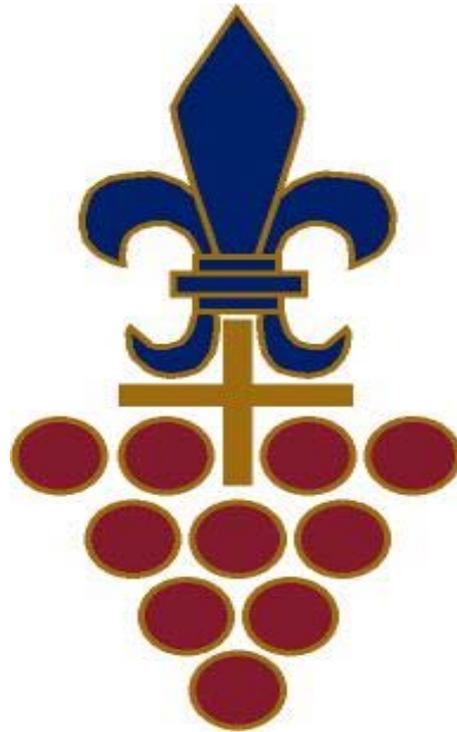


**STELLENBOSCH MUNICIPALITY**



**DEVELOPMENT CHARGES  
POLICY**

**2020/2021**



# STELLENBOSCH MUNICIPALITY

## DEVELOPMENT CHARGES POLICY

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## 1. DEFINITIONS

In this policy, unless the context indicates otherwise -

- 1.1 **'applicant'** means a person who makes a land development application;
- 1.2 **'bulk service'** means the capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure provision of municipal infrastructure services for the benefit of multiple users or the community as a whole - the relevant Master Plan shall be used as a guide to identify such bulk services;
- 1.3 **'By-Law'** means the Stellenbosch Municipality: Land Use Planning By-Law published in the Western Cape Provincial Gazette Extraordinary of 20 October 2015;
- 1.4 **'capacity'** means the extent of availability of a municipal infrastructure service, based on the capital infrastructure asset or combination of capital infrastructure assets installed for provision of such municipal infrastructure services;
- 1.5 **'capital infrastructure asset'** means a capital asset which is required for provision of a municipal infrastructure service, limited to immovable assets and insofar as movable assets are concerned, specialised vehicles, used for waste collection and disposal only;
- 1.6 **'developer'** means an applicant for land development whose land development application is approved, in whole or in part, by the Municipality or the Municipal Planning Tribunal or municipal official authorised to determine land development applications;
- 1.7 **'development charge (DC)'** means a charge imposed by the Municipality on a developer in terms of any applicable law referred to in this policy, or a condition of the approval, payment of which will contribute towards the Municipality's expenditure on capital investment in municipal infrastructure services;
- 1.8 **"Engineer"** means an Engineer employed by the "Municipality" or any person appointed by the "Municipality" from time to time and notified as such in writing to the "Developer" to perform the duties envisaged in terms of this Agreement
- 1.9 **'engineering services installation agreement'** means an agreement concluded between the Municipality and a developer, recording their detailed and specific respective rights and obligations regarding the provision and installation of the external engineering services required for an approved land development, and regarding the associated development charge;
- 1.10 **'external engineering service'** means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area, provided that in circumstances where the characteristics of a specific area or the design of the relevant engineering service so requires, such services can be located within the boundaries of a land area;
- 1.11 **'impact zone'** means a geographical zone within which the capital infrastructure assets or system of capital infrastructure assets required to provide bulk services to an approved land development are located (the impact zones are Stellenbosch Town, Dwars River, Franschhoek and Klapmuts);

- 1.12 **‘internal engineering service’** 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;
- 1.13 **‘land development’** means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;
- 1.14 **‘land development application’** means an application for land development submitted with the Municipality or referred to the Municipal Planning Tribunal or other decision-making body for approval, in accordance with applicable national or provincial legislation, including the National Building Regulations and Building Standards Act 103 of 1977 (including any regulations promulgated thereunder), the SPLUMA, the LUPA and the By-Law;
- 1.15 **‘land use’** means the purpose for which land is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes;
- 1.16 **‘link service’** means the capital infrastructure assets associated with that portion of an external engineering service which links an internal engineering service to the applicable bulk service, and which is not shared by multiple users or the community as a whole;
- 1.17 **‘LUPA’** means the Western Cape Land Use Planning Act, 2014, Act. 3 of 2014 (PN 99/2014 of 7 April 2014);
- 1.18 **‘Municipality’** means the Stellenbosch Municipality (WCO24) established in terms of Provincial Notice 489 of 22 September 2000 in terms of the Local Government: Municipal Structures Act, 117 of 1998, and includes all political structures or office bearers and municipal staff members to whom authority has been delegated to take decisions in terms of the Municipality’s delegation system;
- 1.19 **‘municipal infrastructure service’** means any of the following municipal services:
- 1.20.1 potable water;
  - 1.20.2 sewerage and wastewater treatment;
  - 1.20.3 electricity distribution
  - 1.20.4 municipal roads;
  - 1.20.5 street lighting
  - 1.20.6 storm water management;
  - 1.20.7 solid waste disposal;
  - 1.20.8 public transport, including non-motorised transport;
  - 1.20.9 social infrastructure services;
- 1.20 **‘Municipal Planning Tribunal’** means a Municipal Planning Tribunal referred to in Chapter 6 of SPLUMA;
- 1.21 **‘Social Infrastructure services’** means community services provided in terms of the functions which are the responsibility of the Municipality in terms of the Constitution, which includes, but is not limited to:
- 2.2.1 Early Childhood Development Centres;

- 2.2.2 Public Open Spaces, parks, sports fields;
  - 2.2.3 Fire Fighting and Emergency Services;
  - 2.2.4 Local Tourism;
  - 2.2.5 Cemeteries;
  - 2.2.6 Burial of animals;
  - 2.2.7 Noise pollution; and
  - 2.2.8 Municipal health services;
- 1.22 ‘**SPLUMA**’ means the Spatial Planning and Land Use Planning Act, 16 of 2013;
- 1.23 ‘**Systems Act**’ means the Local Government: Municipal Systems Act, 2000, Act 32 of 2000).

## 2. INTRODUCTION

- 2.1 This policy is applicable to the Development Charges charged for the following services: Water, Sewer, Stormwater, Solid Waste, Roads, Community Facilities and Electricity.
- 2.1
- 2.2 In terms of Section 152 of the Constitution, the objects of local government include the provision of services to communities in a sustainable manner and the promotion of social and economic development.<sup>1</sup> Chapter 8 of the Systems Act provides for the general duty of the Municipality to provide municipal services and the manner in which such services are to be provided.
- 2.3 Social and economic development has a positive impact on the Municipality’s finances as it increases revenue from property rates, fees, service charges and tariffs by expanding the base of ratepayers. However, development associated with this economic growth has an impact on the demand for municipal infrastructure services as well as social infrastructure services such as clinics, schools and other public amenities. Therefore, infrastructure is needed to support sustainable social and economic development in Stellenbosch. Without infrastructure, both public and private sector investment in Stellenbosch will slow down. The cost to the Municipality for providing this infrastructure is high. Funding to cover these costs is obtained from three sources:
- 2.2.1 Grants are provided by national or provincial government and are generally targeted towards social infrastructure, particularly in support of low-income housing development.
  - 2.2.2 Loans are converted into tariffs and are recovered by user fees paid by all consumers to the Municipality.
  - 2.2.3 Development charges are a more targeted and more equitable way of ensuring that the main beneficiaries of infrastructure make an appropriate and fair contribution to that cost, without unduly burdening the Municipality’s ratepayers. Development Charges are the most important form of capital contribution raised by the Municipality to pay for infrastructure.
- 2.4 The general duty of the Municipality to provide municipal services is inter alia provided for in terms of Section 73(2) of the Systems Act, which section provides as follows:

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<sup>1</sup> Section 152(1)(b) and (c).

“(2) *Municipal services must—*

- (a) *be equitable and accessible;*
- (b) *be provided in a manner that is conducive to—*
  - (i) *the prudent, economic, efficient and effective use of available resources; and*
  - (ii) *the improvement of standards of quality over time;*
- (c) *be financially sustainable;*
- (d) *be environmentally sustainable; and*
- (e) *be regularly reviewed with a view to upgrading, extension and improvement.”*

2.5 The goal of this policy includes the following:

- 2.2.1 Striving to make Stellenbosch the preferred town for investment and business, where investment inflows and new enterprise translate into jobs and prosperity.
- 2.2.2 Establishing the greenest municipality which will not only make Stellenbosch attractive for visitors and tourists, but will also provide a desirable environment for new businesses and appropriate industries.
- 2.2.3 Ensuring a dignified living for all Stellenbosch citizens, who feel that they own their town, take pride in it and have a sense of self-worth and belonging.
- 2.2.4 Creating a safer Stellenbosch, where civic pride and responsibility supplant crime and destructive behaviour.

### **3. OBJECTIVES**

- 3.1 The objectives of this policy are to provide a sustainable and equitable framework for the financing of capital infrastructure assets and to ensure that:
  - 3.1.1 The Municipality is able to provide capital infrastructure assets in a timely and sufficient manner to support land development;
  - 3.1.2 Development charges complement other sources of capital finance available to the Municipality and are not utilised as a general revenue source;
  - 3.1.3 Development charges are managed in a predictable, fair and transparent manner; and
  - 3.1.4 Unnecessary litigation in the administration of development charges is minimised.

## 4. PRINCIPLES OF THE POLICY

4.1 Four key principles underlie the system of development charges. These are:

4.1.1 **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.

This implies that:

4.1.1.1 The Municipality should recover from applicants a contribution that is as close as possible to be full and actual costs of the capital infrastructure assets that are needed to mitigate the impacts of land development and to provide services to new land developments;

4.1.1.2 Development charges are levied to recover the infrastructure costs incurred or to be incurred due to land development, and are thus not a form of taxation;

4.1.1.3 Costs which should be covered by development charges can be determined both in relation to the value of pre-installed capital infrastructure assets resulting from historical investments, and the provision of new capital infrastructure assets to meet new capacity requirements; and

4.1.1.4 Development charges are not an additional revenue source to be used to deal with historical backlogs in provision of services, such as backlogs that exist in some historically disadvantaged areas.

4.1.2 **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.

4.1.3 **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.

This implies that:

4.1.3.1 Development charges should be determined based on identifiable and measurable costs so as to avoid distortions in the economy and in patterns of spatial development;

4.1.3.2 Development charges should not be used as a spatial planning policy instrument;

4.1.3.3 Costs recovered should be dedicated only to the purpose for which they were raised; and

4.1.3.4 Development charges should be calculated where possible on a sectoral or geographic scale to more accurately approximate costs within a specific impact zone.

4.1.4 **Administrative ease and uniformity:** The determination, calculation and operation of development charges should be administratively simple and transparent.

## 5. LEGISLATIVE FRAMEWORK

Development Charges are an integral part of the broader legal framework for urban land development and municipal finance. This legal framework has undergone substantial changes at national, provincial and municipal levels with the introduction of the SPLUMA, LUPA and the By-Law.

### 5.1 Policy context

This policy is consistent with the Final Draft Policy for Municipal Development Charges (Version 10) issued by the National Treasury on 15 December 2015 and which reflects a broadly shared understanding of the role, purpose and legal nature of Development Charges across the country.

### 5.2 Applicable legislation

#### The Systems Act

5.2.1 The general power of the Municipality to recover charges is provided for in Section 75A. In terms of Section 75A (2) charges are levied by the Municipality by resolution passed by the Municipal Council with a supporting vote of a majority of its members.

5.2.2 All development charges levied in terms of the general power of the Municipality, as envisaged in terms of Section 75A, will be levied in terms of a Council's Resolution by virtue of which this policy is approved.

5.2.3 When the development charges are determined pursuant to a Council's Resolution envisaged in terms of Section 75A(2), regard must at least be had to the factors provided for in Section 40(3), (4) and (5) of the LUPA read with the changes required by the context. See **Paragraph 5.2.7** below.

#### LUPA

5.2.4 The LUPA came into force on 1 December 2015 pursuant to Proclamation No 30 of 2015 (Western Cape).

5.2.5 In terms of Section 40(2) the Municipality may, when it approves a land use application subject to conditions, impose reasonable conditions which arise from the approval relating to the provision of engineering services and infrastructure and the cession of land or the payment of money. The

aforementioned type of conditions may require a proportional contribution to municipal public expenditure according to the normal need therefore arising from the approval, as determined by the Municipality.

5.2.6 Municipal public expenditure is provided for in Section 40(4) as follows:

- “40(4) *Municipal public expenditure contemplated in subsection (3) includes, but is not limited to, municipal public expenditure for municipal service infrastructure and amenities relating to—*
- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;*
  - (b) conservation purposes;*
  - (c) energy conservation;*
  - (d) climate change; or*
  - (e) engineering services.”*

5.2.7 Section 40(5) provides as follows:

- “40(5) *When determining the contribution contemplated in subsections (3) and (4), a municipality must have regard to at least—*
- (a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;*
  - (b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;*
  - (c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;*
  - (d) money in respect of contributions contemplated in subsection paid in the past by the owner of the land concerned; and*
  - (e) money in respect of contributions contemplated in subsection (3) to be paid in the future by the owner of the land concerned.”<sup>2</sup>*

## **SPLUMA**

5.2.8 In terms of Section 49, an applicant is responsible for the provision and installation of internal engineering services and the Municipality is responsible for the provision of external engineering services.

5.2.9 Section 49(4) and (5) provides as follows:

- “40(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

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<sup>2</sup> Section 83(7) of the By-Law contains a similar provision.

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.”

### **Stellenbosch Municipality: Land Use Planning By-Law**

- 5.2.10 In terms of Section 83(1) of the By-Law, an applicant (as defined in Section 1 of the By-Law) must pay development charges to the Municipality in respect of the provision and installation of external engineering services. The external engineering services for which development charges are payable must be set out in the policy and be reviewed annually by the Municipality. The amount of development charges payable by such applicant must be calculated in accordance with a policy adopted by the Municipality.<sup>3</sup>
- 5.2.11 The provision of engineering services is prescribed in detail in Chapter 8 of the By-Law. Specific reference is made to Section 66(4) and (5). National Land Transport Act 5 of 2009
- 5.2.12 Although public transport infrastructure is not typically included as one of the engineering services covered by development charges, this act allows the Municipality to raise a user charge from 'land, buildings or other developments that generate the movement of passengers, including land or buildings of which the State is the owner, in its area', provided that this money goes into the Municipality's 'land transport fund'.

## **6. OBLIGATION TO IMPOSE A DEVELOPMENT CHARGE**

- 6.1 When the Municipality approves a land development application (as defined in this policy) which will or may result in intensified land use with an increased demand for such municipal infrastructure services, the Municipality must levy a development charge proportional to the municipal public expenditure according to the normal need arising from such approval. The instances when development charges will be levied will include:
- 6.1.1 When the Municipality approves an application in terms of Section 15(2) of the By-Law and imposes conditions in terms of Section 66 thereof relating to the provision of engineering services and infrastructure and the cession of land or the payment of money;
- 6.1.2 The approval of building plans in terms of the National Building Regulations and Building Standards Act 103 of 1977.

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<sup>3</sup> See Chapter VIII of the By-Law.

- 6.2 Development Charges will not apply to the following land use applications, which are deemed to have no significant impact on provision of bulk infrastructure, and which has a social and/or economic benefit to the municipality and/or the community:
- 6.2.1 Home early childhood development centres
  - 6.2.2 Community based churches and places of religious worship (it must be clear that such development will not lead to a significant additional service usage that will have an increased demand on municipal services)
  - 6.2.3 House shops up to the lesser of 30% of the floor area of the buildings on the site or 50m<sup>2</sup> per erf.
  - 6.2.4 Second dwellings – up to a total maximum of five bedrooms per erf will not trigger a Development Charges payment, any bedrooms in excess of five will be charged per bedroom at the usage rate of the “student room” category.
  - 6.2.5 Accommodation establishments (bed and breakfast/guest rooms): up to the first five bedrooms of an existing dwelling – thereafter Development Charges will be charged per bedroom at the usage rate of the “student room” category. The assessment will be based on the total number of bedrooms in the house and not the number of bedrooms operating as guest rooms. Any additional land use that is not integral to the accommodation function – (restaurant, spa, gym, office, and conference centre) must be added as GLA (General Business) and will be additional to the Development Charges calculated per room.
  - 6.2.6 Breaking New Ground (BNG) housing projects implemented by the municipality. These projects are approved by council prior to implementation and such approval should include financial commitments regarding the provision of bulk services for these projects. It is thus not necessary for development charges since the provision of bulk services are to be funded by alternative funding sources.
  - 6.2.7 Development Charges will also not apply to the following land use applications. This is in order to incentivise and support private landowners and/or emerging developers to supply affordable housing units for rental or purchase as government alone cannot keep up with this demand. This incentive will be granted at the discretion of the Director: Infrastructure Services and the Developer must provide proof that the development complies with the following criteria:

The further densification on a residential erf (excluding subdivision) that comply with the following criteria:

- the intention of the development should be to cater for the housing demand in the low and middle income bracket i.e. those who qualify for the Finance Linked Individual Subsidy Programme (FLISP). Currently this means households with a max gross income of R 22 000. The cost of these units may not exceed R 5 000 per month (rental) or R 500 000 (unit purchase price). Proof of sale prices must be submitted.
- the proposed residential development must be located within a “Less formal residential” zoning as per the Zoning Scheme.

- 6.3 A development charge will be determined by the Municipality in terms of and on the basis of the applicable statutory provisions referred to in **Paragraph 5.2** above read with this policy.
- 6.4 A developer must pay to the Municipality the full amount of the applicable development charge prior to the exercise of any rights to use, develop or improve the

land arising from the approval of a land development application, unless in the case of a phased land development –

- 6.4.1 The Municipality authorises phased payments in the land development approval conditions, to take into account the timing of the proposed phases of the land development; and
  - 6.4.2 If agreed to by the Municipality, the developer provides a written guarantee from a registered financial institution, in an amount and subject to terms and conditions agreed in writing by the Municipality.
  - 6.4.3 The Municipality may also consider the payment of the outstanding development charge into an attorneys trust account, in cases where this will enable the completion of infrastructure projects in lieu of Development Charges that are not yet completed at the time that clearance is sought and if such withholding of clearance is deemed to be unfair towards the developer. An example of this is where the municipality has requested the upgrade or installation of a service in-lieu of Development Charges, of which the upgrade was not an original condition of approval, or which is not specifically triggered by the development, but of which the immediate upgrade will be of benefit to the municipality and/or the greater public. The conditions for the utilisation of the funds in this trust account shall be stipulated in a letter of undertaking issued by the trust attorney and as agreed to in writing by the Municipality.
- 6.5 When approving a land development application, the Municipality must stipulate at least the following matters relating to the development charge –
- 6.5.1 The total amount of the development charge,;
  - 6.5.2 The dates/development milestones on which the payment or payments must be made and the amount of such payments;
  - 6.5.3 ;
  - 6.5.4 Whether the Municipality and the developer have agreed that the developer will install any bulk services, as contemplated in **Paragraph 10**; and
  - 6.5.5 Where the developer is to install bulk services instead of the payment of some portion or all of a development charge –
    - 6.5.5.1 The nature and extent of the bulk services to be installed by the developer;
    - 6.5.5.2 The timing of commencement and completion of the bulk services to be installed by the developer;
    - 6.5.5.3 The amount of the developer's fair and reasonable costs of installation, or the process for determining that amount, including the process, after installation, for making any adjustments to an amount specified as determined by the Municipality; and
    - 6.5.5.4 The engineering and other standards to which the installed external engineering services must conform.

- 6.6 The Municipality and a developer may, and in the circumstances provided for in **Paragraph 10** must, conclude an engineering services installation agreement to give detailed effect on the arrangements contemplated in this **Paragraph 6**, provided that an engineering services installation agreement may not permit any intensification of land use beyond that which was approved.
- 6.7 The impact zones with reference to which the Municipality will calculate development charges in respect of civil services, are Stellenbosch Town, Dwars River, Franschoek and Klapmuts.

## 7. PURPOSE OF DEVELOPMENT CHARGES

- 7.1 Money collected by the Municipality in respect of development charges must be used for purposes of funding or acquiring capital infrastructure assets in a timely and sufficient manner to support current and projected future land development in the area of jurisdiction of the Municipality, and where calculated with reference to a particular impact zone, must be used for capital infrastructures assets in that impact zone.
- 7.2 Development charges are not a general revenue source and money collected in respect of development charges may not be used to fund the operating or maintenance costs incurred by the Municipality in respect of municipal infrastructure services.

## 8. CALCULATION OF DEVELOPMENT CHARGES

- 8.1 Subject to the provisions of this policy, a development charge shall be calculated with reference to the estimated increased load placed on the external engineering services networks that results from the development in a specific impact zone.
- 8.2 The capital cost of internal engineering services is for the account of the developer.
- 8.3 Subject to **Paragraph 6.3** above and for purposes of calculation of the bulk services component of a development charge, the Municipality must –
  - 8.3.1 Determine a unit cost for each municipal infrastructure service, which unit cost must include all land cost, professional fees, materials, labour and reasonable costs of construction, but must exclude the value of any debts incurred by the Municipality for purposes of funding existing capital infrastructure assets, to the extent that such debt has not been repaid by the Municipality;
  - 8.3.2 Apply a formula, which formula will –
    - 8.7.2.1 Be aimed at determining the impact of the proposed land use on municipal infrastructure services, taking into account current and planned capacity, relative to the impact of the land use occurring at the date of approval of the land development application; and

- 8.7.2.2 Calculate the amount payable by multiplying the unit cost referred to in **Paragraph 8.7.2.1**, by the estimated proportion of the municipal infrastructure services, including current and planned capacity, that will be utilised by the proposed land development.
- 8.4 The basis upon which development charges of the civil services and community services will be determined, as envisaged in **Paragraph 8.7**, will be as recorded in the Development Charge Calculation report revision 6, dated 28 April 2018 by iCE Tygerberg Consulting Engineers,. The aforementioned report does not provide for the calculation of development charges in respect of all components of municipal infrastructure services. Development charges in respect of any component of municipal infrastructure services not provided for, will be determined and calculated in terms of a separate policy, conditions of approval or Council's Resolution/s.
- 8.5 The basis upon which development charges will be determined i.t.o. electricity will be as per NRS 069: Code of practice for the recovery of capital costs for distribution network assets.
- 8.6 The Municipality must adjust the unit cost for each municipal infrastructure service on an annual basis during the budget preparation process referred to in Section 21 of the Local Government: Municipal Finance Management Act 56 of 2003, to take account of inflationary impacts and must publish the adjusted unit costs within two months of approving the municipal budget. The Municipality will use the Contract Price Adjustment Factor as prescribed in the SAICE General Conditions of Contract for Construction Works (as amended) to determine the annual effect of inflation.
- 8.7 The Municipality must re-calculate the unit cost for each municipal infrastructure service at least once every five years or within such longer period as is approved in advance by the Council of the Municipality, to take into account the current and planned capacity for each municipal infrastructure service at the date of re-calculation, and any other relevant factors.
- 8.8 In the event of the Municipality discovering that a gross error has occurred in the determination of the development charges, or if there are justifiable reasons to review the charges, it may, by means of a council resolution, correct such error or review the charges.

## 9. ACTUAL COSTS

- 9.1 Notwithstanding the provisions of **Paragraph 8.3**, the Municipality may at its own instance or on request by a developer, increase or reduce the amount of the bulk services component of a development charge so as to reflect the actual cost of installation of the required bulk services, where:
- 9.1.1 Exceptional circumstances, as motivated by the developer and if accepted by the Council, justify such an increase or reduction; or
- 9.1.2 a particular land development significantly exceeds the size or impact thresholds set out in the applicable Development Charges tariff tables .

- 9.1.3 the actual usage of a particular land development varies significantly from the usage of the approved Development Charges tariff tables and of which the actual usage is motivated by a professional engineer and can be justified by means of recognised engineering guidelines and/or industry norms and standards.
- 9.1.4 Where a development is situated outside the urban area and was not taken into account during the determination of the Development Charges tariffs, then the Development Charges of that development will be based on its actual impact, as confirmed by a report by a professionally registered engineer appointed by the Developer, and as approved by the Municipality. Examples of such a scenario would be development on farms that supports the primary farming activity, i.e. a cellar on a wine farm. The actual trip generation might be less than what is allowed for in the Development Charges tariff tables and if it can be justified the Development Charges can be based on the actual impact/demand on the bulk infrastructure.
- 9.2 Where the Municipality adjusts the amount of the bulk services component of a development charge on the basis of actual costs in terms of this section
  - 9.2.1 the developer is responsible for the costs of performing the calculation of such adjustment, which must be carried out by a registered professional civil engineer appointed by the developer with appropriate experience and expertise having regard to the nature and extent of the proposed land use; and
  - 9.2.2 the actual cost must include, where applicable and without limitation, land costs, professional fees, materials, labour, the reasonable costs of construction and any tax liabilities: provided that all such costs would otherwise have been borne by the municipality, in the provision and installation of the bulk services concerned.

**10. INSTALLATION OF EXTERNAL ENGINEERING SERVICES INSTEAD OF THE PAYMENT OF DEVELOPMENT CHARGES.**

- 10.1 The Municipality may agree with a developer that the developer installs all or part of the external engineering services required for an approved land development instead of the payment of the applicable development charge. Such external engineering services must also be a “bulk service”.
- 10.2 Where a developer installs external engineering services to the technical standards required by the Municipality, as reflected in the applicable conditions of approval of the land development application or as agreed with the Municipality in writing, the developer may set off the fair and reasonable cost of such installation, as determined by the Municipality, against the applicable development charges.
- 10.3 Any capital infrastructure assets forming part of an external engineering service installed by a developer instead of payment of any part of a development charge shall, upon installation, become the property of the Municipality, and-

- 10.3.1 the developer shall bear the responsibility of ensuring that ownership or other relevant rights to the affected capital infrastructure assets is or are transferred to the Municipality;
  - 10.3.2 the Municipality must include the applicable capital infrastructure asset gain in its next adjustments budget, in accordance with regulations relating to asset gains, made in terms of the Local Government: Municipal Finance Management Act 56 of 2003.
- 10.4 The Municipality may require that a developer installs external engineering services to accommodate a greater capacity than that which would be required for the proposed land use alone in accordance with any master plan approved by the Municipality, in order to support planned future development in the vicinity of the approved land development. Where the total fair and reasonable cost of installation of such required external engineering services exceeds the development charge payable by the developer, the Municipality may reimburse the developer the amount in excess of the development charge, in accordance with a written agreement, provided that such infrastructure has been provided for in accordance with an approved master planning programme for such service and which has been approved as a capital project in terms of the budget of the Municipality.
- 10.5 If the developer elects to develop outside the municipality's capital expenditure programme that is approved by the municipal council, he or she will have to fund the provision of services to enable such development. There is no obligation on the Municipality to provide services to land simply because an owner wants to develop his/her land and the Municipality is not obligated to re-imburse the Developer for such expense. Section 152 of the Constitution emphasises the fact that the municipality must structure its administration and budgeting and planning processes to give priority to the basic needs of the community.
- 10.6 When a developer installs external engineering services instead of payment of a development charge, he or she must adopt the most cost-effective and efficient approach to meet the Municipality's technical standards. The principles of procuring the most cost –effective and efficient services must be followed. Therefore, the installation of engineering services must be provided at a competitive bidding process. As a minimum, three quotations or tenders should be obtained and evaluated by the Developer's consultant with a recommendation for appointment. Such recommendation must be approved by the Municipality before the appointment of a contractor.

## 11. NON-PROVISION BY THE MUNICIPALITY.

- 11.1 Where the Municipality has agreed to install the required external engineering services and fails to do so within a period of twelve months from the date for completion stipulated in such agreement, the Municipality must return the development charge paid by the developer, to the developer, with interest charged at the applicable rate for debts owed to the state.
- 11.2 Notwithstanding the provisions of **Paragraph 11.1**, the Municipality and the developer may agree to:

- 11.2.1 an extension of the time period for the installation of the required external engineering services by the Municipality: provided that such extended time period may not exceed twenty-four months and provided further that where the Municipality completes the installation within such extended time period, it has no obligation to return the development charge paid by the developer, to the developer; or
- 11.2.2 an engineering services installation agreement, or revised engineering services installation agreement, in terms of which the developer agrees to install the required external engineering services in whole or in part and, where agreeing to install in part, the time period within which the municipality will install those external engineering services for which it remains responsible: provided that the extended time period for installation by the Municipality may not exceed twenty-four months and provided further that where the Municipality completes its portion of the installation within such extended time period, it has no obligation to return that portion of the development charge paid by the developer which pertains to the external engineering services installed by the Municipality, to the developer.

## 12. WITHHOLDING CLEARANCES AND APPROVALS.

- 12.1 The Municipality shall be entitled to withhold any consent, clearance or approval in respect of a land development in the event where development charges owed by the developer remain unpaid or the developer fails to install external engineering services in accordance with an engineering services installation agreement entered into with the Municipality.
- 12.2 The Municipality shall not be obliged to allow any internal or link services to be connected to the bulk services of the Municipality until all development charges have been paid by a developer.

## 13. SUBSIDIES AND EXEMPTIONS

- 13.1 ***The Stellenbosch Municipal Council*** is the approving authority for subsidies and exemptions. Applications must be in writing and addressed to the Director: Infrastructure Services for consideration, before submitting to council for approval.
- 13.2 As stated by the Final Draft of the Policy Framework for Municipal Development Charges being drawn up by National Treasury, the Municipality should seek to
  - 13.2.1 Minimise the number and value of any subsidies or exemptions it provides for the payment of development charges and
  - 13.2.2 Apply any subsidies, exemption or surcharges in an equitable transparent and administratively feasible manner
- 13.3 Developers will be allowed to apply for exemption for developments that comply with the following criteria:

13.3.1 In the case of registered non-profit organisations developing social development projects that is beneficial to the community and where the applicant is able to demonstrate how the proposed development will have a social and/or economic benefit to the municipality. The use of any land or buildings, or any part thereof, shall not be for the private financial benefit of any individual, including as a shareholder in a company or otherwise.

13.4 Before the Municipality grants an individual exemption, it must:

- 13.4.1 calculate the applicable development charge as if it were payable (Infrastructure Services);
  - 13.4.2 ensure that the revenue to be forgone as a result of any exemption approved by the Municipal Council is reflected in the Municipality's budget (Finance);
  - 13.4.3 must provide for budgetary provision for the realisation of the revenue forgone to be made, from another realistically available source of revenue (Finance);
  - 13.4.4 ensure that the monetary value of the exemption, together with the amount of any other payment or payments received by the Municipality towards the capital costs of external engineering services for an approved land development, is at least equal to the development charge calculated in accordance with **Paragraph 13.4.1**.
- 13.5 Any development for which exemption has been granted and is used for any purpose other than the purpose for which it was so granted an exemption, the payment of Development Charges will become applicable.

#### **14. OTHER PRINCIPLES TO BE APPLIED**

- 14.1 Development Charges will be applied based on the impact on services by the increase in land use rights and/or intensification of land use leading to increased demand, irrespective of the geographical location of the development. For example, the traffic generated by a development located along a provincial road, will ultimately end up on the Municipality's road network that link to the provincial roads. The same applies to the additional stormwater runoff that ends up in downstream municipal networks and river courses, increase in demand and the bulk supply of water, and sewer and solid waste disposal.
- 14.2 Development Charges in rural areas/farms: Development Charges will be determined in terms of **paragraph 9.1.3** for buildings/development related to the primary farming activities and can be classified as an agricultural building/agricultural industry i.e.: cellar and bottling facilities on a wine farm or a fruit packaging and storage facility on a fruit farm. It can be assumed that in most cases, the people already working or residing on the farm will work in these buildings and not place a significant additional demand on the bulk services. The approved Development Charges tariffs will be applicable for any other development on a farm i.e. a farm stall, function venues, tourist accommodation facilities, conference facilities or other business and commercial activities including wine tasting since these land uses attract people from outside and places an additional demand on the bulk infrastructure.
- 14.3 Where a development's Development Charges are utilised to upgrade a specific service in order to create the required capacity, and the Development Charges for that specific service category is not sufficient to cover the cost of the upgrade, the Director: Infrastructure, at his discretion, will determine if Development Charges from the other service categories can be utilized to cover the cost. Factors to be taken into consideration include the status of bulk services in the development area, the practicality and timing to secure alternative sources of funding, etc. Electrical Development Charges may not be used to cross fund civil engineering

infrastructure and vice versa. The Community Facilities Development Charges must be ring fenced and not utilised on civil or electrical infrastructure.

- 14.4 GLA – Gross Leasable Area – where this is not known at the time of the Development Charges calculation being done, it will be deemed to be 15% less than the total bulk i.e. 85% of the total bulk.
- 14.5 Development Charges In lieu of Parking bays: If the development is located in an area where the lack of sufficient on-site parking is currently causing problems for the municipality and or the public, this option will not be considered. Some or all of the following criteria must be met before a Development Charges payment in lieu of parking will be favourably considered:
- If located in the historical CDB core where buildings were approved with limit parking provision
  - When a development is situated within a 500m radius of a public transport hub or facility
  - When a development is situated along a primary functional public transport route – provide that the necessary embayment is provided
  - When a development is situated along a primary NMT route (as defined by the NMT Masterplan) – provide that the necessary facilities is of good state
  - Where public parking garage has been constructed that can cater for shortfall in parking demand.
- 14.6 Provincial Roads – 20% of the value of upgrades on provincial roads have been allowed for in the determination of the Development Charges tariffs and therefore this percentage will be allowed to be offset from Development Charges. The offsetting of Development Charges against the full cost of provincial road upgrades would result in an under-recovery of Development Charges for municipal roads. Exception is upgrades to intersections between municipal and provincial roads, where the full amount can be offset from Development Charges.
- 14.7 The use of Development Charges on non-motorised transport (NMT) facilities will be allowed as a functional and safe non-motorised transport (NMT) and public transport network will reduce the dependence on private motor vehicles and therefore relieve road congestion and free up capacity on the roads and intersections. The non-motorised transport (NMT) master plan will be used as a guideline in determining which non-motorised transport (NMT) items this applies to. A further guiding principle is that the non-motorised transport (NMT) item must be for the benefit of multiple users/developments and/or the community as a whole and not just benefit an individual private development/small cluster of private developments.