

11.8.2	REQUEST TO UNDERTAKE THE PUBLIC PARTICIPATION PROCESS (“PPP”) IN RESPECT OF THE DRAFT STELLENBOSCH MUNICIPALITY FILMING BY-LAW, 2023
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Collaborator No: 757038

IDP KPA Ref No: Good Governance and Compliance

Meeting Date: Mayco: 11 October 2023 & 17th Council: 25 October 2023

1. SUBJECT: REQUEST TO UNDERTAKE THE PUBLIC PARTICIPATION PROCESS (“PPP”) IN RESPECT OF THE DRAFT STELLENBOSCH MUNICIPALITY FILMING BY-LAW, 2023

2. PURPOSE

To provide Council with the pertinent facts in order to approve that the draft Stellenbosch Municipality Filming By-Law, 2023 be advertised for a period of thirty (30) days to obtain public comment in respect of the subject draft By-Law.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

The Stellenbosch Municipality Filming By-Law has been drafted to govern the process of filming within the Stellenbosch Municipality and to provide guidance to prospective film organisers and municipal officials on film permit applications and related matters.

The By-Law is aligned to the constitutional mandate of the Stellenbosch Municipality within the framework of developmental local government. Through the enforcement of this By-Law, the Municipality can perform its constitutionally role to facilitate and regulate economic development initiatives within its jurisdictional area, which includes filming.

5. RECOMMENDATIONS

- (a) that Council take note of the draft Stellenbosch Filming By-Law, 2023, attached as **APPENDIX 1** to this report, and
- (b) that Council approve that the draft Stellenbosch Filming By-Law, 2023, be advertised for public comment for a period of thirty (30) days, whereafter same be resubmitted to Council for final consideration and subsequent approval.

6. DISCUSSION / CONTENTS

6.1 Background

The making of films in the Stellenbosch Municipality has grown exponentially due to the picturesque landscapes, vineyards, historic architecture, and proximity to Cape Town. It is therefore imperative that the municipality implements the necessary measures to ensure the provision of support services and regulations to inform and govern filming activities.

The establishment of a municipal framework is necessary to manage film permitting, whilst simultaneously assisting film organisers to experience the municipal area as a destination of choice for filming.

As part of the development process, the Draft Stellenbosch Municipality Filming By-Law was circulated internally to relevant Directorates for comments which has been processed and incorporated into the draft By-Law, attached as **APPENDIX 1**.

6.2 Discussion

The Stellenbosch Municipality notes the importance of the film industry as a key driver for economic activity. Filming is a platform to showcase the unique natural features of the Stellenbosch Municipality to a wider audience, contributing towards raising the global profile of the Municipality as a preferred destination.

The purpose of the Stellenbosch Filming By-Law is to provide the necessary municipal structure and systems to facilitate and regulate film permit applications and to assist and guide the municipality in managing and regulating film-related activities in an efficient, effective and sustainable manner whilst contributing towards job creation, investment and social inclusivity. The By-Law will also provide legislative certainty and assist in removing red tape and facilitate the ease of doing business.

The By-Law is designed to provide guidance in terms of the use of public spaces, safety considerations, and the impact of filming activities on the local community.

6.3 Financial Implications

None, the policy has been drafted using the resources within the Municipality.

6.4 Legal Implications

The recommendations in this report comply with Council's policies and all applicable legislation.

6.5 Staff Implications

This report has no additional staff implications to the Municipality.

6.6 Previous / Relevant Council Resolutions:

None

6.7 Risk Implications

This report has no risk implications for the Municipality.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2023-10-11: ITEM 7.8.3

- (a) that Council take note of the draft Stellenbosch Filming By-Law, 2023, attached as **APPENDIX 1** to this report, and
- (b) that Council approve that the draft Stellenbosch Filming By-Law, 2023, be advertised for public comment for a period of thirty (30) days, whereafter same be resubmitted to Council for final consideration and subsequent approval.

APPENDICES

Appendix 1: Draft Stellenbosch Municipality Filming By-Law, 2023.

APPENDIX 1

**STELLENBOSCH MUNICIPALITY
FILMING BY-LAW, 2023**

DRAFT

To provide for the regulation of filming activities on private and public property, to enable an environment for the development of the filming sector within the jurisdiction of the Stellenbosch Municipality; and to provide for similarly connected matters.

Preamble

WHEREAS Section 156 of the Constitution, read with local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution, empowers a municipality with the authority to make by-laws for effective administration and exercise of any power concerning a matter reasonably necessary for, or incidental to the effective performance of its functions;

WHEREAS the Municipality aims to balance economic activities such as filming with other rights contemplated in Chapter 2 of the Constitution and thereby intends to regulate short-term public nuisances linked to filming;

WHEREAS the Municipality recognises the important role that filming plays in the economy of the Stellenbosch Municipality and the promotion of the human right of freedom of expression and is committed to simplifying permission processes in relation to filming within its jurisdiction;

WHEREAS the Municipality intends to provide a one-stop accessible facility for the processing of applications for filming while acting within the parameters of the Constitution and existing applicable legislation;

AND NOW THEREFORE, BE IT ENACTED by the Council of the Stellenbosch Municipality, as follows:-

Definitions

1. In this By-Law, unless inconsistent with the context –

“applicant” means a natural or juristic person who applies for permission to conduct filming activities in the Stellenbosch Municipality;

“abutting or affected properties” means properties that share a common boundary or properties in close proximity that, while not sharing a common boundary, may be impacted by film-related activity;

“authorised official” means an employee of the Municipality responsible for carrying out any duty of function or exercising any power in terms of the By-Law and includes an employee delegated to carry out or exercise such duties, functions or powers;

“filming” means: (i) the preparation of public and private property for the recording of sound and images as well as the recording of sound and images moving or still, whether on film or video tape, electronically, digitally or by other means and includes all activities related to the filming location where there is an impact on public or private property, which may require the services of the Stellenbosch Municipality, or may have any adverse implications for public safety, the environment and local communities;

- (ii) student film projects where there is an impact on public property, which may require the services of the Municipality or may have any adverse implications for public safety, the environment and local communities;
- (iii) the recording of digital media on public property on mobile devices such as smartphones, tablet computers, handheld cameras for the creation or sharing of information for commercial gain via virtual communities and social networks;

but excludes:

- (iv) the recording of a private wedding ceremony or other private celebration or event for the purpose of making a recording thereof for its participants for private purposes;
- (v) electronic news gathering or the recording of current affairs or news for immediate broadcast or release;
- (vi) the recording of digital media or mobile devices such as smartphones, tablet computers and handheld cameras for personal use where there is no impact on the public or any public amenity;

- (vii) purpose-built facilities and other film suitable facilities, including filming facilities at educational institutions, where there is not impact on the public or any public amenity;

“Film Permit Office” means the unit responsible for coordinating film permit applications, the approval and rejection of filming and film-related activities in accordance with this bylaw and any other applicable legislation and for issuing of permits with appropriate conditions.

“film shoot” means the process or activity of filming, photographing or recording of sound and image for the production of film material or digital media for commercial productions or documentaries and includes the preparation of property for filming;

“film suitable facility” means a film studio or any other facility or premises, including filming facilities at educational institutions that meets minimum requirements to obtain:

- a) pre-authorization or certification, and
- b) registration with the Film Permit Office as a film-suitable facility and to be exempt from repeated film permit applications for a defined period;

“location” means any area or place, used for filming activity other than a sound stage or backlot adjoining a movie studio or purpose-built film facility. This area or place may be erected or demarcated by temporary or permanent structures;

“permit” means a written permission granted for filming by the Stellenbosch Municipality in terms of this By-Law;

“permit holder” means a person, whether natural or juristic, or their representative, that has been granted a permit to conduct filming in terms of this By-Law;

“person” means any natural person or juristic person recognized by law as the subject of rights and duties;

“public place” includes –

- (a) a public road, parking area, square, park, recreation ground, sports ground, sanitary lane, open space, shopping centre on municipal land, unused or vacant municipal land or cemetery which has –
 - (i) been provided, reserved or set apart for use by the public; or
 - (ii) been dedicated to the public; and
- (b) public transportation operated by service providers for the Stellenbosch Municipality, but does not include public land that has been leased by the Municipality;

“purpose-built film facility” means a place, studio, facility, or property designed and built or converted for filming activities including any sound stage or backlot adjoining such facility, with all the necessary approvals from the Municipality; and

“shoot type” means a micro, small, medium, large or very large filming activity as described in Schedule 1.

Application

2. This By-Law applies to all filming activities undertaken within the jurisdiction of the Stellenbosch Municipality.

Exemptions

3. (1) Purpose-built film facilities and film suitable facilities registered in terms of section 5(8), within the jurisdiction of the Municipality, are exempted from having to apply for film permits, except when filming activities spill outside of the erf boundaries of any such facility or onto public property, provided that film suitable facilities must apply for exemption on an annual basis.
- (2) An applicant applying for micro shoot permit is exempt from having to submit proof of not objections to filming to the municipality
- (3) Owners of properties contained in the list developed in terms of section 5(8) are exempt from having to submit proof of consultation for filming activities on their properties for the duration of the exemption.
- (4) The following types of filming activities do not require a film permit:-
 - (a) The filming of private wedding ceremonies, or other private celebrations or events for the purpose of making a recording thereof for its participants for private purposes.
 - (b) Electronic news gathering and recording of current affairs or news for immediate broadcast or release; and
 - (c) The recording of digital media on mobile devices such as smartphones, tablet computers, handheld cameras for personal use where there is no impact on the public or public amenity is exempt from having to apply for a film permit.

Application for filming permit

4. (1) Subject to the exemptions set out in section 3, no person may conduct filming within the jurisdiction of the Municipality without a permit.
- (2) An application for a permit to conduct filming must be submitted to the Municipality –
 - (a) after registration in terms of section 6; and

- (b) in accordance with the application requirements for different shoot types as set out in Schedule 1 prior to the commencement of the intended filming activities.
- (3) The applicant must inform the Municipality of any changes, new developments or any relevant information pertaining to the shoot or its impact once the use of any location has been confirmed.
- (4) The Municipality authorised official may approve, vary or refuse a permit application for filming in terms of the provisions of the By-Law.
- (5) The Municipality may impose:
 - (a) written conditions to be fulfilled by the applicant during the film permit application process, and
 - (b) additional written conditions on the permit upon issue.
- (6) A permit issued in terms of the By-Law is not transferable.
- (7) The Municipality reserves the right to, at its own discretion, amend any condition on any permit or revoke the permit in its entirety at any time should it come to the attention of the Municipality that the filming activity has the potential to contravene any legislation, cause harm or injury to members of the public, damage municipal property or infrastructure, or negatively impact the natural environment.

Community Consultation

- 5. (1) A person who intends to apply for a permit to film must first deliver a written notice of intention for filming to occupiers of the abutting and the affected properties, in terms of subsection (2), before submitting an application for filming to the Municipality.
- (2) The written notice of intention for filming must –
 - (a) be in a format approved by the Municipality;
 - (b) communicate the intention of the applicant to submit an application for permission to conduct filming activities at a particular address, location or area;
 - (c) provide the occupiers of abutting and affected properties an opportunity to declare on the prescribed form that they have no objection to the intended filming;
 - (d) advise the occupiers of the abutting and affected properties of their right to submit any objections to the Municipality;

- (e) contain the name and contact details of the film company; and
 - (f) contain the dates and times of intended filming activities.
- (3) where the occupiers of abutting and affected properties cannot be reached a person who intends to apply for a permit to film must demonstrate to the authorised official that reasonable steps have been taken to contact such occupiers.
- (4) The proof of notification or consultation with occupiers of abutting and affected properties that has been obtained in accordance with Schedule 1 must be submitted to the Municipality's Film Permit Office at the time of submission of the application for filming.
- (5) A person impacted by intended filming activity may submit an objection to the intended filming directly to the Film Permit Office for consideration during the permit application decision-making process.
- (6) The Film Permit office will inform an objector in writing of the outcome of the objection.
- (7) The Municipality may require further consultation between the film company, abutting and affected residents and businesses, prior to the permit being issued should there be any changes, new developments or information pertaining to the shoot or its impact once an applicant has confirmed the use of any location.
- (8) Subject to subsection (9), the Municipality may annually consult on and publish a list of properties with may be used for filming activities without the need for further consultation with occupiers of abutting and affected properties for the period set out on the published list.
- (9) The Municipality may determine conditions in publishing the list of properties referred to in subsection (8).

Requirements for processing of applications for filming

6. (1) Any person or production company who intends to conduct filming must –
- (a) register with the Municipality in terms of its Standard Operating Procedures; and
 - (b) apply to the Municipality for a permit to conduct filming, in terms of Section 4.

- (2) The submitted application must include –
- (a) the name, address, electronic mail address, telephone and cellular phone contact numbers and occupation of the applicant;
 - (b) the name of the production company to which the application relates;
 - (c) particulars and contact details of the person who will be in charge of the actual filming, if such person is not the applicant, as contemplated in Section 6 (2)(a);
 - (d) an alternative forwarding address for the receipt of any notices, accounts or correspondence;
 - (e) details of locations of intended filming activities, the proposed dates and times, the number of people intended to be part of the filming projects and general details of the purpose of the intended filming; and
 - (f) a detailed description of the filming activities and the apparatus to be used, which may include:
 - (i) devices or equipment that may cause light, noise or air pollution;
 - (ii) generators, energy transformers or converters;
 - (iii) vehicles, cranes, any other apparatus or devices, unmanned aerial vehicles, drones or similar devices requiring special permission;
 - (iv) temporary structures, tripods or dollies, specialised rigs or equipment; or
 - (v) special effects, stunts, explosives or simulated gunfire.
- (3) The Municipality may require payment of a fee before considering an application to conduct filming .
- (4) The applicant must provide proof to the satisfaction of the Film Permit Office of:
- (a) appropriate indemnity cover; and
 - (b) appropriate specialised risk insurance and blanket liability or cover where the filming activity would involve stunts, special effects, explosives or similar activities, cranes, drones or unmanned aerial vehicles or any other apparatus or equipment special permission.

Criteria for assessing applications

- 7.(1) The Film Permit Office, when considering an application and determining conditions as contemplated in section 4(5), must assess –
- (a) the duration and location of the filming activity;
 - (b) whether the filming activity has the potential to cause unreasonable disturbance or harm to any person in the form of noise, light or air pollution;
 - (c) whether the filming activity would unreasonably interfere with or disrupt normal activities in a public place or have a negative impact on -
 - (i) general traffic in public places;
 - (ii) pedestrian traffic in public places;
 - (iii) public parking;
 - (iv) access to any private property;
 - (v) municipal property or infrastructure;
 - (vi) the natural environment; or
 - (vii) safety of members of the public;
 - (d) the potential impact of the filming activity on the surrounding community;
 - (e) whether the occupiers of abutting and affected properties have been given notice of the intended filming; and
 - (f) any objections from occupiers of abutting and affected properties.

Decision on Film Permits

8. (1) The Municipality must approve or decline an application for a film permit in terms of this By-Law, within a time period applicable to an event as set out in Schedule 1.
- (2) Once a decision has been taken in terms of subsection (1) the applicant must be informed thereof in writing.
 - (3) Where an application for a film permit has been approved, the Municipality must issue a permit with conditions.

- (4) If an application for a filming permit has been declined the Film Permit Office must provide a notice to the applicant that contains –
- (a) written reasons for declining the application;
 - (b) notification of their right, in terms of section 10, to appeal the decision to decline the application; and
 - (c) information relating to the procedures and timeframes within which to lodge an appeal against the decision to decline their application for filming.

Compliance notices

- 9.(1) An authorised official may issue and serve a compliance notice to the permit holder when a provision of this By-law is contravened or when a condition imposed in terms of this By-law has not been fulfilled by the permit holder.
- (2) An authorised official may serve a written compliance notice to the permit holder in the form of an appropriate electronic notification if there are time constraints or the need for urgent intervention.
- (3) A compliance notice issued and served in terms of subsection (1) must state –
- (a) the provision of the By-law that is being contravened or which will be contravened if the filming activity continues;
 - (b) the condition that must be complied with;
 - (c) the measures that must be taken to rectify the contravention or non-compliance with any conditions which may have been imposed;
 - (d) the time period within which the notice must be complied with, and
 - (e) the consequences of non-compliance.
- (4) The Municipality may take any steps necessary to ensure compliance, which may include –
- (a) entry into the relevant property in order to investigate matters related to this By-law;
 - (b) cancellation and withdrawal of the permit;
 - (c) stopping any filming activities;
 - (d) seizure and impoundment of vehicles and equipment without a warrant by an authorised official on ground of a contravention of this By-law or any applicable law or by-law; and

- (e) the authorised official, at the time of the impoundment, must give the holder of the seized and impounded vehicles and equipment a copy of a notice setting out –
 - (i) the reason for the impoundment;
 - (ii) the description of the vehicles and equipment being impounded;
 - (iii) the address and contact details of the designated pound;
 - (iv) the conditions for the release of the impounded goods and the payment of any costs related to impoundment;
 - (v) the possibility of the impounded vehicles or equipment being forfeited to the Municipality and sold to recover costs, and
 - (vi) the name and office number of a council official to whom any representation regarding the impoundment may be made.
- (5) A compliance notice is sufficiently and effectively served on the permit holder –
 - (a) when it has been delivered or collected personally;
 - (b) when it has been left at his or her place of residence or business in the jurisdiction of the Municipality;
 - (c) when it has been delivered to the forwarding address or email address of the permit holder provided to the Municipality in terms of section 8 (2) of this By-law.

Right of Appeal

- 10.(1) The applicant may appeal against a decision where their application has been declined as referred to in section 5(6).
- (2) An appeal must be lodged in writing in terms of Section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), within 21 days of the notification of decision.

Offences and Penalties

- 11.(1) A person is guilty of an offence if the person –
 - (a) contravenes any provision of this By-law;

- (b) fails to comply with a condition imposed in terms of this By-law; or
 - (c) fails to comply with a compliance notice issued in terms of this By-law.
- (2) A person found guilty of an offence in terms of this By-Law is liable to a fine, and upon conviction to a period of imprisonment not exceeding two years, or to both such fine and imprisonment.
- (3) The Municipality may decline to consider application for filming activity –
- (a) for a period of up to 3 months where a person has reneged on the conditions of a film permit; and
 - (b) for a period of up to 6 months where a person has been convicted of an offence in terms of this By-law.

12. The Municipality may act and recover costs

- (1) Notwithstanding any other provisions of this By-law, the Municipality may –
- (a) take measures it considers appropriate to remedy the situation where a person or permit holder on whom a compliance notice was issued under section 9 fails to comply, or has complied inadequately to the compliance notice;
 - (b) recover costs, in terms of its Credit Control and Debt Collection Policy and its Credit Control and Debt Collection By-law, for the measures to be undertaken under subsection (a) and for all costs incurred as a result of acting under subsection (a) from all persons on whom the compliance notice was issued.
- (2) Any person who fails to comply with a notice in terms of subsection 9(1) may be fined in terms of this by-law, and the Municipality may act against the offender and take the necessary steps to implement such notice at the expense of the owner of the premises or the offender, as the case may be.

Indemnity

- 13.** The Stellenbosch Municipality or any authorised official is not liable to a third party for any damage caused by anything lawfully done or omitted by the Municipality or any authorised official in carrying out any function or duty in terms of this By-law.

SCHEDULE 1

Shoot Type	Shoot Size/Description	Conditions	Application Requirements	Consultation/ Notification Requirements (Prior to submission of permit application)
Micro Shoot	1-3 vehicles and/ or 8 or less cast & crew and duration of 1 day	<ul style="list-style-type: none"> • Small, mobile shoots • No generators, lights, structures • No road closures 	2 working days prior to shoot day	*No requirement for the delivery of Notice of intention for filming to adjacent properties
Small Shoot	4 -6 vehicles and/or 9-15 cast & crew	<ul style="list-style-type: none"> • Small stills shoots/ commercials • Small pick-up shots • Minimal generators, lights, structures • No special effects and/or stunts • No road closures 	2 working days prior to shoot day	*subject to nature and impact of shoot **Community notification/ consultation may be required, and if required, the type and extent of notification/ consultation is to be determined by the Municipality.
Medium Shoot	7-15 vehicles And/or 16-30 cast & crew	<ul style="list-style-type: none"> • Big stills shoots, small commercials & features • Minor/ moderate generators, lights, sets, structures • Minor special effects and/ or stunts • Traffic assistance required • Minor lane/road closures • Minimal noise impact, early morning or night shoots <p><i>NB – with major lane/ road closures, diversions, Civil Aviation Authority (CAA) or other approvals, etc. Large shoots timeframes become applicable</i></p>	5 working days prior to the shoot day *subject to nature and impact of shoot *Remote Base camp may be required – especially if shoot is in a residential area	* subject to nature and impact of shoot **Community notification/ consultation may be required, and if required, the type and extent of notification/ consultation is to be determined by the Municipality. *Proof of delivery of Notice of intention for filming to abutting and affected properties to be submitted to Film Office.

Shoot Type	Shoot Size/Description	Conditions	Application Requirements	Consultation/ Notification Requirements (Prior to submission of permit application)
Large Shoot	16 – 30 vehicles and/or 30-60 cast & crew	<ul style="list-style-type: none"> • Large stills shoots, commercials, features • Moderate/substantial generators, lights, sets, structures • Special effects and/or stunts • Traffic assistance required • Major lane/road closures, diversions, etc. • Moderate noise impact, early morning or night shoots <p><i>NB – with major lane/road closures, diversions, CAA or other approvals, etc. Very Large Shoots timeframes will become applicable</i></p>	<p>5+ working days prior to shoot day</p> <p>*subject to nature and impact of shoot</p> <ul style="list-style-type: none"> • A shoot schedule may be required • Traffic diversion plan/s may be required • Remote Base camp may be required – especially if shoot is in a residential area 	<p>*Community notification/ consultation may be required by the Municipality and if required, the type and extent of consultation is so to be determined by the Municipality.</p> <ul style="list-style-type: none"> • Proof of delivery of Notice of intention for filming to abutting and affected properties to be submitted to Film Office
Very Large Shoot	31 or more vehicles and/or 61 or more cast & crew	<ul style="list-style-type: none"> • Very large, high-impact shoots, commercials & features • Extensive generators, lights, sets, structures • Large special effects and/ or stunts • Traffic assistance required • Major lane/road closures • Considerable noise impact, early morning or night shoots <p><i>NB – with major lane/ road closures, diversions, CAA or other approvals, etc. additional planning time may be required.</i></p>	<p>10+ working days prior to shoot day</p> <p>*subject to nature and impact of shoot</p> <p>*A shoot schedule may be required - Traffic diversion plan/s required</p> <ul style="list-style-type: none"> • Remote Base camp may be required – especially if shoot is in a residential area 	<p>*Community consultation may be required by the Municipality and if so required, the extent of consultation is to be determined by the Municipality.</p> <ul style="list-style-type: none"> • Proof of delivery of Notice of intention for filming to abutting and affected properties to be submitted to the Film Office.