

SENQU MUNICIPALITY

LOCAL AUTHORITY NOTICE NO...

2017

BY-LAW ON THE PREVENTION OF TAMPERING WITH ELECTRICAL INSTALLATIONS AND THE IMPROPER AND UNAUTHORISED USE OF SUCH INSTALLATIONS

The Municipal Council of Senqu Local Municipality 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 the Prevention of Tampering with Electrical Installations and the Improper and Unauthorised Use of such Installations.

SCHEDULE

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CHAPTER 1

PURPOSE, DEFINITIONS AND APPLICABILITY OF BY-LAW

1 Objectives

The objectives of this By-law are to provide, in conjunction with the Senqu Municipality: Electricity Supply By-law, 2017 a legal framework to control tampering with and improper and unauthorised use of electrical installations.

2 Definitions

In this By-law any word or expression to which a meaning has been assigned in the Electricity Act, 1987 (Act 41 of 1987) and the Senqu Municipality: Electricity Supply By-law, 2017 shall have that meaning assigned to it in that Act and By-law and, unless the context otherwise indicates:

“authorised person” means a person authorised by the Municipality to implement the provisions of this By-law or a specific section of this By-law in accordance with the standards and procedures required by the Municipality, and includes a compliance officer defined in paragraph (e) of the definition of “compliance officer”;

“compliance officer” means a person who is authorised to implement and enforce the provisions of this By-law by virtue of his or her –

- (a) declaration as a peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (b) appointment as a police officer as contemplated in the South African Police Service Act, 1995 (Act 68 of 1995);
- (c) a traffic officer appointed in terms of section 3 of the Road Traffic Act, No. 29 of 1989 or section 3A of the National Road Traffic Act No. 93 of 1996 as the case may be;

- (d) appointment as a law enforcement officer or traffic officer by the Municipality and declaration as peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977); or
- (e) appointment by the Municipality as a compliance officer or an inspector;

"consumer" in relation to premises means the owner of the premises;

"Council" means the Senqu municipal council, a municipal council referred to in section 157(1) of the Constitution;

"credit meter" means a meter where an account is issued subsequent to the consumption of electricity;

"electrical installation" means an electrical installation as defined in the Regulations;

"fee" means any fee, charge or deposit determined for purposes of this By-law, by the Municipality in terms of the Senqu Municipality: Tariff By-law, 2017;

"law" means any applicable law, proclamation, ordinance, act of parliament or enactment having force of law;

"meter" means a device which records the demand and the electrical energy consumed and includes conventional and prepayment meters;

"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 duly authorised agent or any legal entity duly authorised or contracted by the Municipality to provide an electricity service within the jurisdiction of the Municipality;;

"occupier" in relation to any premises means-

- (a) any person in actual occupation of such premises;
- (b) any person legally entitled to occupy such premises;
- (c) in the case of such premises being subdivided and let to lodgers or various tenants, the person receiving the rent payable by such lodgers or tenants, whether on his own account or as agent for a person entitled thereto or interested therein; or
- (d) any person in control of such premises or responsible for the management thereof, and includes the agent of any such person when he is absent from the Republic of South Africa or his whereabouts are unknown;

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"owner" in relation to premises means the person in whom is vested the legal title thereto; provided that-

- (a) in the case of immovable property-
 - (i) leased for a period of not less than 30 years, whether the lease is registered or not, the lessee thereof, or
 - (ii) beneficially occupied under a servitude or right analogous thereto, the occupier thereof;
- (b) if the owner -
 - (i) is deceased or insolvent, has assigned his or her estate for the benefit of his or her creditors, has been placed under curatorship by order of court or is a company being wound up or under judicial management, the person in whom the administration of such property is vested as executor, administrator, trustee, assignee, curator, liquidator or judicial manager, as the case may be, or
 - (ii) is absent from the Republic of South Africa, or if his or her address is unknown to the Municipality, any person who as agent or otherwise receives or is entitled to receive the rent in respect of such property; and
 - (iii) if the Municipality is unable to determine who such person is, the person who is entitled to the beneficial use of such property, shall be deemed to be the owner thereof, to the exclusion of the person in whom is vested the legal title thereto;

"premises" means any land or any building or structure above or below ground level and includes any vehicle, aircraft or vessel;

"prepayment meter" means a meter that can be programmed to allow the flow of the pre-purchased amounts of energy in an electrical circuit;

"Regulations" means Regulations made in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993);

"service connection" means all cables and equipment required to connect the supply mains to the electrical installation of the consumer at the point of supply;

"service protective device" means any fuse or circuit breaker installed for the purpose of protecting the Municipality's equipment from overloads or faults occurring on the installation or on the internal service connection;

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

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

"token" means the essential element of a prepayment metering system used to transfer information from a point of sale for electricity credit to a prepayment meter and vice versa;

3 Applicability of By-law

(1) This By-law must be read with the Senqu Municipality: Electricity Supply By-law, 2017.

(2) In the event of any conflict with any other by-law which directly or indirectly regulates tampering or improper or unauthorised use of electrical installation, the provisions of this By-law shall prevail to the extent of the inconsistency.

CHAPTER 2

ELECTRICITY SERVICES

4 Provisions of electricity services

The Municipality shall supply or contract for the supply of electricity within the jurisdiction of the Municipality in accordance with section 4 of the Senqu Municipality: Electricity Supply By-law, 2017.

CHAPTER 3

IMPROPER USE, TAMPERING, UNAUTHORISED CONNECTION AND RE-CONNECTION

5 Improper use

(1) If a consumer uses the electricity for any purpose or deals with the electricity in any manner which the Municipality has reasonable grounds for believing interferes in an improper or unsafe manner or is calculated to interfere in an improper or unsafe manner with the efficient supply of electricity to any other consumer, the Municipality may, with or without notice, disconnect the electricity supply but such supply shall be restored as soon as the cause for the disconnection has been permanently remedied or removed.

(1) The applicable fee for the disconnection and reconnection of the electricity supply shall be paid by the consumer before the electricity supply is restored, unless it can be shown that the consumer did not use or deal with the electricity in an improper or unsafe manner.

6 Tampering with service connection or supply mains

(1) No person shall in any manner or for any reason whatsoever tamper or interfere with any meter or metering equipment or service connection or service protective device or supply mains or any other equipment of the Municipality.

(2) Where prima facie evidence exists of a consumer or any other person having contravened subsection (1), the Municipality shall have the right to disconnect the supply of electricity immediately and without prior notice to the consumer.

(3) The consumer or other person concerned shall be liable for all fees and charges approved by the Municipality for such disconnection.

(4) Where a consumer or any other person has contravened subsection (1) and such contravention has resulted in the meter recording less than the true consumption, the Municipality shall have the right to recover from the consumer the full cost of his or her estimated consumption as assessed by the Municipality and in accordance with the applicable tariff of charges approved by the Municipality.

(5) This section does not derogate from the right of the Municipality to institute criminal proceedings in accordance with any law against a consumer or any other person who has contravened subsection (1).

7 Tampering with seal or lock of Municipality

No person, other than an authorised person, shall in any manner or for any reason whatsoever remove, break, deface, tamper or interfere with the seal or lock of a meter, service protective device or other apparatus which belongs to the Municipality.

8 Unauthorised connection

No person, other than an authorised person, shall directly or indirectly connect, attempt to connect or cause or permit to be connected any electrical installation or part thereof to the supply mains or service connection of the Municipality.

9 Unauthorised reconnection

(1) No person, other than an authorised person, shall reconnect, attempt to reconnect or cause or permit to be reconnected to the supply mains or service connection any electrical installation or installations which has or have been disconnected by the Municipality.

(2) Where the supply of electricity that has previously been disconnected is found to have been reconnected, the consumer using the supply of electricity shall be liable for all charges for electricity consumed between the date of disconnection and the date the electricity supply was found to be reconnected and any other charges raised in this regard.

(3) The Municipality may remove part or all of the supply equipment until such time as payment contemplated in subsection (2) has been received in full.

(4) The consumer shall be responsible for all the costs associated with the reinstatement of supply equipment contemplated in this section.

(5) This section does not derogate from the right of the Municipality to institute criminal proceedings in accordance with any law against a consumer or any other person who has contravened subsection (1).

CHAPTER 4

INSPECTION, TEST AND MAINTENANCE

10 Right of entry to inspect, test and do maintenance work

(1) An authorised person shall have access to or over any property for the purposes of:

- (a) doing anything authorised or required to be done by the Municipality under this By-law or any other law;
- (b) inspecting and examining any service mains and anything connected therewith;
- (c) enquiring into and investigating any possible source of electricity supply or the suitability of immovable property for any work, scheme or undertaking of the Municipality and making any necessary survey in connection therewith.

(2) An authorised person may, by notice in writing served on the owner or occupier of any property, require such owner or occupier to provide, on the day and at the hour specified in such notice, access to such property to a person and for a purpose referred to in subsection (1).

(3) The Municipality may gain access to or over any property without notice and may take whatever action as may, in its opinion, be necessary or desirable in consequence of the existence of a state of war or the occurrence of any calamity, emergency or disaster.

(4) The Municipality shall pay compensation to any person suffering damage as a result of the exercise of the right of access contemplated by subsection (1), except where the

Municipality is authorised to execute on the property concerned any work at the cost of such person or some other person or to execute on such property any work and recover the cost thereof from such person or some other person,

(5) Compensation referred to in subsection (4) shall be an amount as may be agreed upon by the Municipality and such person or, in the absence of agreement, as may be determined by arbitration or by a court of law.

11 Refusal or failure to give information

No person shall refuse or fail to give such information as may be reasonably required of him or her by any authorised person or render any false information to any such person regarding any electrical installation work completed or contemplated or any unauthorised use of or tampering with any electrical installation.

12 Refusal of admittance

No person shall wilfully hinder, obstruct, interfere with or refuse admittance to any authorised person in the performance of his or her duty under this By-law or of any duty connected therewith or relating thereto.

CHAPTER 4

LAW ENFORCEMENT

13 Appointment of compliance officer

(1) The Municipality may appoint or designate a person or employee to serve as a compliance officer for purposes of compliance and enforcement monitoring of this By-law.

(2) A compliance officer shall take all lawful, necessary and practicable measures to enforce the provisions of this By-law.

(3) The Municipality shall issue each compliance officer with a written appointment stating that he or she has been appointed for purposes of this By-law or with an identification card that contains the municipal logo, department and name of the officer.

14 Powers and functions of a compliance officer

(1) A compliance officer may, subject to subsection (2) and (3), at any reasonable time, and without prior notice, enter any land property, building or premises for purposes of ensuring compliance with this By-law.

(2) An inspection of a private dwelling may only be carried out by a compliance officer at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building and after obtaining the consent of the owner or lawful occupier or person in control of the building, or with a warrant issued in terms of the Criminal Procedure Act, 1977.

(3) The compliance officer is not required to give any notice to enter land or a building, other than a private dwelling, and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if:

- (a) he or she believes on reasonable grounds that a warrant would be issued to him or her on application; and
- (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action.

(4) A compliance officer shall show proof of his or her written appointment or identification card contemplated in section 14(3) when required to do so by any person affected by the exercising of a power or show proof that he or she is a law enforcement officer.

(5) A compliance officer may not investigate a matter in which he or she has a direct or indirect personal interest.

(6) In ascertaining compliance with this By-law, a compliance officer may:

- (a) be accompanied by an interpreter, a police officer or any other person who may be able to assist with the inspection;
- (b) question any person who is or was on that property, who in the opinion of the compliance officer, may be able to furnish information on a matter to which this By-law relates;
- (c) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute:
 - (i) an offence in terms of this By-law; or
 - (ii) a breach of an approval or a term or condition of such approval
- (d) question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for the purpose of investigating any matter in connection with this By-law;
- (e) examine any book, record or other written or electronic information and make a copy thereof or an extract therefrom and remove such document, book, record or written or electronic information in order to make copies or extracts;

- (f) require a person to produce or to deliver to a place specified by him or her, any document, book, record, or any written or electronic information referred to in paragraph (e) for inspection;
- (g) require from such person an explanation of any entry in such document, book, record or written or electronic information;
- (h) inspect any article, substance, plant or machinery which is or was on the property, or any work performed on the property or any condition prevalent on the property, or remove for examination or analysis any article, substance, plant or machinery or a part or sample;
- (i) seize any book, record or other document, details or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this By-law, provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;
- (j) direct any person to appear before him or her at such time and place as may be determined by him or her and question such person either alone or in the presence of any other person on any matter to which this By-law relates; and
- (k) take photographs or make audio visual recordings or tape recordings of any person or anything for the purposes of his or her investigation.

(7) When a compliance officer removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he or she shall issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.

(8) Where a compliance officer enters any land in terms of subsection (1), a person who controls or manages the land shall at all times provide such facilities as are reasonably required by the compliance officer to enable him or her to perform his or her functions effectively and safely under this By-law.

(9) A compliance officer who enters and searches any property or private dwelling under this section, shall conduct such search with strict regard for decency and order and with regard for each person's right to dignity, freedom, security and privacy.

15 Offences and penalties

- (1) A person shall be guilty of an offence if such person -

- (a) Uses or interferes with municipal equipment or consumption of services supplied;
- (b) tampers or breaks any seal on a meter or on any equipment belonging to the Municipality, or for any reason as determined by the Municipality causes a meter not to properly register the service used;
- (c) unlawfully prevents an authorised person and a compliance officer entry to his or her premises or causes or permits any other person to prevent entry;
- (d) obstructs or hinders an authorised person or a compliance officer in the performance of his or her duties or causes or permits any other person to so obstruct or hinder the authorised person or compliance officer;
- (e) refuses or fails to provide to an authorised person or a compliance officer such information as is required to allow a compliance officer to perform a function in terms of this By-law;
- (f) furnishes false or misleading information to an authorised person the Municipality when called upon to furnish information;
- (g) impersonates an authorised person or a compliance officer;
- (h) contravenes or fails to comply with any provision of this By-law; or
- (i) supplies particulars, information or answers in an application or on knowing it to be false, incorrect 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.

16 Right to disconnect supply

(1) The Municipality shall have the right to disconnect the supply of electricity to any premises if the person liable to pay for such supply fails to pay any charge due to the Municipality in connection with any supply of electricity which he or she may at any time have received from the Municipality in respect of such premises, provided that such disconnection shall take place in accordance with the provisions of the Senqu Municipality: Credit Control and

Debt Collection By-law, 2017 and upon the failure of the person concerned to adhere to the provisions of such policy or any agreement entered into between him or her and the Municipality in terms of such policy.

(2) In the case where an installation has been illegally reconnected on a consumer's premises after having been previously disconnected by the Municipality, or in the case where the Municipality's electrical equipment has been tampered with to prevent the full registration of consumption by the meter, the electricity supply may be physically removed from those premises.

17 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 authorised 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.

18 Compliance with notice

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.

CHAPTER 5

GENERAL PROVISIONS

19 Prevention of tampering with service connection or supply mains

If the Municipality decides that it is necessary or desirable to take special precautions in order to prevent tampering with any portion of the supply mains, service connection or service protective device or meter or metering equipment, the consumer shall either supply and install the necessary protection or pay the costs involved where such protection is supplied by the Municipality.

20 Non-liability of Municipality

The Municipality shall not be liable for any loss or damage, direct or consequential, suffered or sustained by a consumer as a result of or arising from the cessation, interruption or any other abnormality of the supply of electricity, unless caused by negligence on the part of the Municipality.

21 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.

22 Appeals

Any person may appeal against any decision taken under this By-law by giving written notice of the appeal in accordance with the provisions of section 62 of the Municipal Systems Act, 2000.

23 Repeal of by-laws

This By-law repeals and replaces any other by-law relating to the tampering with electrical installations and improper and unauthorised use of electrical installations only which were promulgated by the Municipality before commencement of this By-law.

24 Short title and commencement

This By-law shall be known as the Senqu Municipality: Prevention of Tampering with Electrical Installations and the Improper and Unauthorised Use of such Installations By-law, 2017 and shall come into operation on the date of publication thereof in the *Provincial Gazette*.