

Swartland, South Africa

Credit Control and Debt Collection

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Credit Control and Debt Collection Contents

1. Definitions	1
2. Application for municipal services	3
3. Liability for payment of money due and payable to the municipality	4
4. Date of payment of money due	4
5. Steps to be taken in accordance with credit control and debt collection policy	5
6. Levying of interest	5
7. The disconnection and/or restriction of water and/or electricity services	5
8. Collection of deposit	6
9. Measuring of municipal services	6
10. Enquiries, appeals, and service complaints	7
11. Collection costs	7
12. Dishonoured payments	7
13. Access to premises	7
14. Safe accommodation of service connections, meters, stopcocks, appliances, etc.	8
15. Theft, damage and unauthorised use of water and electricity	8
16. Signing of notices and documents	8
17. Certification of documents	8
18. Prima facie evidence	9
19. Source of financial assistance	9
20. Requirements for registration as an indigent household	9
21. Application for registration	9
22. Consideration of applications	9
23. Appropriation of and limitation on financial assistance	10
24. Levying of administration fees	10
25. Cancellation of registration	10
26. Offences and penalties	11

Swartland South Africa

Credit Control and Debt Collection By-law, 2003

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and includes any amendments published up to 28 June 2024.]*

[Repealed by Credit Control and Debt Collection on 11 July 2014]

1. Definitions

In this by-law, unless inconsistent with the context, an expression to which a meaning was ascribed in the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) will have that meaning and

"**account**" includes—

- (1) levies, surcharges or service charges in respect of the following services:
 - electricity consumption;
 - water consumption;
 - refuse removal;
 - sewage services;
- (2) rates;
- (3) rental;
- (4) loan instalments;
- (5) interest on arrears;
- (6) any other levies and money owing to the Municipality;

and "municipal account" has a corresponding meaning;

"**Act**" means the Local Government: Municipal Systems Act, (Act No 32 of 2000) as amended from time to time;

"**amounts in arrears**" means any amount due and payable to the Municipality which has not been paid on or before the date of payment;

"**council**" means the municipal council of the Municipality of Swartland;

"**date of payment**" means the date which has or the dates which have been determined in accordance with the Municipality's credit control and debt collection policy, as the date or dates on which the respective fees, tariffs and rates due and owing to the Municipality, must be paid;

"**indigent household**" means a household registered as such with the Municipality and which—

- (1) complies with the qualification requirements as determined in the Municipality's credit control and debt collection policy; and
- (2) occupies premises within the area of jurisdiction of the Municipality;

"Manager: Financial Services" means a person appointed by the council in that capacity to administer the council's finances and includes any person—

- (1) who is in an acting capacity in that position;
- (2) to whom the Manager: Financial Services delegated a power, function or duty in respect of such delegated power, function or duty;

"Municipal Manager" means the person appointed in that capacity by the council in accordance with section 82 of the Local Government Act: Municipal Structures No 117 of 1988 and includes any person—

- (1) acting in that position;
- (2) to whom the Municipality delegated a power, function or duty in respect of such delegated power, function or duty;

"municipal services" means the provision of water, the provision of electricity, the removal of domestic waste, the disposal of sewage or any one or combination of these services;

"Municipality" means the Municipality of Swartland;

"owner" in respect of immovable property means—

- (1) the person in whom ownership vests;
- (2) in the event of the person in whom the ownership vests being insolvent or deceased, or subject to any legal disqualification, the person under whose control and administration such immovable property vest in his/her capacity as curator, trustee, executor, administrator, judicial manager, liquidator or any other lawful representative;
- (3) in any event where the council is unable to determine the identity of such a person, the person who is entitled to the beneficial use of such immovable property;
- (4) in the event of immovable property in respect of which a lease agreement of 30 years or longer has been concluded, the lessee thereof;
- (5) in respect of—
 - (i) a portion of land demarcated on a sectional title plan and registered in accordance with the Sectional Titles Act, 1986 (Act No. 59 of 1986), the developer or the governing body in respect of the joint property;
 - (ii) a portion of land as defined in this Act, the person in whose name that portion is registered in accordance with a title deed, including the lawfully appointed representative of such person;
- (6) any persona, including but not limited to—
 - (i) a company registered in terms of the Companies' Act, 1973 (Act No 61 of 1973), a trust inter vivos, a trust mortis causa, a close corporation registered in terms of the Close Corporations Act, 1984 (Act No 69 of 1984), and a voluntary association;
 - (ii) any government department;
 - (iii) any council or governing body established in terms of any legislation in force in the Republic of South Africa; and
 - (iv) any embassy or other foreign entity;

"premises" means any portion of land, situated within the area of jurisdiction of the municipality, and of which the outer boundaries are demarcated on:

- (1) a general plan or diagram registered in terms of the Land Survey Act, 1927 (Act No. 9 of 1927) or the Deeds Registries Act, 1937 (Act No 47 of 1937); or

- (2) a sectional title plan registered in terms of the Sectional Titles Act, 1986 (Act No 95 of 1986);

"**standard rate of interest**" means a rate of interest one per cent higher than the rate payable by the Municipality to its bank in respect of an overdraft.

Credit control and debt collections measures

2. Application for municipal services

- 2.1 No one will be allowed access to municipal services, or may use or consume municipal services, unless application was made on a form, as prescribed by the Municipality from time to time, and the Municipality granted such application.
- 2.2 If, on the date of this by-law coming into effect, or at any other time, municipal services are provided in the absence of a written agreement providing therefor, it shall be deemed that—
- (1) an agreement in accordance with the provisions of section 2.6 actually exists; and
 - (2) the standard or level of service thus provided is the standard or level of service preferred by the consumer or the person making use of the services;
- until such time as the Municipality and the person concerned entered into an agreement as envisaged in section 2.1.
- 2.3 Upon receipt of an application for the provision of municipal services, the Municipality shall inform the applicant concerned of the different levels or standards of services and the applicable tariffs or fees payable in respect of each level of service.
- 2.4 The Municipality will only be obliged to provide a specific level of a municipal service requested, if it is already provided by the Municipality in the normal course of events, and then only if the Municipality possesses the means and capacity to provide such a level of service.
- 2.5 A person may at any time apply to change the level of a municipal service originally agreed upon, provided that the level of service requested is available, and that the costs and disbursements incidental to such change, be borne by the applicant.
- 2.6 The application form referred to in section 2.1, properly completed and signed by the applicant, and the Municipality's approval thereof, shall constitute a binding agreement between the Municipality and such a person and will take effect on the date indicated on the form.
- 2.7 A person who has entered into an agreement with the Municipality in terms of section 2.6, may, subject to the provisions of any other by-laws of the Municipality, only terminate such agreement by means of prior written notice to the Municipality.
- 2.8 If the Municipality—
- (1) refuses an application for the provision of municipal services or a specific service or level of service;
 - (2) is not in a position to provide such municipal service or level of a service on the date on which it is requested;
 - (3) is not in a position to provide such municipal service or level of a service at all;
- the Municipality shall, within a reasonable time, inform the applicant of such refusal or inability to provide the service, the reasons therefor, and, if applicable, when the Municipality will be in a position to deliver such municipal service or specific service or level of service.

3. Liability for payment of money due and payable to the municipality

- 3.1 The person responsible for the payment of money due and payable to the Municipality will be the following in the instances mentioned hereafter:
- (1) rates and sewage — the owner of the premises concerned;
 - (2) municipal services (excluding disposal of sewage) — the consumer or person to whom the service was provided, provided that if the owner is not the consumer or the person to whom the service is provided, and the Municipality has taken reasonable steps to procure payment of monies due by such a consumer or person, without being successful in collecting such monies, the owner of such premises shall be liable for payment of such amounts as may be due and payable by such a consumer or person to the Municipality;
 - (3) rental payable in respect of the letting of state-financed housing and other municipal property — the person with whom the lease was concluded and where no agreement of lease was concluded, the person who applied to rent the premises, or, if no such person can be identified, the head of the household occupying such premises or any other person who accepts responsibility for the payment of rental due, irrespective of whether such a person occupies the premises or not;
 - (4) repayment of housing loans — the person or persons with whom a loan agreement or an instrument of debt has been concluded;
 - (5) any other services — the person to whom such services were delivered.
- 3.2 Where a company, trust, close corporation or a governing body in terms of the Sectional Titles Act, 1986 (Act No 95 of 1986)—
- is the owner of immovable property and/or;
 - is the applicant in terms of section 2.1 for the provision of municipal services, and such services are being or were in fact provided;
- the obligation of such entity for the payment of rates on immovable property and/or any amounts payable in respect of municipal services, shall be extended to its directors, trustees or members, as the case may be, who as such will be held liable jointly and severally.
- 3.3 Where an account is not paid in full, any lesser amount offered and accepted by the Municipality shall not be deemed to be in full and final settlement of such account, unless the Municipal Manager in writing accepted such lesser amount in full and final settlement of the account in question.
- 3.4 The onus rests on the debtor to obtain a statement of his or her accounts so that they may be paid on or before the date of payment.

4. Date of payment of money due

- 4.1 The date of payment in respect of—
- rates;
 - municipal services;
 - rent and/or loan instalments due in respect of state financed housing and/or other municipal property, and
 - any other amounts due to the Municipality other than those due in respect of rates, municipal services and rent and/or loan instalments,
- shall be the date indicated in the Municipality's credit control and debt collection policy, as may be amended from time to time.

- 4.2 Where the last date of payment of any amount due to the Municipality falls on a day on which the Municipality's offices are closed, the final date of payment of those amounts will be deemed to be the first day thereafter on which the offices are open.

Steps to be taken where debtors are in arrears or fail to pay money due on or before date of payment

5. Steps to be taken in accordance with credit control and debt collection policy

- 5.1 Actions against persons who fail or neglect to pay money due to the Municipality on or before the date of payment, will be as set out in the Municipality's credit control and debt collection policy, as may be amended from time to time.
- 5.2 The actions referred to in section 5.1 include, but are not necessarily limited to, the following:
- (1) the levying of interest on amounts in arrears;
 - (2) the disconnection or restricting of water and/or electricity services;
 - (3) the concluding of agreements for the payment in instalments of amounts in arrears in accordance with the provisions of section 103 of the Act;
 - (4) the handing over of accounts for money owing to a debt collector or an attorney;
 - (5) the institution of legal action.

6. Levying of interest

- 1.1 The Municipality shall be entitled to levy and collect interest at the standard rate in respect of all amounts in arrears due and payable to the Municipality, for each month that such amount remains unpaid after the date referred to in section 6.2, provided that a portion of a month is deemed to be a month.
- 1.2 Interest as envisaged in section 6.1 is levied from a date defined in the Municipality's credit control and debt collection policy.

7. The disconnection and/or restriction of water and/or electricity services

- 1.1 Should any amount owing in respect of municipal services, or any portion thereof, remain unpaid after the date of payment—
- (1) the Municipality shall be entitled to disconnect the electricity supply to those premises; and
 - (2) the Manager: Financial Services shall be able to exercise his discretion to—
 - restrict the supply of water to those premises by installing a water control mechanism on the service connection to those premises which will allow the passage of the amount of water per month as determined in the Council's credit control policy.
- or
- disconnect the supply of water;
- or
- with due consideration of the particular debtor's payment record, postpone the restriction or disconnection of the water supply for a period not exceeding 14 days.

- 7.2 In the event of the disconnection of the water or electricity supply to premises in terms of the provisions of section 7.1, such water or electricity supply shall only be resumed as soon as—
- (1) the amounts in arrears together with interest have been paid in full or an agreement for the payment thereof has been concluded with the debtor in accordance with the terms and conditions contained in the Municipality's credit control and debt collections policy; and
 - (2) the fees for resumption of services, as determined in the Municipality's tariff policy, have been paid.
- 7.3 The Municipality shall be entitled to collect a levy for debt collection, as determined in the Municipality's tariff policy, to defray the administrative costs of the disconnection and resumption of services, from every person who neglects to pay his or her account for municipal services timeously on the date of payment and when that person's name appears on a disconnection list. The levy shall be payable on or before a date as determined in the Municipality's credit control and debt collection policy.

8. Collection of deposit

- 8.1 When a person applies for municipal services pursuant to the provisions of section 2.1, and before such services are provided, a deposit is collected from that person to serve as security or partial security for the payment for municipal services provided to that person.
- 8.2 A deposit as envisaged in section 8.1 is utilised to settle or reduce amounts owed by a person to the Municipality for municipal services rendered, in the event of such person disappearing and being difficult to trace, or being declared insolvent or who, for whatever reason, refuses to meet his or her obligations towards the Municipality.
- 8.3 The amount of the deposit is as determined in the Municipality's tariff policy provided that the Manager: Financial Services shall be entitled to increase the amount of such deposit on each occasion at which any municipal service is disconnected or restricted in terms of section 7.1, provided, however, that a deposit may only thus be increased to a maximum amount calculated as follows:
- 2½ times the amount of the highest account rendered to the person concerned for municipal services in any month during the 12 months preceding the date of disconnection of service or restriction of supply. Where municipal services have at any stage not yet been provided to a person for 12 months, the amount of the highest monthly account for any month during such shorter period shall be the determining amount.
- 8.4 When a person, having paid a deposit to the Municipality, requests in writing that the municipal services provided to him or her be terminated and that the deposit thus kept by the Municipality be refunded to him or her, such deposit or any portion thereof which has not been utilised in accordance with section 8.2 shall be refunded to such person.
- 8.5 The Municipality is not liable for the payment of interest on deposits held by the Municipality.

General provisions

9. Measuring of municipal services

- 9.1 Where a meter has been installed, it will be assumed that the electrical energy or quantity water registered by that meter has been delivered; provided that for any period that a meter is out of order, the electrical energy or water so delivered shall be calculated on the basis of the average quantity delivered over three months immediately preceding the period in question.
- 9.2 Should premises on which measuring mechanisms are installed be locked or for whatsoever reason be inaccessible to the official responsible for reading meters, the Municipality shall be entitled to render to the user an account based on the estimated use, as estimated by the Manager: Financial Services.

- 9.3 Where a user is assessed for estimated usage in terms of section 9.2, the difference between the actual usage and estimated usage must be set off as soon as a metered reading is obtained.
- 9.4 Should a user request that a special meter reading be taken, such reading may be obtained against payment of a fee as determined in the Municipality's tariff policy.

10. Enquiries, appeals, and service complaints

- 10.1 Should a person be convinced that his or her account for municipal services is inaccurate, he or she may direct a request to the Municipality to have that account reviewed.
- 10.2 In the meantime, the person must pay an amount equal to the average usage for the preceding three months, where the history of that account is available. Where such history is not available, the person must pay an estimated amount, as determined by the Manager: Financial Services, before the date of payment and until the matter has been resolved.
- 10.3 The Manager: Financial Services shall, within one month of receipt of such a request, investigate the matter and inform the person concerned of the outcome of such an investigation.
- 10.4 Failure to pay the amount determined in accordance with section 10.2 on or before the date of payment, will render such a person liable to have his or her electricity or water supply disconnected.
- 10.5 A person may appeal against the findings of the Manager: Financial Services.
- 10.6 An appeal in accordance with section 10.5 must be made and delivered to the Municipal Manager within 21 days of the appellant becoming aware of the finding referred to in section 10.3 and shall—
- (1) set out the grounds of the appeal, and
 - (2) where applicable, include the fees determined by the Municipality for the testing of the metering mechanism.

11. Collection costs

All legal costs, collection commission, and any other expenses incurred by the Municipality in order to recover monies owing by a debtor to the Municipality, shall be debited against that debtor's account and collected from him or her by the Municipality.

12. Dishonoured payments

Should any payment made to the Municipality by means of a negotiable instrument be dishonoured by a bank at a later stage, the Manager: Financial Services may—

- (1) impose costs and administration fees on the account of that debtor at a rate to be determined by the council from time to time; and
- (2) after a bank dishonours payment tendered by a debtor for a third time, notify that person in writing that all future payments may only be made in cash.

13. Access to premises

An occupier of premises in the area of jurisdiction of the Municipality must give an authorised representative of the Municipality or of a service provider access at all reasonable hours to the premises in order to read, inspect, instal or repair any meter or service connection for reticulation, or to disconnect or restrict the provision of a municipal service.

14. Safe accommodation of service connections, meters, stopcocks, appliances, etc.

Where water and/or electricity are/is provided to premises, the user of any service connections, meters, stopcocks, as well as appliances and equipment for the safeguarding of services on those premises, and the user shall also be liable to compensate the Municipality for any costs or losses incurred or damages suffered by the Municipality as a result thereof.

15. Theft, damage and unauthorised use of water and electricity

15.1 No person may:

- (1) in any manner or for any reason whatsoever tamper with, damage or break, meddle with or remove any service connection, meter, stopcock, appliance or equipment for the safeguarding of services, or seals or main supply lines which had been installed to measure, provide or restrict the supply of water and/or electricity;
- (2) directly or indirectly connect, attempt to connect, or allow or permit the connection, of any water pipeline or piping or network or an electrical installation, to the Municipality's main supply lines or service connection, unless such person was specifically and in writing authorised by the Municipality to do so;
- (3) reconnect, attempt to reconnect, or allow or permit the reconnection, of any water supply or electrical installation which had been disconnected, for whatsoever reason, by the Municipality, to the Municipality's main supply lines or service connection, unless such person was specifically and in writing authorised by the Municipality to do so; or
- (4) use water or electricity which had been obtained unlawfully.

15.2 The Municipal Manager shall, as soon as it is brought to his attention and he is possessed of sufficient factual evidence that a transgression of any of the provisions of section 15.1 has been committed, institute a criminal prosecution of the person so suspected of having committed such transgression.

15.3 Additionally and despite criminal prosecution and the imposition of a term of imprisonment and/or a fine pursuant to any by-law promulgated by the Municipality, or any other Act, regulation or by-law, on any person guilty of the transgression of any of the provisions mentioned in section 15.1, the Municipality shall be entitled to—

- (1) recover from such person all costs or damages or losses which the Municipality may incur, suffer or may have inflicted as a result of such transgression,
- (2) hold a person who consumed water and/or electricity unlawfully, responsible for payment for such unlawful consumption in accordance with the provisions of section 9.1;
- (3) summarily disconnect the provision of water and/or electricity to the premises in question.

16. Signing of notices and documents

A notice or document issued by the Municipality pursuant to a by-law promulgated by the Municipality and signed by a staff member of the Municipality is deemed to have been properly issued and shall be accepted by the court as evidence of that fact upon the mere submission thereof.

17. Certification of documents

Any order, notice or other document which needs to be certified by the Municipality, is deemed to have been sufficiently certified if it is signed by the Municipal Manager or a duly authorised official of the Municipality to whom such powers were delegated by means of a decision of the Municipality's council or pursuant to a by-law.

18. *Prima facie* evidence

In lawsuits initiated by the Municipality, the mere submission of a certificate reflecting the amount due and payable to the Municipality and signed by the Municipal Manager or a suitably qualified official authorised thereto by the Municipal Manager, shall be accepted by the court as *prima facie* evidence that the amount is due.

Financial assistance to indigent households

19. Source of financial assistance

Financial assistance to an indigent household is financed from—

- (1) financial allocations by the National Government to the Municipality for that specific purpose;
- (2) a contribution for that specific purpose by the Municipality, the extent of such contribution being determined annually by the Council during the drafting of the Council's budget.

20. Requirements for registration as an indigent household

A household wishing to register as an indigent household and be considered for financial assistance in accordance with the council's policy in this regard, may only be registered as such if—

- (1) that household complies with the registration requirements as determined in the Municipality's credit control and debt collection policy, as amended from time to time, and
- (2) application for registration has been made on a form prescribed by the Municipality for this purpose and which is obtainable from any Municipal office.

21. Application for registration

- 21.1 A household wishing to apply for qualification as an indigent household, must complete the application form referred to in section 20(2), and hand it in at the Municipality's head office.
- 21.2 An application form, or any other form, declaration or certificate required by the Municipality must be signed or certified by the head of the household unless the contrary is indicated on such form, declaration or certificate. For purposes hereof the head of the household is deemed to be the lawful owner or the lawful lessee of the premises or the person who otherwise exercises control over such premises.
- 21.3 An application shall be accompanied by the required documentary proof and information as set out in the Municipality's credit control and debt collection policy, as amended from time to time.
- 21.4 It shall be required of the head of the household who applied for registration as an indigent household to declare that all information furnished on the application form and other documentation is true and correct.
- 21.5 The Municipality or its authorised agent may through its authorised representative take any steps that may be necessary to check the correctness of information furnished by an applicant and/or to verify the correctness thereof, including interviews with and the taking of statements from members of a household.

22. Consideration of applications

- 22.1 The Municipality shall consider an application received in accordance with the provisions of section 21.1, and if the Municipality is satisfied that the applicant qualifies in terms of the provisions of section 20, such household shall be registered as an indigent household.

- 22.2 The Municipality shall be entitled to deny an application if the annual grant for financial assistance to indigent households referred to in section 19 is at any stage depleted or being depleted.
- 22.3 If a household is registered as an indigent household, financial assistance is provided to that household in accordance with the provisions of section 23.1, provided however that—
- (1) the household, on a four-monthly basis, calculated from the date on which the financial assistance was granted, provide proof to the Manager: Financial Services to his satisfaction, that the household in question still complies with the prerequisites contained in section 20;
 - (2) if a household at any stage after completion of the cycle of four months failed or refused to provide proof or satisfactory proof in respect of the qualification requirements referred to in section 20, in terms of sub-section (1) above, all financial assistance to such a household is immediately suspended until such time as such proof, subject to the provisions of section 24.1(2), is delivered.

23. Appropriation of and limitation on financial assistance

- 23.1 Subject to its sustainability and affordability and with consideration of the provisions of section 22.2, financial assistance to an indigent household that has qualified for such assistance, shall be limited to and appropriated for the settlement or partial settlement of amounts owing in respect of rates and those municipal services listed in the Municipality's credit control and debt collection policy, as amended from time to time.
- 23.2 At least once per year during the budgetary process, but also as an interim measure at any other stage, the Municipality shall be entitled to determine or re-determine the degree to which financial assistance may be provided to qualifying indigent households, including the rate at which and the municipal services in respect of which such financial assistance will be provided.
- 23.3 Where a pre-paid electricity meter is installed on premises occupied by an indigent household, and if the electricity connection is limited to 20 ampère, such household will likewise be considered for financial assistance in respect of the use of electricity and to the extent determined by the Municipality's credit control and debt collection policy.

Credit earned on such an account will be employed for the settlement of rates due or fees due in respect of any of the other municipal services.

24. Levying of administration fees

- 24.1 The Municipality shall be entitled to collect a monthly administration fee, as determined from time to time in the Municipality's tariff policy, from every registered indigent household until the cancellation of registration of that household pursuant to the provisions of section 25.
- 24.2 The administration fee for a particular month is payable on or before a date as determined in the Municipality's credit control and debt collection policy.

25. Cancellation of registration

- 25.1 Registration as an indigent household is cancelled under the following circumstances and such household will forfeit all financial assistance granted to it for the non-expired portion for which the assistance was granted:
- (1) where it is found that false information had been furnished in the application form or other documentation and/or statements;
 - (2) if the head of the indigent household after expiry of a period of 30 days following on the suspension of financial assistance in accordance with section 22.3, refuses, neglects or fails to provide to the Municipality the information required by section 21.3;

- (3) if it is found that circumstances have changed to such an extent that the indigent household no longer complies with one or more of the prerequisites for registration mentioned in section 20;
 - (4) if the household fails or refuses to pay the administration fee payable in terms of section 24, for a particular month on or before the date mentioned in section 24.2.
- 25.2 The onus is on the head of the indigent household to inform the Municipality if at any stage circumstances have changed to such an extent that there is no longer compliance with the requirements set out in section 20, while at the same time providing full particulars of such changed circumstances to the Municipality.
- 25.3 Over and above the criminal prosecution of the head or any member of an indigent household, and notwithstanding anything to the contrary contained herein, the Municipality shall be entitled to reclaim the financial assistance which has been appropriated in terms of the provisions of section 23—
 - (1) in the instance mentioned in section 25.1(1) and (2) — from the date on which the financial assistance was granted; and
 - (2) in the instance mentioned in section 25.1(3) – from the date on which the circumstances referred to in section 25.1.(3) changed or, if such date can not be determined, from the date on which it was established that the household no longer complied with the qualifying prerequisites.
- 25.4 In the event of the termination of the registration of an indigent household in terms of the provisions of section 25.1.(1), such household will not again in future be considered for financial assistance.

Criminal prosecution

26. Offences and penalties

Any person who—

- (1) neglects or refuses to allow access to premises to an authorised agent of the Municipality or to a service provider in terms of section 13;
- (2) impedes or obstructs an authorised agent of the Municipality or of a service provider in the exercising of his or her rights in accordance with these by-laws;
- (3) in any manner or for any reason whatsoever tampers with, damages or breaks, meddles with or removes any service connection, meter, stopcock, appliance or equipment for the safeguarding of services, or seals or main supply lines which have been installed to measure, provide or restrict the supply of water and/or electricity;
- (4) reconnects, attempts to reconnect, or allows or permits the reconnection, of any water supply or electrical installation which has been disconnected, for whatsoever reason, by the Municipality, to the Municipality's main supply lines or service connection;
- (5) uses water or electricity which has been obtained unlawfully;
- (6) refuses or neglects to supply such information to a duly authorised official or representative of the Municipality as may reasonably be required for purposes of the exercising of the rights and duties in terms of these by-laws, or supplies false information to such official or representative in the knowledge that the information is false and misleading;
- (7) neglects to comply with a provision of this by-law or acts in breach thereof;

- (8) neglects to comply with the provisions of a notice served upon him or her in terms of the provisions of these bylaws,

is guilty of an offence and upon conviction liable to a fine not exceeding R5 000 or imprisonment not exceeding 12 months or to both such fine and imprisonment.