

eThekweni, South Africa

Imposition of Surcharges on Electricity Supplied to Occupiers of Municipal Property

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Contents

1. Definitions 1

2. Method of raising Surcharge 2

3. Basis of Surcharge 3

4. Effect on Municipal Tenants 3

eThekwini South Africa

Imposition of Surcharges on Electricity Supplied to Occupiers of Municipal Property By-law, 2006

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General Annotation:

Section 229(1)(a) of the Constitution empowers the Municipality to impose surcharges on fees for services provided by or on behalf of the Municipality:

Section 229(2) empowers the National Government to regulate these powers by legislation: The National Government, at this stage, does not appear to intend regulating Surcharges.

1. Definitions

ds and phrases shall have the following meanings ascribed to them:

"**Authorised Officer**": A municipal employee to whom the City Manager has allocated a responsibility;

"**City Hall Notice Board**": The Notice Board in the foyer of the West Street entrance to the City Hall;

"**City Manager**": The Municipal Manager for the Municipality appointed in terms of section 82 of the Municipal Structures Act and includes, where necessary, any acting City Manager;

"**Constitution**": The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"**Councillor**": An elected member of the Municipal Council;

"**Electricity Act**": The Electricity Act, 1987 (Act No. 41 of 1987);

"**Electricity Dispenser**": An "electricity dispenser" as defined in section 1 of the Electricity Supply Bylaws;

"**Electricity Supply Bylaws**": The Electricity Supply Bylaws of the former Durban Transitional Metropolitan Council published in Municipal Notice 45 of 1998 and preserved in the area of jurisdiction of the eThekwini Municipality by Clause 9(1) of Provincial Notice 343 of 2000 (KZN);

"**eTM Website**": www.durban.gov.za

"**Executive Committee**": A Committee of the kind referred to in section 43 of the Municipal Structures Act;

"**Information Act**": The Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

"**Information Office**": The address of the Information Officer as given by the City Manager by Notice on the City Hall Notice Board;

"**Information Officer**": The Person appointed by the Municipality as the "Deputy Information Officer" in terms of section 17 of the Information Act;

"**Municipal Council**": The "municipal council" of the Municipality as contemplated in section 157 of the Constitution;

"**Municipal Gazette**": Ezasegagasini Metro published as a supplement in various newspapers circulating in the area of jurisdiction of the Municipality;

"Municipality": The Juristic Person established in terms of Provincial Notice 343 of 2000 (KZN) and includes any committee or Person delegated by the Municipal Council of such municipality or deemed to have been so delegated to exercise any power or carry out any duty of the municipality and includes, in respect of the exercise of any private power of the municipality, any duly appointed agent of the municipality;

"Municipal Property": Any immovable property owned by the Municipality;

"Municipal Structures Act": The Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"Municipal Systems Act": The Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"Notice": Notice in writing;

"Person" includes, where appropriate, a juristic person;

"Surcharge": A surcharge of the kind referred to in section 229 of the Constitution;

"Unfair Discrimination": discrimination of the kind prescribed by section 9 of the Constitution.

2. Method of raising Surcharge

- 2.1 Subject to the provisions of section 229(2)(a) of the Constitution and any law made in terms of section 229(2)(b) of the Constitution, the Municipal Council may by resolution supported by the majority of the Councillors impose, amend, suspend or withdraw any Surcharge on tariff fees for the provision of electricity charged by way of an Electricity Dispenser on any Municipal Property and supplied by or on behalf of the Municipality to occupiers of such property in lieu of any charge for any other services named in such resolution after the Municipality has taken into account any comment or objection received in terms of section 2.4 in respect of the Surcharge concerned.
- 2.2 In determining any Surcharge under section 2.1 the Municipality may differentiate between different Municipal Properties and the quality of services given to the property concerned on such grounds as is reasonable so long as the differentiation does not amount to Unfair Discrimination.
- 2.3 Where the Executive Committee is of opinion that the Municipal Council should adopt any resolution declaring, amending, suspending or withdrawing any Surcharge, the Municipality shall cause its intention to be published by way of a Notice in the *Municipal Gazette* not less than thirty Days beforehand and by way of a Notice exhibited on the City Hall Notice Board and at the properties concerned which Notices shall inform the members of the public of their right to comment and object.
- 2.4 Where any Person objects to any proposed resolution declaring, amending, suspending or withdrawing a Surcharge, she shall note her objection in writing to the Authorised Officer at the address given in such Notices within 14 Days of the date of the publication of the Notice which is last published.
- 2.5 The Authorised Officer concerned shall refer any objection referred to in section 2.4 to the Executive Committee for consideration and investigation and such Committee shall report thereon to the Municipal Council.
- 2.6 In any resolution imposing, amending, suspending or withdrawing any Surcharge the Municipal Council shall fix a reasonable date from which such Surcharge shall be effective, amended or withdrawn or shall fix a reasonable period during which such Surcharge shall be suspended.
- 2.7 The Municipality shall publish any resolution made under section 2.1 and/or 2.6 on the eTM Website and at the Information Office and such publication shall be deemed to be sufficient notice of any such resolution to all Persons concerned.
- 2.8 Any Person may inspect any publication issued under this section during Office Hours at the Information Office.

3. Basis of Surcharge

Any Surcharge shall be leviable on the basis of a percentage of the tariff for electricity supplied by way of an Electricity Dispenser made under and in accordance with section 75A of the Systems Act read with the Electricity Supply Bylaws and the Electricity Act.

4. Effect on Municipal Tenants

- 4.1 Any occupier of any part of any Municipal Property to which a system of surcharging of electricity is in place who occupies such property in terms of any lease or tenancy agreement with the Municipality or its predecessors in title concerned may continue to pay rental, water and other service charges provided that such Person is not in arrears in respect of her rental on
- 4.2 Where any occupier of any part of any Municipal Property to which a system of surcharging of electricity is in place and who occupies such property in terms of any lease or tenancy agreement with the Municipality or its predecessors in title concerned is in arrears in respect of her rental, the Municipality shall cancel such lease or tenancy agreement by Notice given in terms of the provisions of that contract.
- 4.3 Any tenant whose contract has been cancelled under section 4.2 shall be a precarist of the Municipality but may acquire electricity and any other services referred to in the applicable resolution through the Electricity Dispenser concerned in accordance with the provisions of the Electricity Supply Bylaws.
- 4.4 Where any occupier of any part of any Municipal Property to which a system of surcharging of electricity is in place and who occupies such property in terms of any lease or tenancy agreement with the Municipality or its predecessors in title concerned is up to date in respect of her rental as on she may elect by Notice given to to become a precarist of the Municipality for the premises which she occupies with a right to receive electricity and other applicable services by way of the system of Electricity Dispensers.