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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
	PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS		
478	Municipal Structures Act (117/1998): Senqu Municipality: Unlawful Land Occupation By-law.....	4857	3

PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 478 OF 2022



Unlawful Land Occupation By-law

SENQU LOCAL MUNICIPALITY UNLAWFUL LAND OCCUPATION BY-LAW

Table of Contents

1. Definitions
2. Application, principles and objectives of the bylaw
3. Management of authorized informal settlements
4. Rendering of services to authorized informal settlements
5. Management of unauthorized informal settlements and illegal occupants
6. Unlawful occupation of land
7. Removal and disposal of structures and their contents
8. Roles of ward councillors, ward committee members and traditional leaders
9. Restriction of liability
10. Prohibited conduct and penalties
11. Appeal
12. Short title and commencement

1. Definitions

“**allocate**” means to assign a specific number to a site, stand or structure in an informal settlement for administrative purposes without granting any rights or security of tenure;

“**authorised informal settlement**” means any informal settlement which is recognised by the municipality as an authorised informal settlement and which will be formalised and upgraded to a formal township in terms of the municipality’s housing sector plan;

“**authorised official**” means the authorised official appointed or assigned in terms of section 3;

“**consent**” means the express, tacit or implied consent of the owner or person in charge to the occupant of a structure, irrespective of whether such consent was given in writing or otherwise;

“**court**” means any division of the high court or the magistrate’s court in whose area of jurisdiction the land is situated;

“**eviction**” means the permanent removal, in accordance with the provisions of a court order, of a person and his or her personal property from occupation of a structure or the land on which the structure is constructed, and includes the demolition and removal from the land of any building materials used to construct the structure, and “evict” has a corresponding meaning;

“**head of the household**” means –

- a) the *de facto* head of a household;
- b) a single parent, where the household has only one parent with dependants living permanently with him or her in the household; and
- c) any person in the household who has legal capacity to act and is recognized by the majority of the other persons in the household as the person responsible for the maintenance of the welfare and discipline within the household;

“**informal settlement**” means one or more structure constructed on land, with or without the consent of the owner of the land or the person in charge of the land;

“**land**” means any land or building within the area of jurisdiction of the municipality, irrespective of whether such land belongs to an organ of state, a private individual or a legal entity;

“**municipality**” means the Senqu Local Municipality, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998;

“**official**” means any person who is employed or is contracted by the municipality;

“**owner**” means the registered owner of land, irrespective of whether such owner is an organ of state, a private individual or a legal entity;

“**person in charge**”, in relation to land, means a person who has the legal authority to give permission to another person to enter or reside on that land;

“**PIE Act**” means the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998);

“**SAPS**” means the South African Police Service;

“**structure**” means any shack, shelter, building, hut, tent, dwelling, fence, wall or similar structure;

“**unauthorised informal settlement**” means any informal settlement which is not recognised by the Municipality as an authorised informal settlement and which will not be formalised and upgraded to a formal township in terms of the municipality’s housing sector plan, but will be demolished and removed in terms of this by-law; and

“**unlawful occupation**” means the illegal occupation of or trespassing on land or any settlement or occupation of land by any number of people without the consent of the owner of the land or the person in charge of the land, or without any other right in law to settle on or occupy such land.

2. Application of the bylaw

- 1) This by-law applies to all land and informal settlements within the area of jurisdiction of the municipality.
- 2) In principle it is recognised that no-one has the right to occupy land or to allow, encourage, motivate, organise and instigate the occupation of land without the express or written consent of the owner of such land.

3. Management of authorised informal settlements

- 1) As soon as a determination of the status of an authorised informal settlement has been made, the municipality must –
 - a) through an authorised official visit the informal settlement and notify the occupants of the status of the authorised informal settlement to determine the occupants of each structure;
 - b) compile a comprehensive register of all the occupants who are entitled to reside in the authorised informal settlement and capture the details of such occupants; and
 - c) allocate to each site or stand in an authorised informal settlement contemplated in subsection 1) a unique number as the temporary address of the site or stand and must ensure that the number is legibly painted or inscribed in a prominent place on the site or stand.
- 2) The occupants of an authorised informal settlement are required to provide the name and identity number of the head of the household who is entitled to occupy the structure and the names, identity numbers and relationships to the head of the household of each and every other person occupying the structure as a member of the household.
- 3) In respect of an authorised informal settlement contemplated in subsection 1), the authorized official must ensure that –
 - a) the municipality’s budget & treasury directorate institutes, operates and maintains an appropriate account for services rendered by the municipality to each registered structure in the authorized informal settlement and for any

charges levied for the right of occupation of a particular site or stand in the authorized informal settlement; and

- b) such an account is supplied to the head of the household of each registered structure in the authorised informal settlement.

4. Rendering of services to informal settlements

- 1) Where an existing informal settlement has been provided with rudimentary services by the municipality or where the municipality allocated a number to a structure or a stand, such supply of services or such allocation of a number does not amount to the granting of any right to any person to permanently reside on such land.
- 2) The numbering of a stand or a structure does not itself in any manner mean that the yard fenced in or on which a structure or building has been erected and so numbered is a surveyed stand.
- 3) The occupant of a structure contemplated in subsections (1) and (2) has no right to the land and cannot claim ownership of the land on whatever basis including the period of occupation of such land and this includes cases where money has been exchanged with whomever under the pretext that land acquisition is being effected by such transaction.

5. Management of unauthorised informal settlements

- 1) As soon as a determination of the status of an unauthorised informal settlement has been made, the authorised official must, personally or through a subordinate official designated by him or her for that purpose, visit the informal settlement and notify the occupants of the status of the informal settlement by means of a written notice hand-delivered to each structure in the informal settlement.
- 2) The written notice contemplated in subsection 1) must –
 - a) notify the occupants of a structure in the unauthorised informal settlement that their occupation of the structure and the site or stand on which it is situated is illegal; and
 - b) request the occupants of the structure to vacate the structure and remove any building materials and other personal property from the unauthorised informal settlement within a period of 24 hours after receipt of the written notice.
- 3) If the occupants notified in terms of subsection 1) cooperate and vacate their structure and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the authorised official must take such steps as he or she may deem appropriate to prevent a recurrence of any incident of unlawful occupation on that site, stand or unauthorised informal settlement and must regularly monitor the situation to ensure the non-recurrence of such unlawful occupation.
- 4) If the occupants notified in terms of subsection 1) fail to cooperate and vacate their structure and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the authorised official may immediately institute the necessary legal procedures to obtain an eviction order contemplated in subsection 5).
- 5) After the expiry of the period stipulated in the written notice contemplated in subsection 1), the authorised official may lodge an application in a competent court to obtain an eviction order contemplated in section 4, 5 or 6 of the PIE Act,

against any person or persons, jointly or severally, occupying a structure or a site or stand in the unauthorised informal settlement.

- 6) The authorised official may, after obtaining the eviction order referred to in subsection 5), deploy the sheriff to execute the eviction order and to terminate the unauthorised informal settlement.

6. Unlawful occupation of land

- 1) The authorised official must, immediately after he or she becomes aware of the unlawful occupation of land or the existence of an unauthorised informal settlement –
 - a) Inform the occupants of their unlawful occupation of the land;
 - b) Serve notices on the occupants;
 - c) Lodge a formal complaint of trespassing with the SAPS;
 - d) Demolish structures that are not inhabited by any occupants;
 - e) Remove and dispose of the structures and their contents in terms of section 7.

7. Removal and disposal of structures and their contents

- 1) In the demolishing of structures, the material used for such construction and the contents of the structure must be removed and stored in a safe place by the authorised official.
- 2) The authorised official must compile and maintain a register in which is recorded –
 - a) particulars and photographs of the items in subsection 1) removed and stored in terms of this by-law, save where it is manifest that the items are waste material;
 - b) the date of the removal and storage of the items in subsection 1), the name of the owner thereof (if known) and the site or stand number or coordinates thereof;
 - c) the signature of the person who is claiming ownership the items in subsection 1) and to whom possession has been restored; or
 - d) full details of the amount realised on the sale of the items in subsection 1) in terms of subsection 8) and the date of the sale.
- 3) Officials deployed to perform the exercise of removing unlawful occupants and demolishing illegal structures must be clearly identifiable as officials of the municipality, and a log must be kept of the name of every official who is present at every such exercise.
- 4) When intent on removing the items in subsection 1) from a public place, officials must make reasonable enquiries in the immediate vicinity as to the presence of possible claimants of the items sought to be removed, and if they can be located, and their identity confirmed, and they can demonstrate, convincingly, that any item is their property, they must:
 - a) be placed in possession of all items that they are able to remove; or
 - b) be invited to call at a designated place during office hours to collect the balance of their claimed possessions, which shall, in the register, be so recorded, and the items tagged.
- 5) All such items in subsection 1) that have been removed must be stored for not more than 14 days.

- 6) A notice must be displayed at the place from which the items in subsection 1) were taken and it must contain information about where the items are being kept, for how long, and the procedure to retrieve any items, the name of the official responsible for the safekeeping of the items, and that person's telephone number and e-mail address.
- 7) If the items in subsection 1) are not claimed by their owner within a period of 14 days after the date of the removal and storage, the municipality may, after obtaining a court order authorising such action, dispose of the items in a manner prescribed by the court.
- 8) Employees and councillors of the municipality, or a family member, or a close associate of any municipal employee or councillor, may not purchase any goods offered for sale in terms of this by-law, either personally or through any other person, directly or indirectly.

8. Role of ward councillors, ward committee members and traditional leaders

- 1) Ward councillors, ward committee members and traditional leaders must immediately report all cases of unlawful occupation of any land within their ward or area of which they are aware or of which they should reasonably be aware, to the authorised official.
- 2) Ward councillors, ward committee members and traditional leaders must actively prevent the unlawful occupation of land in their respective wards or areas.
- 3) Ward councillors, ward committee members and traditional leaders must assist the authorised official in the execution of his or her duties in terms of this by-law.

9. Restriction of Liability

Neither the municipality nor its authorised official or any of its employees shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law

10. Prohibited conduct and penalties

- 1) No person may –
 - a) individually or as part of a group –
 - i. clear or fence any land without the prior written consent of the owner;
 - ii. invade or occupy any land to which he or she does not have lawful title;
 - b) erect a structure on any land to which he or she does not have lawful title;
 - c) continue with the construction of an incomplete structure after a written warning to stop construction was issued by the municipality;
 - d) demarcate or continue to demarcate any piece of land with any form of material, including, but not restricted to string, rope, pegs, stones, pebbles, wire, wood or any other material after a written warning to stop any form of demarcation was issued by the municipality;
 - e) move or remove any demarcation or surveying pegs affixed in terms of any law;
 - f) without the written consent of the municipality allow, encourage, motivate, organise or instigate the occupation of any land;
 - g) move furniture into a structure in order to defeat the provisions of any law;

- h) without the written consent of the municipality allow a structure to be unoccupied for more than 2 weeks;
 - i) erect any additional structure or an extension on a site in any existing informal settlement or reception area;
 - j) lease any additional structure on a site in any existing informal settlement or reception area;
 - k) access land in contravention of a sign prohibiting such access;
 - l) occupy a structure on any land to which he or she does not have lawful title;
 - m) sell any land or structure on any land to which he or she does not have lawful title;
 - n) interfere with or obstruct an authorised officer in the execution of his or her duties in terms of this by-law; or
 - o) refuse to disclose information sought by the authorised officer in respect of the occupants of an informal settlement.
- 2) A person who contravenes a provision of this by-law, or fails to comply with the provisions of this by-law, is guilty of an offence and on conviction liable to the payment of a fine not exceeding [insert amount].

11. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

12. Short title and Commencement

This by-law shall be known as the Unlawful Land Occupation By-law and comes into operation on the date of publication thereof in the Provincial Gazette.

