

LOCAL AUTHORITY NOTICES

No. 50

CREDIT CONTROL AND DEBT COLLECTION

BY-LAW

MUNICIPALITY OF SENQU CREDIT CONTROL AND DEBT COLLECTION BY-LAW

The Municipal Manager of Senqu Municipality hereby publishes in terms of Section 13 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) read with Section 162 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) the Senqu Credit Control and Debt Collecting By-Law, which shall come into operation on the date of publication hereof.

[1] DEFINITIONS

"Arrangement" means a written agreement entered into between the Council and the debtor where specific repayment parameters are agreed to.

"Chief Financial Officer" means a person appointed by the Council to manage, inter alia, the Council's financial administration and debt collection of the Council's debtors and includes any person acting in this position.

"Consumer" in relation to premises means:

[i] any occupier thereof or any other person with whom the Municipality has contracted to supply or is actually supplying electricity thereat; or

[ii] if such premises are not occupied, any person who has a valid existing agreement with the Municipality for the supply of electricity to such premises; or

[iii] if there is no such person or occupier, the owner of the premises;

"Council" means the municipal council, as referred to in section 157 of the Constitution of the Republic of South Africa Act 108 of 1996, of the Senqu Municipality established by part 7 of provincial notice 80, dated 27 September 2000;

"Credit Control" means all the functions relating to the collection of monies owed by ratepayers and the users of municipal services.

"Customer" means any occupier of any premises to which the Council has agreed to supply or is actually supplying services, or if there is no occupier, then the owner of the premises and includes any debtor of the Municipality.

"Defaulter" means any person owing the Council arrear monies in respect of taxes and/or service charges.

"Gender" any reference to the one gender shall include reference to the other

"Municipality" means the Municipality of Senqu, a local municipality established in terms of Section 12 of the Local Government: Municipal Structures Act 1998;

"Municipal Manager" means the person appointed as Municipal Manager by the municipal council in terms of section 82 of *the* Local Government: Municipal Structures Act, 1998 [Act 117 of 1998] as amended and includes a person acting in this position.

"Occupier" means any person who occupies any premises or part thereof, without regard to the title under which he or she so occupies.

"Owner" means

[a] The person in who from time to time is vested the legal title to premises;

[b] In a case where the person in whom the legal title is vested is insolvent or dead, or is under any form of legal disability whatsoever, the person in whom the administration of and control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or other legal representative.

[c] In a case where the council is unable to determine the identity of such person, a person who is entitled to the benefit of such premises with a building thereon;

[d] In the case of premises for which a lease of 30 years or more has been entered into, the lessee thereof

[e] In relation to -

[i] A piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act 1986, (Act 95 of 1986), and without restricting the above the developer or the body corporate in respect of the common property, or

[ii] A section as Defined in such Act, *the* person in whose name such a section is registered under a sectional title deed and includes the lawfully appointed agent of such a person

[f] any legal person including but not limited to:

[i] A company registered in terms of the Companies Act, 1973 (Act 61 of 1973), a Trust, a Closed Corporation registered in terms of the Closed Corporations Act, 1984 (Act 69 of 1984) and a Voluntary Association.

[ii] Any Department of State.

[iii] Any Council or Board established in terms of any legislation applicable to the Republic of South Africa.

[iv] Any Embassy or other foreign entity.

"Premises" includes any piece of land, the external surface boundaries of which are delineated on:

[a] A general plan or diagram registered in terms of the Land Survey Act, (9 of 1927) or in terms of the Deed Registry Act, 47 of 1937; or

[b] A sectional plan registered in terms of the Sectional Titles Act, 95 of 1986, which is situated within the area of jurisdiction of the Council.

"Tampering" Means any unauthorized interference with Council's supply, seals and metering equipment to cause damage to Council's property and to evade payment for services.

[2] Other terms

All other terms used in this by-law shall, unless the context otherwise requires, have the meaning assigned thereto in the Electricity Act, 1987 [Act 41 of 1987], as amended.

[3] Headings and titles

The headings and titles in this by-law shall not affect the construction thereof.

[4] GENERAL PROVISIONS

[4.1] Service of notice

[1] Any notice or other document that is served on a person in terms of this by-law is regarded as having been served-

[a] when it has been delivered to that person personally;

[b] when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;

[c] when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;

[d] if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs [a], [b] or [c]; or

[e] if that person's address and agent or representative in the Republic is unknown, when it had been posted in a conspicuous place on the property or premises, if any, to which it relates.

[2] When any notice or other document must be authorized or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

[3] Any legal process is effectively and sufficiently served on the Municipality when it is delivered to the Municipal Manager of the Municipality or a person in attendance at the Municipal Manager's office.

[4.2] Compliance with notices

Any person on whom a notice duly issued or given under this by-law is served shall, within the time specified in such notice, comply with its terms.

[4.3] Authentication of Documents

[a] Every order, notice or other document requiring authentication by the Council shall be sufficiently authenticated, if signed by the Municipal Manager or by a duly authorized employee of the Council;

[b] Delivery of a copy of the document shall be deemed to be delivery of the original.

[4.4] Full and final settlement of an amount

[a] The Chief Financial Officer shall be at liberty to appropriate monies received in respect of any municipal services provided by the Municipality in a manner he deems fit in accordance with the Credit Control Policy of the Council.

[b] Where the exact amount due and payable to the Council has not been paid in full, any lesser amount tendered to and accepted by any Council employee, shall not be deemed to be in final settlement of such an amount unless permitted by the Credit Control Policy of the Council.

[c] The provisions in sub-section [a] above shall prevail notwithstanding the fact that such a lesser payment was tendered and/or accepted in full settlement.

[4.5] Interest charges

Subject to the provisions of the Local Government: Municipal Finance Management Act 56 of 2003 or any other law relating to interest, the Council may charge and recover interest in respect of any arrears amount due and payable to it.

[4.6] Prima Facie Evidence

A certificate under the hand of the Municipal Manger reflecting the amount due and payable to the Council shall upon mere production thereof be accepted by any court of law as prima facie evidence of the indebtedness reflected therein.

[5.] POWER OF COUNCIL TO RECOVER COSTS

[5.1] Dishonoured payments

Where any payment made to the Council is later dishonoured by the bank, the Council may levy such costs and administration fees as may be reasonable and enforceable in terms of prevailing legislation.

[5.2] Legal Fees

All legal costs, including attorney-and-own-client costs incurred in the recovery of amounts in arrears shall be levied against the arrears account of the debtor.

[5.3] Cost to remind debtor of arrears

Any cost incurred in demanding payment from the debtor or reminding the debtor, by means of telephone, fax, e-mail, letter or otherwise, that his payments are due, may be levied against the account of the debtor.

[5.4] Disconnection fees

Where any service is discontinued as a result of non-compliance with these by-laws by the debtor, the Council shall be entitled to levy and recover the standard disconnection fee as determined by it from time to time from such debtor.

[5.5] Accounts

The Council may-

- [a]** Consolidate any separate accounts of persons liable for payments to the municipality;
- [b]** Credit a payment by such a person against any account of that person; and
- [c]** implement any of the debt collection and credit control measures provided for in these by-laws and policy in relation to any arrears on any of the accounts of such a person.

[6] SERVICE AGREEMENT AND TERMINATION OF SERVICES

[6.1] No supply of services shall be given unless and until application has been made by a customer on the prescribed form and a service agreement has been entered into between such customer and the Municipality and a deposit as security equal to an amount as determined by the Council from time to time has been paid in full by such a customer.

[6.2] Termination of the services agreement must be in writing to the other party of the intention to do so.

[7] DISPUTE REGARDING AMOUNT OWING

[7.1] In the event of any dispute arising as to the amount owing by an owner or occupier in respect of municipal services, such owner or occupier shall, notwithstanding such dispute, proceed to make regular minimum payments based on the calculation of the average municipal account for the preceding three months prior to the arising of the dispute, any adjustment in the time value of money as well as the annual amendments of tariffs of the Council.

[7.2] The amount referred to in sub-section [1] shall be determined by the Chief Financial Officer and be conveyed by notice to the relevant owner or occupier.

[8] ARREARS COLLECTION

CREDIT CONTROL POLICY

[8.1] The Council shall have a written policy on credit control and debt collection which shall be termed the Credit Control Policy and which may provide for -

- [a]** Credit control procedures and mechanisms;
- [b]** Debt collection procedures and mechanisms;
- [c]** Provision for indigent debtors;
- [d]** Interest on arrears;
- [e]** Extensions of time for payment of accounts, including arrangements for payment;
- [f]** Termination of services or the restriction of the provision of services when payments are in arrears;
- [g]** The provision of new services;
- [h]** An agreement between a debtor's employer and the Council to deduct amounts from the debtor's salary or wage;
- [i]** Any other matter, which is incidental to credit control and debt collection;
- [j]** The sale in execution of any property.

[8.2] In determining its policy, the Council may differentiate between categories of persons, customers, debtors and owners as it may deem appropriate provided such differentiation does not amount to unfair discrimination

[9] POWER TO RESTRICT OR DISCONNECT SUPPLY OF SERVICES

[9.1] The Council may restrict or disconnect the supply of water and electricity or discontinue any other service rendered to any premises whenever a user of any such service:

- [a]** The municipality may introduce various metering equipment and customers may be required to convert to a system preferred by the municipality;

[b] Fails to make full payment on the due date or fails to make an acceptable arrangement for the repayment of any amount for services, rates or taxes and bar the customer from buying prepayment services who are in arrears with all overdue rates and service accounts;

[c] Fails to comply with a condition of supply imposed by the Council;

[d] Obstructs the efficient supply of water, electricity or any other municipal services to another customer;

[e] Supplies such municipal service to a customer who is not entitled thereto or permits such a service to continue;

[f] Tamper with any municipal supply meter or bypasses any metering equipment in order to obtain an un-metered service;

[g] Causes a situation, which in the opinion of the council is dangerous, or a contravention of relevant legislation;

[h] Is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act 24 of 1936 or any other applicable law;

[i] Is subject to an administration order granted in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944).

[9.2] The right of Council to restrict water to any premises or consumer shall be subject to the provisions of section 4 of the Water Services Act, 108 of 1997.

[9.3] The right to restrict, disconnect or terminate a service shall be in respect of any service rendered by Council, and shall prevail notwithstanding the fact that payment has been made in respect of any specific service and notwithstanding the fact that the person who entered into an agreement for the supply of services with *the* Council and the owner are different entities or persons, as the case may be.

[10] SALES IN EXECUTION

[10.1] The Council may only sell a property in execution in terms of a policy determined by it from time to time.

[11] POWER OF ENTRY AND INSPECTION

[11.1] A duly authorized representative of the Council may for any purpose related to the implementation or enforcement of these by-laws, at all reasonable times or in an emergency at any time, enter premises, request information and carry out such inspection and examination as he or she may deem necessary, and for purposes of installing or repairing any meter or service connection reticulation, or to disconnect, stop or restrict the provision of any service.

[11.2] If the Council considers it necessary that work be performed to enable an employee to perform a function referred to in sub-section 11.1 properly and effectively, it may -

[a] By written notice require the owner or occupier of the premises at his own expense to do specific work within a specified period; or

[b] If in its opinion the situation is a matter of urgency, without prior notice do such work or cause it to be done at the expense of the owner.

[11.3] If the work referred to in sub-section 11.2 [b] above is carried out for the sole purpose of establishing whether a contravention of these by-laws has been committed and no such contravention has taken place, the Council shall bear the expense connected therewith together with the expense of restoring the premises to its former condition.

[12] ARRANGEMENTS TO PAY OUTSTANDING AND DUE AMOUNTS IN CONSECUTIVE INSTALMENTS

[12.1] A debtor may enter into a written agreement with the Council to repay any outstanding and due amount to the Council under the following conditions as determined by the Credit Control Policy of the Council:

[a] The outstanding balance, costs and any interest thereon in regular and consecutive monthly installments;

[b] The written agreement being signed on behalf of the Council by a duly authorized officer.

[13] RECONNECTION OF SERVICES

The Financial Officer shall authorize the reconnection of services or the reinstatement of service delivery after satisfactory payment and/ or arrangements for payment has or have been made by the debtor in accordance with the Council's Credit Control Policy.

[14] ASSESSMENT RATES

[14.1] Amount due for assessment rates

[b] All properties within the boundaries of the Senqu Municipality are to be valued in terms of the legislation, applicable to the valuation of properties for the purpose of levying property rates.

[c] All assessment rates due by property owners are payable by the fixed date as determined by Council.

[d] Joint owners of property shall be jointly and severally liable for payment of assessment rates

[e] Assessment rates may be paid as an annual single amount, or in equal payments or payments of varying amounts as determined by the Council.

[f] Payment of assessment rates may not be deferred beyond the fixed date by reason of an objection to the valuation roll.

[14.2] Claim on rental for assessment rates in arrears

The Council may apply to the appropriate Court for the attachment of any rental due in respect of rate able property in order to cover in part or in full any amount outstanding in respect of assessment rates for a period longer than three months after the fixed date.

[14.3] Liability of Company Directors for assessment rates

Where a company, closed corporation, trust or a body corporate, in terms of the Sectional Tiles Act, 1986 or any other legal entity is responsible for the payment of any arrear amount to the Council, the liability of such entity shall be extended personally to the directors, trustees or members thereof jointly and severally as the case may be.

[14.4] Disposed of Council's property and payment of assessment rates

[a] The purchaser of Council property is liable for the payment of assessment rates on the property from the date such property was sold to the purchaser.

[b] In the event of the Council repossessing the aforesaid property, any outstanding and due amount in respect of assessment rates shall be recovered from the Purchaser.

[14.5] Restrain on transfer of property

[a] A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate:

(i) issued by the municipality in which that property is situated; and

(ii) which certifies that all amounts due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

[b] In the case of the transfer of immovable property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936).

[c] An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.

[14.6] Assessment rates payable on municipal property

[a] The lessee of municipal property shall be responsible for payment of any general assessment rates payable on such property for the duration of the lease.

[b] The Chief Financial Officer may elect to include the assessment rates in respect of a property in the rental payable by the lessee.

[15] RELAXATION, WAIVER AND DIFFERENTIATION

[15.1] The Council may differentiate between different categories of ratepayers, users of services, customers, debtors, taxes, services, service standards and other matters provided such differentiation does not amount to unfair discrimination.

[15.2] The Council may, in a specific instance and for a particular owner or customer and subject to such conditions as the Council may deem fit, relax or waive in writing the requirements of any provision of these bylaws.

[16] REPORTING OF DEFAULTERS

The Council may, in its discretion and through a duly delegated employee report such persons that owe the Council monies to bodies that collate and retain such information. The information that would be included in such a report shall be available personal information on the defaulter, or in the event of a legal person, the available statutory details, including information pertaining to the responsible officers of such legal persons.

[17] OFFENCES

Any person who-

[a] Any person who contravenes any provisions of this by-law shall be guilty of an offence.

[b] Fails to give the access required by an employee in terms of these by-laws;

[c] Obstructs or hinders an employee in the exercise of his or her powers or performance of functions or duties under these by-laws;

[d] Uses or interferes with Council equipment or consumption of services supplied;

[e] Tamperers or breaks any seal on a meter or on any equipment belonging to the Council, or for any reason as determined by the Chief Financial Officer causes a meter not to properly register the service used;

[f] Fails or refuses to give an employee such information as he or she may reasonably require for the purpose of exercising his or her power or functions under these by-laws or gives such an officer false or misleading information knowing it to be false or misleading;

[g] Any person who continues to commit an offence after notice has been served on him to cease committing such offence or after he has been convicted of such offence shall be guilty of a continuing offence,

[h] Contravenes or fails to comply with a provision of these by-laws, shall be guilty of an offence and be liable to imprisonment for a period not exceeding six months or both such a fine and imprisonment and, in addition, may be charged for usage, as estimated by the Chief Financial Officer based on average usage during the previous 6 months or as may be determined by resolution of the Council from time to time;

[i] Every person committing a breach of the provisions of this by-law shall be liable to recompense the Municipality for any loss or damage suffered or sustained by it in consequence of such breach.

[18] CONFLICT OF BY LAWS

If there is any conflict between these by-laws and any other by-law of the Council, these by-laws will prevail.

[19] REPEAL OF COUNCIL CREDIT CONTROL

The provisions of any by-law or by-laws relating to the control of credit and the collection of debt by the Council of any Council now comprising an administrative unit of the Council are hereby repealed