



LAND USE ENFORCEMENT POLICY

(FOR INTERNAL USE)

STELLENBOSCH MUNICIPALITY (WC024)

APPROVED BY COUNCIL: 24 AUGUST 2020

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DISCLAIMER

This policy reflects the preliminary views of the Stellenbosch Municipality. It should be noted that the document has been created to facilitate an effective system with uniform and transparent approaches to land use enforcement within the Stellenbosch WC024 area.

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SECTION 1: DEFINITIONS AND POLICY OUTLINE

1.1 Definitions

1.1.1 “Authorised employee” / “Inspector”

Means a municipal employee who is authorised in terms of delegated or sub-delegated authority by the Municipality to exercise a power or perform a duty in terms of this Policy or to inspect land and buildings in order to enforce compliance with the By-Law (2015) or the zoning scheme.

1.1.2 “Business Owners/Operators”

Persons operating and owning the business operating on the applicable land/property.

1.1.3 “Compliance”

Means conforming to the applicable rule, policy or law, i.e. notices, zoning schemes and By Laws applicable to land use enforcement.

1.1.4 “Enforcement”

The process of ensuring compliance with laws, by-laws, rules and/or legislation applicable to land use regulation and the use of land.

1.1.5 “Enforcement Spreadsheet”

A document used to record and save all information regarding land use complaints.

1.1.6 “Land”

Means any erf or farm or portion thereof, and includes any improvement or building on the land and any real right in land within the boundaries of the Municipality of Stellenbosch.

1.1.7 “Land Use Contraventions”

The use of land which violates the permitted land use rights for which such land may be used.

1.1.8 “Land Use”

Means the purpose for which land is or may be utilised lawfully in terms of a zoning scheme or in terms of any other approval, permit or consent issued by a competent authority, and includes any conditions related to the land use.

1.1.9 “Land use applications”

An application submitted to the Municipality for the regularisation of the use of land.

1.1.10 “Land Use Planning Act”

Means the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014).

1.1.11 “Municipal area”

Means the area of jurisdiction of a municipality determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998).

1.1.12 “Municipal Systems Act”

Means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

1.1.13 “Municipality”

Means the municipality of Stellenbosch established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), by Provincial Notice No. 479 dated 22 December 2000, and where the context so requires, includes:

- (a) the Council;
- (b) another political structure or a political office bearer of the Municipality, authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (c) the Tribunal authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (d) the Municipal Manager; and
- (e) an authorised employee.

1.1.14 “Offender”

Person or party who violates the rule of law by utilising land for an unauthorised purpose - this may be the property owner, tenant, or business owner.

1.1.15 “Owner”

Means the person registered in a deeds registry or title deed as the owner of land or who is the beneficial owner in law.

1.1.16 “Person”

Means any natural or juristic person, including an organ of state.

1.1.17 “By-Law (2015)”

Means Stellenbosch Municipality: Land Use Planning By-Law October (2015).

1.1.18 “SLA”

Service Level Agreement.

1.1.19 “Violations”

An act or instance of violating law or rule of law and especially a failure to do what is required or expected by a law, rule or agreement.

1.1.20 “WCO24”

The entire Municipal area of Stellenbosch.

1.1.21 “Zoning”

Means a land use category regulating the utilisation and development of land and setting out:

- (a) the purposes for which land may be utilised; and
- (b) the development parameters applicable to that land use category, as determined by the applicable zoning scheme.

1.1.22 “Zoning scheme”

System of land use management, in terms of legislation, which allocates legal rights to land within its area to develop and the erection and use of buildings within the ambit of specific conditions and control measures.

1.2 Policy Outline

- 1.2.1 This policy is aimed at setting out a uniform structure effectively addressing and solving all land use related complaints within the Stellenbosch Municipal (WC024) Area.
- 1.2.2 Land use enforcement has followed different forms and processes over the years and there has never been an approved policy guiding officials in dealing with illegal land use violations.
- 1.2.3 As with any municipality, Stellenbosch is plagued by various unauthorised activities. To solve these issues, a uniform methodology must be adopted that tackles land use enforcement in an assertive and structural manner within prescribed time frames, by authorized officials of the Planning and Economic Development Department.
- 1.2.4 The intention of the land use enforcement policy is to set out a transparent and uniform process in dealing with Land Use Contraventions of the applicable law. As people become more aware of the various duties of Municipalities, complaints pertaining to the use of land remains on the increase. Land use inspections also generate land use applications which are assessed by the Town Planning Department. These applications provide revenue in terms of costs related to applications.
- 1.2.5 The Stellenbosch Municipal Land Use Planning By-Law (2015) provides the mandate for a municipality to enforce planning legislation, but it does not provide guidelines to officials dealing with land use complaints.
- 1.2.6 As there is an obligation on Council to enforce compliance, the policy must guide officials in conducting their duties and in doing so make sure all complaints are dealt with in a transparent and amicable manner, so that future unauthorised activities are discouraged altogether and rate payers understand that these activities may have a detrimental effect on the neighbourhood and its surroundings.

SECTION 2: POLICY OBJECTIVES & LEGAL MANDATE

2.1 Objectives

- 2.1.1 The approach of the Policy is to provide guidelines to authorised employees dealing with Land Use Contraventions and to ensure that the unlawful activity stops (or dealt with in terms of other laws and regulations applicable) until such time as the appropriate land use rights are in place. An Owner and Offender will be given a reasonable time period to cease such activities; these times are determined by the official and are based on the categories provided in Table 1. It is to be noted that the submission of land use applications does not condone the continuation of such activities. The town planning and enforcement process may run concurrently but are dealt with on its own merits.
- 2.1.2 The enforcement policy places the following objectives on authorised employees investigating and dealing with land use complaints:
- 2.1.2.1 That land use complaints are dealt with and resolved within stipulated time frames;
- 2.1.2.2 That all complaints are dealt with in accordance with this policy and its guidelines in a consistent and transparent manner;
- 2.1.2.3 That members of the public are discouraged to continue or start using properties for unauthorised activities;
- 2.1.2.4 Authorised employees dealing with land use complaints adopt an effective and consistent approach to land use enforcement in the WC024 area.

2.2 Legal Mandate

- 2.2.1 Section 152 (1) of South African Constitution stipulates the five objectives of local government, which include the promotion of social and economic development as well as safe and healthy environments.
- 2.2.2 Section 32 (1) of the Spatial Planning and Land Use Management Act 2013 applies to the Enforcement of Land Use Scheme states '*A municipality may pass by-laws aimed at enforcing its land use scheme*'.
- 2.2.3 Part 3, Section 68 and 74 of the Western Cape Land Use Planning Act, 2014 (LUPA) applies to Enforcement, Offences and Penalties.
- 2.2.4 Chapter IX Stellenbosch Municipal Land Use Planning By-Law (2015) deals with Enforcement.
- 2.2.5 This policy is in accordance with the legal requirements as set out in the applicable By-law and Municipal Systems Acts which places a responsibility on the Municipality to enforce compliance with the By-Law and Zoning Scheme Regulations.

2.3 Offences & Penalties

Section 86 of the By-Law (2015) prescribes offences and penalties, which need to be adhered to and is applicable when enforcing this Policy. Such penalties can be a fine or imprisonment not exceeding 20 years or both a fine and such imprisonment when a person is guilty of an offence, as stipulated in section 86 of the By-Law (2015) and is liable on conviction.

SECTION 3: COMPLAINTS PROCESS

3.1 Process to Lodge Complaint

- 3.1.1 For record purposes all complaints must be submitted to the Municipality in writing as follows:
- a) The standard land use complaint form, which is available on the Municipality's website under the Planning Portal tab: <http://www.stellenbosch.gov.za/>;
 - b) Such form must be emailed to zoning.violations@stellenbosch.gov.za; or
 - c) A formal letter for the attention of the Director: Planning & Building Development Directorate, may be faxed (fax: 021 – 886 6899) or hand delivered or posted to the municipal offices at 17 Plein Street Stellenbosch, 7600 PO Box 17, Stellenbosch, 7599.
- 3.1.2 All complaints must contain sufficient information to enable the applicable department to investigate the matter. This includes:
- a) Full physical address of the offending property;
 - b) Precise nature of the Land Use Contravention/s (such as dates, times, frequency, intensity/extent of the contravention, etc. (if possible));
 - c) Photographs, if applicable;
 - d) The effect/impact that the contravention/s is having on the Complainant and/or the neighborhood and its surroundings;
 - e) Name, address, and contact details of the Complainant;
 - f) Preferred method of communication.
- 3.1.3 It is the Municipality's duty to enforce compliance with the relevant by-laws and zoning scheme regulations, regardless of the source or location of the complaint. The Municipality will attempt to keep all information contained in the complaint form, letter, or email anonymous during investigations. (The Municipality cannot guarantee that the information will remain anonymous). The alleged Offender and/or Owner may request such information in terms of her/his constitutional rights and therefore may apply for such information via the normal processes pertaining to access to information.
- 3.1.4 Complaints may be lodged by any person whether or not residing in the Stellenbosch area or its surroundings.
- 3.1.5 The Complainant must be advised to respect the alleged Offender and Owner's privacy, by not trespassing on his/her property and not making defamatory statements.

3.2 Anonymous Complaints

- 3.2.1 The Municipality will not investigate anonymous complaints. The Complainant must be available for correspondence throughout the investigation of the case and must be made aware that they may need to provide evidence in court should they be required to do so.
- 3.2.2 All information related to a complaint must be saved on the erf file and the Land Use Contravention folder for record purposes.

3.3 Complaint Received and Inspection

- 3.3.1 Once a formal complaint is received, the authorised employee must determine if the matter is a Land Use Contravention. This can be done by conducting a desktop investigation on the property to check the zoning and current land use rights.
- 3.3.2 Complaints outside the ambit of the land use enforcement environment must be referred to the relevant department and the Complainant informed thereof. Proper record of referral must be kept and acknowledged by the relevant department.
- 3.3.3 Once the Land Use Contravention has been confirmed the authorised employee must:
- 3.3.3.1 Allocate a reference number and record the complaint and all particulars on the enforcement spreadsheet;
- 3.3.3.2 Send a written acknowledgement, indicating the reference number and the details of the authorised employee dealing with complaint, within 4 (four) working days of receiving the complaint either via email or registered post to the address provided for by the Complainant. If no physical or email address is available, the authorised employee must make contact with the Complainant in order to acquire these details;
- 3.3.3.3 Compile a Land Use Contravention folder with all the relevant information in order for the official to conduct inspections. This includes:
- a) The formal complaint with all supporting documentation;
 - b) Ownership/windeed details;
 - c) Locality map indicating property location;
 - d) Copy of the acknowledgement-correspondence and all other correspondence related to the complaint;
 - e) Permitted zoning use rights applicable and/or existing use rights (if available, the zoning certificate);
 - f) Formulated notices (3 copies).
- 3.3.4 Refer completed Land Use Contravention folder to the authorized official for inspections within 4 (four) working days from the date the complaint was received.
- 3.3.5 The Land Use Contravention folder will then be checked and signed off by the authorised employee's supervisor/manager before it gets allocated to the land use Inspector to conduct inspections.
- 3.3.6 The land use Inspector must make the initial determination of whether the category of the complaint falls into Table 1 and indicate it as such. This determination may change after conducting a full investigation of the case.

3.4 Inspections

- 3.4.1 Section 93 of the By-Law (2015) stipulates the General Powers and Functions of Authorised Employees, such as:

- a) The authorised employee may enter the property **with the permission** of the Owner and/or alleged Offender, without a warrant and/or previous notice in order to ensure compliance with the By-Law (2015);
- b) Identifying himself/herself as a designated authorised employee and indicating proof that he/she has been designated as an authorised employee for purposes of such inspection;
- c) Being accompanied by a police officer or any other authorised third party (when need be) assisting the authorised employee with the inspection.

3.4.2 Once the Land Use Contravention folder has been allocated to the Inspector, he/she must:

- a) Inspect the property within 4 (four) working days of receipt of the file. Such inspection must be made with due diligence and respect to those staying on or using the property;
- b) Identify themselves as authorised employees, provide identification indicating this and inform the alleged Offender and Owner of the property of the purpose of the site inspection, and request to conduct an inspection to verify the use of the property in accordance with the zoning scheme regulations and/or previous land use approvals and conditions;
- c) Make sure to obtain as much information as possible. Consider the evidence needed to institute legal proceedings, in the event of non-compliance of notices. Such as who is carrying out the Land Use Contravention, the time of the inspection, the nature and scale of the Land Use Contravention, how many people are on the property and how many are involved in the Land Use Contravention. Take photographs when necessary and check if the Complainant is available to depose to an affidavit;
- d) Advise the alleged Offender and Owner of section 86(1)(f) of the Stellenbosch Municipality Land Use Planning By-Law (2015) if the alleged Offender and/or Owner refuses access to the property (*“A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she hinders or interferes with an authorized employee in the exercise of any power or the performance of any duty of that employee”*);
- e) Send a standard letter via registered post and hand deliver a copy at the property requesting access to the property within 7 (seven) working days. If access is still denied by the alleged Offender and they have failed to respond to such letter, it will result in the Inspector producing a legal docket for an offence in terms of section 86(1)(f) of the Stellenbosch Municipality Land Use Planning By-Law (2015);
- f) Keep the Complainant informed of progress via his/her preferred method of communication throughout all stages of the investigation.

3.4.3. Telephonic updates are not recommended as records of all correspondence and communication in respect of the matter must be kept on file. Email transmission is the preferred method of communication, but if no email address is available, registered post must be sent to the address provided by the Complainant.

3.4.4. An important part of conducting an inspection at any property is to provide guidance and advice to unauthorized land use operators, on how to regularize such uses. As a local authority, the Municipality promotes job creation, and needs to inform people of the way forward. Inform them of their entitlement to submit land use applications in order to conduct such activity from the property lawfully.

3.4.5. The submission of town planning applications does not offer the Offender and/or Owner temporary rights to continue with the unauthorised use of the land, the use must still cease within the prescribed time period as set out in the notice. It is only upon approval of applications that such use may operate.

3.5. Serving of Compliance Notices

3.5.1 Once a Land Use Contravention has been confirmed by the Inspector, he/she must act in accordance with Section **87** of the Stellenbosch Municipality Land Use Planning By-Law (2015), which stipulates, inter alia, the following:

3.5.1.1 The Municipality must serve a compliance notice on the Offender if it has reasonable grounds to suspect that the Offender is guilty of an offence in terms of section 86 of the By-Law (2015), which compliance notice must instruct the Offender to cease the unlawful utilisation of land or construction activity or both, within the notice period provided by the Municipality, and in accordance with the Municipality's instructions as stipulated in section 87 of the By-Law (2015), such as:

- a) demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity, as the case may be, within the period determined by the Municipal Manager;
- b) submit an application for the approval of the utilisation of the land or construction activity in terms of this By-law within 30 days of the service of the compliance notice and to pay the contravention penalty within 30 days after approval of the utilisation; or
- c) rectify the contravention of or non-compliance with a condition of approval within a specified period.

3.5.1.2 An Offender who has received a compliance notice in terms of section 87 of the By-Law (2015), may object to such compliance notice by submitting written representations to the Municipality within 30 (thirty) days of receipt of the compliance notice.

3.5.2 The following additional information must be taken into account when serving compliance notices:

- a) Serve the compliance notice on the Offender and Owner of the property. If he/she is not available at the time of service, it may be served on any other person over the age of 16 who resides or works at the premises;
- b) Make sure the compliance notice is addressed to the Offender and/or Owner/s as per the windeed printout;
- c) Indicate exactly how the compliance notice was served, who received and signed for it and/or if the Offender and/or any other person has refused to sign receipt thereof;
- d) If the Land Use Contravention has been confirmed, the Inspector must serve the compliance notice regardless of whether or not the Offender and/or any other persons wants to accept it.
- e) Copies of the compliance notices must also be sent via registered mail or email (if available) to the registered Owners, if they are not available at the time of inspection;
- f) Every effort must be made to serve the compliance notice personally before sending same via registered post. It is recommended that 3 (three) inspections be conducted at different times and days. If the Offender and/or Owner can still not be located, the Inspector must request assistance

from their senior and only after all efforts have failed, send the notice via registered mail and also hand deliver at the property of the Owner and/or Offender.

3.6 Contents of compliance notice

3.6.1 Section **88** of the By-Law (2015) prescribes the contents of compliance notices, which contents are, inter alia, the following:

- a) Identify the person to whom the compliance notice is addressed;
- b) The unlawful use of the land and/or construction activity on the land must be described;
- c) Include a statement in the compliance notice that the use of the land and/or construction activity on the land is unlawful;
- d) Inform the Offender and/or Owner of the offence/s being committed, or which has been committed, by such Offender and/or Owner, as stipulated in section 86 of the By-Law (2015);
- e) State the steps that the Offender and/or Owner must take;
- f) State the time period in which such steps must be taken in each instance;
- g) State anything the Offender and/or Owner may do and may not do, as well as the time periods applicable;
- h) Make provision in the compliance notice for the Offender and/or Owner to make representations in accordance with section 89 of the By-Law (2015) and stipulate a contact person;
- i) State the applicable warning/s on the grounds that the Offender and/or Owner may be prosecuted and convicted (as stipulated in section 86 of the By-Law (2015) should the Offender and/or Owner not comply, and if convicted, be liable for a penalty in terms of an order of court, including but not limited to demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the property/land or restore the building concerned or to cease the activity;
- j) Confirm that there is an obligation on the Offender and/or Owner on whom a compliance notice is served to comply with such compliance notice within the time period stated in the compliance notice, unless:
 - a. The Offender and/or Owner has objected to the notice in terms of section 89 of the By-Law, and
 - b. The Municipality has not decided on the matter in terms of that section, or
 - c. The Municipality has agreed to suspend the operation of the compliance notice in terms of section 89(2).

3.7 Objections to Compliance Notice

3.7.1 Objections or representations may be lodged against compliance notices in accordance with Section **89** of the By-Law (2015), by making written representations to the Municipality within 30 (thirty) days of the date of the compliance notice.

3.7.2 The Municipality shall consider such objections or written representations, and any other further information provided, where after the Municipality, may:

- 3.7.2.1 suspend,
- 3.7.2.2 confirm,
- 3.7.2.3 vary, or
- 3.7.2.4 withdraw, such compliance notice or any part of such compliance notice; and
- 3.7.2.5 must specify the time period within which the Offender and/or Owner to whom the compliance notice is addressed must comply with any part of the compliance notice that is confirmed or varied.
- 3.7.2.6 The Municipality may consider these guidelines when a decision is taken in terms of Section 89 of the By-Law (2015). This is done in view of the Policy Outline and Objectives of the policy.
 - Due consideration must be given to the Land Use Category
 - A decision taken should not exceed more than 90 days calculated from the expiry date of the notice
 - A decision to withdraw the notice must be based on prima facie proof that the land use activity in question, is in fact a lawful use
 - A decision taken must be done in order to facilitate the cessation or moving of the unlawful activity

3.8 Failure to comply with compliance notice

- 3.8.1 Section **90** of the By-Law (2015) prescribes the consequences of the failure to comply with the compliance notices by the Offender and/or Owner, which are, inter alia, the following:
 - 3.8.1.1 Lay a criminal charge against the Offender and/or Owner;
 - 3.8.1.2 Apply to the High Court for an order to:
 - a) restrain the Offender and/or Owner from continuing the unlawful use of the land/property,
 - b) direct the Offender and/or Owner to demolish, remove or alter any building, structure or work unlawfully erected or constructed, and/or
 - c) direct the Offender and/or Owner to rehabilitate the land/property concern, without payment of compensation to the Offender and/or Owner.

3.9 Follow up Inspections

- 3.9.1 Once the time period stipulated in the compliance notice has expired, the Inspector must conduct a follow up inspection within 3 (three) working days of the expiry date in order to establish whether the Land Use Contravention has ceased.
- 3.9.2 In the event that the Land Use Contravention is still continuing, the Inspector must decide:
 - 3.9.2.1 whether or not enough evidence exists to proceed with legal action against the Offender/s and/or Owner, and if so gather the required evidence;
 - 3.9.2.2 whether or not to proceed on criminal or civil grounds taking into account the type of land use and its effects on the surrounding residents and neighborhood.
- 3.9.3 If in the view of the Inspector, the Land Use Contravention has ceased, he/she must conduct an additional follow-up inspection to confirm prior to closing the case. The Inspector must be sure

that the Land Use Contravention has ceased in its entirety before closing the file. If not, the Inspector may request further information from the Complainant and allow a 30 day period to provide any evidence to this effect before proceeding any further with the matter.

- 3.9.4 Once the Complainant provides sufficient evidence within the time period stipulated, the matter must be referred to the legal department for further action. After all the relevant evidence has been gathered for legal action, the Inspector has 5 (five) working days to submit the legal docket to the legal department for comment/approval/refusal. A separate SLA must be entered into between the legal and the Planning and Building Development Management departments for time frames with regards to acceptance of dockets and court dates.

3.10 Requesting Additional Evidence

- 3.10.1 In the event that, after the inspections (at least 3 inspections at different times and days) were conducted by the official and he/she confirms that there is no Land Use Contravention, and/or insufficient evidence exists to proceed with the matter, he/she must inform the complainant of these findings in writing and afford him/her the opportunity to submit detailed information/evidence within 30 (thirty) days.
- 3.10.2 If the complaint was referred by another department, municipal employee or ward councilor the same procedure shall be applicable and adhered to as stipulated herein in respect of a Complainant.
- 3.10.3 The official's letter/correspondence, requesting such evidence, must be clear in advising the complainant or evidence bearer that they will be required to attest to such evidence in court as they witnessed the Land Use Contravention. In such cases the Inspector acts as a facilitator to obtain compliance.
- 3.10.4 Additional evidence by the Complainant and/or evidence bearer must be submitted in the form of a sworn affidavit. The Complainant must be informed that the details provided in the affidavit will form the basis of the case against the Offender and/or Owner.
- 3.10.5 If the Complainant refuses or fails to submit the requested evidence in the prescribed time frame the official will conduct a final inspection within 5 (five) days of expiration of such time frame before closing the case.

3.11 Compliance Certificates

- 3.11.1 When an authorised employee is duly satisfied that the Offender and/or Owner has complied with the compliance notice, a compliance certificate may be issued as determined by the Municipality as confirmation of such compliance.
- 3.11.2 The authorised employee is obliged to submit a monthly report of all Offender and/or Owner's compliance of such compliance notice and the issuing of the compliance certificates.

3.12 Exclusions

- 3.12.1 Any and all complaints related to a contravention of South African laws and regulations must be referred to the South African Police Services.
- 3.12.2 Shebeens/Taverns can be dealt with by authorised employees under this policy but the assistance of law enforcement can be requested when needed. If no assistance is forthcoming from law enforcement and or SAPS officials may follow due process by serving the relevant notices via registered post and conducting drive-by inspections.

3.12.3 This policy does not deal with contraventions of the National Building Regulations and Building Standards Act No 103 of 1977. All building related complaints must be referred to the Building Development Management Department for further investigation.

SECTION 4: COMPLAINT CATEGORIES

4.1 Unauthorised activities take many forms because of different social and economic backgrounds. The policy has outlined different categories in order for the Inspector to make informed decisions whilst dealing with Land Use Contravention complaints.

4.2 Important factors guiding the Inspector when conducting inspections and making decisions on Land Use Contraventions refers to:

4.2.1 The nature of the alleged unauthorised activity;

4.2.2 Safety aspects to users, employees, and surrounding residents of the alleged activity;

4.2.3 Direct impact on the surrounding neighbor's, neighborhood and environment.

4.3 After conducting the initial inspections, the Inspector must make a determination of the category the Land Use Contravention falls under. See Table 1 for list of categories, criteria, and time frames.

4.4 **Table 1: Land Use Contravention Category**

Contravention Category	Contravention Descriptions	Remedial Actions	Notice Times Frames	To note
A	In cases where there is a need to move and or relocate people, students, or children. If the use does not fall into any of the above criteria but requires movement of people, the Inspector along with the line manager must make the determination on the matter.	A 30-day cease notice applies but the Inspector may extend such notice for additional 90 days after considering all the facts. If extensions are granted, the owners/offenders must agree in writing and submit a written undertaking that they will cease by such date indicated in the further abovementioned notice.	30 days' cease notice Maximum 90 days' extension of time	Extensions can be granted after considering all the facts around the use. This together with consultations with the line manager and the complainants will determine whether such extension will be allowed. The Inspector may choose to allow an additional 30 or 60 days with a maximum of 90.
B	Where a Land Use Contravention poses a threat to life or has a material adverse effect on the community, land being used and surrounding environment.	Cease forthwith. The Inspector to approach legal department for urgent interdict application to interdict activity to cease.	Notice to cease immediately	No extensions to be granted under this category.

Contravention Category	Contravention Descriptions	Remedial Actions	Notice Times Frames	To note
C	Where Land Use Contraventions causes an adverse impact to the surrounding neighborhood, residents, and amenity of the area such as noise nuisance, traffic and parking problems, affecting property values. Due consideration must be given to air pollution & noise related complaints. The Inspectorate responsible for investigating such complaints (in terms of the Noise Control Regulations PN200/2013, the National Environmental Act No. 107 of 1998 & Air Quality Control By-Law, 2018) must be notified immediately.	A 30 day ceases notice.	30 days to cease and comply. Extensions on notices must be referred to the courts.	If the property owner/alleged offender can prove that they will be relocating or cease by the required date in an extension request, i.e. new signed lease agreement, then a reasonable extension and/or further extension may be considered by the allocated Inspector/s in his/her discretion taking into account the merits and factors of each individual situation.
Contravention Category		Examples		
A	Schools, daycares, old age homes, stay in rehab facilities, etc.			
B	Any use as per category A that poses a danger to life, business using noxious materials such as gasses, chemicals, etc. Agriculture land used for storage or business use where large amounts of fuel or other noxious materials are kept.			
C	House shops, mechanical workshops, guest houses, function facilities, student accommodations, and or any other business not listed in category A & B that in the view of the Inspector causes an adverse impact on the surroundings.			

SECTION 5: COMMUNICATION

5.1 Communication Format

All communication between the authorised employees and Complainants must take the form of standardised letters approved by the Municipality. All correspondence must be sent via registered post or email and detailed records must be kept at all times throughout the investigation.

For effective and speedy service delivery all communication must follow the below timeframes.

5.2 **Table 2: Communication Timeframe Table**

<i>Communication Type</i>	<i>Number of Days</i>
Complaint Acknowledgement Letter	Within 4 (four) working days of receipt of complaint
Notice Served Letter	Within 2 (two) working days after the notice was served
Request for further information	Within 2 (two) working days after the last inspection has been conducted
Closing Letter	Sent within 3 (Three) working days after the final inspection and confirmation of matter complied
Court Outcomes Letter	Sent within 3 (Three) working days of court outcome

5.3 **Telephonic communication**

Telephonic communication regarding cases is strongly prohibited as no records or calls can be recorded. Telephonic calls to Complainants must only be done in cases where no email or physical postal address for registered post exists. If so all conversations must be fully recorded by the authorised employee in the Land Use Contravention folder, i.e. time and date of call and what was discussed.

SECTION 6: APPLICABLE LEGISLATION

The following legislation applies to this policy.

6.1 Spatial Planning and Land Use Management Act, 2013: Section 32 applies to the Enforcement of Land Use Scheme. Section 32. (1) in particular states '*A municipality may pass by-laws aimed at enforcing its land use scheme*'.

6.2 Western Cape Land Use Planning Act, 2014: Part 3, section 68 -74 apply to Enforcement, Offences and Penalties.

6.3 Stellenbosch Municipal Land Use Planning By-Law (2015): Chapter IX, sections 85-99; Enforcement of the Municipality.

SECTION 7: POLICY COMPLIANCE

All authorized officials using this policy are expected to comply with the contents and guidelines provided herein. Employees who fail to comply must be subjected to disciplinary actions by line managers whilst offending parties will face civil or criminal litigation.

SECTION 8: APPROVAL & IMPLEMENTATION

The land use enforcement policy for the Stellenbosch Municipality has been approved by Council on the 24th of August 2020.

The policy comes into effect as of the date indicated above and will remain in place until such time that it is reviewed on an annual basis.



File Reference Number:
Enquiries:
Contact No:
Email address:
Date:

PERSONAL SERVICE/REGISTERED MAIL/E MAIL

Name & Surname Recipient
Physical Address (registered mail or personal service)
E mail Address (via e mail)

Dear Sir/Madam

ALLEGED LAND USE CONTRAVENTION ON FARM/ERF/PHYSICAL ADDRESS
REQUEST FOR ACCESS TO PREMISES:

1. Please take note that on DATE a complaint was received against you for: DESCRIBE ACTIVITY
2. The allocated Inspector/s in respect of the Land Use Contravention on the premises was unable to gain access to the premises on DATE, in order to investigate a complaint/enquiry about an alleged Land Use Contravention in terms of the Stellenbosch Zoning Scheme Regulations promulgated in terms of the Stellenbosch Municipal Planning by-Law 2015.
3. Please take note of Section 86(1)(f) of the By-Law, which stipulates:
'A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she hinders or interferes with an authorised employee in the exercise of any power or the performance of any duty of that employee.'
4. Take further note of Section 93 of the by-Law, which stipulates inter alia:
'(1) an authorised employee may, with the permission of the occupier or owner of land without a warrant and without previous notice, enter upon land or premises or either a building at any reasonable time for the purpose of ensuring compliance with this By-law. (2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of subsection (1). (3) An authorised employee may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.'
5. The allocated Inspector/s, INSPECTOR DETAILS will inspect your property on DATE. Kindly provide him/her with proper access to the property as required herein. Should the inspection for any valid reason not be possible on DATE at TIME, please inform the Inspector thereof within 5 (five) days of the date of this letter. The Inspector's telephone number is _____ and/or email at _____.
6. The Inspector is available between 08h00 and 16h00, Monday to Friday.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



Reference Number:

Enquiries:

Contact No:

Email Address:

Date:

PERSONAL SERVICE/REGISTERED MAIL/E MAIL

Name and Surname of recipient

Address (registered mail or personal service)

E mail address (via e mail)

Dear Sir/Madam

ALLEGED LAND USE CONTRAVENTION ON ERF/FARM/PHYSICAL ADDRESS
REQUEST FOR ADDITIONAL INFORMATION:

We refer to your complaint with REF NO. and we would like to confirm the following:

1. The allocated inspector has investigated your complaint and such investigation reveals that the abovementioned property is being used for INDICATE THE USE (as per zoning and/or approval) purposes.
2. Such land use is permitted in terms of Stellenbosch Zoning Scheme Regulations promulgated in terms of the Stellenbosch Municipal Planning By-Law 2015
3. However, if you have any evidence which indicates that the property is being used for a purpose other than that set out above or as per your complaint with REF NO., please furnish such evidence to our offices at the above address on or before DATE.
4. On receipt of such further evidence, this matter shall be further investigated. If no further information is received by the date mentioned herein, this matter will be closed.
5. Please take note of the following.
 - a) In order to achieve a successful prosecution, the person who witnessed the land use contravention needs to provide such evidence and give evidence in court. (the allocated inspector/s has not established a land use contravention on the premises and therefore you will need to provide the required evidence in order to proceed effectively)
 - b) Please provide inter alia accurate details of dates and times when the land use contravention happens as you will also be required to provide this evidence in court when requested to do so. Please only provide facts, and not what you suspect. If the activity involves cars, people or staff visiting or coming to and from the premises, please provide all the necessary details.
 - c) Please respect your neighbours right to privacy by not intruding on their personal space. If you require taking pictures, please do so from the comfort of your own premises or municipal areas outside such property's boundaries at which such alleged land use contravention takes place.
 - d) Please provide all evidence in the form of a sworn affidavit.

Yours faithful

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



Our File Reference Number:
Enquiries:
Contact No:
Email address:
Date:

PERSONAL SERVICE/REGISTERED MAIL/E MAIL

Name and Surname of recipient
Address (registered mail or personal service)
E mail address (via e mail)

Dear Sir/Madam

ALLEGED LAND USE CONTRAVENTION ON PREMISES ERF/FARM/PHYSICAL ADDRESS

CLOSING OF COMPLAINT:

1. The Municipality refers to the complaint with **REF NO.** and would like to confirm the following:
 - 1.1. The Municipality wishes to advise that the allocated Inspectors follow up inspection at the premises revealed that the land use contravention at the premises has ceased and/or the property owners/offenders have complied with the conditions of approval in respect of land use rights.
 - 1.2. Please feel free to contact the Municipality if the land use contravention resumes in terms of Stellenbosch Zoning Scheme Regulations promulgated in terms of the Stellenbosch Municipal Planning By-Law 2015.
2. Please note that as for the reasons mentioned above the matter is regarded as closed.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Planning and Economic Development

Our File Reference Number:

Enquiries:

Contact No:

Email address:

Date:

PERSONAL SERVICE/REGISTERED MAIL/PER EMAIL

Name & Surname of recipient

Address (registered mail or personal service)

E mail address (via e mail)

Dear Sir/Madam

ALLEGED LAND USE CONTRAVENTION OF FARM/ERF/PHYSICAL ADDRESS

COMPLAINT ACKNOWLEDGEMENT:

With reference to your complaint received on DATE I wish to advise as follows:

1. Your complaint will be investigated in accordance with the Stellenbosch Municipality Land Use Planning By-Law (2015) and a detailed response will be directed to you in due course.
2. It has been referred to INSPECTOR NAME who will investigate the alleged land use contravention.
3. The Municipality will report back on the complaint within 30 days.
4. Please quote the following reference number for all queries related hereto: Farm 1077 Paarl.
5. You are advised that all communication with you will be done via e-mail unless you notify me in writing of an alternative preferred method of communication.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Reference Number:

Enquiries:

Contact No:

Email address:

Date:

PERSONAL SERVICE/REGISTERED MAIL/E MAIL

Name and Surname of recipient

Address (registered mail or personal service)

E mail address (via e mail)

Dear Sir/Madam

ALLEGED LAND USE CONTRAVENTION ON PREMISES ERF/FARM/PHYSICAL ADDRESS

COMPLIANCE CERTIFICATE

COMPLIANCE CERTIFICATE: DESCRIPTION OF ACTIVITY

1. Our compliance notice dated refer(s).
2. This compliance certificate is issued in terms of section 91 of the Stellenbosch Municipal Land Use Planning By-law, 2015 to confirm you complied with the aforementioned compliance notice.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



Reference Number:
Enquiries:
Contact No:
Email Address:
Date:

PERSONAL SERVICE/REGISTERED MAIL/E MAIL

Dear Sir/Madam
Physical Address (registered mail or personal service)
E mail Address (via e mail)

ALLEGED LAND USE CONTRAVENTION OF PREMISES FARM/ERF/PHYSICAL ADDRESS

COURT OUTCOME:

We refer to your complaint with REF NO. and we would like to confirm the following:

1. Please be advised that NAME OF OFFENDER appeared in court on DATE , the outcome was as follow:

(INDICATE THE COURT OUTCOME)

(Delete sections not applicable, chose either 2 or 3)

2. You will be informed of any progress after the next court date.
3. This matter will be monitored accordingly, and if the land use contravention continues, further legal action will be instituted.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



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Our Reference Number:
Enquiries:
Contact no:
Date:

PERSONAL SERVICE/REGISTERED MAIL/E MAIL

Name and Surname of recipient
Address (registered mail or personal service)
E mail address (via e mail)

Dear Sir/Madam

NOTIFICATION: ALLEGED LAND USE CONTRAVENTION ITO SECTION 87(2) OF THE STELLENBOSCH LAND USE PLANNING BY-LAW 2015: ERF/FARM/PHYSICAL ADDRESS

This Municipality has reasonable grounds to suspect that you are going to make yourself guilty of an offence(s) in terms of Section 86 (1) (make sure the correct section is quoted) of the Stellenbosch Municipal Land Use Planning By-law 2015 ('the By-Law):

'A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both and such imprisonment if he or she –

(b) utilises land in a manner other than prescribed by a zoning scheme without the approval of the Municipality'

It has come to the attention of this office that an (STATE ACTIVITY) is planned on FARM/ERF/PHYSICAL ADDRESS, on the DATE as can be seen by (state where the information was obtained).

Please be informed that the zoning of the property in question is that of ZONING OF PROPERTY only. The property may not be utilised for purposes of (STATE THE ACTIVITY), without the necessary approval in terms of the Stellenbosch Municipal Land Use Planning By-law 2015.

An inspection of the property file indicated that no land use approval was granted (STATE THE ACTIVITY) at the property in question.

You are advised to take note of this warning and to cease any plans of proceeding with this anticipated activity without delay. Failure to comply will make you liable for possible prosecution in terms of the Stellenbosch Land Use Planning By-Law, 2015.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



STELLENBOSCH

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Reference Number:
Enquiries:
Contact No:
Email address:
Date:

PERSONAL SERVICE/REGISTERED MAIL/PER E MAIL

Name/Surname of recipient
Address (registered mail or personal service)
E mail Address (via e mail)

Dear Sir/Madam

ALLEGED LAND USE CONTRAVENTION ON PREMISES ERF/FARM/PHYSICAL ADDRESS

RESPONSE TO OBJECTION/REPRESENTATION SUBMITTED TO NOTICE:

DESCRIPTION OF ILLEGAL ACTIVITY/PROPERTY DESCRIPTION

1. Our notice dated (_/ _/ _) and your subsequent written objection/representations to the compliance notice served in terms of section 87 of the Stellenbosch Municipal Land Use Planning By-law refer(s).
(delete which is not applicable)
2. We have considered your representation, and hereby:
 - (a) Suspend or confirm or vary or withdraw the compliance notice or any part of the compliance notice in terms of section 89 of the Stellenbosch Municipal Land Use Planning By-Law of the said legislation; in terms of section 89 of the Stellenbosch Municipal Land Use Planning By-law of the said legislation; and/or
 - (b) Confirm that you have specify time period to comply with any part of the compliance notice that is confirmed or varied.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT



File Reference Number:
Enquiries:
Contact No:
Email address:
Date:

PERSONAL SERVICE/REGISTERED MAIL/PER EMAIL

Dear Sir/Madam
Physical Address (registered mail or personal service)
E mail Address (via e mail)

ALLEGED LAND USE CONTRAVENTION OF PREMISES FARM/ERF/PHYSICAL ADDRESS

SERVING OF COMPLIANCE NOTICE:

We refer to your complaint with REF.NO. and we would like to confirm the following:

1. The inspection was held on DATE and the allocated employee has established the following:

A portion of the property is used to operate a DESCRIPTION OF ACTIVITY.
2. The owner and operators has been instructed to act in accordance with the applicable laws and regulations, as well as with the Stellenbosch Municipality Land Use Planning By-Law (2015), and has been served with a compliance notice to cease the activity within 30 (thirty) days calculated from the DATE OF SERVICE.
3. Please take note of the following:
 - a. Whilst the owners/alleged offenders are still within their notice period as mentioned above, and may apply to Council for the appropriate land use rights via a land use application, they must still cease the land use contravention within the period set out in the notice.
 - b. Criminal prosecution via court proceedings is the preferred method of instituting legal action. It can take several months/years to obtain a criminal conviction and/or order of court compelling the owners/alleged offenders to cease the land use contravention and/or comply with such compliance notice. This is a separate process subject to all laws and regulations applicable thereto.
 - c. In the event of court action, you may be required to give evidence/testimony during the hearing of this matter in court, but will be informed in due time if such evidence/testimony is required.
4. You will be advised of any progress after follow up inspections have been conducted.

Yours faithfully

For DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT