

# BY-LAWS REGULATING THE IMPOSITION OF SURCHARGES ON ELECTRICITY SUPPLIED TO OCCUPIERS OF MUNICIPAL PROPERTY

[MUNICIPAL NOTICE NO. 577 OF 2006.]  
[DATE OF COMMENCEMENT: 6 APRIL, 2006.]

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## ETHEKWINI MUNICIPALITY

### BY-LAWS REGULATING THE IMPOSITION OF SURCHARGES ON ELECTRICITY SUPPLIED TO OCCUPIERS OF MUNICIPAL PROPERTY

#### 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<sup>i</sup>. Section 229 (2) empowers the National Government to regulate these powers by legislation<sup>ii</sup>. The National Government, at this stage, does not appear to intend regulating Surcharges.

#### ARRANGEMENT OF SECTIONS

1.0	Definitions
2.0	Method of raising Surcharge
3.0	Basis of Surcharge
4.0	Effect on Municipal Tenants

#### 1.0 Definitions—

Words 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 By-laws**;

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

**eTM Website:** [www.durban.gov.za](http://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 proscribed by section 9 of the **Constitution**.

## 2.0 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**.

### 3.0 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 By-laws** and the **Electricity Act**.

### 4.0 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 prearist 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 By-laws**.
- 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 .....<sup>1</sup> to become a prearist 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**.

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