

05 June 2025

Mr. Lungelo Mbandazayo
City Manager
City of Cape Town
Civic Centre
12 Hertzog Boulevard
Cape Town
8001
South Africa

Dear Mr. Mbandazayo

COMMENTS ON THE PROPOSED 2025/26 BUDGET OF THE CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY

1. Introduction:

AfriForum is a civil rights organisation committed to the protection and promotion of constitutional rights, with a strong emphasis on good governance, community empowerment, and responsible public participation. Our constitutional mandate includes the vigilant safeguarding of legality, transparency, and fairness in public administration, and we are active participants in municipal consultation processes across South Africa.

In line with our broader strategic vision of ensuring lawful, accountable, and responsive governance, AfriForum actively engages municipalities to help promote effective service delivery and protect residents from arbitrary or unlawful state action. It is in this spirit that we submit the present comments on the City of Cape Town's proposed 2025/26 budget, with specific reference to the structure and legality of water, sanitation, and electricity tariffs.

2. General Concerns

AfriForum expresses grave concern regarding the legality and constitutionality of the tariff restructuring proposals in the 2025/26 draft budget. We raise particular objections to the following issues:

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Address: 58 Union Avenue, Kloofsig, Centurion • **Tel.:** 086 10 200 30
Member Affairs – Email: ledesake@afriforum.co.za • **Directors:** Ms A. Bailey, Mr P.J.W. Buys, Ms H.K. Coetzee, Mr P.L. Dekker, Mr F.J.D. de Klerk, Mr G.R. de Vries, Dr D.J. Hermann, Mr W.G. Human, Mr C.M. Kriel, Prof. J.J. Malan and Dr R. Pretorius. • **Company Secretary:** Mr W.A. Vogel.
Registration number: 2005/042861/08 • **NGO number:** 054 - 590

- The use of property valuation as a basis for calculating fixed water and sanitation charges;
- The structural change to electricity tariffs in the absence of a recent and targeted Cost of Supply (CoS) study that complies with national policy directives.

We expand on each concern below.

2.1 Unlawful Use of Property Valuation in Water and Sanitation Tariff Determination

The City proposes to calculate the fixed portion of water tariffs based on a customer's property value rather than actual usage patterns. This change is detailed in the tabled 2025/26 budget (Annexure A, p. 4) and represents a fundamental shift from a consumption-based model to a value-based model.

Section 74(2) of the Local Government: Municipal Systems Act 32 of 2000 ("Systems Act") sets out mandatory tariff principles:

“The amount individual users pay for services should generally be in proportion to their use of that service.”

In terms of section 74(2)(c), tariffs must be equitable and must reflect the cost of rendering the service. The linkage of water charges to the municipal property valuation roll, rather than to measurable consumption or service cost drivers, violates this provision and disassociates tariffs from the cost-reflective principle.

Additionally, section 8(2) of the Municipal Fiscal Powers and Functions Act 12 of 2007 prohibits the imposition of a surcharge that is “unreasonable or unfair.” Using property value as a tariff determinant, without any connection to actual water usage or infrastructure capacity, introduces arbitrary cross-subsidisation and contradicts both the spirit and text of the Act.

The City has provided no technical justification, econometric analysis, or cost-benefit rationale to demonstrate how such a value-based approach aligns with operational

expenditure, infrastructure maintenance, or sustainability metrics. The failure to disclose this data raises serious procedural and substantive law concerns.

2.2 Constitutional Rationality Review: Tariff Determination and Public Power

The principle of legality, a foundational element of the rule of law under section 1(c) of the Constitution, requires that all exercises of public power be rationally related to the purpose for which the power is conferred.

The Constitutional Court has confirmed that irrational exercises of power are unlawful and susceptible to judicial review. In *Pharmaceutical Manufacturers Association of SA: In re Ex Parte President of the Republic of South Africa* 2000 (2) SA 674 (CC), the Court held:

"The exercise of public power must not be arbitrary. Decisions must be rationally related to the purpose for which the power was given."

This principle was reinforced in *Democratic Alliance v President of South Africa* 2013 (1) SA 248 (CC), where the Court found that rationality requires an objective connection between the means used and the end sought to be achieved. It is not enough for a decision-maker to merely assert good intentions; the decision must bear a rational connection to its stated purpose and the broader statutory framework.

Applying these tests, the City's decision to restructure water tariffs based on property value, absent any data or clear logical connection to service consumption, infrastructure cost, or fairness, fails the rationality test. The reform therefore violates the rule of law and is susceptible to a legality review.

3. Electricity Tariff Restructuring Without a Supporting Cost of Supply Study

The draft budget introduces structural changes to the electricity tariff model, including the removal of contributions to general municipal services from the electricity unit cost. While the City claims that this change will provide relief to high-consumption households, AfriForum is concerned that such a structural shift was implemented without disclosing or relying on a recent and tariff-specific Cost of Supply (CoS) study.

The Electricity Pricing Policy (EPP) of the Department of Mineral Resources and Energy—Government Gazette No. 31741 of 19 December 2008—sets out the national policy parameters for electricity pricing. Clause 23 of the EPP provides:

“The EPP recognises the need for cost reflective tariffs to ensure financial sustainability of the electricity industry. Distributors shall undertake Cost of Supply studies at least every five years and must update their tariffs accordingly. Any structural tariff change shall be supported by a Cost of Supply study that specifically supports such tariff change.”

This requirement is unequivocal: any structural tariff modification must be accompanied by a CoS study that directly supports the proposed changes. If the City is unable to produce such a study that:

- Is less than five years old,
- Reflects current economic and technical conditions, and
- Explicitly justifies the proposed restructuring,

then the implementation of the proposed changes would be in violation of the EPP, the MFMA, and the rationality principle under the Constitution. A failure to meet these standards renders the tariff structure ultra vires and invalid in law.

4. Cleansing Tariffs

AfriForum further raises concerns regarding the inclusion of a “City-Wide Cleaning” charge as a separate tariff item within the 2025/26 budget structure for waste-related services.

Waste removal and city cleansing are two distinct municipal functions. Waste removal is a measurable, revenue-generating service provided to individual properties and must be funded exclusively through a ringfenced service tariff. City-wide cleansing, by contrast, is a non-revenue generating public service that includes the cleaning of

streets, public areas, and parks. This service benefits the broader community and is traditionally funded from general property rates.

The bundling of city-wide cleansing charges into the tariff structure creates an impermissible cross-subsidisation between a general public function and a targeted user-pay service. This approach lacks transparency, undermines cost-reflectivity, and introduces an unfair and regressive burden on ratepayers.

The City has not disclosed whether the cleansing charge is being treated as a surcharge, as defined in fiscal legislation, or whether it has been appropriately classified under the budget's revenue framework. Without such clarity, the charge lacks legal justification and appears to contravene national financial management norms.

Conclusion

AfriForum hereby formally submits the following:

- The City must immediately review and amend its proposed water and sanitation tariffs to remove the use of property value as a determinant. Instead, it must adhere to cost-reflective, usage-based principles in compliance with section 74 of the Systems Act and section 8 of the Fiscal Powers and Functions Act;
- The City must disclose a recent, NERSA-compliant Cost of Supply study that explicitly supports the structural change to the electricity tariff. In the absence thereof, the proposed tariff model must be withdrawn until compliance is achieved;
- The City must provide a written legal and technical justification for each structural change, including:
- A statement of alignment with the Electricity Pricing Policy (particularly Policy 23);
- An assessment of how each tariff aligns with the principle of legality and rationality as developed by the Constitutional Court in *Pharmaceutical Manufacturers, Democratic Alliance*, and other relevant decisions;

- Confirmation of compliance with the requirements of the Systems Act, Fiscal Powers and Functions Act, and relevant MFMA Circulars.
- Should the City fail to amend or justify these proposals in line with the applicable legal framework, AfriForum reserves its right to initiate legal proceedings to challenge the budget and tariff structures on grounds of unlawfulness and irrationality.

In light of the significant impact these tariff structures may have on the community, AfriForum respectfully extends an invitation to the City of Cape Town for a meeting to discuss this matter in greater detail. We are committed to fostering a constructive dialogue and believe that such a discussion could pave the way for addressing the concerns raised and identifying solutions that benefit all parties.

Thank you for considering this submission and for your dedication to the well-being of Cape Town's residents. We look forward to the possibility of collaborating with the City on this important issue.

Kind Regards

Jurie Ferreira
District Coordinator
AfriForum
Cell: 060 983 1406
Email: jurie.ferreira@afriforum.co.za