

SENQU MUNICIPALITY MUNICIPAL NOTICE

LOCAL AUTHORITY NOTICE NO...

2017

BY-LAW ON CREDIT CONTROL AND DEBT COLLECTION

The Municipal Council in the Schedule hereto 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 Act 1996 (Act 108 of 1996) the By-law on Credit Control and Debt Collection.

SCHEDULE

TABLE OF CONTENTS

CHAPTER 1	3
PURPOSE, DEFINITIONS AND APPLICABILITY OF BY-LAW	3
1 Purpose	3
2 Definitions	3
3 Applicability of By-law	5
CHAPTER 2	6
SERVICE PROVISION AND ACCOUNTS.....	6
4 Service agreement.....	6
5 Payment of charges.....	6
6 Accounts.....	6
7 Dispute regarding amount owing	6
8 Dishonoured payments	7
9 Legal cost	7
10 Disconnection fees	7
CHAPTER 3	7
ARREARS COLLECTION	7
11 Credit control policy	7
12 Power to restrict or disconnect supply of services	7
13 Arrangements to pay outstanding and due amounts in consecutive instalments	8
14 Full and final settlement of amount	8
15 Reconnection of services.....	9
16 Sales in execution.....	9
17 Interest charges	9
CHAPTER 4	9
ASSESSMENT RATES	9

18	Amount due for assessment rates	9
19	Claim on rental for assessment rates in arrears	10
20	Liability of company directors for assessment rates	10
21	Disposal of Municipality's property and payment of assessment rates	10
22	Restraint on transfer of property	10
23	Assessment rates payable on municipal property.....	10
CHAPTER 5		10
NOTICES.....		10
24	Service of notice	10
25	Compliance with notices	11
26	Authentication of documents.....	11
CHAPTER 6		11
LAW ENFORCEMENT		11
27	Power of entry and inspection.....	11
28	Offences and penalties	12
CHAPTER 7		12
GENERAL MATTERS		12
29	Prima Facie Evidence	12
30	Relaxation, waiver and differentiation	12
31	Reporting of defaulters	13
32	Repeal of by-laws	13
33	Short title and commencement	13

CHAPTER 1

PURPOSE, DEFINITIONS AND APPLICABILITY OF BY-LAW

1 Purpose

The objects of this By-law are to—

- (a) give effect to the Municipality's Credit Control and Debt Collection Policy, and its implementation and enforcement in terms of section 156(2) of the Constitution read with sections 96 and 98 of the Systems Act;
- (b) provide for the collection of monies due and payable to the Municipality; and
- (c) provide for matters incidental thereto.

2 Definitions

In this By-law, unless the context otherwise indicates:

“account” means an account rendered specifying charges for municipal services provided by the municipality, or any authorised and contracted service provider, and which account may include assessment rates levies;

“actual consumption” means the measured consumption of any customer for any given period;

“charges” means the rate (including assessment rates), charge, tariff, fee or subsidy determined by the Municipality in term of this By-law;

“arrears” means those rates, levies, consumed services, service charges and municipal rental that have not been paid by the due date;

“arrangement” means a written agreement entered into between the Municipality and the debtor where specific repayment parameters are agreed to;

“average consumption” means the average consumption by a customer of a municipal service during a specific period, which consumption is calculated by dividing the total measured consumption of that municipal service by that customer over the preceding three months by three;

“chief financial officer” means a person appointed by the Municipality to manage, inter alia, the Municipality 's financial administration and debt collection of the Municipality 's debtors and includes any person acting in this position;

“consumer” in relation to premises means:

- (a) any occupier thereof or any other person with whom the Municipality has contracted to supply or is actually supplying electricity thereat; or
- (b) 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
- (c) 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 the owner of the premises and includes any debtor of the Municipality;

"defaulter" means any person owing the Municipality arrear monies in respect of taxes and/or service charges;

"estimated consumption" means the deemed consumption by a consumer whose consumption is not measured during a specific period, which estimated consumption is rationally determined taking into account at least the consumption of municipal services for a specific level of service during a specific period in the area of supply of the municipality;

"fee" means any fee or deposit determined by the Municipality in terms of this By-law;

"interest" means the charge levied on arrears, calculated at the prime rate charged by the bank which holds the municipality's primary bank account, plus a percentage as may be determined by Municipality from time to time;

"municipal account" means an account rendered specifying charges for services provided by the municipality, or any authorised and contracted service provider, and/or assessment rates levies as well as municipal rent;

"Municipality" means the Senqu Municipality and includes the Council, any executive councillor, or committee established by the Municipality, or any employee thereof, or duly authorised agent thereof acting in connection with this By-Law by virtue of a power vested in the Municipality and delegated to such employee or agent;

"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;

"municipal services" means those services provided by the municipality, such as, amongst others, the supply of water, electricity, refuse removal and sewerage treatment and for which services charges are levied;

"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 and which leasehold has been endorsed on the title deed of the property, 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, 2008 (Act 71 of 2008), a trust, a closed corporation that was registered in terms of the Closed Corporations Act, 1984 (Act 69 of 1984);
 - (ii) any organ 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;
- (g) any public benefit organisation or non-profit organisation that are registered, accredited or recognised in terms of any law applicable in the Republic of South Africa and that provide a certificate of exemption from the South African Revenue Services in terms of the Income Tax Act and, if requested by the Municipality, provide its financial statements for the preceding year;
- (h) the occupier of the premises who is a beneficiary of the Housing Subsidy System contemplated in the Housing Act, if that occupier has been identified as a beneficiary by the Department of Human Settlements;

"premises" includes –

- (a) any piece of land of which the occupier is a beneficiary in terms of the Housing Subsidy Scheme; or
- (b) any piece of land, the external surface boundaries of which are delineated on:
 - (i) 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
 - (ii) a sectional plan registered in terms of the Sectional Titles Act, 95 of 1986, which is situated within the area of jurisdiction of the Municipality;

“service charges” means the fees levied by the municipality in terms of its tariff policy for any municipal services rendered in respect of an immovable property and includes any penalties, interest or surcharges levied or imposed in terms of this policy

"tampering" means any unauthorised interference with Municipality's supply, seals and metering equipment;

"tariff" means the Municipality's tariff of charges for the supply of electricity and includes any fee, charge, levy and surcharge; and

“the Act” means the means Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000).

3 Applicability of By-law

- (1) This By-law applies throughout the Municipality's area of jurisdiction in respect of any amounts payable to–
 - (a) the Municipality for rates or the provision of any municipal service;
 - (b) any service provider of the Municipality in respect of any municipal service provided by the service provider concerned on behalf of the Municipality; or
 - (c) any other amount payable to the Municipality.
- (2) If there is any conflict between this By-law and any other by-law of the Municipality, this By-law shall prevail.

CHAPTER 2

SERVICE PROVISION AND ACCOUNTS

4 Service agreement

- (1) The Municipality shall not supply any services unless and until –
 - (a) application has been made by a customer on the applicable form;
 - (b) a service agreement has been entered into between such customer and the Municipality; and
 - (c) a deposit as security equal to an amount as determined by the Municipality has been paid in full by such a customer.
- (2) Termination of the services agreement must be in writing to the other party of the intention to do so.

5 Payment of charges

- (1) All accounts is payable when issued by the Municipality and each account shall, on its face, reflect the due date and a warning indicating that the service may be discontinued if the charges in respect thereof remain unpaid after the due date.
- (2) An error or omission in any account or failure to render an account shall not relieve the consumer of his or her obligation to pay the correct amount due and the onus shall be on the consumer to satisfy himself or herself that the account rendered is in accordance with the applicable charge.
- (3) The Municipality may remind a consumer that his or her payments are due or demand payment of arrear amounts by means of a written reminder, facsimile, telephone call, cellular phone text message, e-mail or utilisation of other media and any cost so incurred may be levied against the account of the debtor.

6 Accounts

The Municipality 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 this By-law and policy in relation to any arrears on any of the accounts of such a person.

7 Dispute regarding amount owing

- (1) In the event of any dispute arising as to the amount owing by an owner in respect of municipal services, such owner 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 Municipality.
- (2) The amount referred to in subsection (1) shall be determined by the chief financial officer and be conveyed by notice to the relevant owner.

8 Dishonoured payments

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

9 Legal cost

(1) 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.

(2) If a debtor becomes an indigent person before the settlement of the arrears, the legal costs shall be for the account of the Municipality.

10 Disconnection fees

Where any service is discontinued as a result of non-compliance with this By-law by the debtor, the Municipality is entitled to levy and recover the applicable disconnection fee from such debtor.

CHAPTER 3 ARREARS COLLECTION

11 Credit control policy

(1) The Council shall approve 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 Municipality to deduct amounts from the debtor's salary or wage;
- (i) intergovernmental arrangements;
- (j) the sale in execution of any property; and
- (k) any other matter, which is incidental to credit control and debt collection.

(2) In determining its policy, the Municipality may differentiate between categories of persons, customers, debtors and owners as it may deem appropriate provided such differentiation does not amount to unfair discrimination.

12 Power to restrict or disconnect supply of services

(1) The Municipality 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) 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;
- (b) fails to comply with a condition of supply imposed by the Municipality;
- (c) obstructs the efficient supply of water, electricity or any other municipal services to another customer;
- (d) supplies such municipal service to a customer who is not entitled thereto or permits such a service to continue;
- (e) tampers with any municipal supply meter or bypasses any metering equipment in order to obtain an un-metered service;
- (f) causes a situation, which in the opinion of the Municipality is dangerous, or a contravention of relevant legislation;
- (g) 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;
- (h) is subject to an administration order granted in terms of section 74 of the Magistrates Court Act, 1944 (Act 32 of 1944).

(2) The Municipality may introduce various metering equipment and customers may be required to convert to a system preferred by the municipality;

(3) The right of Municipality 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.

(4) The right to restrict, disconnect or terminate a service shall be in respect of any service rendered by the Municipality, 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 Municipality and the owner are different entities or persons, as the case may be.

13 Arrangements to pay outstanding and due amounts in consecutive instalments

A debtor may enter into a written agreement with the Municipality to repay any outstanding and due amount to the Municipality under the following conditions:

- (a) That the outstanding balance, costs and any interest thereon are paid in regular and consecutive monthly instalments; and
- (b) the written agreement being signed on behalf of the Municipality by a duly authorised officer.

14 Full and final settlement of amount

(1) 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 or she deems fit in accordance with the Credit Control Policy of the Municipality.

(2) Where the exact amount due and payable to the Municipality has not been paid in full, any lesser amount tendered to and accepted by any municipal employee, shall not be a payment in final settlement of such an amount unless permitted by the Credit Control Policy of the Municipality.

(3) The provisions in subsection (2) above shall prevail notwithstanding the fact that such a lesser payment was tendered and accepted in full settlement.

15 Reconnection of services

(1) The Municipality shall authorise the reconnection of services or the reinstatement of service delivery after satisfactory payment and arrangements for payment has or have been made by the debtor.

(2) Payment of any amount for prepaid electrical services shall firstly be utilised to settle any amount that is owing to the Municipality by the customer and the remainder of the amount paid shall be utilised for the purchase of electrical units.

16 Sales in execution

The Municipality may only sell a property in execution in terms of a policy approved by the Council from time to time.

17 Interest charges

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

(2) The Municipality may write-off arrear interest on any arrear amount that it may have charged in terms of subsection (1) on condition that the debtor pays the outstanding balance and costs once-off and in full.

(3) If the Municipality writes-off any interest in terms of subsection (2), the full amount of the arrear interest charged, or a portion thereof, as determined by the Council shall be written off.

CHAPTER 4 ASSESSMENT RATES

18 Amount due for assessment rates

(1) 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.

(2) All assessment rates due by property owners are payable by the fixed date as determined by Municipality.

(3) Joint owners of property shall be jointly and severally liable for payment of assessment rates

(4) Assessment rates may be paid as an annual single amount, or in equal payments or payments of varying amounts as determined by the Municipality.

(5) Payment of assessment rates may not be deferred beyond the fixed date by reason of an objection to the valuation roll.

19 Claim on rental for assessment rates in arrears

The Municipality 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.

20 Liability of company directors for assessment rates

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

21 Disposal of Municipality's property and payment of assessment rates

(1) The purchaser of Municipal property is liable for the payment of assessment rates on the property from the date such property was registered in terms of the Deeds Registries Act.

(2) In the event of the Municipality repossessing the aforesaid property, any outstanding and due amount in respect of assessment rates shall be recovered from the Purchaser.

22 Restraint on transfer of property

(1) The 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 clearance and evaluation certificate referred to in section 118 of the Municipal Systems Act:

- (a) issued by the municipality in which that property is situated; and
- (b) 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.

(2) 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).

(3) 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.

23 Assessment rates payable on municipal property

The lessee of municipal property shall be responsible for payment of any general assessment rate payable on such property for the duration of the lease if the lease agreement provides for such payment by the lessee.

CHAPTER 5

NOTICES

24 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 or a person in attendance at the municipal manager's office.

25 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.

26 Authentication of documents

(1) Every order, notice or other document requiring authentication by the Municipality shall be sufficiently authenticated, if signed by the municipal manager or by a duly authorised employee of the Municipality.

(2) Delivery of a copy of the document shall be deemed to be delivery of the original.

CHAPTER 6

LAW ENFORCEMENT

27 Power of entry and inspection

(1) A duly authorised representative of the Municipality may for any purpose related to the implementation or enforcement of this 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.

(2) If the Municipality considers it necessary that work be performed to enable an employee to perform a function referred to in subsection (1) properly and effectively, it may -

- (a) by written notice require the owner or occupier of the premises at his or her 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.

(3) If the work referred to in subsection (2)(b) above is carried out for the sole purpose of establishing whether a contravention of this By-law has been committed and no such contravention has taken place, the Municipality shall bear the expense connected therewith together with the expense of restoring the premises to its former condition.

28 Offences and penalties

(1) A person is guilty of an offence if he or she -

- (a) fails to give the access required by an employee in terms of this By-law;
- (b) obstructs or hinders an employee in the exercise of his or her powers or performance of functions or duties under this By-law;
- (c) uses or interferes with Municipality equipment or consumption of services supplied;
- (d) tampers or breaks any seal on a meter or on any equipment belonging to the Municipality, or for any reason as determined by the Chief financial officer causes a meter not to properly register the service used;
- (e) 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 this By-law or gives such an officer false or misleading information knowing it to be false or misleading.

(2) Any person convicted of an offence in terms of this By-law, shall be liable upon conviction to a fine or imprisonment or to both such fine and imprisonment.

(3) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, is guilty of a continuing offence and upon conviction is liable to a fine or to imprisonment, or to both such fine and imprisonment, in respect of each day on which he or she so continues with that conduct.

(4) 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.

CHAPTER 7

GENERAL MATTERS

29 Prima Facie Evidence

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

30 Relaxation, waiver and differentiation

(1) The Municipality 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.

(2) The Municipality may, in a specific instance and for a particular owner or customer and subject to such conditions as the Municipality may deem fit, relax or waive in writing the requirements of any provision of this By-law.

31 Reporting of defaulters

(1) The Municipality may report such persons that owe the Municipality monies to bodies that collate and retain such information.

(2) 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.

32 Repeal of by-laws

The By-Laws Relating to Credit Control and Debt Collection published by in the *Provincial Gazette* by Notice Number 50 of 2006 is hereby repealed.

33 Short title and commencement

This by-law shall be known as the Senqu Municipality: Credit Control and Debt Collection By-law, 2017 and shall come into operation on the date of publication thereof in the *Provincial Gazette*.