

SWELLENDAM MUNICIPALITY

BY-LAW RELATING TO IRRIGATION WATER

To regulate the provision of irrigation water in the urban areas of the area of jurisdiction of the Municipality and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

AND WHEREAS Section 156 (1) (d) provides for local government to promote a safe and healthy environment;

AND WHEREAS the Swellendam Municipality seeks to regulate the provision of irrigation water for non-domestic, gardening and other related purposes, within urban areas;

BE IT ENACTED by the Council of the Swellendam Municipality, as follows:—

TABLE OF CONTENTS

1. Interpretation
2. Allocation of irrigation water
3. Fees and tariffs
4. Transfer of irrigation water allocations
5. Distribution of irrigation water and the control of irrigation water by sluice systems
6. Rendering of notices and accounts
7. Unauthorised use of irrigation water or interference with the irrigation water distribution systems
8. Maintenance of irrigation water distribution systems
9. Illegal extraction of water
10. Appeals
11. Serving of notices and other documents
12. Offences and penalties
13. Irrigation monitoring committees
14. Conflict between legislation
15. Repeal of by-laws
16. Short title
17. Operative date

1. INTERPRETATION

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

“allocated irrigation water”, means available water from a water resource, which are allocated by the Municipality for use as irrigation water;

“authorized official”, means any peace officer authorized in terms of section 334 of the Criminal Procedures Act, 1977 (Act No 51 of 1977), as amended, or any employee of the Municipality, who is authorized by the Municipality to enforce the provisions of this by-law;

“available water”, means water from a water resource, available for use or for allocation to an end user;

“bulk water charges”, means the cost of water before the purification thereof to be used as potable water, and include, but is not limited to, the fees of catchment management agencies,

the costs of bulk water, contributions to national water works, water user charges and licensing fees;

“civil engineering and construction specifications and standards”, means the civil engineering and construction specifications and standards determined for all civil engineering construction work, to be carried out in the area of jurisdiction of the Municipality;

“culverts”, means a channel or a conduit carrying water across or under a road;

“entitlement”, means a vested and registered right to the use of water from a specific water resource;

“irrigation water distribution system”, means a network of dams, retention dams, structures for the diverting of irrigation water, water courses, channels, culverts, side furrows and furrows, located on public places, public roads, the municipal commonage or private land, used exclusively for the distribution of irrigation water to specific premises;

“irrigation water schedule”, means the time schedule, expressed as days and hours, in terms of which irrigation water are allocated to individual premises, serviced by an irrigation water distribution system;

“Municipality” means the Swellendam Municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this By-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“municipal servitude”, means a registered right over a premises, with the purpose of utilizing the reserved portion of the erf for the installation of municipal services;

“occupant”, means a person who occupies and control land or a premises, and includes a resident;

“owner”, means any person, who as an registered owner, legal lessee or occupant of a registered premises or a portion of land, or use and / or utilize it for whatever purpose, or who as agent of the owner and exercise control over such premises;

“premises”, means any portion of land situated within the area of jurisdiction of the Municipality, of which the outer boundaries are demarcated on a general plan or diagram or sectional title plan, registered in accordance with applicable legislation;

“permissible water use”, has the meaning given to it in Schedule 1 of the National Water Act, 1998 (Act No 36 of 1998), as amended;

“potable water”, means water purified and cleansed in terms of SANS specifications and requirements, to be used as drinking water;

“register” means the register to be kept at the municipality containing the information of users;

“service provider”, means any institution or entity or group of people, with whom the Municipality has a service level agreement to deliver a specific service;

“sluice”, means a sliding gate or other contrivance for controlling the volume or flow of water;

“the service”, means an irrigation water supply service;

“user” means the owner who has applied for irrigation water and whose name has been entered into the register to qualify for irrigation water for a specific financial year and include **“users”**;

“water” means water for irrigation purposes which is distributed through the irrigation water distribution system to premises;

“water resource”, means a natural water resource, such as a fountain, aquifer, lake or river from where water can be withdrawn; and

“water users association”, means an association established in terms of Chapter 8 of the of the National Water Act, 1998 (Act No 36 of 1998), as amended.

2. ALLOCATION OF IRRIGATION WATER

(1) The Municipality as distributor of potable and other water, may allocate available water as irrigation water from any specific water resource within the area of jurisdiction of the Municipality, when such water is not allocated and / or used –

(a) for human consumption;

- (b) for industrial and / or commercial consumption;
 - (c) for permissible water use by owners directly bordering on the water resource, or where the water resource is situated on the land owned or occupied;
 - (d) by property owners holding an entitlement to use water from a specific water resource; and
 - (e) in terms of a water use license, authorizing a specific water use by the licensee from a water resource.
- (2) Irrigation water shall only be supplied to areas, where an irrigation water distribution system is available and operational for irrigation water distribution, and only owners with access to such irrigation water distribution system, may apply for an allocation of irrigation water.
- (3) All owners with access to an irrigation water distribution system, or to whom irrigation water can be supplied for irrigation purposes, shall apply annually, on the prescribed application form, to the Municipality during the months of April and May of every year, for an irrigation water allocation for a period of a year.
- (4) A register is kept at the Municipality containing the particulars of the users who has paid their fees for a specific year and confirming their right to irrigation water for the relevant financial year.
- (5) The allocation of irrigation water to users shall be conditional, and shall be subject to the following conditions –
- (a) the availability of surplus water for use as irrigation water, shall be based on the order of preferred users from a water resource, as contemplated in subsection 2(1) of this by-law, and when no surplus water for irrigation purposes is available, the Municipality may terminate an irrigation water distribution service;
 - (b) premises with an entitlement for irrigation water, shall receive first preference for all allocations;
 - (c) the Municipality may from time to time determine the conditions for the supply of irrigation water; and
 - (d) the Municipality may stop the supply of irrigation water for periods, to effect urgent repairs to an irrigation water distribution system.
- (6) Every premises allocated an irrigation water supply, shall be supplied with irrigation water on a specified day and hour according to the size of a premises, the allocation for the premises concerned, and the location thereof in the irrigation water distribution system.

3. FEES AND PAYMENT

- (1) The Municipality shall be entitled to levy fees and tariffs in accordance with the Tariff By-law of the Municipality, for the supply and use of irrigation water by consumers thereof.
- (2) The fees and tariffs for irrigation water may be structured as such, to recover the costs for bulk water charges, the costs for the maintenance of the irrigation water distribution system located on or in public places, public roads, the municipal commonage or private land, used primarily for the distribution of irrigation water to specific premises, and the costs for the supply of irrigation water to a premises.
- (3) The user is responsible for the payment of the fees levied for irrigation water.
- (4) The user must pay the prescribed amount for a specific year in respect of the allocation of irrigation water for that financial year at the Municipal office on the date of application.
- (5) No irrigation water will be supplied to any user who has not paid the fees and whose name is not entered in the register.

4. TRANSFER OF IRRIGATION WATER ALLOCATIONS

No person may transfer his or her allocation of irrigation water, received in terms of an entitlement and / or a permissible use and / or as an ordinary allocation as a result of an application for irrigation water, to any other person or take or sell irrigation water or allow irrigation water to be taken or be sold.

5. DISTRIBUTION OF IRRIGATION WATER AND THE CONTROL OF IRRIGATION WATER BY SLUICE SYSTEMS

(1) Irrigation water shall be distributed to premises by the Municipality or a service provider through a system of irrigation dams, irrigation water retention dams, structures for the diverting of irrigation water, water courses, irrigation channels, culverts, sluices, irrigation water side furrows and irrigation water furrows.

(2) An irrigation water distribution system shall consist out of a network of dams, retention dams, structures for the diverting of irrigation water, water courses, channels, culverts, sluices, side furrows and furrows, located on or in public places, public roads, the municipal commonage or private land, used for the distribution of irrigation water to specific premises.

(3) Where any portion of an irrigation water distribution system is located on private land, the Municipality may register a municipal servitude over such property for the irrigation water distribution system.

(4) The owner to whom water for irrigation purposes, has been allocated, shall direct or avert the irrigation water from an irrigation channel or furrow nearest to his or her premises, by means of a sluice system approved by the Municipality, and when the owner fails to construct and maintain such sluice system, the Municipality may construct and maintain such sluice system at the expense of the person in default, or alternatively refuse the supply of irrigation water to a premises.

(5) The Municipality shall determine the number of sluices allowable for a premises to divert irrigation water, which an owner then may construct.

(6) The Municipality may enter into an agreement with any water users association or other institution or entity or a group of land owners, to manage and maintain any irrigation water distribution system.

6. RENDERING OF NOTICES AND ACCOUNTS

(1) The Municipality shall not render any notices or accounts for the payment for the supply of irrigation water.

7. UNAUTHORIZED USE OF IRRIGATION WATER OR INTERFERENCE WITH THE IRRIGATION WATER DISTRIBUTION SYSTEMS

(1) Any unauthorised person who opens or tamper or interfere with any municipal or private water sluice, or in any way obstructs the flow of irrigation water or illegally divert irrigation water, or hinders any authorized official or other person, charged with the care and maintenance of water sluices or the irrigation water distribution system, shall be guilty of an offence.

(2) A person who has not obtained a right of use for irrigation water or has not been allocated irrigation water, may not divert water from an irrigation water distribution system, or in any way obstruct or diminish the flow of water in any water course, irrigation channel or irrigation furrow.

(3) An authorized official shall have the right of access to a premise, to inspect sluices and the irrigation water distribution system, to establish the legality of water use and / or to investigate any possible transgressions.

8. MAINTENANCE OF IRRIGATION WATER DISTRIBUTION SYSTEMS

(1) The Municipality shall within the constraints of budgetary provisions –

(a) keep the dams, retention dams, water courses, structures for the diverting of irrigation water, channels, side furrows, culverts and furrows of irrigation water distribution systems on public places and public roads in the area of jurisdiction of the Municipality, and managed as such by the Municipality, in a proper state of repair; and

(b) endeavour to supply irrigation water to premises, in terms of a prearranged irrigation water schedule and planned quantities, by means of the available irrigation water distribution systems, subject to the availability of the water.

(2) The owner supplied with irrigation water shall be responsible and liable for –

(a) keeping all sluices, furrows and culverts used for irrigation water on his or her premises in good repair, and shall have no claim against the Municipality for not receiving irrigation water, because of his or her neglect of sluices, furrows or culverts;

- (b) any damages to sluices, furrows and culverts used for irrigation water on his or her premises;
 - (c) any wastage of irrigation water;
 - (d) properly closing off sluices, but shall not be allowed to close sluices off with soil or similar materials; and
 - (e) keeping irrigation furrows that pass through his or her premises, including the retaining wall or retaining bank of such an irrigation furrow, free from obstructions or shrubs, weeds or vegetation.
- (3) The owner shall be allowed with the written consent of the Municipality –
- (a) to provide irrigation furrows that form part of an irrigation water distribution water system, located on such premises, with a cement lining, on condition that the construction work shall be carried out in accordance with the Municipality's civil engineering and construction specifications and standards;
 - (b) to construct on such premises, a building or stoep over an irrigation furrow, enclose an irrigation furrow, or to construct a dam in an irrigation furrow; and
 - (c) to construct vehicular or pedestrian bridges over an irrigation furrow on such premises, in accordance with specification provided by the Municipality, when access over an irrigation furrow is required.
- (4) The owner who fails to comply with the provisions of subsections 8(2) of this by-law, shall be guilty of an offence and shall be liable for any costs incurred by the Municipality to rectify any non-compliance.

9. ILLEGAL EXTRACTION OF WATER

When the owner extracts any irrigation water from an irrigation furrow, irrigation channel or water course not allocated to such premises, or withdraw irrigation water at a time of withdrawal not allocated to such premises, by means of a pump or other apparatus for diverting water or a pipe installed in an irrigation furrow, channel or water course, the owner may be ordered to remove such pump, apparatus or pipe forthwith, and shall be deemed to be in contravention of the provisions of this by-law

10. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended.

11. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by-law, is deemed to be duly issued, when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively served –
 - (a) when it has been emailed to the email address as registered with the municipality; or
 - (b) delivered to that person personally;
 - (c) when it has been left at that person's place of residence or business in the Republic of South Africa, with a person apparently older than sixteen years;
 - (d) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic of South Africa, and proof of the posting thereof is provided;
 - (e) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 11(2)(a), 11(2)(b) or 11(2)(c) of this by-law;
 - (f) if that person's address and agent or representative in the country of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or

(g) in the event of a body corporate, when it has been delivered at the registered office or the business premises of the body corporate.

(3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purpose of the serving of the notice, instruction, letter of demand, or other document, to describe the person in the notice, instruction, letter of demand or other document, as the owner and it is not a requirement to name that person.

(4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

12. OFFENCES AND PENALTIES

(1) Any person who contravenes or fails to comply with the provisions of this bylaw, or fails to comply with a notice served in terms of this by-law, or fails to comply to an instruction of an authorized official or posted on a notice board, is guilty of an offence and is liable on conviction, for -

(a) a fine or imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment;

(b) in the case of a successive or continuing offence, to an additional fine or additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment, for every day such offence continues; and

(c) any further amount as an order of court for costs, equal to any costs and / or expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

(2) The Municipality shall have the right to discontinue the irrigation water supply to any premises, when any contravention of provisions of this by-law has occurred, for a period not exceeding one (1) calendar year.

13. CONFLICT WITH OTHER LEGISLATION

(1) In the event of any conflict between any provision of this By-law and National and Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail subject to section 151(3) and 156(4) of the Constitution.

(2) In the event of an inconsistency between the different texts The English text shall prevail.

14. REPEAL OF BY-LAWS

The provisions of any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the Municipality, are hereby repealed as far as they relate to matters provided for in this By-law.

15. SHORT TITLE AND COMMENCEMENT

This By-law is called the Swellendam Municipality Irrigation Water By-law, and commences on the date of publication thereof in the Provincial Gazette.