy makes provision for non-residential ratepayers to make application for a rate deferral agreement. Each application will be considered on an individual basis with Council taking the following criteria into account in considering whether to accept the application:

5. independent evidence from the applicant that financial hardship is being experienced, such as a letter from the applicant's accountant, auditor or bank manager; and
6. a written commitment from the applicant to an agreed timeframe in which the deferred rates will be paid.

In the case of a deferral, if approved, the balance of rates owing will be deferred for a period of 12 months at which time a review will be carried out with the ratepayer to determine the ratepayer's circumstances. Non-residential applicants will have a maximum of three further financial years in which to fully repay all

rates deferred. Rates that accrue during this interim period must also be paid by the extended payment date.

It is acknowledged that industrial/commercial businesses may have tenants who are not directly paying Council rates. Council will consider applications from landlords on behalf of tenants. The same approval criteria will apply.

As any unpaid rates will ultimately be a charge on the property, no rate deferral agreement will be entered into without the express consent of the property owner.

Interest on outstanding rates for non-residential properties will be levied at the prescribed penalty interest rate.

4.1.2 Waiver (Sections 171 & 171(A))

A waiver application, together with supporting evidence, must be submitted to (and approved by the Chief Financial Officer) before being submitted to Council or to the Chief Executive Officer. The Chief Executive Officer has the delegated power to write-off debts up to \$1,000. All other waivers must be approved by Council (Refer to policy guidelines – **APPENDIX A**).

4.1.1.2 Rates and Charges Not to be Waived

Council's preference is to not **waive** rates, municipal charges or service charges (where applicable), as the value of each property provides the owner with a potential source of funds, if liquidated.

It is considered inequitable for the majority of ratepayers to subsidise the property assets of hardship applicants.

A more equitable solution for the community is to defer rates and charges (refer Section 4.1.1). Council will, however, consider waiver applications for interest and legal costs that may have been, or will be, incurred by the ratepayer.

4.1.1.3 Waiving Interest and Legal Costs

Interest and legal cost waivers fall under two categories:

1. Administrative waivers; and
2. Waiver on compassionate grounds.

1. Administrative Waivers

Waiver for Administrative Reason/Error - Ratepayers may have interest and / or legal costs waived in the event of an administrative issue, error or omissions which caused or significantly contributed to the failure to pay rates in a timely manner.

The Chief Financial Officer shall have discretionary power to waive interest and / or legal costs for administrative waivers where the interest has been incorrectly or unreasonably charged.

2. Waiver on Compassionate Grounds

People may have interest and / or legal costs waived where they have demonstrated compassionate grounds for a payment being late.

Requests for interest and legal cost waivers in respect of financial hardship will be considered by the Chief Financial Officer. The same criteria as applies to rate deferrals (refer to Section 4.1.1) will be applied in assessing eligibility.

4.2 Waiver on Grounds of Homelessness as Necessitous Circumstances.

The Director City Development is the authorised officer (under delegation) to review and administer cases of financial hardship where homelessness has been cited as a “necessitous circumstance” for not paying Council imposed infringement notices. The Director has the delegated power to withdraw any related infringement and associated charges.

4.3 Assistance Charter and Operational Framework

The policy framework also provides an “Assistance Charter” and “Operational Framework” on how assistance can be provided to those in need. The key principles involve:

4.1.3 Assistance Charter Framework

- **Listening** Council will listen to you because it is you who is important.
- **Provide Time** Council will give you the time you need to tell us about your situation.
- **Examine Options** Council will work with you to explore your situation and provide you with options to resolve it.

The Policy enables people to:

- approach Council in a non-threatening environment when in circumstances of hardship;
- be assisted in making an application for waiver or deferment of rates and other charges for Council consideration;
- be assisted in identifying their needs and access to support services that may be applicable to their needs; and
- appeal against a decision relating to their hardship application (**APPENDIX C**).

The Policy enables Council officers (wherever reasonably possible) to:

- provide assistance to those in need;
- provide a hardship application form and process;
- provide a means of assessment of a person’s circumstances causing the hardship being experienced;
- to determine if needs are beyond just financial and identify where other Council Services may assist;

- identify other support mechanisms (external to Council) available to those experiencing hardship, to which they can be referred;
- provide a schedule of Financial Counselling services to which a customer can be referred (**APPENDIX D**);
- work with the customer to set up a flexible and affordable payment plan where applicable;
- stop further debt recovery action while on the program and minimise costs associated with the recovery of outstanding debts for the customer; and
- make recommendations to management and or Council for a deferment or waiver relating to the debt where appropriate.

Operational Framework

- Officers look at debtor’s history of non-payment;
- Officers initiate contact with ratepayer with the view to meet and assist where possible;
- Officers to make at least two attempts to make personal contact by phone;
- Officers to issue correspondence confirming any discussions and/or advising of the next course of action;
- Officers to ensure that all payment arrangement/agreements are accepted in writing from the ratepayer;
- Officers ensure compliance with Privacy Act legislation and that any information provided in accordance with this Policy will be treated as strictly confidential.

4.1.1.3 Application Procedure

In the cases of hardship, a debtor must request assistance from Council in writing. The debtor must provide complete details of the circumstances preventing them from meeting their financial obligation to Council.

An initial “needs” assessment will be performed by Council officers to determine the level of support and services that may need to be engaged to assist the debtor. (**APPENDIX B**).

Subject to the findings of the initial needs assessment, officers can provide one or all of the following:

- recommend assistance in the form of a waiver of the rate and/or charge, and/or interest (waiver of the rate or charge requires Council Approval);
- recommend a deferral of the payment of the rate or charge (Requires Chief Financial Officer approval); or in cases where homelessness has been accepted as “necessitous circumstances” the Director City Development can waive the infringement and associated charges;
- recommend referral to Financial Counsellor for a full assessment and report;
- establish a repayment arrangement mutually acceptable to Council and the debtor;
- recommend other internal and/or external professional support services that would be of assistance to the debtor’s circumstances (**APPENDIX D**).

5 POLICY MATTERS – OTHER

5.1 Staff Training

Council will consider specific staff training to increase awareness of hardship issues and internal capabilities to implement Council’s Hardship Policy. Training will be aimed at front line staff (including Council’s contracted mercantile agencies) and managers that oversee customer service and collections operations, and covers issues such as:

- understanding hardship;
- effects of hardship on customer behaviour;
- respectful communication; and
- the types of assistance available to residents in hardship.

5.2 Communications

Council will provide details on its website of this Hardship Policy and available options and also make reference to the policy on rate notices.

5.3 Policy Review Date

This Policy will be reviewed by Council in March 2019.

5.4 APPENDIX A – POLICY GUIDELINES FOR DEFERMENT OR WAIVER

Purpose

The purpose of this statement is to set guidelines under which deferment/waiver of payment and collection of rates and other charges may be approved.

Issues

The payment and collection of rates is subject to provisions of the Local Government Act 1989 (the Act). Sections 170, 171 and 171A of the Act give Council the power to defer/waive in whole or part payment of rates and charges if Council determines that enforcement of the requirement to pay would cause hardship to the ratepayer.

Under the Monash Manual of Delegation, authority to defer payments for rates and other charges (with the exception of infringement notices) is given to the Chief Financial Officer.

The Director City Development is the authorised officer (under delegation) to review and administer cases of financial hardship where homelessness has been cited as a “necessitous circumstance” for not paying Council imposed infringement notices. The Director City Development has the delegated power to withdraw any related infringement and associated charges.

Guidelines

1. The person may be referred to an independent Financial counselling Service for assessment.
2. If the counselling service confirms the person is suffering financial hardship, then the matter will be referred to the Chief Financial Officer for consideration and or report to Council (dependant on whether a deferral or waiver is to be granted).
3. In the case of a deferral, if approved, the balance of rates owing will be deferred for a period of 12 months at which time a review will be carried out with the ratepayer to determine the ratepayer’s circumstances.
4. If the review shows no improvement in the ratepayer’s circumstances, payment of the next year’s rates will also be deferred.
5. The maximum amount of indebtedness that will be deferrable will be 20% of the CIV as at the last general revaluation.
6. Interest will continue to accrue on the deferred rates in accordance with Section 172 of the Act and Section 2 of the Penalty Interest Act 1983. For residential ratepayers, an interest rate of 2.5% is to apply where the rates and charges have been granted a deferment (under this policy). The interest rate charged on deferred rates for eligible recipient pensioners will be 0% where a person is over the age of 65 and can prove they have lived in their home for more than 10 years.
7. Rates and interest charges will be payable in full upon the following:
 - the ratepayer becoming deceased;

- the property being sold or transferred to another name; or
 - a material alteration to the ratepayer's circumstances.
8. Council's preference is to not waive rates, municipal charges or service charges, however, Council will consider waiver applications for interest and legal costs that may have been, or will be, incurred by the ratepayer.
 9. Any applicant that is seeking hardship relief, where an infringement notice and any associated charges have been incurred, may make a special circumstances application which cites homelessness as the reason for that "necessitous circumstance". In these cases the Director of City Development has the delegated authority to waive the infringement notice and associated charges.

COMPLIANCE WITH COUNCIL POLICY

Council officers may be required to conduct a basic hardship assessment and should have information and a preliminary plain English verbal questionnaire prepared.

Criteria of Policy	YES /NO	Comment – if required
Is this house where you live?		
Do you run a business from home?		
Do you owe money for more than one year?		
Are these payments hard to make?		
Can you make regular smaller payments?		
Do you want to keep your home or do you want to sell it?		
Can you provide a financial statement that outlines your income and expenses?		
Do you own another property?		

Confidentiality

Any information provided in accordance with this Policy will be treated as strictly confidential.

APPLICANTS AGREEMENT TO PAY

I/We (Insert Name/s):	
<ul style="list-style-type: none"> • Agree to the terms and conditions established for the repayment of the outstanding rates and charges on my / our property. 	
<ul style="list-style-type: none"> • Commit fully to making repayments as required 	
<ul style="list-style-type: none"> • Understand that interest will continue to accrue on any outstanding balance (subject to the provisions of this Policy) 	
<ul style="list-style-type: none"> • Acknowledge that if in default of this agreement, Council has the right to proceed with full recovery of the debt without further notice. 	
<ul style="list-style-type: none"> • Understand that additional recovery costs may be incurred by me / us if in default of this agreement. 	
Payment Frequency: Lump Sum / Monthly / Fortnightly / Weekly	
Amount:	\$
Signed:	Signed:
Write Name:	Write Name:
Date:	

THIS SECTION TO BE COMPLETED BY COUNCIL AUTHORISED OFFICER

REPAYMENT CAPACITY

Based upon information provided in the application, the applicant has financial capacity to make repayments	YES / NO
If YES, how much could be paid per week?	\$

ASSESSMENT SUMMARY

Applicant complies with Policy criteria (specify number of criteria met)	Of 7
Applicant has identified capacity to make repayments	YES / NO

Signed:	Date:
Write Name:	

RECOMMENDATION

Based upon:

- (a) compliance with Council’s Policy;
- (b) a capacity by the applicant to make regular repayments of outstanding rates and charges; and
- (c) the above signed agreement to make such repayments,

it is recommended that financial assistance *be / not be* granted by:

- (a) Waiving % or \$_____of interest raised to date, and / or
- (b) Not raising further interest on this account.

Signed:
 Authorised Officer

Date: / /20

Signed:
 Chief Financial Officer

Date: / /20

5.6 APPENDIX C – APPEAL AGAINST DECISION

(If you are not happy with the decision, you can appeal by completing this form)

ASSESSMENT NUMBER	
RATEPAYER NAME/S	
CONTACT DETAILS	Phone: _____ Mob: _____ Email: _____
PROPERTY ADDRESS	
TOTAL DEBT AMOUNT	\$ _____

I / We hereby lodge our Right to Appeal against a decision made in accordance with Council’s adopted Hardship Policy.

Name of applicant/s _____

Preferred Contact Number _____

Why I / we disagree (State grounds for appeal): _____

Signature of Applicant/s _____

Date _____ / _____ / _____

Office use only:
Appeal Received by: _____ Date: _____

Insert Name: _____

5.7 APPENDIX D – FINANCIAL COUNSELLING SERVICES REGISTER VICTORIA

National Debt Helpline

1800 007 007

Not-for-profit Victorian Government service providing free, confidential phone financial counselling for Victorians experiencing financial difficulty.

Website: www.ndh.org.au

Please contact National Debt Helpline to request a referral to see a financial counsellor at your local financial counselling service.

Please also visit the website below for useful information on finance matters:

www.moneyhelp.org.au