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ETHEKWINI MUNICIPALITY: DEVELOPMENT CHARGES POLICY 2022/2023

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1. DEFINITIONS

“applicant” means any person who makes a land development application as contemplated in Section 45 of SPLUMA;

‘bulk engineering service’ means capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure delivery of municipal engineering services for the benefit of multiple users or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework (as defined in the Spatial Planning and Land Use Management Act); these services include:

- Water
- Sanitation
- Electricity
- Municipal roads and Stormwater
- Transport services which include taxi ranks, bus ranks, pedestrian bridges, public transport interchanges, scholar drop-off facilities and public space improvements, including trading stalls, that are associated with public transport interchanges, ranks, stations and facilities.

“Capacity” means the maximum demand for an engineering service, that the associated capital infrastructure assets can satisfy;

“CFO” means Chief Financial Officer of the Municipality as defined in the MFMA or his/her delegate in terms of Section 59 of the Local Government Municipal Systems Act, No.32 of 2000;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“Council” or “Municipal Council” means the eThekweni Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

“developer” means an applicant, as defined in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), whose land development application is approved, in whole or in part, by the person or body authorised to do so in terms of applicable legislation;

“development charge” means is a once off charge levied by a municipality on the landowner as a condition for approving land development application, to cover the costs incurred by the municipality when installing new infrastructure or upgrading an existing infrastructure;

“effective date” means the date on which this Policy comes into effect which shall be 1 July 2022;

“engineering services agreement” means an agreement concluded between the Municipality and a developer, detailing specific terms and conditions on external engineering services granted by the Municipality to an approved land development, and its associated development charge;

“external engineering service” means an engineering service situated outside the boundaries of a land area required to serve the use and development of the land area and is either a link engineering service or a bulk engineering service or an engineering;

“internal engineering services” means an engineering service within the boundaries of a land area which is necessary for the use and development of the land area and which is to be owned and operated by the Municipality or service provider;

“land development” means the erection of building or structures on land or change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land uses or uses permitted in terms of the land use scheme;

“land development application” means an application for land development lodged with the Municipality for consideration and decision making and “application” shall have a corresponding meaning;

“link engineering service” means an external engineering service required to connect an internal engineering service to a bulk engineering service and includes the land required for the link engineering service;

“Municipality” means eThekweni Municipality, a category A Municipality as envisaged in terms of section 155(1) of the Constitution;

“Municipal Manager” means a person appointed in terms of section 54A of the Systems Act as the head of administration of the Municipal Council;

“Municipal Fiscal Powers and Functions Act” means Municipal Fiscal Powers and Functions Act 12 of 2007.

“SPLUMA” means the Spatial Planning and Land Use Planning Act, 16 of 2013;

“Systems Act” means the Local Government: Municipal Systems Act, 2000, Act 32 of 2000).

2. PREAMBLE

The Municipality has an obligation of promoting the development principles of spatial justice; spatial sustainability; spatial resilience; efficiency and good administration in municipal planning. This Policy sets to regulate the implementation of the Development Charge Policy of the eThekweni Municipality and must be read in conjunction with the eThekweni Municipality: Property Rates Bylaw 2015, as amended, Treasury Framework on development charges, Municipal Fiscal Powers and Functions Act, SPLUMA as well Planning and eThekweni Municipality Land Use Management Bylaw 2016.

3. PURPOSE

The purpose of this Policy is to provide a framework on equitability and sustainability for financing capital infrastructure assets. This will ensure that the municipality is equipped to efficiently and effectively provide capital infrastructure assets and support development of land in its jurisdiction. It also promotes transparency, consistency, fairness and predictability of development charges management. The scope of development contribution determines the development charge liability for the following bulk engineering services that are provided by the Municipality:

- Water
- Sanitation
- Electricity
- Refuse collection
- Sewerage
- Municipal roads and Stormwater
- Transport services which include taxi ranks, bus ranks, pedestrian bridges, public transport interchanges, scholar drop-off facilities and public space improvements, including trading stalls, that are associated with public transport interchanges, ranks, stations and facilities.

4. POLICY OBJECTIVES

The desired outcome of this Development Charges policy is to:

- i. recover the portion of the capital cost of economic infrastructure that is attributable to developments.
- ii. enable the provision of economic infrastructure timely and efficiently in order to support land development.
- iii. provide economic infrastructure in the most cost-effective manner taking into consideration scarce resources and effective urban form.

- iv. promote sustainable infrastructure provision and compliment the Municipal Spatial Development Framework in shaping a cost-effective urban environment.
- v. mitigate the risk of inadequate infrastructure, which may result in negative impact on ecosystems and environmental quality.
- vi. Promote economic development and job creation through attracting direct investment in support of the growth strategy.

This policy provides the key details of the Development Charge namely:

- i. A once-off capital amount paid to cover the costs of the additional infrastructure that the Municipality is obliged to provide.
- ii. The trigger for determining whether a Development Charge must be paid once the land development application has been approved.
- iii. The basis on which the amount of a Development Charge is calculated based on the increased impact that a new or changed use will have on the existing infrastructure.
- iv. The conditions under which such a charge becomes payable and the administrative procedures for making such payment. The Development Charge is calculated over and above any other obligations that a developer may incur in terms of applicable legislation.

5. PROBLEM STATEMENT

This Policy tends to promote sustainability in municipal infrastructure investment finance, which allows the municipality to meet its required strategic infrastructure need to promote economic growth that creates job opportunities and reduce poverty. Over the years, the municipality has been imposing development charges guided by council resolutions and departmental. There is a need to formalise these procedures

to ensure consistency in its application. The under investment in municipal infrastructure has a negative impact on the economy and the provision of basic services to communities.

6. PRINCIPLES OF THE POLICY

The Policy is guided by the principles which closely reflect National Treasury's National Policy Framework for Municipal Development Charges. The following guiding principles must be considered when implementing this Policy.

6.1 *Equity and Fairness*

Development charges should be reasonable, balanced and practical so as to be equitable to all stakeholders. The key function of a system of development charges is to ensure that those who benefit from new infrastructure investment, or who cause off-site impacts, pay their fair share of the associated costs.

6.2 *Predictability*

Development charges should be a predictable, legally certain and reliable source of revenue to the Municipality for providing external engineering services and should be clearly and transparently accounted for. In order to promote predictability in municipal finance systems the costs associated with municipal capital infrastructure assets provided expressly to benefit poor households should be established before subsidies are applied in a transparent manner to fund the liability.

6.3 *Spatial and Economic Neutrality*

The primary role of a system of development charges is to ensure the timely, sustainable financing of required capital infrastructure assets.

6.4 Administrative ease and uniformity

The determination, calculation and operation of development charges should be administratively simple and transparent.

7. LEGAL FRAMEWORK

In terms of Section 229(1) of the Constitution, municipalities are empowered to impose property rates and surcharges on fees for services provided by or on behalf of the municipality. These property rates and municipal surcharges referred to in Section 229(1) of the Constitution, are regulated in Municipal Property Rates Act, 2004 and tariffs regulated in Municipal Systems Act, 2000. Municipality is expected to exercise its power to impose levies subject to provisions envisaged in terms of Section 75A of Municipal Systems Act, 2000.

Municipal Finance Management Act, the Municipal Systems Act, legal framework for land development; and A municipality must exercise its power to levy a development charge subject to the above-mentioned legislation read in conjunction with Municipal Fiscal Powers and Functions Act, SPLUMA, Planning and eThekweni Municipality Land Use Management Bylaw 2016 as well as National Treasury framework.

Section 49 of the SPLUMA prescribes that:

- (1) An applicant is responsible for the provision and installation of internal engineering services.*
- (2) A municipality is responsible for the provision of external engineering services.*
- (3) Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.*
- (4) An applicant may, in agreement with the municipality or service provider, install any external engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against Development Charges payable.*

(5) If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.'

8. INTERPRETATION OF THE POLICY

8.1 Where there is a conflict between this Policy and another policy of the Municipality, this Policy prevails over the affected portion of the other policy in respect of any development charges matter.

8.2 Where there is a conflict of interpretation between the English version of this Policy and a translated version, the English version prevails.

9. POLICY ROLE PLAYERS AND STAKEHOLDERS

9.1 various units with the Municipality that have a direct interest in the implementation of Development Charges;

9.2 external land developers in the land development industry (private and public sector); and

9.3 members of the public that are affected by this Policy.

10. ADMINISTRATION OF THE DEVELOPMENT CHARGES

10.1 A development charge may be levied in respect of land development application submitted to the municipality in terms of eThekweni Municipality: Spatial Planning and Land Use Management by-law.

10.2 Such application must be lodged with Development Management and Planning Unit, in a prescribed form.

10.3 Upon the approval of a land development application, the developer will enter into an engineering service agreement with the Municipality, which will specify terms of the agreement and the development charge thereof.

11. INSTALLATION OF EXTERNAL ENGINEERING SERVICES AND PAYMENT OF DEVELOPMENT CHARGES

11.1 The Municipality may enter into an agreement with the developer, where instead of payment of development charges, the developer installs full or partial external engineering services.

11.2 The Municipality will require the developer to comply with all relevant policies and bylaws of the Municipality, as well as its technical standards. During the installation of the external engineering service, the developer must assume efficient and cost-efficient approach.

11.3 In order to adopt cost-efficient approach in the installation of engineering services, the municipality may request the developer to apply competitive bidding process principles in accordance with the eThekweni Municipality Supply Chain Management Policy.

11.4 Where a developer opts to install the infrastructure, such infrastructure becomes a property of the municipality, and the developer shall register and transfer any rights of such infrastructure to the municipality.

11.5 The Municipality must, in the adjustments budget, record all capital infrastructure assets attained, in accordance with the Municipal Finance Management Act's provision applicable to capital infrastructure assets gained.

12. CALCULATION OF DEVELOPMENT CHARGES

12.1 Calculation of development charges will be informed by the following principles:

12.1.1 Developers are responsible for the provision of internal and link external engineering services. The Development Charges relate only to the cost of bulk engineering services.

12.1.2 The Development Charges liability must be proportional to the extent of the demand that the land development is projected to create, for existing or planned bulk engineering services; and must be calculated on the basis of a reasonable assessment of the costs of providing existing or planned bulk engineering services.

12.1.3 The Development Charges for each service is calculated based on total impact on the service, multiplied by the unit cost for that service. This calculation will be undertaken for each engineering service covered by this policy.

12.1.4 The data inputs required to calculate the Development Charge are as the follows:

- i. Proposed land use changes (submitted as part of the application)
- ii. Unit impact
- iii. Unit cost of service for anticipated demand

12.1.5 Unit cost estimates for each infrastructure category will be inflated annually by the average construction escalation values as published by the South African Forum of Civil Engineering Contractors (SAFCEC) or similar inflation index.

12.2 The unit cost of service shall be based on the estimated capital costs of the respective external engineering service required to service the new demand,

taking into account approved engineering standards and any existing capacity or lack thereof within the systems.

- 12.2.1 The unit cost of service of service would be re-calculated periodically, but within a period of no more than every five years, using current replacement costs in order to determine as closely as practical the infrastructure cost.

13. PAYMENT OF DEVELOPMENT CHARGES

- 13.1 Once the development application has been approved by the Municipality and engineering service agreement concluded, a developer must pay the applicable development charge to the municipality partially or in full prior to developing land. Payment will be due as per the conditions set out in the land development approval.

- 13.2 Payments for the Development Charges must be made in accordance with the Credit Control and Debt Collection Bylaw and its Policy.

- 13.3 As a method of payment, the Municipality shall accept payment under the following circumstances–

- a. Cash payment,
- b. EFT;
- c. Third party collectors appointed by the Municipality from time to time;
- d. Direct debit; and
- e. Digital/mobile payment platforms e.g., Master-pass, Zapper's scan to pay, and any other digital Payments that may be accepted to the Municipality.
- f. Mastercard or Visa debit cards issued by legally recognised financial institutions and financial service providers.

- 13.4 If the application lapses in terms of section 43(2) of SPLUMA any Development Charges already paid will not be refunded.

- 13.5 Where the developer opts not to proceed with the approved development, the Municipality will only refund Development Charges received after deducting any costs incurred and subject to any representation made to the Chief Financial Officer and Accounting Officer.
- 13.6 A developer may provide a Financial Guarantee from a registered financial institution in lieu of a development charge payment, in an amount subject to the terms and conditions agreed by the Municipality, in accordance with the provisions of the Credit Control and Debt Collection Policy.
- 13.7 Where prior engineering service agreement is made between the Municipality and the developer and an additional infrastructure is installed by the developer, the Municipality may off-set the costs of the additional infrastructure from the development charges paid by the developer on a fair and reasonable basis.

14. EXEMPTIONS AND SUBSIDIES

14.1 The Municipality may grant exemption or subsidise categories of landowners or land developments where development charges may be reduced or waived on application, subject to the Council approval. The criteria may include land development for the purposes of:

14.1.1 providing low-income and subsidised housing;

14.1.2 the beneficiaries of the land development:

- i. people who are primarily indigent,
- ii. dependent on pensions or social grants for their livelihood;
- iii. persons temporarily without income;
- iv. persons situated within an area affected by a disaster within the meaning of the Disaster Management Act, 2002, or any other serious adverse social or economic conditions; or
- v. serving community, conservation, educational, institutional or public purposes as defined in Schedule 2 of the SPLUMA.

14.1.3 where land development meets the criteria for subsidisation in terms of this Policy, been funded or budgeted to be funded through a fiscal transfer from another sphere of government, the municipality must grant a subsidy to the extent of that grant funding.

14.1.4 providing incentive towards the implementation of catalytic projects that are key in supporting the socio-economic recovery and growth of the city in line with the spatial development framework.

15. ISSUING OF REVENUE CLEARANCE CERTIFICATES AND OTHER APPROVALS

15.1 Where the land developer owes the Municipality and the debt remains unpaid or fail to comply with an engineering services agreement, the Municipality may hold back revenue clearance certificate, approval of land development or Certificate of Occupancy.

15.2 Where the developer fails to pay the agreed development charges, the Municipality may disapprove any connection to its bulk services system until such charges are settled or payment arrangement are concluded with the Municipality.

15.3 The collection of any outstanding debt will be subjected to the processes of debt collection as prescribed in the eThekweni Municipality Credit Control and Debt Collection Policy.

16. POLICY EVALUATION AND REVIEW

16.1 This is the first Policy to be adopted by the Council in compliance with the provisions of legislation. To evaluate and review this Policy, statistical data, practical implementation issues and legislative requirements will be used, and the Policy will be reviewed annually.

17. TRANSITIONAL ARRANGEMENTS

17.1 The effective date this Policy implementation shall take effect upon the approval of the Council.

17.2 Unless otherwise approved by the Council, the provisions of the Policy will not be implemented retrospectively. Therefore, development applications approved prior to the approval of this Policy will be subject to the terms and conditions of the engineering service agreement concluded with the Municipality.

18. DISPUTE AND RESOLUTION

18.1 A person whose rights are affected by a decision taken by a decision maker in terms of this Policy may lodge a dispute subject to the right of appeal in terms of Section 62 of the Systems Act. A written notice of the appeal and reasons must be lodged with the City Manager in a prescribed form, within twenty-one (21) days of the date of notification of the decision by the decision maker.

19. MISREPRESENTATION

19.1 Any person who has received any benefit or relief in terms of this Policy and who has misrepresented themselves in order to qualify for such benefit or relief commits an offence and, in addition to criminal proceedings, remedial measures will be taken in a manner as determined by the Municipality from time to time, and the CFO will reverse all benefits and raise any fee, as determined by the Council , as set out in the Tariff Policy.

19.2 The Municipal Manager shall report any misrepresentation in terms of this Policy to the law enforcement agencies such as South African Police Services, Special Investigation Unit etc.

20. GENERAL

20.1 This policy will be posted on the eThekweni municipal website www.durban.gov.za and, without detracting from other communication modes that may be implemented by the Municipality, from time to time. It will also be communicated to the local community during the statutory annual budget community participation process.

20.2 Prescribed forms are available at Customer Service Centres, Sizakala Centre Offices and on the Municipal official website.