

MINUTES OF THE PUBLIC MEETING ON THE SIGNAGE BYLAW

Date: 22 September 2025

Venue: Franschoek Civic Hall & MS Teams (Hybrid)

Chairperson: Bernabe de la Bat

Recording: Session recorded for minute-taking and record-keeping purposes.

1. WELCOME AND OPENING

- **Bernabe de la Bat** welcomed attendees and initiated introductions.
 - Attendees were asked to state their name, organization, and whether they wished to speak during the meeting.
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2. ATTENDANCE

In-Person Attendees:

- Bernabe de la Bat – Manager: Spatial Planning, Stellenbosch Municipality
- Jeremy Benjamin – Senior Manager: Development Planning, Stellenbosch Municipality
- Mervin Williams – Chief Legal Advisor, Stellenbosch Municipality
- Carlin Sinclair – Pro Advantage
- Michael Brits – Tractor Outdoor
- Jean Paulsen – Jinja Outdoor
- Martin Raubenheimer – Jinja Outdoor
- Bradley Simpson – Primedia Outdoor
- Angelo Tandy – Chairperson, OHMSA
- Kestel Serfontein – Urban IQ
- Edward Voster – Jinja Outdoor
- Beven Zettler – Zettler and Sons
- Ian Katzeff – S Zettler and Sons / Iningi Investments
- Stuart McDonald – Punch Media
- Rick Furtus –
- Piet van der Merve – Corpman Media
- Pier Besson – Gorilla Media

- Mark Thomis – Gottcha Media
- Matthew Bremmner – HSG Attorneys
- Fuad Davids – HSG Attorneys
- Harvey Steenkamp
- Stiaan Casterns – Senior Manager: Development Management
- Kaizer Makati – Heritage Planner
- Katherine Robinson – Senior Heritage Planner

Online Attendees (MS Teams):

- Michael Christophers – MD, Relative Media
- Anthony Allen – Epic Outdoor Benefit
- Berta Hayes – Stellenbosch Heritage Foundation (SHF)
- Lauren Nelson – Head of Legal, Provence Agent Outdoor Network
- Gary Zinn – Adlogic
- Katherine Sima – Primedia
- Vanessa Kuzwayo – Lovelight Media
- JC de Klerk
- Renay – Director, Outdoor
- Dhlamini Madoda
- Renee Higley – Director, Epic Arto

3. MEETING PURPOSE

- The meeting was convened to discuss the **Outdoor Advertising and Signage Bylaw**, which was advertised from **6 March to 6 April 2025 (the latest public participation)**.
- The Municipality received numerous comments and requests for a public engagement session.
- This meeting serves as a response to those requests and provides a final opportunity for stakeholders to voice concerns.

4. PRESENTATION

- **Katherine Robinson** explained the rationale for the Bylaw:

- The existing advertising policy aligned with the zoning scheme lacked enforceability.
 - The new Bylaw aims to strengthen regulations and enforcement mechanisms.
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5. MEETING GUIDELINES

- **Bernabe de la Bat:** The Chairperson provided an overview of the meeting's purpose and structure:
 - The draft outdoor advertising and signage by-law were advertised via newspapers and the municipal website from 6 March to 6 April 2025.
 - A significant number of comments were received during the public participation period.
 - Some submissions included requests for direct engagement with the Municipality.
 - Although this is not standard procedure, the Municipality, in consultation with the Legal Department, agreed to host this meeting to hear stakeholders' concerns.
 - The meeting was initially advertised to take place on 14 August 2025 and is now being held as scheduled.

Engagement Guidelines:

- The meeting is not a debate or workshop.
- Stakeholders may clarify or expand on previously submitted comments and may raise new arguments.
- All comments will be recorded and considered in the review process.
- If comments are deemed valid, appropriate amendments will be made to the draft By-Law.
- Material changes may require re-advertisement; otherwise, the document will proceed to Council for approval.

Speaking Protocol:

- Each speaker is allocated 10 minutes to present their input.
- A second round of 10-minute slots will be available for additional contributions if time permits.
- Attendees were requested to be brief, concise, and focused in their comments.

Presenter: Katherine Robinson (KR)

- The presenter provided a brief explanation of the need for the proposed Signage By-Law:
 - The Municipality has been operating under an advertising policy aligned with the zoning scheme.
 - However, the existing policy lacked sufficient enforceability.
 - The introduction of a formal By-Law is intended to strengthen the rules and regulations governing signage and advertising.
 - The By-Law will provide a more robust legal framework for implementation and compliance.
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6. SPEAKER: MARTIN RAUBINHEIMER (JINJA OUTDOOR)

- Martin requested clarity on whether stakeholders would receive an updated version of the outdoor advertising and signage by-law after their comments have been considered.
- He noted that if such a version were to be circulated, it would allow stakeholders to avoid unnecessary discussion on items that may already be resolved.
- He emphasized that having sight of the revised document would enable stakeholders to respond in a more structured and appropriate manner, potentially reducing debate and duplication.
- Martin asked for confirmation on what to expect going forward in terms of document circulation and further comment opportunities.

Response: Bernabe de la Bat

- The Chairperson confirmed that there have been various opportunities to comment and this is the final opportunity to submit any comments.
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7. SPEAKER: ANGELO THANDI (OHMSA)

- Angela requested clarity on whether stakeholders would be given access to the final version of the outdoor advertising and signage by-law before it is promulgated.
- She emphasized the importance of having sight of the document that will be submitted to Council, even if no further debate or comment is invited.

Response: Bernabe de la Bat

- The Chairperson confirmed that once the document is submitted to Council, it becomes a public document.
- Stakeholders will be able to access the document via the Council agenda, which is made publicly available.
- However, this does not form part of a formal process for additional comments or input.
- Bernabe offered to share the link to the agenda when the document is published.

Angelo Thandi:

- Confirmed that the response provided sufficient clarity and thanked the Chairperson.
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8. SPEAKER: BERTA HAYES

- Bertha wanted to confirm whether the document provided (the draft by-law) was the same document previously circulated for public comment.

Response: Bernabe de la Bat

- The Chairperson confirmed that it is the same document and that the by-law will be amended with due consideration to the comments and oral representations provided.
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9. SPEAKER: DHLAMINI MADODA

- Dhlamini requested clarification on the following points:
 1. The identity of the Chairperson, noting that he had not been introduced.
 2. Whether the current meeting forms part of the official Council process or is an accommodative engagement for specific individuals.
 3. The official steps the Municipality will follow from this point onward in terms of promulgating the outdoor advertising and signage by-law.
 4. Whether stakeholders will have access to the final version of the document before it is submitted to Council.

- He emphasized the importance of an inclusive and transparent process, particularly for stakeholders invested in the signage industry, and cautioned against any suppression of ideas.

Response: Bernabe de la Bat (Chairperson)

- Bernabe reintroduced himself as the Manager for Spatial Planning at Stellenbosch Municipality.
- He confirmed that the meeting was convened in response to multiple requests received during the public participation process.
- The meeting was publicly advertised in newspapers and is open to all interested parties, not limited to those who requested it.
- He clarified that:
 - This meeting represents the final opportunity for stakeholders to submit comments.
 - There will be no additional comment period following this meeting.
 - The final version of the By-Law will be included in the Council agenda, which is a public document accessible via the municipal website.
 - Stakeholders may view the document prior to the Council meeting but will not be invited to submit further comments at that stage.
- All comments received throughout the process, including those from this meeting, will be considered in full.
- If any material changes arise from the input, the Municipality will initiate a new public participation process. Minor changes will be incorporated and submitted directly to Council.

10. SPEAKER: MARTIN RAUBENHEIMER – JINJA OUTDOOR

- Martin thanked the Chairperson for the opportunity to speak and requested that the Municipality respond to key questions before stakeholders proceed with further comments.
- He noted that the industry has submitted comments since 2023 but has not received any formal response from the Municipality regarding its position on those inputs.
- He raised constitutional concerns, emphasizing that:
 - The Constitution is the supreme law of the country.

- Case law dictates that Municipalities are agents of the Constitution and have a higher duty to uphold its principles.
 - The Municipality did not oppose a High Court application brought by OHMSA, instead offering costs without addressing the constitutional issues raised.
- Martin requested that the Municipality:
 - Clarify its position on the constitutional matters raised.
 - Confirm whether legal opinions have been obtained on these issues.
- He cited specific concerns with the definition of “advertisement” in the draft By-Law, arguing that it is overly broad and could lead to unreasonable restrictions on public expression. S4(1) and 13(3) – (10) of the by-law, as examples, also too broad.
- He provided examples of everyday items (e.g., branded shoes, shopping bags, beverage containers) that could be interpreted as advertisements under the current definition, questioning the practicality and legality of such an approach.
- Martin emphasized the importance of public engagement and the Municipality’s duty under the Municipal Systems Act to consult meaningfully with stakeholders.
- He requested that the updated version of the By-Law be shared with the industry before submission to Council, to ensure that constitutional concerns are properly addressed and to avoid unnecessary debate.
- He expressed support for a balanced approach that protects heritage and cultural areas while also enabling commercial opportunities and economic development.
- Martin highlighted Stellenbosch’s significance as a major economic hub and stressed the need for collaborative efforts to promote growth and job creation.
- He warned against over-regulation, which could lead to unconstitutional restrictions on land use and expression.
- He urged the Municipality to ensure that the By-Law aligns with the Spatial Planning and Land Use Management Act (SPLUMA) and the Constitution, cautioning that any conflict would render the By-Law invalid. Further reiterates the Municipality’s duties in terms of the Municipal Systems Act.

- He concluded by reiterating the industry's willingness to engage constructively and contribute to a well-balanced, inclusive regulatory framework that supports both public interest and economic vitality.
- The Municipality operates as an Outdoor landlord, utilizing public spaces for outdoor advertising purposes.
- This creates a competitive conflict with private industry stakeholders and other landlords.
- He highlighted potential Competition Commission issues arising from this arrangement that needs to be addressed.
- He expressed concern over the broad discretionary powers granted to municipal officials in the draft By-Law, especially in a context where the Municipality is both regulator and competitor.
- Martin also briefly mentioned the need for transitional provisions in the By-Law and deferred that topic to another speaker.
- He concluded by requesting a formal response from the Municipality on the constitutional and legal issues raised.

Response: Bernabe de la Bat (Chairperson)

- Bernabe reiterated that the meeting is intended for engagement, not debate.
- He acknowledged the legal sensitivities raised and assured attendees that the final version of the By-Law will be scrutinized by legal experts.
- He then invited the next speaker to proceed, noting that other stakeholders also wished to contribute.

11. SPEAKER: IAN KATZEFF – S ZETTLER AND SONS

- Ian expressed serious concerns about the validity and fairness of the public participation process, questioning whether it is a genuine engagement or a box-ticking exercise.
- He emphasized the need for meaningful and material changes to result from stakeholder input, warning that failure to do so could lead to legal challenges, embarrassment for the Municipality, and unnecessary public expenditure.

- He cautioned that internal legal reviews may simply reiterate existing positions, increasing the risk of litigation.

General Observations:

- The draft By-Law is overly broad, potentially ultra vires, and infringes on property ownership rights.
- The consultation process has not adequately addressed concerns raised over an extended period, including previous litigation.
- The bylaw is unreasonably arbitrary in the manner it sweeps across rights. Council needs to assess whether such a sweeping bylaw is necessary. We are entitled to just public administration and the bylaw in its current form is not a just form of public administration.
- The By-Law may violate the principle of just public administration, which should not trample existing rights.

Specific Provisions of Concern:

1. Section 17 – Entry and Inspections:

- Grants municipal officials the right to enter private property without prior consent.
- Ian argued this violates privacy and property rights, noting that even SAPS requires probable cause or a warrant.

2. Section 19(9) – Property Rates Adjustment:

- Allows the Municipality to adjust property rates based on perceived contraventions.
- Ian described this as unfair and punitive, lacking due process. This is not a just public administrative measure to apply.

3. Section 26 – Transitional Provisions:

- Noted a missing subsection (3).
- Subsection (4) requires removal of any previous advertisement (prior to bylaw) deemed unlawful within 90 days, even if longstanding.
- Ian argued this is unreasonable and negatively impacts commercial viability.

4. Schedule 2 – Billboard Placement:

- Restricts billboards within:
 - 5 meters of residential boundaries.
 - 50 meters of signalised intersections if unilluminated.
 - 80 meters if illuminated.
- Ian stated these restrictions would render many existing signs unlawful, requiring removal at the owner's expense, and unfairly dictate property usage.
- There has to be a balance between Municipality's obligation to manage and the individual or entities rights to use their property for their own residential or commercial purpose.

5. Schedule 3 – Freestanding and Composite Advertisements:

- Limits signage to businesses set back 15 meters or more from the road.
- Ian argued this infringes on free speech and the ability of businesses to attract customers, especially those located directly on road boundaries.
- He warned of unequal treatment, where the Municipality may selectively waive restrictions, undermining equality before the law.

Economic and Social Impact:

- The By-Law could restrict advertising activity, harming the local economy and leading to job losses.
- It may disproportionately affect individuals without internet access, reducing visibility for businesses reliant on foot traffic.
- Ian urged the Municipality to reconsider the draft, suggesting a return to the drawing board to ensure the By-Law is balanced, fair, and economically sustainable.

Conclusion:

- Ian reiterated the importance of constitutional compliance, fair administration, and inclusive engagement.
 - He thanked the Municipality for the opportunity to speak and urged careful reconsideration of the draft By-Law
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12. SPEAKER: KESTEL SERFONTEIN – PLANNING PROFESSIONAL

- Kestel introduced himself as a planning professional who assists media owners in interpreting regulatory frameworks, speaking from a spatial planning perspective.

Key Points Raised:

1. Balance Between Control and Enablement:

- The By-Law should not only serve as a mechanism of control, but also as a tool to enable and unlock opportunities, in line with enabling legislation such as SPLUMA.
- While the By-Law claims to aim for balance, it appears to excessively control and limit opportunities through restrictions on sizes, spacing, and placement.
- This limits the outdoor media industry's ability to respond creatively and appropriately through innovation, design, and contextual responsiveness.

2. Missing Mechanisms – Overlay Zones:

- The urban and rural conservation overlay zones and scenic route overlays are described as turnkey mechanisms, but are absent from the current draft. There also has not been opportunity to review it.
- These mechanisms are essential for determining whether a location qualifies for advertising opportunities and must be included in the By-Law for proper review and comment.

3. Metaphorical Illustration:

- Advertising infrastructure was likened to transport infrastructure, both serving as conduits for movement—of people and messages.
- Just as roads are essential for economic connectivity, advertising opportunities are vital for economic visibility and growth.

4. Long-Term Impact:

- The By-Law will shape the regulatory environment for years to come, potentially beyond the current administration's tenure.
- It is essential that the objective of balance be clearly reflected in the final document.

5. 60-Day Finalization Period:

- Kestel commended the Municipality's commitment to a 60-day finalization period, which provides a reasonable timeframe for stakeholders to expect feedback and fair evaluation.

6. Section 21 Liaison Forums:

- The draft mentions liaison forums, but it is unclear how these committees will be composed.
- Kestel emphasized the need for specific industry representation within these forums to ensure sectoral input is considered.

7. Definition of Public Space:

- He raised concerns that the definition of public space may exceed constitutional intent and the mandate provided for regulating advertising in public places.

8. Environmental Impact Assessments (EIAs):

- The By-Law references EIAs, which are not applicable to signage under national legislation.
- Kestel suggested replacing this with more appropriate terms such as advertising impact assessments, as used in other municipalities.

9. Waiver Mechanisms and Flexibility:

- While the By-Law includes case-specific flexibility under sections 6, 16, and 24, Kestel questioned why the By-Law isn't proactively designed to promote balance, rather than relying on waiver applications.

10. Electronic Signage Restrictions:

- The By-Law limits electronic signage to 2.1 meters and prohibits visibility from Class 2 and 3 roads.
- Kestel argued this excludes most viable locations, leaving only Class 4 roads, which are typically residential or minor collector roads.
- He described this as unreasonable and overly restrictive, undermining the potential for appropriate electronic advertising

11. Spacing Standards:

- Notes that this is similar to the Bylaw of City of Cape Town.
- Many of the spacing standards is not qualified and informed. There needs to be a rationale intent behind the standards.

12. Area Control Matrix:

- The matrix follows a similar standard to the Bylaw of the City of Cape Town.
- Once again emphasises the need for a more balanced matrix.

13. Billboards:

- Notes that the bylaw, when it deals with billboards, adopts a one size fits all approach.
- Suggests that the Municipality looks at smaller sizes in partial control areas as a mechanism to speak to shopping nodes or mixed-used nodes.

14. Flat Signs:

- Limited to 5m and too overly restrictive, but when it comes to the Municipality's own signs there is no limitation.

15. Schedule 17:

- Very important mechanism to enable NPO's.
- Many media owners would like to assist in social and community benefit opportunities, but size is too restrictive and does not allow for this opportunity

13. SPEAKER: BERTA HAYES – STELLENBOSCH HERITAGE FOUNDATION (SHF)

- Berta noted that Patricia, another SHF representative, was unable to join the meeting due to technical issues.
- She confirmed that most of SHF's concerns were submitted in their April 2025 written comments, and requested that those be reviewed and considered.

Key Concerns Raised:

1. Billboard Placement on Scenic Routes:

- SHF is concerned about billboards along the R304 between Stellenbosch and the N1, particularly those advertising motor vehicles, which are considered inappropriate for heritage-sensitive routes.

2. Digital Screens on Residential Buildings:

- Concern was raised about large rotating digital screens attached to residential buildings, such as those in Bird Street.
- Berta warned that widespread installation of such screens would negatively affect the historic character of Stellenbosch and may deter tourism.

3. Comment Period Duration:

- SHF proposed that the comment period be extended from 21 business days to 30 calendar days, aligning it with land use application procedures.

4. Guidance for Scenic Routes and Cultural Landscapes:

- Berta emphasized the need for clear guidelines for advertising along scenic routes and within graded cultural landscapes.

5. Shop Window Advertising in Heritage Areas:

- SHF is concerned about shop windows in the historical core being completely covered with advertisements, which detracts from the visual integrity of heritage buildings.

Closing Note:

Berta reiterated that SHF's full concerns were submitted in April and requested that those comments be reviewed and considered in the finalization of the By-Law.

14. SPEAKER: BRADLEY SIMPSON – PRIMEDIA OUTDOOR

- Bradley raised concerns regarding the absence of overlay zones in the new draft zoning scheme By-Law issued by Stellenbosch Municipality.
- He noted that while the draft Outdoor advertising and Signage By-Law refers to overlay zones and conservation zones, these are not included in the new zoning scheme By-Law.

- He questioned whether the Municipality intends to update or include these zones and whether a map of areas of control will be made available, similar to practices in other municipalities such as Cape Town.
- Bradley emphasized that the lack of clarity leaves stakeholders in a grey area regarding their rights and permissible locations for advertising projects.

Response: Stiaan Carstens

- It was clarified that the 2019 overlay zones referenced in the By-Law are included in the new proposed zoning scheme By-Law.
- These zones are located at the back of the document and have not been changed.
- The overlay zones continue to group operations and remain part of the regulatory framework.

15. SPEAKER: MARTIN RAUBENHEIMER - JINJA OUTDOOR

- Raised concern about the transitional provisions in the draft By-Law, which regulate the shift from the current regime to the new one.
- Noted that the provisions rely on regulatory realities that are not fully established.
- Stressed that the current wording may result in deprivation of property, which constitutionally requires compensation.
- Stated that the 90-day removal clause appears to collapse into legal uncertainty, potentially rendering it unconstitutional.
- Urged the Municipality to carefully review and revise this section.

Response: Bernabe de la Bat (Chairperson)

- Acknowledged the concern and stated that constitutional and legal matters will be reviewed both internally and externally to ensure compliance.
- Confirmed that the Municipality is committed to ensuring the By-Law is legally sound.

16. IAN KATZEFF – S ZETTLER AND SONS

- Highlighted that retrospective application of new rules is generally discouraged in law.
- Argued that the transitional clause requiring billboard removal within 90 days is arbitrary and unfair, especially when applied to existing lawful structures.
- Stated that such provisions violate principles of natural justice and impose unreasonable burdens on property owners.

17. SPEAKER: BRADLEY – PRIMEDIA OUTDOOR

- Referenced the land use planning approval process, noting that the transition from Scheme 8 to the new zoning scheme By-Law was handled well.
- Suggested that the outdoor advertising and signage by-law should adopt a similar approach regarding the status of previous approvals.

18. SPEAKER: KESTEL SERFONTEIN – PLANNING PROFESSIONAL

- Proposed a performance-based approach to signage regulation, similar to planning principles used for height and coverage.
- Suggested that contextual design and impact mitigation could allow for customized waivers, as practiced in Cape Town.
- Argued that a blanket prohibition may not be appropriate and that flexibility based on context could help achieve a balanced regulatory framework

19. SPEAKER: ANGELO THANDI (OHMSA)

- Emphasized that this approach is unfair, overly broad, and may violate legal norms.
- Expressed the view that it would be prudent and constructive for the Municipality to share the final draft of the By-Law with stakeholders prior to promulgation.
- Highlighted ongoing disparities and unresolved issues in the current draft that could be clarified through further engagement.

- Referenced practices in other municipalities across South Africa, where collaborative partnerships are being formed to co-develop regulatory frameworks.
- Emphasized the desire to work with the Municipality, rather than face potential legal disputes, and reiterated the request for early access to the final draft for review.
- Again, requested that the Municipality share the final draft bylaw with the industry before submitting it to Council.

Response: Bernabe De La Bat - Chairperson

- Confirmed that the Municipality will review all constitutional and legal concerns, both internally and externally.
- Once again emphasised that should there be material changes the Municipality will consider re-circulating it.

20. SPEAKER: JEAN POLSON – JINJA OUTDOOR

- Jean summarized key concerns raised by stakeholders, stating that the existing draft By-Law lacks constitutional alignment, and fails to strike a balance between economic development and regulatory oversight.
- He described the draft as overly restrictive, and emphasized that stakeholders are seeking collaborative engagement, not one-way consultation.

Key Points Raised:

1. Legal Framework and Section 62 of Municipal Systems Act:
 - Cited Section 62 of the Municipal Systems Act, noting that courts have held it to be an inappropriate remedy in certain contexts.
 - Requested that the Municipality revisit its reliance on this section.
2. Engagement Process:
 - Asked for clarity on whether the Municipality views engagement as a one-way process, where stakeholders submit comments but are not given the opportunity to respond to the Municipality's decisions.

- Advocated for a workshop-style meeting to allow for interactive dialogue and resolution of outstanding issues.

3. Regulatory Confusion:

- Expressed confusion over the legal framework currently in effect, referencing mentions of policy, zoning By-Laws, and the draft outdoor advertising and signage By-Law.
- Requested clarification on which framework stakeholders are expected to be applied and complied with.

4. Retrospective Application:

- Asserted that retrospective enforcement of the By-Law would be unlawful, referencing existing court rulings.
- Urged the Municipality to avoid retroactive measures that could lead to legal challenges.

5. Discretion and Exemptions:

- Raised concern about the wide discretionary powers granted in the draft, particularly regarding exemptions.
- Requested clarity on the guardrails that will be implemented to prevent arbitrary administrative action, which could result in further litigation.
- Emphasized the Municipality's constitutional duty to avoid unnecessary legal disputes.

6. Call for Further Public Participation:

- Recommended additional public engagement, ideally in the form of workshops, to avoid economic harm and ensure market-informed regulation.
- Highlighted the importance of consultation in understanding what advertisers need for Stellenbosch's economic development.

Closing Request:

- Asked for confirmation on two points:
 1. Whether the engagement process is one-way, with no feedback on the second draft.

2. What legal framework stakeholders are currently expected to comply with.

Response: Bernabe de la Bat – Chairperson

Engagement and Process:

- Bernabe reiterated that the current engagement is not a one-way process, and the Municipality has convened this meeting to listen to stakeholder concerns. It is also not an open process that can go on forever.
- Bernabe acknowledged that the Municipality has received substantial comments from two distinct stakeholder groups:
- Billboard advertising agencies, advocating for commercial visibility.
- Heritage and conservation stakeholders, focused on preserving Stellenbosch's cultural and visual landscape.
- He emphasized the Municipality's responsibility to strike a balance between these opposing interests. It is a difficult balance to strike.
- However, he cautioned that if legal and professional review finds no material issues, the Municipality will not re-advertise the By-Law.
- The final draft will be made available before submission to Council, but not for further public comment, unless material changes are identified.

Contextual Background:

- Stellenbosch is considered one of South Africa's most visually and culturally significant municipalities, with a rich heritage inventory and declared conservation areas.
- The Municipality has undertaken various studies, including:
 - A rural and economic strategy developed in collaboration with the university.
 - Professional input on overlay conservation zones, rural conservation zones, and scenic routes.
- These studies inform the draft By-Law and are not arbitrary decisions, but part of a structured process.

Current Legal Framework:

- The Municipality currently operates under:

- Previously there was an older signage policy, which was restrictive and focused on the historical core.
- A policy document that outlines Council's position on signage, but lacks enforceability.
- Zoning scheme regulations, which require signage applications and permissions.
- There is no active signage By-Law, but signage is still regulated through zoning provisions, especially in urban conservation zones and scenic routes.

Legislative Intent and Challenges:

- The draft By-Law aims to consolidate previous fragmented regulations, including:
 - Poster By-Laws
 - Signage By-Laws
 - Election-related signage controls
- Bernabe acknowledged past confusion due to overlapping regulations and confirmed that all stakeholder comments, including those submitted to the courts, are being considered.
- He concluded by stating the Municipality's intent to finalize the By-Law before upcoming elections, ensuring a clear and enforceable framework is in place.

21. SPEAKER: MARTIN RAUBENHEIMER – JINJA OUTDOOR

- Requested that the final updated version of the draft By-Law be made available to stakeholders before promulgation.
- Committed to providing a response within 14 days, ensuring the process does not become prolonged.
- Emphasized that reviewing the final draft is essential to ensure constitutional compliance and responsible legislation.
- If the Municipality is unwilling to share the final draft, the speaker requested the opportunity to address the relevant portfolio committee when the draft is considered by Council.

Response: Mervin Williams – Legal Advisor, Stellenbosch Municipality

- Confirmed that the current meeting forms part of the consultation process, aimed at gathering stakeholder input for Council's consideration.
- Reiterated that if material changes arise from the comments received, the draft will be re-advertised for further public input.
- If there are no material changes, the By-Law will be finalized based on the input received, and the final document can be circulated to stakeholders, but not for further comment.
- Regarding the request to address the portfolio committee, Mervin noted that he would need to review the rules of order to determine whether such participation is permitted.
- Acknowledged that there may be precedent for such engagement and committed to checking and confirming whether stakeholders can formally present to Council during the By-Law approval process.

Response: Martin and Angelo:

- Confirms that the Municipal Systems and Structures Act does allow for stakeholders to address portfolio committee.

22. SPEAKER: EDWARD FORSTER – JINJA OUTDOOR

- Thanked the Municipality for the opportunity to engage.
- Noted that it is clear from the meeting that:
 1. The Municipality has not yet fully considered the industry's submitted inputs.
 2. If material changes result from the review, the Municipality will share the updated draft with stakeholders.
- Requested that, regardless of whether material changes occur:
 - The Municipality share the date when the draft will be submitted to Council.
 - Clarification be provided on the anticipated timeline for reviewing all comments and finalizing the draft.
- Emphasized the industry's interest in resolving the matter sooner rather than later, and in having certainty before the draft is taken to Council.

Response: Bernabe de la Bat – Chairperson

- Confirmed that while many comments have been reviewed, the Municipality has not yet completed the full assessment due to overlapping issues.
- Reiterated that if no material changes are made, the final draft will not be circulated for comment, but will be made available via a link once it is included in the Council agenda.
- Clarified that the Municipality is not waiting for the next election to finalize the By-Law, but aims to complete the process as soon as possible.
- Indicated that the target date for Council submission is November, ideally before the close of offices for the year.
- Noted that October is no longer feasible, and December typically has limited Council activity, making November the most realistic window to go to Council.

Question: Martin:

- How do you anticipate getting everything or everyone around the table and who will assist with assessment with comments received? Will you get outside legal Counsel? Will this all be done before close of business in December? This will inform on attitude of Municipality

Response: Bernabe De La Bat – Chairperson

- November is only the aim, it is no to say we will have all of it done by then. We will try and get it done as soon as possible. (Mervin Williams reiterates).

23. SPEAKER: MICHAEL BRITS (TRACTOR OUTDOOR)

- Raised a query regarding the potential adoption of the City of Cape Town by-law for signage.
- Noted that Cape Town has recently completed a lengthy process resulting in a workable framework.
- Acknowledged that while regional differences exist, customization is possible.
- Highlighted that Cape Town's signage size specifications appear more practical than current proposals.

- Mentioned that the question had been submitted previously in feedback but had not received a response.

Speaker: Bernabe De La Bat - Chairperson

- Confirmed that various cities and towns were reviewed during the process.
 - Emphasized the distinct differences between urban cities and rural towns (e.g., Stellenbosch), particularly in terms of mechanisms and procedures.
 - Acknowledged that lessons can be learned from Cape Town's approach and that further review is possible.
 - Explained that the initial signage framework was based on a model that was found to be feasible, followed by a review of a more probated version, which influenced the current proposal.
 - Reiterated that cities and towns require different approaches, but the feedback is noted.
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24. SPEAKER: BERTA HAYES – STELLENBOSCH HERITAGE FOUNDATION (SHF)

- Expressed appreciation for the ongoing process but emphasized the urgency of finalizing it.
 - Noted a significant increase in inappropriate advertisements over recent years, which detract from the architectural landscape and natural beauty of the town and surrounding countryside.
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25. SPEAKER: IAN KATZEFF – S ZETTLER AND SONS

- Raised a concern regarding the uniform regulation of advertising across both the town and its rural surroundings.
- Argued that rural areas should be treated differently due to:
 1. Larger geographical area;
 2. Distinct needs; and
 3. Unique tourism dynamics
- Highlighted that rural zones experience higher passing traffic, which benefits from informative signage.

- Asserted that current rural advertising is not cluttered, not unmanaged, and does not detract from the landscape.
- Described existing rural advertising as effective and appropriate, invoking the principle: *“Why fix what is not broken?”*

Response: Bernabe De La Bat Chairperson

- Chose not to engage in detail, stating only that there are differing views on the matter.
-

26. SPEAKER: JEREMY BENJAMIN – STELLENBOSCH MUNICIPALITY

- Reiterated that the process is not a tick-box exercise; stakeholders are encouraged to express their views.
- Emphasized the importance of compliance with legislation, including the MFMA, MSA, and other relevant systems.
- Stressed the need to avoid litigation, especially since public funds are being used.
- Invited stakeholders to highlight any unconstitutional elements to prevent unnecessary legal disputes.
- Acknowledged the dual responsibility to stakeholders and residents of Stellenbosch, the second oldest town in South Africa, with significant tourism value.
- Noted his role in economic development, advocating for sustainable growth that supports tourism, particularly in Franschhoek, where tourism comprises 90% of the local economy.
- Addressed the issue of retrospective application of laws, stating that while most laws are not applied retrospectively, illegal billboards without approval must still be dealt with.
- Explained that some billboards may require building plans due to safety concerns, such as wind damage and liability risks.
- Advocated for a balanced approach to billboard regulation, aligning with the municipality’s IDP vision of innovation.
- Welcomed electronic and innovative signage, but cited a case where an illuminated sign caused visibility issues at an intersection, prompting public complaints.

- Called for collaboration to find workable solutions, acknowledging the complexity of balancing diverse interests.
 - Requested stakeholders to share relevant case law, especially if applicable to the Western Cape, to help avoid legal missteps.
 - Highlighted the cost implications of repeated advertisement processes (approx. R50,000 per instance), and the need to avoid wasteful expenditure while remaining inclusive.
-

27. SPEAKER: MERVIN WILLIAMS – STELLENBOSCH MUNICIPALITY

- Addressed the legal status of the Building Act, referencing Jinja's earlier comments.
 - Clarified that while parts of the Act were challenged, it has not been declared unconstitutional in full.
 - Noted that only a specific section was found unconstitutional in the Overbeek judgment.
 - Emphasized the need to consider both the Building Act and SPLUMA, as each serves a distinct legal purpose.
 - Asserted that the municipality cannot disregard legislation based solely on certain views or interpretations from state entities.
 - Reinforced the importance of applying existing laws unless formally repealed or declared unconstitutional.
-

28. CHAIRPERSON'S CLOSING REMARKS

Speaker: Bernabe De La Bat - Chairperson

- Expressed gratitude to all present for:
 - Their effort to attend;
 - Their interest in the process; and
 - Their valuable advice and contributions.

5 April 2025

The Municipal Manager
Stellenbosch Local Municipality
PO Box 17
Stellenbosch
7599



FOR ATTENTION: Viola Anthony

**RE: COMMENTS ON THE DRAFT STELLENBOSCH
MUNICIPALITY OUTDOOR ADVERTISING AND SIGNAGE BY-
LAW, 2024**

> **(A) INTRODUCTION:**

The latest version of the Draft Stellenbosch Municipality Outdoor Advertising and Signage By-law, 2024, follows previous iterations and has been released for public comment, with submissions due by 6 April 2025. Urban IQ previously submitted formal comments in December 2023, drawing on over three decades of urban planning expertise and a deep understanding of the Out-of-Home (OOH) advertising sector across various municipal jurisdictions in South Africa. As a planning professional specialising in this field, my comments — both then and now — seek to provide constructive input that ensures regulatory frameworks remain relevant, adaptable, and supportive of evolving media formats, designs, and technologies.

Notably, this latest draft appears to be largely a reproduction of the 2023 version, with no substantive amendments to its structure, regulatory standards, or intent. The most significant change is the expanded role and regulatory connection between the Advertising By-law and the proposed **Urban and Rural Conservation Overlay Zone** and **Scenic Routes Overlay Zone**, which are yet to be published for comments. These overlay zones will ultimately determine where outdoor advertising is permitted and specify the types of signage allowed or prohibited in each area. However, in the absence of an officially enacted overlay control scheme, the By-law lacks practical enforceability. Until these zones are formally established, the By-law effectively **freezes administrative decision-making**, creating regulatory uncertainty that inhibits private sector response and investment. This delay not only adds unnecessary bureaucratic complexity but also undermines constitutional rights related to commercial free speech, as businesses cannot operate within a legal framework that remains undefined.

Regrettably, the structural impediments related to **sign sizing, spacing standards, and broad area control and implied locational prohibitions** persist unchanged in this draft, reflecting yet another missed opportunity to modernise the regulatory framework. The administration has essentially restated the same set of restrictive provisions without meaningful consideration of how the OOH industry could constructively contribute to Stellenbosch's local economy.

A fundamental flaw of this By-law, as with its predecessors, is its **lack of industry consultation**. The OOH media sector plays a critical role in responding to urban development and transportation patterns, serving as an integral component of the local economy. This sector has evolved significantly, particularly with the integration of digital technologies, fostering more innovative, adaptable, and sustainable advertising practices. The industry operates on well-established and internationally recognised typologies, size formats, and spacing principles, which provide a balance between commercial viability and urban aesthetics. However, by disregarding these principles, the municipality risks **disrupting economic equilibrium** and diminishing the role of OOH advertising as a legitimate form of commercial expression.

While I as an industry professional fully appreciate and support the protection of Stellenbosch's cultural and scenic heritage, this By-law still takes an excessively restrictive stance. Instead of recognising how thoughtful design and responsible media integration can enhance public spaces, it defaults to an outdated **prohibition-heavy approach** — shrinking signage dimensions to ineffective levels and severely limiting viable locations.

Internationally, progressive urban environments have demonstrated how **creatively integrated OOH advertising can minimise visual impact** while contributing to vibrant cityscapes. Unfortunately, the regulatory stance in Stellenbosch remains rooted in an antiquated philosophy that fails to harness the potential of smart, well-designed outdoor media to complement urban character.

The following sections will critically examine key aspects of the By-law and propose pragmatic, industry-informed recommendations to help shape a more **inclusive, responsive, and effective** regulatory framework for outdoor advertising in Stellenbosch.

(B) GENERAL COMMENTS:

Objectives of the By-law:

The repositioning of Section 2 from the previous By-law (previously titled *Principles*) under the new heading "*Object of the By-law*" appears to acknowledge the importance of **balancing regulatory control** by the facilitation of free speech and economic activity ostensibly in harmony with the conservation of Stellenbosch's visual, tourism, environmental, and heritage assets, as well as traffic safety. However, a closer assessment of the regulatory framework reveals that this balance is not meaningfully achieved. Instead, the By-law leans disproportionately towards **preserving character and visual aspects**, potentially overshadowing the critical role that outdoor advertising plays in sustaining the local economy.

The **Spatial Development Principles** outlined in the Spatial Planning and Land Use Management Act (SPLUMA) — particularly the principle of **efficiency** — underscore the necessity of integrating economic imperatives into regulatory decision-making. The By-law, however, fails to optimise land use efficiencies by allowing for additional economic layering through regulated outdoor advertising. Instead, its restrictive approach nullifies this potential, raising concerns about its alignment with the municipality's broader economic growth objectives. Moreover, by **failing to promote inclusive and transformative economic participation**, the By-law is at odds with national development priorities such as spatial justice and economic inclusion.

As it stands, the By-law in its current format disproportionately favours existing economic interests, effectively entrenching an **exclusionary and restrictive** advertising environment. This directly contradicts its own stated objective of striking a balance, as outlined in Section 2. Without a more progressive and accommodating economic approach, the By-law risks functioning as a **barrier to equitable economic opportunities**, rather than a framework for responsible and sustainable advertising regulation.

Mandatory Finalisation of Applications & Liaison Forums

The retention of the **60-day mandatory finalisation period** for complete applications is commendable, as it enhances efficiency, predictability, and investor confidence in Stellenbosch's Outdoor Advertising regulatory process. However, while this provision is a positive step toward administrative certainty, other structural barriers in the By-law still create unnecessary regulatory complexity and potential delays in decision-making.

Additionally, the provision for the establishment of **liaison forums (Section 21)** is a welcome mechanism to ensure broader representation and incorporate a variety of stakeholder perspectives. However, the composition and inclusivity of such forums remain unclear. It is uncertain to what extent affected and interested parties will be represented, particularly whether the **Out-of-Home (OOH) Media sector** — as a key stakeholder — will be formally included. Given the lack of meaningful engagement with the industry to date, there is a risk that these forums may exclude critical industry voices, ultimately undermining their intended purpose.

For the forums to be effective, the By-law should explicitly ensure that the OOH sector is directly represented in their constitution. This would facilitate a more balanced and informed regulatory process, ensuring that economic, spatial, and aesthetic considerations are **equitably weighed**.

“Public Place” definition

The revised By-law appears to **extend its regulatory scope** beyond the Constitutional mandate set out in Part B of Schedule 5 of the Constitution, which explicitly confines local government competence in this area to *“Billboards and the display of advertisements in public places.”*

Not only does the By-law extend its authority beyond this constitutional limitation by seeking to regulate signs outside public spaces merely because they are visible from public areas, but it also broadens the definition of “public place” to include **privately owned areas** that are simply accessible to the public or **utilised by the public**. This expansion has far-reaching implications:

- It unlawfully restricts the exercise of **vested zoning rights** on private properties by imposing **municipal control** over advertising beyond **legally permitted jurisdiction**.
- It infringes on **fundamental constitutional rights**, including Section 16 (freedom of expression), Section 22 (freedom of trade, occupation, and profession), and Section 25 (property rights), by introducing **unjustified prohibitions** on how property owners may lawfully exercise their rights.
- It **creates regulatory overreach**, effectively allowing the municipality to assume **self-imposed authority** over spaces it does not own, manage, or control.

To align with constitutional mandates, any definition of **“Public Place”** should be strictly confined to areas that are owned, controlled, and vested within the municipality’s custodianship. The **inclusion of private spaces** — simply because they are accessible to the public — amounts to an **overextension of regulatory power**, which should be rectified in the final version of the By-law.

Environmental Impact Assessment

The new By-law grants discretionary powers to officials to compel applicants to submit Environmental Impact Assessments (EIAs) in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998). However, this requirement is misaligned with the legal framework, as billboards and advertising signs are not listed activities under any of the Act’s Regulations. Consequently, applicants cannot be forced to undertake costly EIAs where such assessments are unnecessary or inappropriate.

It appears that the By-law has been modelled on Cape Town’s Outdoor Advertising By-law. However, even the Cape Town By-law avoids the term **“Environmental Impact Assessment”** and instead references a **“Signage Impact Assessment”** — a more contextually appropriate and industry-specific assessment. Other municipalities similarly use the term “Advertising Impact Assessment,” which aligns with the nature of advertising-related impacts.

While specialist impact assessments may be necessary in certain cases — particularly to assess cumulative impacts — the requirement should be tailored to the specific concerns associated with advertising. Unlike greenfield developments, which fundamentally alter land use and warrant environmental studies, advertising structures are typically installed on already developed sites, resulting in limited environmental consequences. The primary impacts of advertising relate to traffic safety, visual amenity, heritage considerations, economic factors, and alignment with policy objectives, rather than traditional environmental concerns.

Exemptions

The inclusion of exemption provisions under Sections 6(16) and 24 is a positive step, as it introduces **flexibility** and allows for **case-specific considerations**. However, the By-law remains unclear on the procedural aspects of granting exemptions. It is particularly uncertain whether applications for exemptions will fall within the delegated authority of officials responsible for general evaluations or whether a dedicated committee — such as a steering committee or the municipal manager — will oversee such decisions. Establishing a structured and transparent decision-making process is crucial to prevent misuse of these provisions.

Furthermore, the necessity for frequent exemptions is a symptom of the overly restrictive nature of the By-law itself. By adopting more **realistic and balanced regulations** concerning sign sizes, spacing, and area prohibitions, the demand for exemptions could be significantly reduced. Predictability and regulatory certainty would benefit both municipal administration and applicants by minimising the need for ad hoc deviations from rigid standards.

Unrealistic size limitation for electronic signs

The By-law retains the restriction of electronic signs to a maximum size of 2.1m² under Section 9(3)(a), despite previous comments highlighting its impracticality. This **excessive restriction** is inconsistent with contemporary advancements in the out-of-home (OOH) media sector and contradicts the city's broader commitment to technological progress, entrepreneurship, and innovation — exemplified by the presence of Stellenbosch's Technopark & University of Stellenbosch.

Digital media is not merely an advertising tool but a **key driver** of economic development and urban modernisation. The imposed size restriction disregards the inherent benefits of digital advertising, including sustainability, energy-efficient illumination, and real-time adaptability. The trend in the OOH industry is increasingly digital, offering advertisers the ability to engage audiences with dynamic, contextually relevant content. Overly restrictive limitations such as this risk **stifling innovation and economic opportunities**.

Additionally, the impact of digital signs on visual comfort and readability must be considered. At 2.1m², digital advertisements become so small that readability is compromised, forcing viewers to focus for longer periods to decipher content. This counteracts the very purpose of outdoor advertising, which relies on quick and effective message transmission.

Another concern is the By-law's restriction of digital signs to only partial and minimum control areas. This exclusion of maximum control areas is unwarranted, particularly where existing ambient lighting — such as streetlights — is already present. Instead of blanket prohibitions, a more appropriate regulatory approach would be to link digital signage permissions for example to the **presence or absence of existing illumination** in the area.

Locational prohibition of electronic signs

Section 10(2) of the By-law imposes broad restrictions on electronic signs, prohibiting them from being visible from **Class 2 or 3 roads**, gateway routes, or scenic routes unless expressly approved in writing by the Municipality. However, this prohibition is fundamentally flawed and impractical. Class 2 and 3 roads are precisely the types of routes where electronic signs are typically located in metropolitan areas, secondary cities, and large towns such as Stellenbosch. Given the substantial capital investment required for electronic signs, their viability is directly linked to high-traffic routes that maximise exposure to audiences. A general prohibition on such routes is, therefore, unjustified and represents a legislative overreach.

Illumination concerns — often cited as the basis for such prohibitions — can be effectively mitigated through **well-established regulatory controls**, such as maximum brightness standards, automatic dimming at night, and other impact-reduction measures. A blanket ban ignores these technical solutions and instead imposes an arbitrary restriction that lacks nuanced consideration of actual impacts. A more rational and predictable regulatory framework should allow electronic signage on such routes while enforcing appropriate illumination and placement standards to manage potential concerns objectively.

Moreover, prohibiting electronic signage along these key routes undermines urban modernisation efforts. A progressive locale such as Stellenbosch would benefit far more from **well-designed, high-quality electronic signage** than from outdated paper-pasted or PVC banner signs, which are environmentally unsustainable and visually unappealing. Electronic signs offer superior design flexibility, improved environmental responsibility, and advanced impact mitigation strategies that are simply unattainable with traditional static signage formats. Instead of restricting innovation, the Municipality should rather embrace digital signage as part of its urban landscape while implementing balanced and reasonable control measures.

Over-restrictive spacing standards

The general spacing requirements outlined in Table 1 under Section 10 (Road Traffic Safety Requirements) remain unchanged from the previous draft, despite previous comments highlighting their excessively restrictive nature. These standards are at least **200–300% more restrictive** than those applied in other major South African cities. While they appear to align with Cape Town's notably stringent by-law, there is no clear or objective justification for such an extreme approach.

The overly restrictive spacing requirements raise significant concerns about their impact on economic activity and advertising viability. Excessive spacing limitations constrain investment in advertising infrastructure, reducing opportunities for businesses to market effectively and diminishing the economic contribution of the out-of-home (OOH) advertising sector. A regulatory framework that **unduly limits economic opportunities** without demonstrable public benefit should be reconsidered.

Furthermore, these spacing standards create unnecessary **administrative burdens** by triggering additional impact assessments solely due to their unusually stringent nature. If Stellenbosch were to adopt more balanced spacing standards — aligned with national industry norms — it would significantly reduce the need for costly and time-consuming waiver applications while maintaining orderly urban aesthetics and ensuring responsible traffic safety management.

A well-calibrated approach should seek to balance urban design considerations with economic vitality. Instead of imposing unjustified restrictions that far exceed what is considered reasonable in comparable municipalities, Stellenbosch should adopt a more pragmatic, evidence-based approach that aligns with national best practices.

(C) DETAIL COMMENTS (SCHEDULES)

The following detailed comments highlight concerns regarding various Schedules that significantly impact third-party advertising.

Schedule 1: Area of Control

The Area of Control matrix remains largely unchanged, mirroring Cape Town's highly restrictive approach, which severely limits billboard opportunities. While the regulatory intent behind these constraints may be understandable in certain contexts, the classification of core economic zones — including central business districts, commercial nodes, and activity corridors — as **Partial Control Areas** raises substantial concerns.

Notably, the only areas explicitly **designated as Minimum Control Areas** — which are the only zones where billboards are permissible — are industrial areas. Other potential billboard-friendly areas are left subject to future designation on a discretionary basis. Furthermore, the term **“heritage insensitive areas”** is left undefined, allowing for subjective interpretation and decision-making by municipal officials.

When read alongside the blanket prohibition of electronic billboards along Class 2 and 3 roads, as well as restrictive spacing requirements, the cumulative effect of these provisions is to render billboard placement **virtually impossible** under the new By-law. This, in practice, amounts to a **de facto ban**, which raises serious concerns regarding regulatory overreach.

This restrictive categorisation also appears to **contradict the principles** outlined in the South African Manual for Outdoor Advertising Control (**SAMOAC**). The failure to permit billboard advertising within **commercial, mixed-use, or business areas** directly conflicts with the city's broader spatial policy framework, which aims to promote economic activity in these very zones. This misalignment risks undermining strategic economic objectives and stifling investment in advertising infrastructure that could otherwise contribute to urban vitality and growth.

Additionally, the intended **overlay zones** — which have yet to be promulgated — could further **erode any remaining billboard opportunities**. These overlay zones appear poised to function as a discretionary tool for municipal officials to arbitrarily determine, where billboards are deemed permissible. The concern here is that such decision-making will be **heavily weighted toward visual, heritage, or special sensitivity considerations**, without adequately factoring in the economic support needs of existing business nodes and linear activity spines.

To ensure a **balanced, predictable, and fair regulatory framework**, the By-law should:

- Expand **Minimum Control Area** classification to include **commercial and mixed-use zones**, allowing for strategic placement of billboards in line with economic activity.
- Define **“heritage insensitive areas”** in clear, objective terms to avoid discretionary decision-making.
- Align billboard opportunities with **the city's spatial planning policies**, ensuring that restrictions do not contradict designated commercial growth areas.
- Implement a **more transparent overlay zone system**, part and parcel of the Advertising By-law, ensuring that economic considerations are weighed alongside visual and heritage factors.

Schedule 2: Billboards

Despite previous concerns raised, this section remains **rigidly restrictive**, prioritising aesthetic considerations over balanced regulatory outcomes. The framework confines billboards almost exclusively to **industrial and transportation zones** — effectively prohibiting them in commercial, retail, and mixed-use areas, which are precisely the locations where businesses require visibility.

While limiting billboard proliferation in a city like Stellenbosch has merit, the **outright ban on smaller billboards (up to 18 sqm) within commercial hubs** is an unnecessary restriction. Shopping centres and high-footfall commercial districts depend on effective advertising visibility for economic vibrancy. A more rational approach would be to:

- Permit **smaller billboards (up to 18 sqm) in Partial Control Areas** within these key commercial zones.
- Introduce **context-sensitive design controls** to ensure that billboards in such areas contribute positively to urban character without compromising aesthetics.

Furthermore, the **blanket 18 sqm size limitation** remains **excessively stringent** for a medium-sized city like Stellenbosch. A more differentiated approach would allow:

- **Larger formats (up to 36 sqm) in Minimum Control Areas**, particularly within industrial and transportation zones where impact concerns are lower.
- **Case-by-case exceptions** where larger billboards can be accommodated without negatively affecting urban character, heritage, or traffic safety.

Stellenbosch has an opportunity to **embrace innovation in billboard design**, integrating advertising structures more seamlessly into the built environment. The By-law should:

- Allow for **design-led exemptions**, where size, height, and spacing restrictions could be waived for billboards that incorporate aesthetic and functional enhancements.
- Encourage **dual-purpose billboards**, such as those integrating public information displays, city branding elements, lighting, or urban greening elements, aligning advertising with broader urban improvement goals.

A **more flexible, design-conscious regulatory framework** would balance urban aesthetics with economic sustainability, ensuring that Stellenbosch remains competitive while maintaining its unique character.

Schedule 4: Flat Signs

The By-law's continued imposition of a rigid **5 sqm size limitation** on Flat Signs remains unduly restrictive and unrealistic. While a waiver provision exists, this arbitrary constraint significantly limits economically viable advertising opportunities and unduly curtails effective advertising exposure. Notably, most municipal By-laws in South Africa do not enforce such an inflexible size limit, allowing for greater creative expression and façade customisation.

A more balanced approach should allow for larger Flat Signs, provided they are **thoughtfully designed** and integrated with the building's architectural character. Large, well-executed Flat Signs can transform otherwise monotonous façades into visually engaging facades, contributing positively to the built environment. By maintaining a stringent blanket restriction, the By-law stifles innovative advertising solutions that could enhance the urban fabric rather than detract from it.

The regulatory framework should instead adopt a **performance-based approach**, permitting larger Flat Signs where design excellence, aesthetic integration, and contextual appropriateness are demonstrated. This would align with the city's commitment to fostering a vibrant, aesthetically pleasing urban environment without unnecessarily hindering economic opportunities.

Schedule 16: Advertising on Municipal Land or Buildings

The provisions governing advertising on municipal land and buildings introduce a fundamental imbalance, granting the municipality an unjustifiable **commercial advantage**. Specifically, paragraph 2(a) of this Schedule allows for a broad discretionary approach to advertising on municipal property, even omitting any explicit size limitations. This stands in stark contrast to the highly restrictive regulations imposed on private property, particularly under Schedules 2 and 4.

Such an approach creates an **inequitable regulatory framework**, where private property owners face excessive constraints while the municipality is afforded undue latitude to monetize advertising on its own land. This contradicts the principles of fair competition and market parity.

To ensure consistency and equitable treatment, the By-law should either:

- Extend the same commercial advertising opportunities to private landowners under a balanced, performance-based framework, or
- Apply the same restrictions to municipal property as currently imposed on private properties.

A fair and transparent regulatory environment is imperative to prevent **undue municipal advantage** and ensure a level playing field for all stakeholders in the outdoor advertising sector.

Schedule 17: Signs erected by or for the Benefit of Non-Profit Organisations

The retaining of the provisions allowing billboards for the benefit of non-profit entities — such as schools, sports clubs, and community organisations — is a commendable recognition of the financial challenges these groups often face. However, the rigid application of an 18 sqm maximum size limitation, mirroring Cape Town's approach, may significantly **curtail the fundraising potential** of these organisations.

In reality, experience has shown that overly restrictive size limitations severely limit the financial viability of such signs. In low-risk environments — such as large land parcels or along major transportation routes — larger sign sizes could be permitted without causing undue visual or environmental impact.

A more **flexible and context-sensitive approach** is warranted, ensuring that non-profit organizations can fully leverage advertising opportunities to support their vital community programs. The By-law should incorporate a provision allowing for case-by-case consideration of larger sign sizes where appropriate, subject to location-specific impact assessments. This would maximize the potential benefits of this initiative while maintaining responsible urban design principles.

(D) CONCLUSION

The **Stellenbosch Municipality Outdoor Advertising and Signage By-law, 2024** establishes a structured yet incomplete regulatory framework for outdoor advertising. A more detailed analysis further reveals persistent issues that require urgent reconsideration. While the By-law seeks to balance visual integrity with economic advancement, its rigid approach — particularly in the imposition of restrictive size limitations and area control — fails to accommodate economic realities, urban design innovation, and fair competition.

Key concerns include:

- **Excessively restrictive size limitations**, particularly for Flat Signs and Billboards, which unnecessarily constrain effectual branding and creative integration with building façades, while also limiting advertising effectiveness of billboards in low-risk areas.
- **Inconsistent regulatory treatment** between municipal and private land, creating an unfair commercial advantage for the Municipality while excessively restricting private sector advertising rights.
- **A lack of flexibility for non-profit organisations**, where rigid size constraints on signage may undermine their ability to maximise financial sustainability.
- **Regulatory uncertainty** due to the expanded role of the Urban and Rural Conservation Overlay Zone and Scenic Routes Overlay Zone, which have yet to be formalised. This expanded regulatory connection effectively freezes administrative decision-making and stalls approvals. The lack of clarity on how these overlays will enable or prohibit advertising sites creates uncertainty, delays, and unnecessary bureaucratic complexity, potentially undermining economic activation.
- **Potential constitutional concerns** arising from overbroad and ambiguous definitions, particularly regarding “public spaces.” The expansive interpretation of what constitutes a public space, coupled with the implied need for additional regulatory compliance, may infringe on constitutional rights related to freedom of expression and property ownership. Any By-law that restricts commercial expression in a manner that is disproportionate or inconsistent with constitutional rights risks legal challenge.

Furthermore, without a **clear visualisation of the area control limitations** to be set out in the overlay zones, it remains unclear whether the regulatory intent aligns with broader spatial development policies. The absence of these overlay components prevents an objective assessment of whether the new By-law supports or stifles economic growth, urban transformation, and efforts to address spatial injustices.

To achieve a balanced and future-proof regulatory framework, it is essential that the Municipality:

- **Adopts a more flexible**, context-sensitive approach to size and spacing limitations.
- **Ensures regulatory parity** between municipal and private land to uphold fair competition.
- **Formally integrates the Overlay Zones** into the Advertising By-law, ensuring that advertising decisions are not left in limbo due to unclear or incomplete regulatory frameworks.
- **Re-evaluates the definition and restrictions of “public spaces”** to ensure alignment with constitutional principles, safeguarding fundamental rights such as freedom of expression and equitable economic opportunity.
- **Clearly aligns the By-law with spatial and economic development** objectives to foster growth in key commercial areas.
- **Engages meaningfully with industry stakeholders** to accommodate modern advertising trends while maintaining urban quality.



By addressing these regulatory inconsistencies and adopting a **more forward-thinking, design-conscious, and economically viable approach**, Stellenbosch Municipality can establish a leading regulatory framework that preserves visual integrity while also fostering investment, creative expression, and constitutional compliance — without compromising the cultural landscape.

Your consideration in this regard is highly appreciated.

YOURS SINCERELY

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line.

KESTELL SERFONTEIN Pr. Pln A/1095/1999
MANAGING HEAD: URBAN IQ

6 April 2025

TO: **Stellenbosch Municipality**
Department of Development and Planning
Viola.Anthony@ Stellenbosch.gov.za

ADREACH (PTY) LIMITED

COMMENTS REGARDING THE NEW PROPOSED CITY OF STELLENBOSCH DRAFT OUTDOOR ADVERTISING BY LAW

INTRODUCTION

1. These comments are submitted in terms of the public participation process required by the Stellenbosch Municipality in terms of section 12(3)(b) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
2. By way of introduction Adreach is directly affected by the proposed by-laws as they are engaged in the business of outdoor advertising and in particular permanent street pole advertising. Our comments/concerns are based on the proposed by-law infringing specifically our, as well as the broader municipal constituencies –



- 2.1. constitutional rights,
- 2.2. rights to economic participation,
- 2.3. rights to fair regulatory practice, and
- 2.4. rights to local governance accountability.

THE EXCLUSION OF COMMERCIAL STREET POLE ADVERTISING

- 3. We reiterate that Adreach specialises in permanent street pole advertising which is accepted, both globally and locally, as a recognised, manageable, and legitimate form of outdoor advertising that is –
 - 3.1. easily regulated for size, height, content, and spacing,
 - 3.2. capable of being environmentally sensitive,
 - 3.3. a significant contributor to the local economy; and
 - 3.4. a significant revenue generator for the Municipality.
- 4. Despite the above factual realities, and whilst specifically catering for other forms of outdoor advertising, permanent street pole advertising has, in contravention of Section 16(1) of the Constitution of the Republic, been unfairly, arbitrarily and inconsistently singled out and is prohibited in terms of the proposed by-law.



5. In terms of this blanket prohibition our amplified comments are set out below.

6. Firstly

6.1. Section 16(1) of the Constitution protects the right to freedom of expression, which includes:

6.1.1. commercial expression, such as advertisements; and

6.1.2. artistic, cultural, and community messaging.

6.2. To the extent that the Municipality would want to limit these rights Section 36 of the Constitution would need to be considered. This section, also known as the “limitations clause” provides that any law or action that limits a right in the Bill of Rights must be reasonable and justifiable in an open and democratic society. Specifically, the limitation must take into account:

-

6.2.1. the nature of the right;

6.2.2. the importance of the purpose of the limitation;

6.2.3. the nature and extent of the limitation;

6.2.4. the relationship between the limitation and its purpose; and

6.2.5. whether less restrictive means could achieve the same purpose.



- 6.3. The blanket prohibition of street pole advertising must therefore be assessed against this framework. Having done so it is submitted that an outright prohibition on street pole advertising, without offering less restrictive measures to achieve urban management goals, fails to meet this constitutional standard of justification. Additionally, the Municipality must show that no less restrictive alternative exists, which in this case, clearly do exist in the form of appropriately considered regulations which are proposed in respect of other forms of advertising.
- 6.4. We reiterate that as other forms of advertising (including temporary street pole signs) are allowed under and in terms of a regulated framework then the same approach should be applied to permanent street pole advertising.

7. Secondly

- 7.1. The proposed by-laws fail to balance competing Constitutional imperatives in that by imposing an outright ban on street pole advertising they fail to uphold the constitutional duty to:

- 7.1.1. promote local economic development (section 152(1)(c) of the Constitution) as the prohibition undermines local entrepreneurship, especially for small businesses who rely on affordable, local visibility. Street pole advertising is one of the most accessible, cost-effective advertising tools for small businesses. By prohibiting it, the proposed by-law favors large



corporations that can afford more expensive formats, thereby widening the inequality gap;

7.1.2. support public access to information and services (which street pole advertising facilitates);

7.1.3. enable inclusive public participation in the urban landscape.

7.2. Conversely, the by-law over prioritises visual and aesthetic control, to the detriment of commercial fairness and small business visibility.

8. Thirdly

8.1. The draft by-law fails to present any evidence of adverse environmental, heritage, or traffic-related impacts that justify such a blanket prohibition. The by-law refers generally to safety, heritage, and aesthetic concerns (see Preamble, Section 2), but no empirical support (such as traffic studies, environmental reports, or comparative municipal benchmarking) is provided to support this extreme measure.

8.2. The reason for this being that these do not exist which highlights the arbitrary and unacceptable nature of this decision.

9. Fourthly

From a procedural perspective we have not been able to determine that affected industry players, civil society, or local business forums were consulted before the draft by-law was compiled.



This omission undermines the participatory objectives aims of the Municipal Systems Act and opens the by-law to procedural challenge.

10. Fifthly

- 10.1. Environmental considerations have in this instance been misapplied as permanent infrastructure (such as reusable pole ads) are environmentally preferable to repeated temporary posting, which generates waste. With proper materials and maintenance, permanent formats can be fully sustainable.

11. Sixthly

The prohibition is likely to result in a proliferation of illegal advertising as against a regulated, licensed permanent system would be far more enforceable and beneficial.

12. Seventhly

- 12.1. The principle of proportionality is a cornerstone of South African constitutional and administrative law. It requires that any limitation of rights or imposition of burdens by the state must be suitable to achieve a legitimate objective, necessary in that no less restrictive measure would achieve the objective, and reasonable in balancing the public interest against individual or commercial rights.



12.2. The by-law's total prohibition of permanent third-party street pole advertising does not meet this standard. It is:

12.2.1. overbroad – capturing all forms of permanent pole-based commercial speech without nuance.

12.2.2. unnecessary – as less invasive, targeted restrictions (e.g., by zone, format, or content type) could be implemented to protect visual and public safety objectives.

12.2.3. disproportionate in effect – as the economic and communicative harm to advertisers, community groups, and the public far outweighs any marginal benefit in visual uniformity or traffic safety.

13. Eighthly

Permanent third-party street pole advertising could be a regulated source of sustainable municipal revenue. The current proposed by-law sacrifices economic potential in favour of over-regulation without measurable public gain.

14. Recommendations

14.1. Rather than a total prohibition, the Municipality should adopt a regulatory framework for street pole advertising that includes:

14.1.1. permit-based systems with reasonable fees;



- 14.1.2. content control provisions (e.g., no hate speech or inappropriate content);
 - 14.1.3. duration and location limitations;
 - 14.1.4. clear responsibilities for maintenance and removal;
 - 14.1.5. access to the street poles for community, cultural, educational, and local economic development uses.
- 14.2. As a final point we mention that Adreach has since its inception championed the Adopt-A-Project business model which is focused on integrating maintenance and community development goals with the business of street pole advertising. We would propose that the Municipality consider allowing permanent street pole advertising which is linked to funding community development goals, such as requiring advertisers to maintain poles and the upliftment of disadvantaged communities as this would ensure that upliftment and growth of the Municipality as a whole. We would be more than willing to meet with the Municipality to discuss this further.

VAGUE AND OVERBROAD DEFINITIONS

15. The by-law's definition of "third-party advertising" lacks clarity and could be interpreted to include non-commercial sponsorships or event co-branding. This ambiguity leads to legal uncertainty and risks selective enforcement when it comes to-



- 15.1. brand urbanization (corporate-supported urban identity projects);
 - 15.2. public art,
 - 15.3. cultural sponsorship,
16. By way of example a pole-wrap saying “Proudly Sponsored by Brand X” next to a community clean-up message could be banned under this definition even if only 10% of the surface area features a logo. Without a clear exemption for “non-commercial aesthetic contributions”, this type of branding risks being labelled as illegal advertising. This undermines efforts to beautify, brand, and unify public spaces.
17. We would propose that the by-laws contain and include a dedicated definition for civic branding, public art, or community messaging with specifically allowable branding thresholds (e.g., 20% for logos/sponsors on community-facing messaging).

OVERREACH OF ENFORCEMENT POWERS

18. Section 19 of the by-law allows the Municipality to remove signage without affording a hearing, which is a breach of procedural fairness as required by section 33 of the Constitution and the Promotion of Administrative Justice Act (PAJA).



EXCESSIVE PENALTIES AND COST RECOVERY MECHANISMS

19. The by-law allows the Municipality to charge for the removal, storage, and disposal of signage, even when the underlying basis for such removal may be disputed. These powers are overly broad and need judicial oversight.

CONCLUSION

20. These comments are submitted with the aim of contributing constructively to a by-law that is legally sound, economically inclusive, environmentally balanced, and administratively fair. A collaborative and modern approach to urban signage and street-level advertising can serve all these goals. The current draft falls short and should be substantially revised before adoption.
21. We are available for consultation, hearings, or written submissions should the Municipality require further input.

Yours sincerely



GAYÉ ROBBERTSE

GENERAL MANAGER



Stellenbosch Municipality

Att: Viola Anthony

Email: Viola.Anthony@ Stellenbosch.gov.za

4 April 2025

COMMENTARY ON DRAFT STELLENBOSCH OUTDOOR ADVERTISING AND SIGNAGE BY-LAW, 2024, IN TERMS OF A PUBLIC NOTICE DATED 6 MARCH 2025

1. Your notice calling for comment on the draft outdoor advertising by-law dated 6 March 2025 bears reference.
2. We have now had the opportunity to consider the revised draft By Law, 2024 "Draft Outdoor By-law" circulated for comment. Naturally, we reconsidered the comments submitted during the first round of public participation by various stakeholders that are attached to the Mayco Agenda dated 21 November 2024, in particular the comprehensive commentary to be found at p 817 thereof.
3. It is most unfortunate that some of the critical aspects therein have not been addressed in the revised version of the Draft Outdoor Advertising Bylaw, particularly, given the detailed and compelling submissions received.
4. More pertinently, the generous invitation by Jinja Outdoor to facilitate (sponsor) a workshop-style stakeholder engagement meeting, during which the detailed comments, concerns, and suggestions made by all could be properly ventilated, discussed, and clarified. To the best of our knowledge, such a meeting has not been arranged. We do not doubt that a further focused stakeholder engagement may resolve these concerns for the benefit of all stakeholders including the Municipality and its residents. The benefit of such a meeting will be immense. In this regard, you are reminded of the obligations imposed upon the Municipality in terms of the Municipal Systems Act, which emphasizes proper stakeholder participation in transparent law-making processes. We therefore strongly support further proper engagement with stakeholders by way of a workshop and trust that you will accede to such a request.
5. We do notice that the Draft Outdoor By-law envisages further public participation in respect of the Scenic Route and Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone, such public participation is essential for the following reasons hereunder.

- 5.1. The draft zoning scheme by-law, for which general public participation strangely preceded the approval of the Draft Outdoor By-law, despite its critical role, fundamental and material bearing on the geographical restrictions imposed by the Draft Outdoor By-law. We trust that approval and submission of the draft zoning by-law before the Draft Outdoor By-Law was not by design or a strategy to avoid proper public and stakeholder engagement about the regulatory framework for outdoor advertising. We trust **that the draft zoning by-law will be re-advertised for public participation insofar as it pertains to the regulation and supervision of outdoor advertising.**
- 5.2. To avoid the invalidity of the Draft Outdoor By-law due to a lack of proper public participation arising from the most fundamental restriction contained therein, namely the demarcation of control areas, **we point out that the draft zoning by-law still does not clearly designate areas of control as envisaged in clause 6 of the Draft Outdoor By-law.** This inconsistency renders the entire Draft Outdoor By-law defective and void for vagueness. No ordinary man on the street can determine, having regard to both draft by-laws which area constitutes an area of minimum, partial, or maximum control. It is vague and uncertain.
- 5.3. Concerning the definition of minimum control areas, the practical application thereof **translates to a complete prohibition of the economic viability of outdoor advertising.**
6. We also wish to briefly draw your attention to some **specific overly restrictive provisions and remaining serious concerns that have not been addressed, namely, the stringent restriction of Billboard to 18m² in size and digital advertising signs to 2.1m² and several height restrictions, which come to mind.** Such stringent restrictions are not in keeping with international trends and the emergence of large-format outdoor advertising and spectacular advertising structures in other foreign and local jurisdictions. This requires serious reconsideration and amounts to an unfair unjustifiable unreasonable limitation of freedom of speech, not to mention that numerous other provisions, also previously comprehensively commented on, violate property rights, freedom of trade, and in general hinder economic growth and undermine investment in the advertising sector. It appears that previous comments in this regard have simply been ignored, more specifically provisions and comments that has been highlighted to arbitrarily deprive advertising rights that was previously obtained when indeed no valid regulatory provisions were in place.

7. **The provisions of the Draft Outdoor By-law are further not aligned with the objectives and provisions of the Spatial Planning and Land Use Management Act**, or even its own stated objectives, in that the restrictions imposed by it hinder economic development and do not consider the changing needs (economic and otherwise) of the Stellenbosch community and its stakeholders.
8. The offensive provisions concerning the Municipality's wide and unfettered discretions have not been rectified, whilst these provisions were previously highlighted by stakeholders to reflect bias, promote arbitrary decision-making, and lack independent appeal procedures.
9. Essentially, the Municipality remains the judge in its own matters, is not an independent appeal authority, and acts as an enforcement agent, all whilst it is also a major role player in the outdoor advertising industry. **This is the most glaring example of an unavoidable conflict of interest in violation of various provisions of the constitutional dispensation of South Africa.** Such provisions are objectively invalid and may in the future be declared by the courts as such. In this regard, you are reminded of the matter involving the City of Johannesburg that resulted in their by-laws being declared invalid and the dire consequences that followed from an unregulated environment.
10. **The Draft Outdoor By-law intends to operate under a presumption of guilt for advertisers, landowners, and event organizers. This will be a violation of international human rights, if approved**
11. **The general overbroad nature of certain definitions and wide discretions afforded to officials within the Municipality is concerning and excessive to the extent that the Municipality may be acting beyond its constitutional powers,** and in turn, casts doubt as to the overall legality of the Draft Outdoor By-law and ultimately, its enforceability, without stimulating excessive litigation against the Municipality.
12. The unilateral and arbitrary determination of the illegality of advertisements by the Municipality, without such dispute having been independently determined by courts, **usurps the functions of the courts** and essentially thereby also our constitutional dispensation. The power attributed to the Municipality to impose penalty rates without recourse to a determination by courts serves as an example of such a provision. All enforcement provisions require careful reconsideration and debate.

13. Because the Municipality is a major role player and landowner in the outdoor advertising market in Stellenbosch, certain provisions of the Draft Outdoor By-law that remain **may simply be declared to be contrary the South African Competition laws** in that it embodies restrictive horizontal practices that limit fair competition amongst the various role players.

CONCLUSION

14. Given only that which has been highlighted above, we urge the Municipality, the Council, and Mayco, to seriously embark on a mindful reconsideration of the provisions of the Draft Outdoor By-law and the Zoning Scheme By-law given the comprehensive commentary solicited by its earlier drafts and need not be repeated herein. No doubt, further comments will be received in respect of this Draft Outdoor By-law and must be diligently considered, before merely rubberstamping same through the formalities of the law-making process.

15. We trust that our comments and those of other stakeholders who raised specific meritorious concerns previously and that remain unresolved will form the subject matter of further stakeholder engagement, as suggested above, to

- resolve the inconsistencies and offensive provisions highlighted; and
- the overall detrimental effect that the mere promulgation of the Draft Outdoor By-law would have on the local economy and its national participants.

16. We invite you to rectify your conduct and further engage with us in this regard.

Kind Regards



per Piet Van der Merwe



92A Fourth Road
Brentwood Park Agricultural Holdings
Kempton Park
1619
Registration No: 2013/170738/07
VAT No: 4490285113

5 April 2025

Stellenbosch Municipality
Department of Development Planning
Attention: Viola Anthony
By email: Viola.Anthony@ Stellenbosch.gov.za

To Whom It May Concern;

**THE DRAFT STELLENBOSCH MUNICIPALITY OUTDOOR
ADVERTISING & SIGNAGE BY-LAW, 2024 FOR PUBLIC COMMENT**

Please find attached my comments with regard to the Stellenbosch Municipality Draft Outdoor Advertising and Signage Bylaw, 2024 published for comment in the Eikestad Newspaper and which further formed part of a notification via email on 6 March 2025.

I trust that due consideration will be given to the comments contained herein and that the Municipality will give the industry the necessary opportunity to engage with the Council in a meaningful and open manner that will result in a workable bylaw that will still live up to the objectives of the SPLUMA Act, adopt a more nationally accepted outdoor advertising standard, with particular reference to advertising sign sizes and responsible and justifiable placement and also, promote the Municipality's own goals of ensuring a set of regulations that protect the Heritage and natural environment of Stellenbosch.

However, having said this it should be stated that it is disappointing to note that large sections of the previous, and now defunct by law, still remain in place in the current draft being circulated for comment, in particular the overly restrictive and nationally unaligned provisions within the proposed by-law dealing with **sign sizing, spacing standards, and the broad area control and implied locational prohibitions, as well as other physical aspects that are vitally important to the Out-of-Home industry as a whole.**

This, even after the initial and unlawfully implemented round of public participation, which would have seen numerous comments raised by the industry with particular reference to the physical characteristics of outdoor advertising mentioned above.

What seems to be lacking is the founding principle that local authorities are tasked with balancing the needs and interests of both the public and the industries operating within their jurisdiction. While their primary responsibility is to protect the public good,

this must be done in a way that fosters a healthy, collaborative relationship with business.

Striking this balance is essential to ensure that authorities do not overstep their regulatory role, becoming overly forceful or obstructive.

Instead, they should aim to be partners with the industries they regulate, working together to create an environment that promotes sustainable growth, innovation, and compliance without stifling economic development.

This approach enables both public welfare and industry success to coexist, benefiting the broader community in the long term.

BY-LAWS CREATING A BLANKET BAN ON OUTDOOR ADVERTISING

One of the most concerning aspects of the draft bylaw is the overly restrictive and, in many cases, potentially unconstitutional provisions it contains. The municipality appears to be moving toward creating regulations that would effectively prevent the out-of-home advertising industry from exercising its constitutional rights within the municipality's boundaries. By severely limiting the areas where billboards can be developed, and introducing vague and arbitrary restrictions, the bylaw stifles the industry's ability to operate and could be seen as an infringement on the industry's right to conduct business and operate within the constitutional values enshrined in the Constitution of South Africa, and highlighted in more detail below.

Fundamental Constitutional Rights affected by the 2024 Draft Bylaw

It is important to point out which fundamental rights, as enshrined under the Constitution of the Republic of South Africa, 1996 ("*the Constitution*"), are affected by the provisions of the 2024 Draft Bylaw.

The Bill of Rights in the Constitution (Chapter 2) is a cornerstone of our democracy and **guarantees** inter alia the following fundamental rights:

1. **the right of freedom of expression**, including commercial speech, as provided for in section 16 of the Bill of Rights, which includes freedom of the press and other media. It means that the press (newspapers, TV, radio, online media) and other forms of media (outdoor advertising, social media, blogs, etc.) have the right to operate freely without government censorship or interference. **A person has the right to promote his, her or its product or services to the public, expressed in a way and format which originate from a person's own unique and creative thinking, compliant with society's norms and standards, and a consumer on the other hand, has the right to be informed about available products and services in a creative manner by being exposed to advertisements.** A Municipality is not allowed to unfairly, unjustly, or disproportionately limit this freedom of expression, other than in terms of section 36 of the Constitution;
2. **the right to freedom of trade** under section 22 of the Constitution, meaning that every citizen has the right to decide what trade, occupation, or profession they want to pursue; and

3. **the right to property** under section 25 of the Constitution, meaning that no one may be deprived of property except in terms of law of general application and the deprivation thereof, must not be arbitrary.

These excessive restrictions not only limit economic opportunities but also raise significant concerns about the fairness and legality of such regulatory measures.

It could thus, be concluded that the 2024 Draft Bylaw introduces a blanket ban on billboards by severely restricting the areas where billboards can be erected, resulting in minimal viable opportunities for billboard development within the jurisdiction of the Municipality.

The bylaw outlines several restricted areas, including heritage-sensitive locations, transportation terminals (which do not yet exist), limited use zones, and conservation areas, among others. These areas are either vague or non-existent at the time of the by law's promulgation, making it uncertain where billboards could be legally placed.

Key concerns include the arbitrary designation of areas by the Municipality, which could be classified as minimum controlled areas without public participation, undermining transparency and fairness. The bylaw also conflicts with existing zoning laws, such as the Limited Use Zones, where billboards cannot be developed.

Additionally, the restrictions on Gateway and Scenic Routes further limit available spaces for billboard development.

The overall effect is that the bylaw sterilizes the opportunity for billboard construction, rendering it practically impossible to develop billboards within the Municipality. This over-regulation may be unconstitutional, as it imposes excessive restrictions on billboards, effectively banning them and not providing reasonable opportunities for businesses to operate in this space.

Schedule 1 (Area of Control Matrix) lacks any form of realistic and fair application and highlights the Municipality's stance with regard to Outdoor Advertising, one of complete distaste, with a view to enforce a cleverly constructed ban on any opportunities for the industry.

The Area of Control matrix in the draft bylaw mirrors Cape Town's restrictive approach, significantly limiting billboard opportunities. The classification of core economic zones, like central business districts and commercial nodes, as Partial Control Areas raises major concerns. The only explicit Minimum Control Areas where billboards are allowed are industrial zones, with other potential areas subject to future discretionary designation. The term "heritage insensitive areas" is undefined, leaving room for subjective interpretation by municipal officials.

The by law's blanket ban on electronic billboards along Class 2 and 3 roads, combined with restrictive spacing rules, effectively creates a ban on billboards. This approach contradicts the South African Manual for Outdoor Advertising Control

(SAMOAC) and conflicts with the city's spatial policy, which seeks to promote economic activity in commercial zones.

Having made the above statement, it could be further expanded upon in the fact that the 2024 Draft Outdoor By law provides under schedule 1 the following in respect of minimum controlled areas:

“Specific areas or sites designated as minimum control by way of the Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone as contained in the Stellenbosch Municipality Zoning Scheme Bylaw prepared by the Municipality”

However, there is no reference to any “specific areas or sites designated as minimum control by way of the Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone” in the yet to be promulgated “Zoning Scheme Bylaw”. This could be further regarded as a smoke screen, and a scenario in which the Council cannot keep on placing itself.

Further concern, besides the above factors, is the overreach the Municipality has provided for itself in the Zoning Scheme by law, which is accepted as not being part of this public participation process, yet, ideally should be, given the impacts and **unaligned** relationship that exists between the two pieces of legislation:

- (8) Should there be any dispute about the extent of the applicability of Rural or Urban Scenic Routes area of control, the Municipality will determine the final extent and its determination is final.

The overreach in this instance arises due to the fact that the Municipality has placed itself in the position as being the final decision maker in any dispute that may result in the determination of an area of control and as such, if the area of control is disputed, it can significantly impact a person's property rights, particularly if it limits or restricts the use of their property, such as for billboard placement. The imposition of such restrictions without clear, objective criteria or the **possibility of an appeal can lead to:**

1. **Devaluation of Property:** If an area is classified under stringent control, it could lower the property's market value, particularly if the restrictions prevent profitable activities like advertising or development.
2. **Loss of Economic Opportunity:** Property owners may be unable to utilize their land as they see fit, especially in the case of commercial properties that could benefit from billboards or other uses typically allowed in less-restricted zones.
3. **Uncertainty and Legal Challenges:** Disputed areas of control may lead to legal challenges, creating uncertainty about the permissible uses of the property and the enforcement of regulations. This can discourage investment or lead to prolonged legal proceedings.

Regarding whether the council should be the final determiner of the extent of the area of control, there are several **concerns**:

1. **Lack of Transparency:** If the council has the sole discretion to determine the extent of these areas, it can lead to arbitrary decision-making. Without clear, objective guidelines or a public participation process, such decisions could be seen as unfair or biased.
2. **Potential Abuse of Power:** Concentrating decision-making authority in the council could lead to the misuse of regulatory powers, such as disproportionately restricting certain areas to the benefit of select interests, without consideration of broader economic or community needs.
3. **Inconsistent Application:** Local councils may not always apply the rules consistently, leading to legal disputes and further uncertainty for property owners.

In a fair and balanced system, it would be preferable for the extent of areas of control to be determined based on clear, transparent criteria and to allow for an independent appeals process. This ensures that property owners have a way to challenge decisions that they feel unjustly restrict their rights, and that regulations are applied consistently and equitably. Ultimately, while the council may have a role in setting these areas, oversight mechanisms and public consultation should be in place to protect property rights and ensure fairness

It should also be noted that in the determination of a scenic route overlay and those proposed, the Council has made very broad strokes in determining these scenic routes overlays- one can be quite sure that the entire stretch of the R44 is not a scenic route, nor for that matter the entire stretch of the N1 on its approach to Klapmuts.

It seems far easier for the responsible officials to sit in their office with a highlighter as opposed to making these maps relevant to the actual physical conditions that exist out in the field.

As already mentioned above, the intended overlay zones could further limit billboard opportunities, as municipal officials would have the discretion to determine where billboards are permitted, prioritizing visual and heritage factors over economic considerations.

These areas are yet to be defined, and as a result leaves the proposed Outdoor Advertising by law in a position of limbo- with no reference to the areas of control as set out in the schedule.

To create a fairer and more predictable regulatory framework, the bylaw should:

- Expand Minimum Control Areas to include commercial and mixed-use zones.
- Define “heritage insensitive areas” clearly to avoid arbitrary decision-making.
- Align billboard regulations with the city’s spatial planning policies to support economic growth.

- Implement a transparent overlay zone system that balances economic needs with visual and heritage factors.

UNREALISTIC SIZE LIMITATIONS

We also wish to briefly draw your attention to some **specific overly restrictive provisions and remaining serious concerns that have not been addressed, namely, the stringent restriction of Billboards to 18m² in size and digital advertising signs to 2.1m² (where the impact of digital signs on visual comfort and readability must be considered. At 2.1m², digital advertisements become so small that readability is compromised, forcing viewers to focus for longer periods to decipher content. This counteracts the very purpose of outdoor advertising, which relies on quick and effective message transmission), and several height restrictions (set in place but without due consideration to the actual lay of the land, position and slope).**

Such stringent restrictions are not in keeping with international trends and the emergence of large-format outdoor advertising and spectacular advertising structures in other foreign and local jurisdictions.

This requires serious reconsideration and amounts to an unfair unjustifiable unreasonable limitation of freedom of speech, not to mention that numerous other provisions, also previously comprehensively commented on, violate property rights, freedom of trade, and in general hinder economic growth and undermine investment in the advertising sector.

It appears that previous comments in this regard have simply been ignored, more specifically provisions and comments that has been highlighted to arbitrarily deprive advertising rights that was previously obtained when indeed no valid regulatory provisions were in place.

APPEAL

The appeal process as outlined in the proposed Outdoor Advertising by laws poses a serious threat to the actual rights of a person seeking an objective and unbiased appeal process.

A person whose rights are affected by a decision in terms of a delegated power may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the Municipal Manager within twenty-one (21) days of the date of the notification of the decision.

Internal appeals process lacks impartiality

The New By-Laws allows for a single employee (the City Manager), who is in a close relationship with the City (and who wants to protect the interests of the City), to handle internal appeals.

In the SAPOA matter the High Court has found that *"the COJ generates advertising income from its own property, and property under its control. To be a regulator in one's own business interest is a clear conflict of interest and has the potential of causing a conflict of interest which will inevitably create potential for bias. It is vital that the 2018 by-laws acknowledge and address this risk. In the case of Glencore Operations South Africa Proprietary Limited Coal Division v Minister of Mineral Resources and Others [2016] JOL 35181 (LC) the learned Venter AJ at paragraph [85] stated that;*

'The requirement that administrative action must be free from bias is part of the common-law rule against bias, namely, nemo iudex in sua causa.' ("no one may be a judge of his or her own cause"). Impartiality is an essential requirement of an officer tasked with exercising a power entrusted to them to make decisions which would affect the rights of others".

In the circumstances, the adjudicatory function of the City in terms of the New By-Laws in respect of applications and appeals should be divested to an impartial decision-making body and not to any particular City official. Appeals must be handled as provided for in SPLUMA.

PRESUMPTIONS

Section 18 of the proposed by law deals with the presumptions and specifically, any person charged with an offence in terms of this Bylaw who is-

- (b) the person whose name appears on an unlawful sign or whose product or services are advertised on such sign, shall be deemed, until the contrary is proved, to have displayed such sign, or to have caused or allowed it to be displayed;

The rule of Law is violated by these presumptions as they all violate the presumption of innocence as protected by section 35(3)(h) of the Constitution. The presumption of innocence is an established principle of South African law which places the burden of proof squarely on the prosecution.

An advertiser which concludes a contract in respect of the advertising of his or her advertisements on signs will not have any ability to control the legality of the signs on which its adverts are displayed. It cannot be held liable unless it is directly implicated in the offence, or is a co-conspirator or an accessory after the fact, he or she has no connection or relationship to the offence.

All exercise of public power must comply with the Constitution and the principle of legality, which is part of the rule of Law. Accordingly, the conduct of the City, in creating presumptions that hold innocent parties responsible for the transgressions of

others, must be rationally related to the purpose sought to be achieved by the exercise of it. If there is no rational basis, then such conduct is arbitrary and falls to be set aside as a violation of the principle of legality.

TRANSITIONAL ARRANGEMENTS

- (1) Anything done before the promulgation of this Bylaw, which was not done in terms of a provision repealed in this Bylaw and was unlawful, shall in the event of such act or sign still not complying with the provisions of this Bylaw, be unlawful and the Municipality in such case may take the necessary action in terms of section 19 hereof.

The Bylaw's transitional provisions are not aligned with the reality that the City did not have bylaws before. These provisions must be amended to reflect to the correct status quo.

Contrary to the provisions of 25 (2), "All legal signs that exist at the date of publication of this Bylaw, must in all respects comply with the stipulations in this bylaw within a period of six (6) months from the date of publication. Any sign that fails to comply after the initial six (6) months will be removed." We contend that the transitional provisions must provide for billboards lawfully erected prior to the promulgation date of the New By-Laws, but not in terms of the existing bylaws, to be approved in terms of the New By-Laws.

CONCLUSION

In this submission to the Municipality, the following should be noted, and on the acceptance that we do acknowledge the fact that the Draft Outdoor By-law envisages further public participation in respect of the Scenic Route and Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone, such public participation is essential for the following reasons hereunder.

- The draft zoning scheme by-law, for which general public participation strangely preceded the approval of the Draft Outdoor By-law, despite its critical role, fundamental and material bearing on the geographical restrictions imposed by the Draft Outdoor By-law. **We trust that approval and submission of the draft zoning by-law before the Draft Outdoor By-Law was not by design or a strategy to avoid proper public and stakeholder engagement about the regulatory framework for outdoor advertising.** We trust that the draft zoning by-law will be re-advertised for public participation insofar as it pertains to the regulation and supervision of outdoor advertising.

In conclusion, it has come to our attention that Jinja Outdoor's generous offer to sponsor a workshop-style stakeholder engagement meeting, where concerns and suggestions could be fully discussed and clarified, remains an option and one that I would encourage the Municipality to embrace.

Such a meeting could be immensely beneficial, resolving concerns for all stakeholders, including the Municipality, the Out-of-Home Industry and its residents. This aligns with the Municipality's obligations under the Municipal Systems Act, which emphasizes the importance of transparent stakeholder participation in the law-making process.

We strongly support further engagement and trust the Municipality will consider this request for a focused, collaborative meeting.

Yours sincerely,

Mark Thomas

082 497 5750



4th of April 2025

To: **Department Development Planning**

Stellenbosch Municipality

Attention: Viola Anthony

Delivery by Email: Viola.Anthony@ Stellenbosch.gov.za

In re: **Comments to proposed new Draft Stellenbosch Municipality Outdoor Advertising and Signage Bylaw, 2024 ("the 2024 Draft Bylaw")**

Introduction

We submit herewith our further and updated comments to the 2024 Draft Bylaw in our endeavours to ensure that the Municipality's regulations in dealing with the municipal function of regulating billboards and the display of advertising signs in public places, strike a healthy balance between the importance of preserving the cultural landscape and heritage values of Stellenbosch, on the one hand, and the constitutional right to Freedom of Expression (which includes the right to freedom of the press and other media) of the Municipality's residents and communities and the broader business sector, on the other. It is beyond any doubt that the Stellenbosch community is a powerful and strategic economic subject within the South African Economy. Overregulation of advertisements will not only harm the local business community but will have a hampering effect on the entire South African Economy. It is therefore essential to adopt a regulatory framework that respects both objectives without unduly favouring one over the other.

There exists a plethora of options that can effectively mitigate any risks associated with outdoor advertising while fostering safe and creative solutions that enhances local and national economic activity.

As will be evident below, we again call upon the Municipality to engage with us, as well as the outdoor industry, to truly explore mutually beneficial solutions that not only preserve the cultural landscape but also contribute to the economic infrastructure supporting the local economy and enhance the place identity of the Municipality. We reiterate that Jinja is a responsible Outdoor Advertising Company and envision sustainable outdoor advertising by

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fax 086 672 9423 • cell 082 785 8925 • martin@jinjaoutdoor.co.za • reg no. 2014/041495/07

directors: wm raubenheimer (martin) • wjg landman (wilhelm) • ep vorster (edward) • wfc arndt (bubu)





unlocking unique and economically viable outdoor advertising opportunities, with due regard for the known externalities associated with poorly regulated Outdoor Advertising.

The general conclusion we come to unfortunately, after studying the new 2024 Draft Bylaw, is that it embraces an overly restrictive regulatory framework, which sterilises almost all opportunities for responsible outdoor advertising investment into the jurisdictional area of the Municipality, contains provisions that are objectively speaking constitutionally invalid and seriously hinders the Municipality's ability to provide fair and just consideration to all development guidelines as prescribed and mandated by the Spatial Planning and Land Use Management Act, No. 16 of 2013 (**"the SPLUMA Act"**).

We urge the Municipality to carefully study and consider our comments and to adopt a balanced and nuanced approach that fosters collaboration between stakeholders and leverages the potential benefits of outdoor advertising, naturally while safeguarding the Municipality's unique cultural heritage and need for regulatory intervention.

Good, fair and balanced regulation is critical for an industry to economically strive and grow. If the outdoor advertising industry strives and grows within the Municipality's jurisdictional area, then and in such event, the Municipality is fulfilling its constitutional and statutory duties, which it is duty bound to do.

Call for active engagement as provided for in the Systems Act

The Municipality invited the public to submit comments to its draft Outdoor Advertising and Signage Bylaw, 2023 (**"the 2023 Draft Bylaw"**) on the 2nd of November 2023.

In response thereto, we submitted our comments to the Municipality on the 4th of December 2023 and requested on the same day, by means of an email addressed to the Municipality, "an opportunity to engage with the Municipality in person in respect of the proposed New Bylaws." We followed up our aforesaid request in writing on the 4th of March 2024 and the 1st of November 2024, but we were unsuccessful to arrange any engagement. The officials have simply refused to engage in person or to respond to us in respect of our comments regarding the 2023 Draft Bylaw, notwithstanding the fact that we are a large outdoor advertising operator within the Municipality's jurisdictional area.

This approach on the part of the Municipality's officials is not only unfortunate, but contrary to the provisions of the Local Government: Municipal Systems Act 32 of 2000 (**"the Systems Act"**). The latter Act specifically acknowledges and records that a fundamental aspect of our local government system is the active engagement of

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communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management.

In terms of section 5(1)(b) of the Systems Act, we as members of the Municipality's local community have the right *"to prompt responses to their (our) written or oral communications, including complaints, to the municipal council or to another political structure or a political office bearer or the administration of the municipality."* [our insertion]

We have also called upon the Municipality in writing during the 2023 Draft Bylaw public participation process to provide us with the updated and amended draft of the 2023 Draft Bylaw, once the officials have taken our comments into consideration and before submitting the new version to the Council for approval. Once more, the officials did not respond to our request and simply proceeded to submit their new version of the 2023 Draft Bylaw to the Council for approval in principle as the new 2024 Draft Bylaw.

We have also specifically called upon the Municipality to make sure that it has a full understanding of the constitutional issues, without trying to suggest that it is not the case. We requested an opportunity, as part of the public participation process in respect of the old 2023 Draft Bylaw, to facilitate a workshop with the Municipality, including its legal and planning departments, regarding the legal framework, planning and constitutional issues regulating billboards. We even went so far to offer to pay for the cost and expenses associated with the engagement legal, constitutional and industry experts. This offer, like all other requests for engagement, was simply turned down. It was not even acknowledged by the officials as a positive gesture.

The failure and neglect on the part of the officials to have responded to our requests for an opportunity to engage, for an copy of the updated version, for a workshop and respond to our comments in respect of the 2023 Draft Bylaw, causes the officials to be in transgression of the provisions of section 5(1)(b) of the Systems Act. This is a very unfortunate situation considering that the public participation process is an important pillar of our constitutional state.

In the meantime, we have progressed to the point that the Municipality has abandoned the 2023 Draft Bylaw process unilaterally and the Council has now adopted in principle on the 29th of January 2025 the new 2024 Draft Bylaw, which is now the subject matter of new public participation process.

In the circumstances, we call upon the Municipality again:

- a) for an opportunity to actively engage in person regarding our comments to the new 2024 Draft Bylaw as provided for in the Systems Act. We have, over the past 20 years made a comprehensive study of the outdoor advertising regulatory regime in South Africa and have assisted many local authorities to ensure

jinja 2 outdoor advertising (pty) ltd

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that their outdoor advertising bylaws comply with the South African legislative and constitutional framework. We have inhouse lawyers and a town planner with expert knowledge of the outdoor advertising, who can be of great assistance to the Municipality, however our *bona fide* attempt to constructively engage with the Municipality is bluntly ignored or turned down;

- b) to submit to us the updated and amended draft of the new 2024 Draft Bylaw once the Municipality has taken all comments into consideration (including our comments) and before submitting the new version to the Council for final approval. By you providing us with your updated and amended new 2024 Bylaw, after considering all the comments you have received from the public and the industry (including our own), you will put us in a position to determine and evaluate to what extent you have taken our comments to the 2024 Draft Bylaw into consideration. Should you proceed to promulgate the 2024 Draft Bylaw, without providing us first with your amended version and an opportunity to finally comment thereto, you will effectively prevent the public participation process from being fully and properly concluded, rendering it to be flawed in our view and reducing the function thereof to a hollow formality in a law-making process as opposed to seeking genuine solutions regulatory challenges. Engagement is a two-way process and cannot be arbitrarily terminated by the Municipality by proceeding to get it approved by Council, without first informing us what amendments you have made, and granting us an opportunity to consider same and to respond thereto by raising concerns and final comments, should any exist. An enhanced level of transparency is especially required, considering that the Municipality is involved in the outdoor advertising industry itself, as a landlord, which places the Municipality in a conflicting and competing position of bias within the outdoor industry, where the Municipality is acting both as player and referee, as opposed to an independent regulator. In addition, various constitutional issues are raised under this comment, which need to be resolved before the Municipality proceeds to approve and promulgate the New Bylaw. In these circumstances, we believe it is only fair and just that the Municipality provides us with an updated version and allow us an opportunity to provide final comments to the updated version. We have no doubt that the Municipality is desirous to promulgate a New Bylaw which is constitutionally compliant; and
- c) to facilitate a workshop with the industry, which is attended by legal and planning experts regarding the legal framework, planning and constitutional issues regulating billboards. We therefore repeat our offer that we will pay the cost and expenses associated with these experts.



Fundamental Constitutional Rights affected by the 2024 Draft Bylaw

Before dealing with the specific provisions of the 2024 Draft Bylaw, it is important to point out which fundamental rights, as enshrined under the Constitution of the Republic of South Africa, 1996 ("**the Constitution**"), are affected by the provisions of the 2024 Draft Bylaw.

The Bill of Rights in the Constitution (Chapter 2) is a cornerstone of our democracy and **guarantees** inter alia the following fundamental rights:

1. **the right of freedom of expression**, including commercial speech, as provided for in section 16 of the Bill of Rights, which includes freedom of the press and other media. It means that the press (newspapers, TV, radio, online media) and other forms of media (outdoor advertising, social media, blogs, etc.) have the right to operate freely without government censorship or interference. **A person has the right to promote his, her or its product or services to the public, expressed in a way and format which originate from a person's own unique and creative thinking, compliant with society's norms and standards, and a consumer on the other hand, has the right to be informed about available products and services in a creative manner by being exposed to advertisements.** A Municipality is not allowed to unfairly, unjustly, or disproportionately limit this freedom of expression, other than in terms of section 36 of the Constitution;
2. **the right to freedom of trade** under section 22 of the Constitution, meaning that every citizen has the right to decide what trade, occupation, or profession they want to pursue; and
3. **the right to property** under section 25 of the Constitution, meaning that no one may be deprived of property except in terms of law of general application and the deprivation thereof, must not be arbitrary.

All the aforesaid fundamental rights are affected by the 2024 Draft Bylaw and it must be remembered that these rights vest automatically in a person under the provisions of the Constitution. A person does not have to apply under the 2024 Draft Bylaw to obtain these rights, they exist in every human being. The activities for instance of erecting a billboard, creating an advertisement for a billboard, displaying an advertisement on a billboard, operating a billboard business or the action taken by a property owner to allow a billboard to be erected on his or her immovable property are fundamental rights a person holds automatically in terms of our Bill of Rights. Put differently, a person does not accrue these right only once the Municipality's approval has been obtained, the question remains is the regulatory oversight lawful, just and in terms of our Constitution.

These rights may however be limited in terms of section 36 of the Constitution by means of law of general application to the extent that the limitation is reasonable and justifiable. Consequently, the Municipality may limit the aforesaid fundamental rights by means of promulgating the 2024 Draft Bylaw, but the limitations imposed by



the said Bylaw must be reasonable and justifiable. Our view is that the present Draft Bylaw unjustifiably infringes upon the constitutional rights referred above.

Furthermore, it must be kept in mind that the Municipality is obligated as a responsible Constitutional citizen in terms of section 7(2) of the Constitution, **to respect, protect, promote, and fulfil** the rights in the Bill of Rights. It also has an obligation to ensure that all its bylaws, policies, and actions are consistent with the Constitution. If the 2024 Draft Bylaw contains provisions that are inconsistent with the Constitution, it must take immediate steps to address the inconsistency by removing it from the draft bylaw.

Lastly, in terms of section 8(1) of the Constitution, the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state, including the Municipality.

In the premises, the Municipality must respect, protect and promote its residents and community's fundamental rights affected by the 2024 Draft Bylaw and it **must** not unfairly limit or expropriate them.

The National Building Regulations and Building Standards Act, No. 103 of 1977 ("the *Buildings Act*")

The Municipality has original and independent legislative power in respect of '*building regulations*'. South African municipalities are therefore directly empowered by the Constitution to make Bylaws concerning '*building regulations*', which powers they may exercise '*fully and effectively*'.¹ The Buildings Act entirely relates to the regulation of buildings situated within the jurisdictional areas of municipalities in South Africa, and falls squarely within the ambit of the functional area of building regulations, hence the reason for the name of the said Act incorporating the words like '*national building regulations and building standards*'

The Constitutional Court ("CC") has pointed out in the Overbeek Judgement handed down by the CC on the 23rd of June 2023 ("**the Overbeek Judgement**") the following:

"[12] *The High Court reasoned that, although Parliament may legislate on "building regulations" because it is a Schedule 4 functional area,² these powers are limited in nature and cannot be interpreted as concurrent*

¹ *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* 2010 (6) SA 182 (CC) ('*Gauteng Development Tribunal*') para 49. Schedules 4 and 5 of the Constitution must be interpreted purposively and '*in a manner that will allow the spheres of government to exercise their powers "fully and effectively"*'

² Section 44(1)(a)(ii) of the Constitution reads: "*The national legislative authority as vested in Parliament confers on the National Assembly the power to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5*".



with municipal legislative powers. The national government may only regulate a municipality's executive authority, not its legislative authority. It held that the national government's powers are limited, in relation to municipalities, to a "monitoring, supervising and support function".

The court a quo in the Overbeek matter made the following fundamental constitutional findings in its judgment:

*[16] Similarly, a municipality has the "right to administer" any local-government matter listed in Schedules 4B and 5B. **One of the functional areas in Schedule 4B in respect of which a municipality has original and independent legislative power is in respect of the building regulations.*** [our underlining]

[23] This is precisely why constitutionally, national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions (like building regulations) [our insertion]

*[24] This autonomy must inform any and all interpretation of municipal powers. **To stipulate that municipalities are obliged to obtain ministerial approval for Bylaws relating to the erection of buildings which they are empowered to make independently, most certainly compromises and impedes a municipality's ability and right to exercise its powers and perform its functions.***" [Emphasis added]

There is one significant consequence of the finding by the court a quo in the Overbeek matter: it is not just that the impugned section of the Buildings Act (section 29(8)) was found to be invalid, but based on the rationale of the finding of the court a quo, it must follow that the entire Buildings Act is in fact constitutionally invalid as the Buildings Act, in its entirety, constitutes building regulations which regulates buildings in municipal areas. Based upon the legal rationale confirmed by the CC in the Overbeek matter the entire Buildings Act may in future be declared to be constitutionally invalid.

The Buildings Act was assented to on the 22nd of June 1977 and became effective on the 1st of September 1985. It is old order legislation and consequently, it is not surprising that the Minister of Trade, Industry, and Competition has conceded in the Overbeek matter that the Buildings Act is to be replaced soon due to its constitutional insufficiencies. The Minister's legal representatives made these admissions during the hearing of the Overbeek matter at the CC on the 3rd of November 2022 which writer has attended in person.

The Buildings Act is national legislation regarding the erection of buildings in municipal areas and is in violation of Part B of Schedule 4 which provides for "FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE" but only to the extent set out in section 155(6)(a) and (7) of the Constitution.





"Building regulations" fall under Schedule 4 Part B. We submit this because section 155(7) of the Constitution only allows national legislation to legislate the executive authority of municipalities and not its legislative powers.³

The structure of the Buildings Act is such that it confers the executive function of the Buildings Act to municipalities, but it has various provisions that are clearly legislative in nature that usurp the legislative power conferred on municipalities in terms of Schedule 4 Part B. As its objective is to set standards, those standards are made in the form of building regulations by the Minister, equally usurping the legislative power of municipalities. The Buildings Act is unconstitutional because it infringes on the legislative autonomy of municipalities, as it impedes a municipality's ability and right to exercise the legislative powers assigned to it in Schedule 4 Part B relating to building regulations.

In summary, Parliament has no authority to make a law about building regulations that concerns anything beyond creating norms and guidelines for the supervision, monitoring, and support of municipalities' executive powers. The Buildings Act unfortunately far exceeds this competence of Parliament and is thus constitutionally invalid. A regime similarly to that provided by the SPLUMA Act is required to be put in place in respect of building regulations.

A municipality is duty bound to have its own bylaws regulating building regulations and Parliament is only entitled to promulgate framework legislation in respect of building regulations, like the SPLUMA Act is for municipal planning.

It is clear, the entire Buildings Act is riddled with unconstitutional provisions, which is largely caused by its old order legislative nature. This reality though causes the entire Buildings Act to be constitutionally invalid in terms of the doctrine of objective constitutional invalidity with effect as from the date the Constitution came into operation on the 4th of February 1997. The doctrine of objective constitutional invalidity was confirmed in the Overbeek Judgement.

In the circumstances, the Municipality should not rely exclusively on the Buildings Act, which is constitutionally invalid, but instead it must promulgate its own building regulations because it has the legislative authority to do so in terms of the Constitution. The Municipality cannot rely on an invalid Act, like the Buildings Act, to govern its affairs. It is against the principle of legality. Put differently, the Municipality did not avail itself to the opportunity to address the specific building requirements pertaining to outdoor advertising structures, in the Draft Bylaw, or otherwise, instead it relies on the outdated and inadequate Buildings Act to regulate advertising structures.

³ Municipality of Johannesburg Metropolitan Municipality v Chairman of the National Building Regulations Review Board and Others 2018 (5) SA 1 (CC) par 34





Considering the aforesaid, it appears that the Municipality agrees with our interpretation and view, because it has removed section 6(1) of the old 2023 Draft Bylaw from the new 2024 Draft Bylaw. Section 6(1) of the old 2023 Draft Bylaw determined:

"6. Standard conditions for approval

- (1) All signs and advertising structures must be properly erected and constructed of the requisite strength and must be secure and must comply with the requirements pertaining thereto of the National Building Regulations and Standards Act, 1977 (Act 103 of 1977)."*

The aforesaid provisions do not appear in the new 2024 Draft Bylaw, although section 11 of the 2024 Draft Bylaw provides as follows:

"11. Legal requirements

All advertisements to be erected or displayed within the area of jurisdiction of the Municipality must, in addition to complying with this Bylaw, comply with all other applicable legislation, including but not limited to the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and any applicable By-law promulgated thereunder, the Stellenbosch Municipality Zoning Scheme Bylaw or condition of approval or any departure from the Stellenbosch Municipality Zoning Scheme Bylaw adopted by the Municipality.

The fact that the Municipality has taken out the clear reference to the Buildings Act in the new 2024 Draft Bylaw creates the impression that the Municipality does not regulate signs and advertising structures under the provisions of the Buildings Act, but on the other hand, section 11 contains a general 'catch it all' provision, which may include reference to the Buildings Act. It is simply unclear what standards and approval processes are to be complied with pertaining to advertising structures.

The Municipality must clarify this uncertainty in the new 2024 Draft Bylaw so that there is no confusion. The 2024 Draft Bylaw must clearly state that the Buildings Act is not applicable to the development of large billboards and advertising signs, alternatively lawfully introduce specific relevant fair buildings standards and regulations for the various kinds of advertising structures

Furthermore, the Municipality cannot rely on the Buildings Act to regulate buildings within its jurisdictional area, because it is constitutionally invalid. The Municipality must urgently rectify this *lacuna*, because it carries a higher



standard of diligence when it comes to unconstitutional matters and issues pertaining to its legislative duties. The following dicta from the Merafong City Local Municipality v AngloGold Ashanti Limited ⁴ is on point:

“it pointed out, as our courts have done repeatedly in the past, that a much higher standard is required of Organs of State. On this aspect it cited the following dictum in MEC for Health, Eastern Cape and another v Kirland Investments (Pty) Ltd t/a Eye and Laser Institute.

“[T]here is a higher duty on the State to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution’s primary agent. It must do right, and it must do it properly.”

The SPLUMA Act

The provisions of the SPLUMA Act must be taken into consideration in relation to the 2024 Draft Bylaw because the activity of ‘land development’, which is defined and regulated under the SPLUMA Act, involves *inter alia* the erection of a structure, like a billboard or large advertising structures, on land.

The scope and application of the SPLUMA Act are set out under section 2 of the SPLUMA Act, which determines:

“Application of Act

2. (1) *This Act applies to the entire area of the Republic and is legislation enacted in terms of—*

- (a) *section 155(7) of the Constitution insofar as it regulates municipal planning; and*
- (b) *section 44(2) of the Constitution insofar as it regulates provincial planning.*

(2) *Except as provided for in this Act, no legislation not repealed by this Act may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with the provisions of this Act.*

⁴ Merafong City Local Municipality v AngloGold Ashanti Limited [2016] JOL 36772 (CC)



“**Land development**” is defined in the SPLUMA Act to mean 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.

In addition, “**land use**” is defined in the SPLUMA Act to mean 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. The permit which the Municipality issues to a landowner to erect a billboard on his, her or its private land fall squarely within the ambit of the definition of “land use”. Furthermore, “**land use management system**” is defined to mean the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures.

In terms of section 2(2) of the SPLUMA Act, the Municipality is not allowed to prescribe in terms of its 2024 Draft Bylaw an alternative or a parallel mechanism, measure, institution or systems on spatial planning, land use, land use management and land development in a manner inconsistent with the provisions of the SPLUMA Act. Any such inconsistencies will be invalid, not only in terms of the provisions of the SPLUMA Act, but also in terms sections 156 and 151(3) of the Constitution. Consequently, the 2024 Draft Bylaw must comply with the provisions of the SPLUMA Act and must not set an alternative or a parallel system which is inconsistent with the provisions of the SPLUMA Act. It is envisaged that some of the provisions contained in the Buildings Act, albeit indirectly through incorporation by reference, impinges upon this legal principle.

The objects of the SPLUMA Act are set out in section 3 thereof, which determines:

“Objects of the Act

3. The objects of this Act are to—

- (a) provide for a uniform, effective and comprehensive system of spatial planning and land use management for the Republic;
- (b) *ensure that the system of spatial planning and land use management promotes social and economic inclusion;*
- (c) provide for development principles and norms and standards;
- (d) provide for the sustainable and efficient use of land;



- (e) provide for cooperative government and intergovernmental relations amongst the national, provincial and local spheres of government; and
- (f) redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems."

The purpose of the SPLUMA Act is as follows:

"To provide a framework for spatial planning and land use management in the Republic; to provide for the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications; to provide for the establishment, functions and operations of Municipal Planning Tribunals; to provide for the facilitation and enforcement of land use and development measures; and to provide for matters connected therewith."

Section 6 of the SPLUMA Act sets out the scope of application of the development principles provided for in the SPLUMA Act:

"Application of development principles

- 6. (1) **The general principles set out in this Chapter apply to all organs of state and other authorities responsible for the implementation of legislation regulating the use and development of land, and guide -**
 - (a) the preparation, adoption and implementation of any spatial development framework, policy or **Bylaw concerning spatial planning and the development or use of land;**
 - (b) the compilation, implementation and administration of any land use scheme or other regulatory mechanism for the management of the use of land;
 - (c) the sustainable use and development of land;
 - (d) the consideration by a competent authority of any application that impacts or may impact upon the use and development of land; and
 - (e) the performance of any function in terms of this Act or any other law regulating spatial planning and land use management.



- (2) *Notwithstanding the categorisation of principles in this section, all principles contained in this Act apply to all aspects of spatial development planning, land development and land use management.*

Pursuant to the provisions of section 6 of the SPLUMA Act, and because the 2024 Draft Bylaw deal with land development and land use, the Municipality must comply with the development principles, set out in section 7 of the SPLUMA Act, read in conjunction with section 6 thereof, in respect of the development of billboards and advertising signs within the jurisdictional area of the Municipality. Section 7 sets out *inter alia* the following development principles to which the Municipality must adhere to:

- > the principle of efficiency, whereby (a) land development optimizes the use of existing resources and infrastructure. (b) decision making procedures must be designed to minimize negative financial, social, economic or environmental impacts; and (c) the development application procedures are efficient and streamlined and timeframes are adhered to by all parties;
- > the principle of good administration, whereby (a) all spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use management systems as embodied in the SPLUMA Act, (b) the requirements of any law relating to land development and land use are met timeously, (c) the preparation and amendment of spatial plans, policies, land use schemes, as well as procedures for development applications, include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them; and (d) policies, legislation and procedures must be clearly set in order to inform and empower members of the public. (Emphasis Added)

In terms of section 12 of the SPLUMA Act, the Municipality must have a Spatial Development Framework, which *inter alia* interpret and represent the spatial development vision of the Municipality in respect of land development and land use. In addition, the Framework must provide clear and accessible information to the public and private sector and provide direction for investment purposes. This Framework must deal with the spatial development vision of the Municipality in respect of advertising signs situated within its jurisdictional area. The 2024 Draft Bylaw must refer, provide for and deal with this Framework, because the 2024 Draft Bylaw and the Municipality's Spatial Development Framework are integrated with each other and cannot co-exist independently and separately from each other, if they are in fact dependent on each other.

It is important that the Municipality's Spatial Development Framework provides a clear and indicative context with regards to the principles and guidelines applicable to the development, erection and operation of advertising signs





situated within its jurisdictional area, because the Municipal Planning Tribunal may not make a decision which is inconsistent with the Municipality's Spatial Development Framework (see section 22 of the SPLUMA Act).

Considering:

- > that no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with the provisions of the SPLUMA Act (section 2(2)); and
- > the national importance of the SPLUMA Act; and
- > the fact that the 2024 Draft Bylaw falls squarely within the ambit of the provisions of the SPLUMA Act; and
- > considering that the SPLUMA Act has at its core the purpose "*to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications*"; and
- > the Municipality must have a Spatial Development Framework, which must deal with issues raised by the Municipality in its 2024 Draft Bylaw and vice versa, the 2024 Draft Bylaw must give effect to the Spatial Development Framework by outlining a supplementary framework of the scope, scale, frequency, impact management and local economic development support in respect of the development of advertising signs within its jurisdictional area it wishes to achieve;
- > the fact that the Municipality is obliged to adhere to the development principles of good administration, as prescribed by the SPLUMA Act, which require *inter alia* from the Municipality to development and set clear policies, legislation, and procedures in order to inform and empower members of the public, specifically pertaining to the development of advertising structures,

then it is suggested that it is of paramount importance that the 2024 Draft Bylaw clearly states that the provisions of the SPLUMA Act apply to the 2024 Draft Bylaw and that in the event of a conflict, the provisions of the SPLUMA Act will prevail considering the provisions of section 2(2) of the SPLUMA Act, and sections 156(3) and 151(3) of the Constitution.





The 2024 Draft Bylaw must explain, inform, and alert any member of the public of the application, objects, development principles and other legislative requirements prescribed by the SPLUMA Act, which directly have a material influence on the provisions of the proposed 2024 Draft Bylaw.

The 2024 Draft Bylaw, unfortunately, materially fails to not entrench the crucial imperatives envisioned by the SPLUMA Act. The 2024 Draft Bylaw does not include, reference, sets out or provide for the norms, guidelines, standards and principles embodied in the SPLUMA Act insofar as it relates to outdoor advertising, causing it to conflict with the SPLUMA Act, rendering the 2024 Draft Bylaw to be invalid in terms of the provisions of section 2(2) of the SPLUMA Act and section 156(3) and 151(3) of the Constitution.

A person applying for an approval under the 2024 Draft Bylaw is simply not guided or protected in any manner whatsoever by the guardrails provided by the SPLUMA Act or that it is applicable to his, her or its rights and application. Furthermore, the 2024 Draft Bylaw materially fails to set out any clear procedure by means of which it informs and empowers members of the public in so far as their rights are concerned relating to land use and development involving outdoor advertising, as prescribed by section 7 of the SPLUMA Act.

Stellenbosch Spatial Development Framework

Section 12 of the SPLUMA Act determines, *inter alia* the Municipality **must prepare** spatial development frameworks that guide the Municipality in taking any decision relating to spatial planning and land use management system. For instance, in terms of said section 12, the Spatial Development Framework must:

1. provide guidelines when the Municipality makes decisions regarding the development of advertising structures;
2. provide clear and accessible information to the public and private sector and provide direction for investment purposes in respect of the development of advertising structures;
3. address historical spatial imbalances in the development of outdoor advertising opportunities;
4. identify the long-term risks of particular spatial patterns of growth and development and the policies and strategies necessary to mitigate those risks in respect of the development of outdoor advertising opportunities;
5. provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development involving outdoor advertising;
6. promote a rational and predictable land development environment to create trust and stimulate investment in the outdoor advertising land development sector; [etc]



The sad state of affairs is that the Stellenbosch Spatial Development Framework does not deal with outdoor advertising as a spatial planning, land use or development activity at all. The Municipality ignores the outdoor advertising industry in its entirety in its Spatial Development Framework, although the Municipality is duty-bound to do so in terms of the provisions of the SPLUMA Act, instead it seeks to enforce a blanket ban on outdoor advertising by formulating the Draft By-law in such a manner that it makes it impossible for any outdoor company to unlock economically viable advertising opportunities within its jurisdiction. This neglect happens in the midst of the outdoor advertising industry being a significant contributor to the increase of business activities, job creation and economic growth within the jurisdictional area of the Municipality and cannot be simply ignored and amounts to a dereliction of its duty to foster economic growth, not limited to only media owners within the municipal area, but also national and international business that seeks to advertise their business within the municipal area.

In terms of the SPLUMA Act, the 2024 Draft Bylaw must refer to and be aligned with the Municipality's Spatial Development Framework, but no such alignment can exist, because the Stellenbosch Spatial Development Framework fails to recognize or provide any guidance to the Municipality in taking any decision relating to spatial planning and land use management system involving outdoor advertising structures. This failure on the part of the Municipality constitutes a serious dereliction of duty and must immediately be rectified.

The 2024 Draft Bylaw stands on its own island and prescribes an alternative or parallel mechanism on spatial planning, land use, land use management and land development which is inconsistent with the provisions of the SPLUMA Act, causing it to be unlawful and invalid in terms of section 2(2) of the SPLUMA Act. If the promulgation thereof is proceeded with, the Municipality will be exposed to unnecessary litigation, which it is duty-bound to avoid in terms of its obligations prescribed by the Systems Act.

At its core, the SPLUMA Act *inter alia* establishes a set of principles aimed at transforming the exclusionary spatial logic of Apartheid-era planning. It introduces a new integrative rationale for development that prioritises sustainability, efficiency, and the removal of spatial inequalities, with spatial justice as a key objective. It is very unfortunate that the Municipality fails to implement these transforming principles insofar as it relates to the outdoor industry. Instead of dealing with this transformation in its Spatial Development Framework and the 2024 Draft Bylaw, the Municipality elects to rather ignore same in its entirety. This type of action, with all due respect, is totally unfounded and irresponsible as a constitutional citizen with a heightened constitutional obligation.

The key question is whether the 2024 Draft Bylaw perpetuates the historic protective and exclusionary logic, or if it sufficiently aligns with SPLUMA's transformative objectives. The principle of spatial efficiency requires that outdoor advertising should not be unfairly discriminated against, given its role as an integral part of the Municipality's





economic activity. A vibrant economic fabric is essential to addressing broader social challenges, particularly in contexts like Stellenbosch, where sensitive locales require a balanced approach.

Unfortunately, by excluding outdoor advertising from the Spatial Development Framework, the Municipality is discriminating against the outdoor advertising industry. Such conduct causes a failure to strike a reasonable balance between environmental, social, and economic considerations in pursuit of SPLUMA's principles.

One of SPLUMA's objectives is to *"advance economic development and employment opportunities for all people,"* and to *"promote economic inclusivity."* By excluding the Outdoor Advertising Industry, the Municipality is contravening this principle, as it fails to recognize the economic importance of this sector, which provides employment and contributes to local economic growth.

Furthermore, SPLUMA mandates that land-use management decisions should be based on sound planning principles, and that all economic activities that are constitutionally recognized should be considered as part of land use and development planning. The exclusion of Outdoor Advertising is seen as an improper or incomplete application of these principles, failing to account for the sector's role in the local economy.

Outdoor advertising is a significant contributor to the South African economy. It supports a range of businesses, from large multinational corporations to small local enterprises, and provides job opportunities in areas such as design, manufacturing, installation, printing, lighting and maintenance. It also facilitates the promotion of products and services, which, in turn, supports economic growth and development within communities.

Excluding this industry from the Spatial Development Framework undermines its potential to contribute to local economic activity. By failing to recognize Outdoor Advertising as a legitimate industry, the Municipality is missing out on opportunities for economic diversification and growth, particularly in a region like Stellenbosch, which is known for both tourism, education and agriculture.

This exclusion could also prevent local businesses from taking full advantage of advertising opportunities, stifling entrepreneurship and economic development.

The Spatial Development Framework serves as a guide for private investment and spatial development, setting a clear framework for land use and infrastructure development. Responsible outdoor advertising, when properly regulated, can be integrated into urban spaces without negatively impacting the surrounding environment. Properly planned and strategically placed outdoor advertisements can in fact complement the overall design of a city or town, making use of existing infrastructure such as roads, bridges, and public spaces.

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By excluding Outdoor Advertising, the Municipality is failing to ensure the efficient and optimal use of its infrastructure. This could result in a missed opportunity to generate additional revenue through advertising, which could, in turn, be reinvested into municipal infrastructure or community development projects.

The Constitution guarantees the right to economic freedom, including the right to participate in economic activities. Outdoor advertising is recognized as an economic activity, and by not including it within the Spatial Development Framework, the Municipality is infringing upon this constitutional right. This exclusion could be seen as an arbitrary decision that disregards the principles of equality and fairness, which are enshrined in the Constitution.

Furthermore, South Africa's Constitution promotes participatory governance, which includes ensuring that all stakeholders, including the Outdoor Advertising Industry, are consulted in matters that impact their activities. The exclusion of this sector from the Spatial Development Framework may be seen as a failure to adequately consult and include the relevant stakeholders in the planning process, violating the principles of public participation and inclusivity.

The exclusion of Outdoor Advertising from the Spatial Development Framework will have long-term implications for the economic inclusivity of the Stellenbosch region. Economic activity is driven by a variety of sectors, and Outdoor Advertising has the potential to generate significant economic benefits, particularly in a region like Stellenbosch, where tourism and local businesses are central to the economy.

By not recognizing the industry, the municipality may inadvertently be limiting opportunities for local businesses to advertise and grow their brands, which could harm the local economy. This exclusion could also lead to missed opportunities for the Municipality to capitalize on the advertising revenue that could be generated through a more inclusive and well-regulated advertising environment.

Lastly, the Draft Bylaw if read and considered in its entirety does not and cannot on any application thereof achieve the stated objectives for the Draft Bylaw in Section 2 thereof. The operative provisions of the Bylaw should be aligned with the objective, with due regard to the practicalities and fairness considerations arising from a stakeholder perspective having to comply therewith.

Unconstitutional provisions of the 2024 Draft Bylaw

The 2024 Draft Bylaw contains many provisions that are inconsistent with those of the Constitution. If the 2024 Draft Bylaw is going to be promulgated containing these constitutional deficiencies, those applicable provisions of

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the 2024 Draft Bylaw (or even the entire 2024 Draft Bylaw) will also render the Draft Bylaw constitutionally invalid in terms of the provisions of the doctrine of objective constitutional invalidity and not only subject the Municipality to unnecessary litigation arising from constitutional challenges, but may eventually be declared invalid. This latter reality has recently been confirmed by the CC in the Overbeek Judgement.

It is therefore of paramount importance that the Municipality makes sure that its 2024 Draft Bylaw does not contain provisions that are objectively unconstitutional. As pointed out above "[T]here is a higher duty on the State to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights.... It is the Constitution's primary agent. It must do right, and it must do it properly."

It is also for this reason why we have offered to sponsor a stakeholder workshop between the Municipality, the industry and constitutional and legal experts to ensure that the 2024 Draft Bylaw does not contain unconstitutional provisions that will be invalid due to its inconsistency.

The following comments serve to demonstrate that which is stated above and amongst others, mere examples of our concerns and objections and should not be considered to be an exhaustive list of issues that require rectification. We therefore implore upon you to afford us and the industry with an opportunity in the form of a stakeholder workshop in order to expedite the law making process and ultimately enhance the fairness of the 2024 Draft Bylaw

Blanket ban on Billboards - Minimum Controlled Areas

A billboard is only allowed to be erected and displayed in a minimum controlled area and subject to a Traffic Impact Assessment and Visual Impact Assessment (which may be extended to include also an Environmental Impact Assessment and a Heritage Impact Assessment). See Schedule 2 – Billboards and section 4(6) of the 2024 Draft Bylaw in this regard.

The areas allocated for the development of billboards under Schedule 1 (minimum controlled) is of such nature that there are almost no viable opportunities to be taken within such designated areas, especially if one looks at the underlying legal restrictions pertaining to the areas which are considered to be minimum controlled. The following areas are deemed to be minimum controlled and available for the development of billboards:

- a) **In Heritage in sensitive areas.** This term is not defined and is very subjectively vague and therefore uncertain. It is impossible for the reasonable man to determine which areas situated within the Municipality's jurisdictional area fall under this classification. These areas for all



practical purposes do not exist. This area of classification needs clarification, definition, guardrails, and detail. As it stands it will lead to arbitrary application.

- b) **Designated transportation terminals unless historical conservation area or graded building or site.** ‘Transportation terminals’ are defined in the 2024 Draft Bylaw to mean *“any area designated by the Municipality as such, where the formal interchange of modes of public transport takes place by the public, including, but not limited to designed railway stations, official taxi terminals, and bus terminals.”* It is clear from the provisions of the said definition and Schedule 1 of the 2024 Draft Bylaw, that no such terminals will exist on the date of promulgation of the new 2024 Draft Bylaw, but that these minimum control areas will only come into play once they are designated as such by the Municipality. The word ‘designated’ implies that the Municipality is going to determine where these terminals are. As a billboard media owner, we have no idea where these designated terminals are, and it is only going to be determined in the future. These areas for all practical purposes do not exist. The Municipality can arbitrarily decide which transportation terminals are classified or designated as minimum control areas. The public will have no say in the process, thereby circumventing stakeholder input and engagement, causing it to be unconstitutional. Furthermore, these types of terminals are normally owned by an Organ of the State and there are only a few transportation terminals within the jurisdictional area of the Municipality. With the State as the landlord, a person will only be able to obtain a billboard lease agreement from the State to operate a billboard via a formal tender process. Consequently, for all practical purposes this type of area, once designated, is only available when the State decides to issue a tender and if you are successful in the tender. It may never materialize.
- c) **Designated areas within limited use zones unless within a within a conservation area.** Once again, these areas will not exist on the date of promulgation of the new 2024 Draft Bylaw, but that these minimum control areas will only come into play once they are designated as such by the Municipality. The word ‘designated’ implies that the Municipality is going to determine where these areas are. This is uncertain. As a billboard media owner, we have no idea where these designated areas are, and it is only going to be determined in the future. These areas for all practical purposes do not exist. The Municipality can arbitrarily decide which areas within a limited use zone are classified or designated as minimum a control area. The public will have no say in the process, thereby circumventing stakeholder input and engagement, causing it to be unconstitutional. Furthermore, the Stellenbosch Municipality Zoning Scheme Bylaw, 2019 (as amended), makes provision for Limited Use Zones, but specifically prescribes under section 230(1) thereof as follows:

“The purpose of this zone (limited use) is to make provision for the following:



- (a) *a transitional mechanism to provide an appropriate zone for properties previously zoned 'undetermined' or other abolished zones in previous schemes.*
- (b) *to allow existing nonconforming land uses which do not fit into a zone in this Scheme to continue within the approved parameters, without granting significant other rights which may be inappropriate in the particular area.*
- (c) *for existing lawful land uses to continue, **provided that no new land uses (other than the right to build a dwelling house) shall be permitted** and properties shall be rezoned to the appropriate use zone in order to permit new land uses."* [our insertion, emphasis and underlining]

This means that a person is **not** entitled to develop a billboard on land situated within a Limited Use Zone. You are only entitled to build a dwelling house within a Limited Use Zone. Listing areas within Limited Use Zones as being minimum controlled areas available for the development of a billboard is in contradiction to the Zoning Scheme Bylaw, 2019. For all practical purposes a person is not allowed to erect a billboard in areas within limited use zones. To aggravate matters, limited use zones are also falling under partially controlled areas, which areas do not allow for the development of billboards.

- d) **Specific areas or sites designated as minimum control by way of the Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone as contained in the Stellenbosch Municipality Zoning Scheme Bylaw prepared by the Municipality.** No specific areas or sites are designated to be minimum control on the Urban and Rural Conservation Overlay Zones and the Scenic Routes Overlay Zones. Although these areas do not exist, the 2024 Draft Bylaw creates the impression they do and that these 'non-areas' qualify as minimum controlled. All roads situated within an urban conservation overlay area is deemed to be maximum controlled, which area does not allow for the development of billboards. Furthermore, Scenic Routes in rural areas are maximum controlled, which excludes billboards. Lastly, Scenic Routes within urban areas fall under urban conservation overlay areas, which is maximum controlled. On close investigation and for all practical purposes a person is not allowed to erect a billboard within this category. This also demonstrates the deficient manner in which stakeholder participation was curtailed by a decision to piecemeal law-making processes and the incorporation of forgone opportunities for public participation by reference in subsequent draft legislation. This process adopted is inherently unfair.
- e) **Industrial zones.** Industrial zones are areas allocated for industries, warehouses, abattoir, brickworks, builders' yards, and scrap yards in accordance with the provisions of the Stellenbosch Municipality



Zoning Scheme Bylaw. These are typically areas where an advertiser **doesn't** want to advertise, because it does not represent a cross section of the general audience that an advertiser normally like to target.

If one considers the severe extent of the restrictions imposed under the aforesaid area classification, then the following additional restrictions imposed by the Municipality in terms of the 2024 Draft Bylaw, makes it impossible to develop a billboard within the jurisdictional area of the Municipality, namely:

1. Under clause 2 of Schedule 2 of the 2024 Draft Bylaw, no billboards are permitted on a designated Gateway Route. All the roads situated within the jurisdictional area of the Municipality which carries sufficient traffic to justify the development of a billboard qualifies to be designed as Gateway Routes in terms of the Zoning Scheme Bylaw. The Municipality can arbitrarily designate a prominent route to be a Gateway Route in which case that road is not available for the development of a billboard. Such arbitrary legislative provisions are constitutionally invalid.
2. Furthermore, the Municipality may designate routes to be scenic routes on its Scenic Route Overlay Zone maps. The Municipality can once more unilaterally and arbitrarily designate a route to be a scenic route and by doing so, it sterilizes such route for the development of billboards, without public participation. This is vague and uncertain.
3. The Municipality's central business district ("**CBD**") is classified to be partially controlled, which means that no billboards are allowed within the CBD area; and
4. In terms of section 5(2)(a) of the 2024 Draft Bylaw, the Municipality is entitled to determine in which area a site falls if a sign falls into more than one area of control or if a proposed site in one area of control may impact on an adjacent area of control. If a billboard situated on a minimum controlled area is visible from a partially controlled area, an official of the Municipality can unilaterally determine which area of control is applicable. This opens the floodgates for arbitrary decision-making and unjust administrative action that will ultimately result in unnecessary litigation.
5. Those areas which may be available under the minimum control classification, which is just about nothing (if anything), is lastly further reduced if such areas fall under an urban or rural conservation overlay area or scenic routes overlay zones areas.

It is apparent from the aforesaid evaluation, that there are effectively no minimum control areas available in terms of the provisions of the 2024 Draft Bylaw, within the jurisdictional area of the Municipality, for the development of billboards. Schedule 1 therefore introduces a blanket ban against billboards by limiting the areas available for the development of billboards to almost a non-event. The 2024 Draft Bylaw simply sterilizes the development of



billboards. The Municipality will be acting inconsistent with the provisions of the Constitution if it does not amend its areas of control to allow a person to develop a billboard within its jurisdictional area. The provisions of and the effect of Schedule 1 amount to over regulation and implement a blanket ban on billboards, rendering Schedule 1 to be constitutionally invalid due to its inconsistency with the provisions of the Constitution.

Failing to Create Economic Opportunities

One of the main objectives of the Municipality set out in the 2024 Draft Bylaw is to *"p(P)romotes freedom of responsible commercial speech by striking a balance between advertising opportunities and economic development on the one hand, and the conservation of the visual, tourism, environmental and heritage characteristics and traffic safety on the other hand."*⁵.

The Municipality has extensive portions of land under its direct control which can be used to unlock significant economic opportunities within the outdoor advertising industry. The Municipality can be a substantial contributor as a landlord towards efforts to create jobs and can earn in the process much required revenue (landlord rental), which the Municipality can use to create suitable infrastructure for a fast-growing urban precinct.

These developments can be done in a manner where outdoor advertising can co-exist in a harmonious manner with traffic safety and the unique tourist, environmental and heritage characteristics of the Municipality.

There is no evidence in the 2024 Draft Bylaw that the Municipality is making any attempt to create economic opportunities within the outdoor advertising environment, although many such opportunities exist. The Municipality is unfortunately, with all due respect, seriously failing its residents in this regard.

The restrictions introduced regarding the areas within which billboards may be erected, for instance, are so severe that it constitutes a blanket ban and effectively sterilises the development of billboards within the jurisdictional area of the Municipality. This type of restrictive municipal legislation is in direct conflict of with provisions of the SPLUMA Act, SAMOAC, the National Development Plan (NDP 2011) and the National Spatial Development Framework (NSDF 2023).

Stellenbosch Zoning Scheme Bylaw and Overlay Zones

⁵ Section 2.1(b) of the 2024 Draft Bylaw





The 2024 Draft Bylaw purports to regulate advertising in accordance with different "area(s) of control", which is defined in the 2024 Draft Bylaw to mean:

“‘Area of Control’ refers to the degree of advertising control to be applied in a specific area (i.e. Maximum, Partial or Minimum Control) in accordance with the visual sensitivity of the area and traffic conditions, which areas are set out in Schedule 1 of this By-Law; and which may be modified or amended by the Stellenbosch Municipality in accordance with the requirements as set out in Section 12(3)(b) of the Municipal Systems Act, 2000 (Act 32 of 2000), which amendments and modifications will be in accordance with the Stellenbosch Municipality's Zoning Scheme By-Law and shall be graphically depicted in the Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone as prepared and promulgated by the Stellenbosch Municipality”

The areas of control form the backbone of the entire regulatory regime of outdoor advertising, which is set out in Schedule 1, but the areas or sites referred to in Schedule 1 may be designated in overlay zones regulated under the Stellenbosch Municipality Zoning Scheme Bylaw. The determination and designation of sites and areas on different overlay zones are a crucial element and part of the 2024 Draft Bylaw, which is neither open for comment, nor part of the public participation process of the 2024 Draft Bylaw, because it is intended to be regulated under a different Bylaw. This failure renders the 2024 Draft Bylaw to be seriously defective and contrary to the provisions of section 12(3)(b) of the Systems Act. The failure to allow the public an opportunity to make representations with regard to the proposed sites and areas on the overlay zones impacts significantly on the constitutionality of the 2024 Draft Bylaw.

The designated areas and sites form a crucial part of the 2024 Draft Bylaw for the following reasons:

- a) One of the peremptory factors that the Municipality must take into account when considering an application for approval is the area of control and accompanying schedule of conditions. If one considers the other factors to be taken into account in the absence of the designated sites and areas, they are vague and meaningless. It creates uncertainty and is unduly cumbersome.
- b) This is largely because the designated areas and sites are an important factor on the list in section 10(13) of the Bylaw which pertains to the *spacing* of the sign. The other factors relate to the type of sign, the effect of the sign and other consents required etc. The Municipality would be unable lawfully to consider an application under the 2024 Draft Bylaw without considering the areas of control and the spacing of the signage in question, which is determined to a large extent with reference to the designated areas and sites on the overlay zones.



- c) In addition, in the absence of the designated sites and areas on the overlay zones, the official who is charged with the approval or rejection of an application for an approval is left without any guidance as to how to exercise his or her wide discretion and what factors should be taken into account when evaluating the application.

Decision-Making Power (Referee, Judge and Player)

The Municipality, as defined, is the authority to consider an application submitted in terms of the provisions of the 2024 Draft Bylaw. From the definition of the term '*Municipality*' it is evident that an advertising sign application can be considered and adjudicated by an employee of the Municipality, holding the required delegated authority.

This reality is unfair and unreasonable, considering that the Municipality is a player in the outdoor industry as landlord and also the referee, as regulator. The Municipality is plainly conflicted and consequently, the decision-making authority must be independent, impartial, and a fair decision-making process is of paramount importance. An employee of the Municipality can never be objective when adjudicating an advertising sign application, considering that the Municipality also operates within the outdoor advertising industry and because of his or her employee-employer relationship. The 2024 Draft Bylaw is marred by a problematic employee-employer relationship and no adequate mechanisms have been put in place to combat the influence that the Municipality, as employer, would have on its employees tasked with assessing and approving applications under the 2024 Draft Bylaw.

The 2024 Draft Bylaw should provide for a steering committee which considers and processes all applications before a final decision is arrived at, however, no provision is made therefore in the 2024 Draft Bylaw for the powers or functions of this steering committee, and it appears all the decision-making falls upon an employee. The power dynamics of the employee-employer relationships coupled with the failure to diffuse the power over a larger group of decision-makers creates a clear structural vulnerability to bias and arbitrary decision-making in the circumstances. See the High Court judgement in the matter between The South African Property Owners Association and others vs. The City of Johannesburg Metropolitan Municipality in this regard⁶.

In the circumstances, the 2024 Draft Bylaw must impose the required guardrails to prevent a compromise of these basis requirements of natural justice. Matters in terms of the 2024 Draft Bylaw, should in the circumstances in our view, be adjudicated by the Municipal Planning Tribunal, operating under the provisions of the SPLUMA Act.

⁶ In the High Court of South Africa (Gauteng Local Division, Johannesburg) under Case Number: 19656/2018





Violation of Section 16(1) of the Constitution

Section 4(1) of the 2024 Draft Bylaw determines:

"4(1) Other than those advertisements referred to in section 13(3) to 13(10) of this Bylaw, no person may display any advertisement or erect or use any advertisement for advertising purposes without the Municipality's approval in terms of this Bylaw and any other applicable legislation."

Consequently, the 2024 Draft Bylaw outlaws the display of any advertisement, or the erection or use of any advertisement for advertising purposes without the Municipality's approval in terms of the 2024 Draft Bylaw.

An "advertisement" is defined extremely broadly as:

"“Advertisement” means any:

- (a) visible or audible representation of a -*
 - i. Word or any abbreviation thereof;*
 - ii. Name or any abbreviation thereof;*
 - iii. Letter;*
 - iv. Figure; or*
 - v. Object*
- (b) sign or symbol; or*
- (c) light which is not solely used as a warning against danger,*

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which is visible from any public place and which is intended to promote any news headlines, business, product, service, brand, person, function, meeting, election or candidate in an election, event or activity.”

This means that each individual advertisement visible from any public place is subject to the prior approval of the Municipality. This amounts to censorship. A person for instance walking in the streets of Stellenbosch with a shirt reflecting a brand on his or her shirt, is not allowed to do so unless he or she has obtained the approval of the Municipality under the 2024 Draft Bylaw. This is absurd, with all due respect, unfair and unjustifiable.

To add insult to injury, section 4(2) of the 2024 Draft Bylaw prohibits not only the display of new advertisement but also the alterations or additions to existing approved advertisements. This limitation is likewise unjustifiable, and not precisely formulated to be a constitutional limitation. Furthermore, there are no advertisements listed under section 13 of the 2024 Draft Bylaw, which does not fall under the harsh provisions of section 4(1).

The following sections have similar prohibitions but in more specific terms relating is to specific circumstances:

- a) section 5(1);
- b) section 10(2);
- c) section 10(6);
- d) section 12(2); and
- e) section 12(4).

The aforesaid prohibitions in general but the one in section 4(1) of the 2024 Draft Bylaw in particular, act as a form of prior restraint and is an unjustifiable infringement of the right to freedom of expression, more particularly commercial free speech. Billboard advertising is part of the right to free speech and is accordingly protected by section 16(1) of the Constitution.

The approach of the 2024 Draft Bylaw, as set out in section 4(1) and its related provisions is to place a near total and blanket prohibition on commercial free speech, unless authorised in the wide discretion of the Municipality's officials.

Not only is the proprietary right to advertise expropriated but the exercising of it is criminalised. This is unjust.

The blanket prohibition in section 4(1) of the 2024 Draft Bylaw on advertising signage without the prior written approval of the Municipality is overbroad in the light of the definitions of “advertisement” and “display”.





It is plain to see that the general prohibition on advertising is overbroad since it reaches well beyond the intended competence of advertising regulation as provided for in Schedule 5B of the Constitution.

The Municipality in formulating the 2024 Draft Bylaw has singularly failed or refused to consider whether the all-embracing restrictions are actually necessary or constitute a greater limitation than needed or that allows for economically viable outdoor advertising.

In acting disproportionately, the 2024 Draft Bylaw fails to strike an appropriate balance between respecting free speech and promoting legitimate governmental objectives, such as traffic and environmental considerations.

The ban is overbroad since it makes few if any, exceptions for third-party advertisements that would not otherwise implicate any legitimate public concern. The 2024 Draft Bylaw chills third-party advertising because it outlaws all such advertising, even where such advertisements do not remotely implicate any of the warranted regulatory and legislative concerns of the Municipality. ,

Advertisers face considerable sanction unless they go to the substantial time and expense of preparing applications and paying high application fees to have their applications considered. Many small businesses cannot afford the expense and fees, only to find that the application is rejected based on a discretionary application of the 2024 Draft Bylaw and other applicable legislation that the Municipality seeks to rely on. This creates an unnecessary barrier to entry into the Outdoor Advertising market by smaller businesses and unduly hampers and effectively stifles one of the fundamental economic processes that belies well-functioning markets, namely the advertisement of goods and services and the communication of market information.

The 2024 Draft Bylaw in compelling virtually all third-party advertisers to apply for permission to advertise and pay high fees, even where it is clear that the advertisements in question do not implicate any legitimate public concern, discloses an attempt on the part of the Municipality to limit third-party advertising and to generate considerable fees from rejected applications made pursuant to an imprecise, uncertain and unduly limiting regulatory framework, that constitutes a form of unjustified (and in fact illegal) enrichment. We make this assertion because in such circumstances the unnecessary application and payment of fees is immoral and contrary to public policy or interest.

The overbroad prohibition of and unjustifiable impingement of commercial free speech renders the 2024 Draft Bylaw unconstitutional because it regulates substantially more speech than is permissible under s 16(1) and it is submitted that such invalidity is not saved by section 36 of the Constitution. In particular:

- i. the nature of the right to freedom of is of fundamental importance in an open and democratic society based on human dignity, equality and freedom;



- ii. no legitimate purpose can be served in such extreme limitation, certainly it is not apparent that any other fundamental right is being protected insofar as the purpose of the limitation appears to be primarily aesthetics;
- iii. the nature and extent of the limitation is an absolute one, subject solely to the discretion of the Municipality and its officials;
- iv. the relationship between the extent of the limitation and its purpose is completely disproportionate; and
- v. there are clearly less restrictive means to achieve the same purpose.

In the circumstances the following provisions of the 2024 Draft Bylaw are unconstitutional and invalid:

- a) section 5(1);
- b) section 10(2);
- c) section 10(6);
- d) section 12(2); and
- e) section 12(4).

Ultra Vires to Part B of Schedule 5 of the Constitution

In terms of s 156(1)(a), read with Part B of Schedule 5 of the Constitution, the Municipality may only regulate billboards and the display of advertisements "in public places".

The definitions of "*advertisement*" and "*public place*" in section 1 of the 2024 Draft Bylaw, is so wide that it even includes any and all privately-owned spaces, both outdoors and indoors, to which the public has access, or simply is able to view.

Virtually all commercial properties, such as shopping centres, big and small, are implicated since the public generally has access to such properties. This would cover any footway, walkway, corridor and space, both indoors and outdoors on private property to which the public has access and in respect of which any advertising is displayed.





As mentioned above in our challenge under section 16(1) of the Constitution, the 2024 Draft Bylaw engages in overreach on a grand scale to prohibit virtually all third-party advertising. This forces such advertisers, including small businesses, to engage in the lengthy and expensive process of securing prior approvals; even where the advertisement does not implicate any legitimate governmental or regulatory concern. Such overbreadth is not only likely to encourage mass defiance of the 2024 Draft Bylaw but will result in unnecessary legal and constitutional challenges.

The overbroad prohibition on commercial free speech renders the 2024 Draft Bylaw unconstitutional because it regulates substantially more speech than is authorised by Part B of Schedule 5 of the Constitution. It is submitted that it could never have been within the contemplation of the framers of the said Schedule to introduce 'nanny state' type control over every private property to which the public has sight or access; and which does not impact on traffic and the environment.

It must also be kept in mind that the Constitution refers to the "*display of advertisements in public places*", while the definition of 'advertisement' in the 2024 Draft Bylaw (which definition is the main building block of the said bylaw) refers to advertisements "*which is visible from any public place.*" The Municipality is going much wider with its 2024 Draft Bylaw than the Constitution permits.

In so doing, the Municipality has stepped well outside the bounds of Part B of Schedule 5 of the Constitution and acted *ultra vires* its powers as granted by the Constitution.

Right to freedom of trade, occupation & profession under section 22 of the Constitution

The cumulative effect of the constitutional violations mentioned herein, together with failure to adhere to constitutional standards, has very serious implications for the outdoor advertising industry, their employees and those they represent, as well as for advertisers and private property owners.

The 2024 Draft Bylaw will have a deleterious impact on the businesses of owners of advertising structures located on private property, as well as on the private property owners themselves. To make matters worse, the 2024 Draft By Law retrospectively outlaws advertisements that are deemed "illegal" at the sole discretion of the Municipality, without any due process to establish to determine such alleged illegality. These provisions infringe the right to access to courts.

The Municipality, as the State at local government level, has an obligation to refrain from interfering with both the civil and political rights, as well as the social and economic rights of citizens.

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The right to freedom of trade enshrined in section 22 of the Constitution protects the right to choose a trade, occupation or profession freely. The 2024 Draft Bylaw infringes upon those rights and such infringement is not saved in terms of section 36 of the Constitution for all the reasons addressed herein.

Section 22 of the Constitution applies to both natural and juristic persons. This is the case when read with section 8(4) of the Constitution, which entitles juristic persons to the rights in the Bill of Rights to the extent required.

In the circumstances, the 2024 Draft Bylaw violates the rights of all participants of the outdoor advertising industry, private property owners as well those of working people in the advertising industry in respect of freedom of trade, occupation and profession.

Violation of the right to property under section 25 of the Constitution

The cumulative effect of all the unconstitutional provisions contained in the 2024 Draft Bylaw, as pointed out herein, also impacts on the rights of the public to private property.

The overbroad reach of the 2024 Draft Bylaw which in effect unduly prohibits, without Municipal approval, all third-party advertising signs on private property to which the public have access or which can be seen by the public, regardless of their impact on any legitimate governmental considerations. This forces such advertisers to spend significant time and money to seek approvals. In some cases, such costs are prohibitive.

Additional factors include the intrusive and wide discretionary and punitive powers the 2024 Draft Bylaw affords the Municipality's officials, as described above.

The 2024 Draft Bylaw accordingly unjustifiably interferes with the use and enjoyment of property or private property owners.

Such interferences constitute deprivations of property.

We submit that such deprivations are egregious since they impact directly on the personal autonomy and livelihoods of private property owners. There is no rational basis for the Municipality's scheme. The means employed are not rationally connected to any legitimate government purpose, which contributes to the arbitrariness of the deprivation.

A lawful deprivation is one that is properly authorised and fairly imposed on the use, enjoyment, exploitation or disposal of property. In this matter, since Part B of Schedule 5 of the Constitution does not contemplate such regulatory overreach, as described above, the deprivations are not authorised by law nor are they fairly imposed.

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The approach of the 2024 Draft Bylaw impairs livelihoods and the full enjoyment of property of private property owners who wish to flight third-party advertising on their property. Private property owners are accordingly expected to bear an undue burden for the benefit of the Municipality. Such a policy or approach is disproportionate because it imposes an unequal and unfair burden on such property owners.

In the circumstances such deprivations are arbitrary for purpose of section 25(1) of the Constitution.

Ad Preamble of the 2024 Draft Bylaw

The preamble must recognise that the 2024 Draft Bylaw falls under the scope of the SPLUMA Act and that the Municipality encourages and embraces all the norms, standards and principles entrenched under the SPLUMA Act insofar as it relates to the development of advertising signs are concerned within its jurisdictional area.

Section 4(6) of the 2024 Draft Bylaw – Impact Assessments

The submission of any or all the various impact studies listed under section 4(6) of the 2024 Draft Bylaw vests with the exclusive discretion of an official of the Municipality and can be demanded by the Municipality in respect of any advertising sign application, irrespective how small it may be. An application for a small advertising sign the size of 1 square meters, for instance, may require that the applicant must incur the costs of obtaining an Environmental Impact Assessment, a Heritage Impact Assessment, a Visual Impact Assessment and a Traffic Impact Assessment. All these impact studies must be conducted by professionally registered practitioners, causing them to be very expensive.

It is totally unreasonable, with all due respect, to allow a provision in the 2024 Draft Bylaw which is so wide, vague and erroneous, causing it to be overbroad and constitutionally invalid.

Section 6(5) of the 2024 Draft Bylaw

The inclusion of this section and the formulation thereof clearly anticipates that the Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone must specifically be subjected to public participation within the context of the 2024 Draft Bylaw. It highlights the deficiencies associated with piece-meal process in subjecting the Zoning scheme Bylaw for public participation before the 2024 Draft Bylaw and in isolation. Our requests for engagement and confirmation that Zoning Scheme Bylaw will be readvertised for Public participation following these provisions have thus far been ignored and already constitute a transgression by the Municipality of the 2024 Draft Bylaw.

jinja 2 outdoor advertising (pty) ltd

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Section 6(6)(d)

This section must provide that the notice contemplated in subsection 6(5)(b) must also be published in two national newspapers that are circulated across South Africa, because there are many outdoor advertising companies operating in Stellenbosch which have offices outside of the jurisdictional area of the Stellenbosch Municipality.

The 2024 Draft Bylaw must also provide that the aforesaid notice must also be forwarded to the major trade originations representing the outdoor advertising industry in South Africa, because it can lead to confusion in the public domain, when comments are called for regarding amendments to the Zoning Scheme Bylaw, which have a material effect on the 2024 Draft Bylaw which regulate advertising signs.

The name of the particular bylaw to be used by the Municipality in the public notice can also be very misleading and may cause that internet search engines do not pick it up. All notices to be published regarding amendments to the Zoning Scheme Bylaw must indicate and mention that the proposed amendments may also influence the 2024 Draft Bylaw.

Section 6(7)

The Municipality **must** call for a public meeting, but thus far refused similar requests for such stakeholder engagement.

Section 7(2) – Joint Liability of Municipality

This section makes both the applicant to whom approval has been granted and the owner of the property or building to which it is attached, jointly and severally liable for the maintenance thereof and must undertake at least one inspection per year thereof with a view to satisfying themselves as to the safety thereof.

The Municipality must make sure that it puts in place the necessary internal processes and insurance to provide for and cover this liability because the Municipality will be jointly liable for the maintenance and annual inspections of all signs erected on municipal property.

Sections 9(3)(a) and 10(2) and (3) – Electronic advertisements must be less than 2.1 m2





Section 9(3)(a) does not allow electronic advertisements to be developed which are larger than 2.1 m². It is a very restrictive provision and is out of touch with national and international tendencies. A sign less than 2.1 m² will hardly be visible from any road and will increase road safety risks rather than reducing same. We request the Municipality to share with us the scientific studies conducted by the Municipality to justify this strict regulation. We are of the view that such a size restriction unduly limits the economically viable digital out-of-home advertising opportunities. It supports the contention that the Municipality seeks to enforce a complete prohibition of outdoor advertising.

With all due respect, it is totally overbroad and effectively imposes a blanket ban on electronic advertisements. The 2024 Draft Bylaws does also not specifically provide for a waiver or exemption of the size of an electronic advertisement.

The Municipality is the most significant landlord within its jurisdictional area. It can be a major contributor to the outdoor advertising industry as landlord, allowing the industry to compete with international social media companies, who hardly pay any taxes to the South African Government. By not granting outdoor advertising opportunities to local outdoor advertising companies, the Municipality forces local advertisers to spend their advertising budgets on social media belonging to international companies, because of a lack of availability of outdoor advertising signs within the jurisdictional area of the Municipality. This conduct does not only jeopardize the local economy, but also the national economic activity.

The Municipality is effectively suffocating and undermining the local outdoor advertising industry to benefit international companies, which do not make any real contributions to the local economy of Stellenbosch.

Section 10(2) determines:

"Electronic advertisements may not be permitted if they are visible from class 2 or 3 roads, gateway route or a scenic route unless expressly approved in writing by the Municipality."

Put bluntly, developing an electronic advertisement which is less than 2.1 m², as prescribed by section 9(3)(a), alongside a class 2 or 3 roads, or a gateway or scenic routes, will be a waste of money and will rather contribute adversely to road traffic safety. There can be no scientific justification for imposing these restrictions.

In terms of national and provincial legislation, the Municipality is duty-bound to create job opportunities. Larger electronic advertisements can easily be developed that operate in harmony with the Municipality's special environment and heritage. By imposing a blanket ban, the Municipality shuts its doors to the outdoor advertising industry. This regulatory result places the Municipality in breach of its constitutional duties.





Section 10(3) disallow advertising on bridges, towers, telecommunication masts, pylons, or street poles. Street poles for instance are structures which can be used by the Municipality to generate substantial additional revenue which can be used to develop much needed infrastructure.

Section 10(11) – Spacing of Billboards

Section 10(11) dictates:

“All advertisements larger than 4.5m² erected adjacent to a public road or in a railway reserve intended to advertise to persons using class 2 and 3 roads must be spaced a minimum specified distance away from any other lawful advertisement or road traffic sign, such distance measured parallel to the centre line of the roadway, in accordance with the measurements set out in Table 1 below:”

By setting the size of the advertisement to be larger than 4.5m² means that it refers to a billboard. A billboard may only be developed within a minimum controlled area. Reference to “a railway reserve” under this provision is out of line, because a billboard is not allowed to be developed in a railway reserve because these areas are classified to be partially controlled.

The Municipality must not impose long distances between signs, because such action will be contrary to the norms, standards, and principles set out under the SPLUMA Act. Healthy competition within the outdoor industry is good and should be encouraged by the Municipality. The market will not support billboards that are developed too close to each other. The quality of the display is very important for an advertiser. The appropriate distances between advertisements must be left to the market to determine same and not the Municipality which has no scientific knowledge regarding the matter. Overregulating outdoors is not in the interest of an open and competitive free market. A distance of 300 meters away from each other is too far and excessive in our view. The Municipality must limit its intervention in the market to the maximum. A maximum distance of 200m is more appropriate in our view.

We also request the Municipality to share with us their scientific studies and reports conducted in support of spacing limitations contained in the 2024 Draft Bylaw. Considering the significant impact these spacing limitations have on the outdoor advertising industry it is expected from the Municipality to do proper research to find the correct and appropriate balance.

Section 11 – Legal Requirements





This provision must clearly state what other legislation is considered to be applicable for the sake of legal certainty and in order to avoid vagueness.

The 2024 Draft Bylaw must explain, inform, and alert any member of the public of the application, objects, development principles and other legislative requirements prescribed by the SPLUMA Act, which directly have a material influence on the provisions of the proposed 2024 Draft Bylaw. In addition, the 2024 Draft Bylaw must refer to and be aligned with the Municipality's Spatial Development Framework.

The 2024 Draft Bylaw must also provide for what happens if there is a conflict between the provisions of the 2024 Draft Bylaw and the Municipality's Zoning Scheme Bylaw and Spatial Development Framework.

Section 12(1)

Section 12(1) allows for the Municipality to impose *"a condition that the owner of any advertisement or billboard on the land or building on which it is erected or displayed, or both such owners or the person whose product or services are advertised, indemnify the Municipality against any consequences flowing from the erection, display or mere presence of such advertisement."*

The person holding the approval to display an advertisement must indemnify the Municipality against any consequences, involving the owner of the land and the advertiser, is overbroad and lacks specificity.

Section 12(2)(b) – remains unused for more than 90 consecutive days

Considering that a billboard is a structure that costs a lot of money to erect, it is nonsensical that the Municipality would be entitled to arbitrarily and unilaterally withdraw approval. This provision is very harsh, and vague and requires further clear guardrails. It amounts to severe over-regulation.

Section 12(5) – Additional Information

In terms of section 12(5), the Municipality is duty-bound to decide within certain periods, commencing on a date when a completed application was received or after receipt of additional information as required by the Municipality. This type of protocol is inclined to encourage officials to request additional information to gain additional time instead of attending to the application.

Section 13 – Appeal (Conflicted position of Appeal Authority)





A person whose rights are affected by a decision in terms of the 2024 Draft Bylaw is granted the right to appeal the decision to the Municipal Manager in terms of section 62 of the Systems Act.

Considering that the administrative decision under appeal was taken by a staff member of the Municipality, other than the municipal manager, the municipal manager is the appeal authority, under the provisions of section 62(4)(a) of the Systems Act.

The Municipality is compromised, because it is not only a regulator of billboards, but also a landlord upon which billboards are erected and operated, from which the Municipality benefits financially. Consequently, the Municipality finds itself in a conflicted position, where it is the referee, judge jury, executioner, and player.

Granting a person, the right to appeal to the Municipality Manager, in these circumstances, where the Municipality Manager is a player and a referee, will mean that the Municipality considers an appeal of an administrative decision taken by the Municipality itself. Such a situation is unfair, bias and will be prejudicial to an appellant. If one considers the issues raised below, it becomes clear that an independent, impartial, and fair appeal-process is of paramount importance.

Our concerns are confirmed by a dictum made by the Constitutional Court in the matter of the Municipality of Johannesburg Metropolitan Municipality v Chairman of the National Building Regulations Review Board and Others (CCT186/17) [2018] ZACC 15; 2018 (8) BCLR 881 (CC); 2018 (5) SA 1 (CC) (7 June 2018). In the latter matter, section 9 of the Buildings Act was declared unconstitutional, which provided that a person may appeal to the Review Board (which was an authority outside of a municipality), against a decision of a municipality to refuse a building plan application. The appeal-process to the Review Board collapsed because section 9 was declared constitutionally invalid. In the circumstances, the Constitutional Court was considering alternative appeal-processes. The following dictum by the honourable Constitutional Court Judge in the aforesaid matter is on point (paragraph 41):

"However, I do not think that these appeals must be processed in terms of section 62 of the Systems Act. This section is simply not suitable. Decisions to which section 9 of the Act applied are those which were taken by a municipality. Under section 62(4) of the Systems Act, a municipal council is the highest appeal authority. Therefore, if section 62 were to apply, a municipality would sit on appeal against its own decision. This would be an untenable situation."

We fully concur with the concerns expressed by the Constitutional Court above. The Municipality will sit on an appeal against its own decision.





The activity of erecting a structure, like a billboard, on land is defined to mean 'land development' in the SPLUMA Act. The SPLUMA Act governs 'land development', which means that the SPLUMA Act is applicable to the activity of erecting a billboard on land. Many municipalities in South Africa implement this reality. Consequently, the 2024 Draft Bylaw, which regulates the activity of erecting a billboard, must comply with the provisions of the SPLUMA Act. In these circumstances, the appeal authority should not be the Municipal Manager, with all respect, but a Tribunal duly constituted in terms of the SPLUMA Act.

Section 18 of the 2024 Draft Bylaw - Presumptions

The presumptions in section 18 of the 2024 Draft Bylaw are a violation of section 35(3) of the Constitution and the Rule of Law.

Section 18 of the Outdoor Advertising By-law provides as follows:

"Any person charged with an offence in terms of this Bylaw who is—

- (a) alone or jointly with any other person responsible for organising, or in control of any meeting, function or event, to which an advertisement or poster relates, shall be deemed, until the contrary is proved, to have knowingly displayed every unlawful advertisement or poster displayed in connection with such meeting, function or event or to have caused or allowed it to be so displayed;*
- (b) the person whose name appears on an unlawful advertisement or whose product or services are advertised on such advertisement, shall be deemed, until the contrary is proved, to have displayed such advertisement, or to have caused or allowed it to be displayed;*
- (c) the owner of any land or building on which any unlawful advertisement was or is displayed, shall be deemed, until the contrary is proved, to have knowingly displayed such advertisement, or caused or allowed it to be displayed."*

The Rule of Law is violated by these presumptions as they all violate the presumption of innocence as protected by section 35(3)(h) of the Constitution. The presumption of innocence is an established principle of South African law which places the burden of proof squarely on the prosecution.

Section 18(a) holds organisers of events to be liable for the unlawful display of advertisements even if they had nothing to do with the legality and unless they are able to demonstrate their innocence.





Section 18(b) holds the person whose name appears on an unlawful advertisement or whose products or services are advertised on such advertisement liable for alleged illegalities conducted by the owner of the advertisement.

Section 18(c) provides that whatever contravention is committed by the owner of the advertisement or presumably the advertiser, such contravention is similarly or automatically committed by the private property owner, thereby holding the latter liable for the offences of the former even in circumstances where the property owner may be entirely oblivious of the transgression and has no connection with the offence, aside from the fact that it may have taken place on his or her property.

Similarly, an advertiser or the person whose name appear on the advertisement may be entirely oblivious to the fact that the advertisement displayed contravenes the 2024 Draft Bylaw.

Further even though the advertisement may be contrary to the provisions of the 2024 Draft Bylaw, but this does not mean that the owner of the advertisement should be held responsible.

These presumptions are offensive to the Rule of Law.

A property owner who rents space to the owner of an advertisement or advertising structure is in a position analogous to a landlord and tenant. Similarly, the owner of an advertising structure who rents out space on his or her advertising structure to an advertiser is in the position akin to that of a landlord. A landlord may not be held liable for criminal offences committed by tenants on his or her property, merely because the offence was committed on his or her property. Unless the landlord is directly implicated in the offence, or is a co-conspirator or an accessory after the fact, he or she has no connection or relationship to the offence.

Similarly, an advertiser which concludes a contract in respect of the advertising of his advertisements on an advertising structure will not have any ability to control the legality of the structures on which its adverts are displayed. It cannot be held liable unless it is directly implicated in the offence, or is a co-conspirator or an accessory after the fact, he or she has no connection or relationship to the offence.

All exercise of public power must comply with the Constitution and the principle of legality, which is part of the Rule of Law. Accordingly, the conduct of the Municipality, in creating presumptions that hold innocent parties responsible for the transgressions of others, must be rationally related to the purpose sought to be achieved by the exercise of it. If there is no rational basis then such conduct is arbitrary and falls to be set aside as a violation of the principle of legality.

The presumptions are not rationally related to the purpose of the 2024 Draft Bylaw, namely the administration of outdoor advertising in public places. The practice of penalising one party for the errancy of another is a most



extraordinary step to take in a constitutional democracy. Such a practice is entirely inconsistent with the normative standards of the Constitution.

The presumptions will again have a chilling effect on commerce and freedom of expression, including commercial free speech.

The Rule of Law does not countenance such irrationality, nor does it permit the imposing of a penalty or punishment on such a basis. In short, penalizing or burdening a person for the wrongs committed by others cannot be rationally related to the objective of the 2024 Draft Bylaw.

The 2024 Draft Bylaw is accordingly a violation of the Rule of Law and is unconstitutional.

It follows that any action taken against any person relying on these presumptions will also be in violation of the Rule of Law.

Sections 19 of the 2024 Draft Bylaw

Section 19 of the 2024 Draft Bylaw affords the Municipality wide coercive powers to:

- a) in terms of section 19(1), if any advertisement is displayed in contravention of the 2024 Draft Bylaw, the Municipality may without prejudice to or in addition to the right to take legal steps or prosecute, serve a notice on the owner of the property on whose land the advertisement is erected or displayed or the owner of the advertisement, calling upon such person to demolish or remove such unauthorised advertisement or carry out such alteration thereto, or to rehabilitate the land to its original form or to do such work as may be specified in such request or notice, within a time frame specified therein - and if the party receiving such notice does not act accordingly such party will be guilty of an offence in terms of sections 22(1) and 22(2)(c) of the 2024 Draft Bylaw;
- b) in terms of section 19(3)(a), the Municipality is entitled without any prior legal notice to the owner of private property, to enter onto a private property to remove or cover an advertisement without a court order. Furthermore, in terms of this section the Municipality grants itself the authority to remove or cover an advertisement without prior legal notice or a court order if in the opinion of an official the advertisement is for instance unsafe or constitutes a threat or danger to any person, property or the public;
- c) section 19(6) purports to create a lien in favour of the Municipality for costs incurred by it in removing any unlawful or dangerous advertisement and for payment of the costs incurred in respect of the storage of such advertisement;



- d) section 19(7) purports to provide for *parate executie*;
- e) section 19(8) provides that the remedies provided for in the 2024 Draft Bylaw are in addition to any other statutory, common law, criminal or civil remedies that a Municipality may have at its disposal; and
- f) in addition to all the aforesaid remedies, the Municipality allows it the right to implement a property rates adjustment in accordance with the use of the property where it has arbitrarily and unilaterally confirmed contravention of the 2024 Draft Bylaw (see section 19(9) in this regard), thereby usurping the functions of our courts and in violation of the constitutionally entrenched right to access to courts.

The powers set out above amount to the taking of intrusive and coercive steps, even on private property, which constitute regulatory self-help. This is impermissible in law and shall lead to unnecessary litigation. Such powers violate:

- i. section 34 of the Constitution which guarantees the right to have a dispute decided in a fair public hearing before a court or independent and impartial tribunal or forum; and
- ii. section 33 of the Constitution which guarantees the right to administrative action that is lawful, reasonable and procedurally fair; and
- iii. section 25 of the Constitution in that the exercise of such powers will interfere with the use and enjoyment of property, which in the abovementioned circumstances will constitute an arbitrary deprivation of property.

It is a fundamental principle of our law that a person may not take the law into his own hands and a statute should be so interpreted that it interferes as little as possible with this principle.

Persons, including organs of state are not entitled to take the law into their own hands to enforce their rights or to simply proceed with enforcing rights that is objectively inconsistent with the Constitution. There is a legal process by which the enforcement of rights is carried out. Normally speaking, it is carried out as a result of an order of Court being put into effect through the proper officers of the law such as the Sheriff, deputy sheriff, messenger of the magistrate's Court or his deputies, reinforced if necessary, by the aid of the police or some such authority; in most civilised countries there exists the same principle that no person enforces his legal rights himself. If any person, including a Municipality wants to enforce a right it must get the officers of the law to assist it in the attainment of its rights.

This principle is consistent with the Rule of Law and the doctrine of separation of powers.





In effect, the impugned provisions of the 2024 Draft Bylaw purport to allow the Municipality' officials to make determinations with far-reaching impact, without the input of the affected parties and then execute the chosen penalty.

The broad reach of these powers is further exacerbated by the definition of "*public place*" which includes:

- 1) national and provincial roads, which means that Municipal officials can execute the 2024 Draft Bylaw to public places over which they have no jurisdiction; and
- 2) enclosed spaces where the public has a right of access, even if it is private property.

Such authority deprives the public of the necessary checks and balances to restrain the abuse of coercive public power.

Section 19 of the 2024 Draft Bylaw is accordingly unconstitutional and unlawful and falls to be set aside.

Section 24 of the 2024 Draft Bylaw - Exemptions (Referee and Player)

Section 24 of the 2024 Draft Bylaw provides for an exemption from the provisions of the 2024 Draft Bylaw to be granted by the Municipality. The concept that members of the public can be exempted from law by executive decision is contrary to the principle of the Rule of Law.

The Municipality's intention to compete in the outdoor advertising space and profit from the outdoor advertising industry is evident from the provisions of section 10(6) which authorizes the Municipality the approve advertising signs on their own property.

The fact that the Municipality has commercial interests in the outdoor advertising industry while retaining an adjudicatory role to approve or reject applications creates a conflict of interest and the risk of bias and abuse: it is both judge and jury in its own cause.

As pointed out above, the 2024 Bylaw is also marred by a problematic employee-employer relationship and lacks adequate mechanisms to combat the influence that the Municipality, as employer, would have on its employees tasked with assessing and approving applications. The power dynamics of the employee-employer relationship, coupled with the failure to diffuse the power over a larger group of decision-makers creates a clear vulnerability to bias and fails to adequately address the Municipality's conflict of interest in acting both as regulator and as market participant.



The the 2024 Bylaw therefore cannot be regarded as constitutional.

Section 25 – Repeal of Bylaw

In the written Agenda of the 17th Meeting of the Council of the Municipality, held on the 25th of October 2023, the Directorate: Planning and Economic Development reported to and informed the Councillors of the Municipality as follows:

"Council adopted the Outdoor advertising and signage bylaw on 24 May 2023 and it was promulgated in the Provincial Gazette No. 8785 dated 30 June 2023. A high court application was launched against the bylaw by Out of Home Media South Africa NPC based on the previous public participation process in 2018 and 2021. Although the process was correctly followed the advertisement referred to the bylaw as the Draft Poster Bylaw. Although the subject line was rectified during the final decision-making process, which is reflected in the Council decision of 2023 in respect of the intention of the by-law, the applicants avow that due to the incorrect reference in the advertisement they did not comment on the bylaw.

The legal advice we received was that the bylaw must go through a new public participation process and when Council approves a new bylaw the current promulgated one will be repealed and replaced with the new bylaw. In the interim the municipality will not enforce the current promulgated bylaw.

The aforesaid Directorate informed the Councillors further under the heading 'Arrangements in respect of Managing and Regulating Signage' as follows:

"It is noted that prior to the commencement of the subject by-law, which commencement date was 30 June 2023, outdoor advertising and signage was dealt with in terms of Stellenbosch Municipality Zoning Scheme By-law, 2019 and the associated Council Policy adopted at the 24th Council Meeting dated 06 May 2010. Therefore, measures are in place to deal with the function until such time as the by-law can be reconsidered and promulgated following the new public participation process."

The said Directorate's report is somewhat vague with the facts. Although the Municipality adopted the Outdoor Advertising and Signage By-Law, 2023 on the 24th of May 2023 and promulgated same in the Provincial Gazette Extraordinary 8785 on the 30th of June 2023, it was however interdicted by order of the High Court dated 31 July 2023⁷, to implement or otherwise seek to enforce the Outdoor Advertising and Signage By-Law, 2023, because the

⁷ OHMSA vs Stellenbosch Municipality and Others Case No 11080/23 Samela J





Municipality unlawfully promulgated same without following a due and proper public participation process, as prescribed by the Systems Act.

Consequently, there is presently only one Outdoor Advertising Bylaw in place within the jurisdictional area of the Municipality and that is the Outdoor Advertising and Signage By-Law, 2023, but the Municipality is interdicted to implement or otherwise seek to enforce same.

In the meantime, as per the aforesaid Directorate's advice above to the Councillors, the Municipality is continuing to regulate outdoor advertising and signage *"in terms of Stellenbosch Municipality Zoning Scheme By-law, 2019 and the associated Council Policy adopted at the 24th Council Meeting dated 06 May 2010."*

As per the aforesaid Directorate's report there are two bylaws involved in the regulation of outdoor advertising and signage i.e. the Outdoor Advertising and Signage By-Law, 2023 and Stellenbosch Municipality Zoning Scheme By-law, 2019.

The proposed section 25 of the 2024 Draft Bylaw determines as follows:

"All prior bylaws of the municipality, including those of any abolished municipality now part of the present municipality, are hereby repealed to the extent that they cover matters specifically provided for in this bylaw."

Considering the aforesaid, all the applicable prior bylaws repealed by the new 2024 Draft Bylaw must be called by their specific names under clause 25 to prevent any confusion. As it reads now, it will lead to serious legal uncertainty.

Section 26 - Transitional Provisions

At the outset it is important to point out that the transitional provisions must provide that the advertisements and advertising signs which were lawfully erected prior to the promulgation date of the 2024 Draft Bylaw are deemed approved in terms of the 2024 Draft Bylaw. Section 26 must be amended accordingly.

Since the inception of our Constitution in 1996, the Municipality never had any legislation dealing with outdoor advertising and signage, other than the Outdoor Advertising and Signage By-Law, 2023, which the Municipality is not allowed to implement by order of the High Court of South Africa. The Outdoor Advertising and Signage By-Law, 2023 is constitutionally invalid, hence the reason that the High Court of South Africa (Western Cape Division, Cape Town) under case number 11080/23 has ordered the Municipality not to implement same.



The 2024 Draft Bylaw will be the first piece of legally enforceable legislation regulating advertising signs within the jurisdictional area of the Municipality. Any attempt by the Municipality to regulate retrospectively by means of the 2024 Draft Bylaw is going to create many unreasonable, unjust and unfair results and consequences.

If the Municipality wishes to deprive a person from any proprietary rights a person holds in an advertising sign prior to the promulgation of the 2024 Draft Bylaw, in terms of the 2024 Draft Bylaw, then and in such event the Municipality is duty bound to compensate such person because the 2024 Draft Bylaw will amount to expropriation. If the Municipality refuses to pay compensation, it will be in conflict of the provisions of section 25 of the Constitution.

Section 26(1) determines:

"26(1) Within 60 (sixty) days of the promulgation of this By-Law and the Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone, whichever occurs later, the Municipality must publish a notice in two local newspapers circulating within its area of jurisdiction, calling for compliance with the provisions of this By-law."

Publication must not only take place in two local newspapers but also in the Provincial Gazette to comply with the provisions of section 13 of the Systems Act. Because of the piecemeal law-making process adopted by the Municipality, a layperson is unable to establish, particularly given the provisions of sections 6(6) and 6(7), when the public participation process requirements have been met.

Section 26(2) states:

"26(2) Where an advertisement has been erected or displayed before the date of commencement of this By-law, which advertisement was previously approved by the Municipality or other competent authority, then the owner of the property on which the advertisement has been erected must apply to the Municipality, for approval of the advertisement in terms of this By-law, within 180 (one-hundred and eighty) days from the date of commencement of this By-law, failing which the previous authorisation shall lapse and the advertisement will be regarded as unlawful and must be removed immediately."

The reference to an "advertisement (which) was previously approved by the Municipality or other competent authority" [our insertion] is confusing, misleading and false. The Municipality endeavors to create the impression that there was previously a valid Bylaw, which is not the case. The only Bylaw the Municipality has promulgated in respect of its functional authority granted under Part B of Schedule 5 of the Constitution is the Outdoor Advertising





and Signage By-Law, 2023, which the Municipality is not allowed to implement by order of the High Court of South Africa. Consequently, no approval can exist that was legally issued before the date of commencement of the 2024 Draft Bylaw. This entire sub-section is consequently a non-event.

Furthermore, reference to *"previous authorisation shall lapse and the advertisement will be regarded as unlawful and must be removed immediately"* is also totally misleading and false, because no previous authorisation can exist, as pointed out above. Something cannot lapse if it does not exist.

If existing signs must be removed because it is not complying with the provisions of the 2024 Draft Bylaw, the Municipality will have to compensate the applicable owner as provided for in section 25 of the Constitution.

This may be a substantial amount of compensation the Municipality will have to pay, hence the reason for suggestion that it may be more appropriate that the 2024 Draft Bylaw determines that all existing signs (old order signs) as on date of promulgation of the 2024 Draft Bylaw must be deemed approved under the 2024 Draft Bylaw, even if they may not be fully compliant under the provisions of the 2024 Draft Bylaw. The 2024 Draft Bylaw should provide for these old order signs which are fully legal.

Section 26(4) dictates:

"26(4) Every person, on whose property an advertisement had been erected prior to the promulgation of this By-law, which advertisement is prohibited by this By-Law and which advertisement had not been approved by the Municipality or other competent authority, will be regarded as unlawful and must be removed within 90 (ninety) days of the commencement of this By-law."

This entire clause is riddled with provisions which is in direct conflict with the provisions of sections 25 and 34 of the Constitution, rendering same to be invalid. The Municipality allows itself to take the law in its own hands, without following due legal process, which conduct amounts to self-help. These provisions are very alarming considering that there was no prior Outdoor Advertising and Signage Bylaw in place and the Municipality acts as a competitor to the industry and as its regulator.

The 2024 Draft Bylaw operates retrospectively to impose burdens and punitive consequences on all advertisers, owners of advertisements and advertising structures, and property owners where such advertisements are displayed or advertising structures erected prior to the commencement of the 2024 Draft Bylaw, which was not unlawful at the time. This is impermissible in law.





The retroactive effect can be described as 'strong retrospectivity' since it changes the law from what it was at a date in the past. It is a generally accepted principle of the Rule of Law that people should be able to regularize their affairs secure in the knowledge that they are at liberty to perform any action that has not been proscribed by law. Retrospective legislation is inconsistent with the Rule of Law because it makes it impossible for citizens to regularise their affairs in this manner.

The penalties for a contravention of any provision of the 2024 Draft Bylaw is potentially severe as indicated by section 22. These punitive aspects are inconsistent with s 35(3)(l) of the Constitution, which provides that an *"accused person is not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted"*.

In opening the door to retrospective application, the 2024 Draft Bylaw falls foul of the Rule of Law because:

1. of the severe penal consequences provided for in section 22 of the 2024 Draft Bylaw;
2. no provision is made to allow advertisers, outdoor advertising companies or entities and private property owners sufficient time to regularise their affairs before they are criminalized.

Schedule 2 – Billboards

Billboards must not be limited to minimum controlled areas. It should also be allowed in partially controlled areas, because there is no scientific evidence that billboards create adverse circumstances that lead to unsafe driving conditions.

In terms of clause (6) billboards must not exceed a maximum total size of 18m² provided that on any V-shaped structure, two such billboards may be permitted. A billboard of this size is hardly visible from class 2 or 3 roads. If a billboard is too small, it increases traffic risks, because a person needs to take extra action and time to see the billboard. An 18-square-meter sign is acceptable on roads where the speed limit is 60 km/h. However, on roads with higher speed limits larger sizes must be allowed to become visible, like for instance 81 square meter billboards. In certain instances, spectacular sites warrant the development of much larger signs, without offending the objectives stipulated in the 2024 Draft Bylaw, this is not catered for and deprives property owners of exploiting such opportunities. This lacuna require rectification.

Clause (7) dictates that billboards must be displayed between the angles of 90° and 60° to the direction of oncoming traffic. This provision amounts to over-regulation and is unduly burdensome and each site has its unique angle to be visible to oncoming traffic.





Clause (11) prescribes that billboards must have a minimum letter or number height of 285mm. This provision is vague, amounts to over-regulation and no scientific study has been conducted to justify this requirement. It is arbitrarily imposed by the Municipality and should be deleted.

The insertion of the new clause (12) allowing the Municipality to depart from any of the requirements set under Schedule 2, if site-specific circumstances justify it, is recommended, but increases the risk of arbitrary administrative decisions, without recourse to an independent appeal authority.

Schedule 4 – Flat Signs

Clause 5 provides that the size restriction on a flat sign may be waived on condition that only graphics designed and created by a suitably qualified consultant be displayed on such sign. This provision requires more explanation as it is unclear what the Municipality wishes to achieve with this provision.

Furthermore, it is proposed that this Schedule 4 also includes a provisions similar to that of clause (12) of Schedule 2, namely that the Municipality may depart from strict compliance, if site specific circumstances justify such departure.

Restrictive Horizontal Practice - Competition Act

The arrangement imposed by the Municipality, as a firm as envisaged in the Competition Act, No. 89 of 1998 (***“the Competition Act”***), in terms of the provisions of the 2024 Draft Bylaw, upon the outdoor advertising industry operating within the jurisdictional area of the Municipality, constitutes a prohibited restrictive horizontal practice in terms of section 4 of the Competition Act.

By means of the 2024 Draft Bylaw, the Municipality is imposing the following arrangement upon the outdoor advertising industry, namely:

1. the Municipality exclusively regulates outdoor advertising and signage within the Municipality’s jurisdictional area;
2. nobody is entitled to erect or develop an advertising sign without the Municipality’s approval, while the Municipality itself is entitled to erect advertising signs on land under its control and only needs an approval from itself. The Municipality is therefore free to develop advertising signs as it wishes;
3. the Municipality is by far the largest owner of land upon which advertising signs can be developed within the jurisdictional area of the Municipality. The Municipality holds a dominant position, as a landlord, when it competes with private landlords within its jurisdictional area;



4. once the Municipality erects or develops an advertising sign on its land, it absorbs a portion of the advertising spend available within the jurisdictional area of the Municipality. The more advertising signs are erected on the Municipality's land, the more revenue the Municipality generates as landlord, the less advertising spend is available to the outdoor advertising industry itself, and the less landlord rental private owners earns, with whom the Municipality competes;
5. the Municipality does not impose any guardrails within which its officials, who works for the Municipality, must exercise their wide discretion;
6. the enforcement of the 2024 Draft Bylaw is also left to the Municipality, who police itself, as well private landlords;
7. should a private landowner wish to appeal the decision taken by an official of the Municipality, the appeal is considered by another official i.e. the Municipal Manager.

The aforesaid complaints are not necessarily exhaustive, but it is clear that the aforesaid arrangement, which the Municipality intends to put in place by means of its 2024 Draft Bylaw, in respect of outdoor advertising within its jurisdictional area, will have the effect of substantially preventing or lessening competition in the outdoor advertising market. Such conduct on the part of the Municipality constitutes a restrictive horizontal practice, which is prohibited in terms of the Competition Act. The Municipality must ensure that it complies with the Competition Act.

Development of the Outdoor Advertising Industry in Stellenbosch and Loss of Advertising Revenue

The 2024 Draft Bylaw can only be successfully implemented and enforced by a local authority if it partners with the outdoor industry. A Bylaw must not become an instrument to implement an almost total ban on outdoor advertising. If the Municipality is going to enforce an outdoor advertising bylaw that is not aligned with the realities on the ground, as experienced by all South Africans, such bylaw will not be sustainable. Outdoor advertising is an essential medium to create jobs, generate economic growth, activate business activities, and facilitate economic empowerment. These goals can be achieved without compromising heritage or the environment. These components can co-exist harmoniously.

The Stellenbosch Municipality is not utilizing their available infrastructure to generate additional revenue for its residents, as it is obliged to do. The Municipality's restrictive approach towards outdoor advertising means that the Municipality is not acting in the interest of its residents.

This approach by the Stellenbosch Municipality affects media owners, persons that want to advertise, landlords, production houses, creative agencies, flighting crews, electricians, engineers, steel contractors, banking





institutions, insurers, and many more. A whole industry, acknowledged by the Constitution, will be undermined unnecessarily if the 2024 Draft Bylaw is approved and promulgated.

Out of Home vs On-line Advertising

A PWC study showed that online advertising revenues rose from R 452m to R 566m, and search internet advertising revenues hit R 865m in 2014, according to the Interactive Advertising Bureau (IAB) South Africa Internet Advertising Revenue Report. Since 2014 it has grown exponentially. As an example, Google billed R 1bn in advertising sales generated in South Africa in 2019.

The sad truth is that all these big on-line companies are foreign companies. All profits made by them in South Africa are moved out of South Africa. Within the Stellenbosch scenario this outflow of currency could be slowed should the Stellenbosch's 2024 Draft Bylaw be less restrictive. This is the type of conduct expected from South African local authorities, standing up to protect local companies and communities.

Conclusion

It is apparent from the comments set out above, which is not intended to be exhaustive (and we reserve our rights to amplify or extend these comments, if necessary), that the 2024 Draft Bylaw, if promulgated, will fail in many instances to comply with the principals of legality and the provisions of the Constitution.

We trust that you will consider our comments favourably to ensure that the Municipality provides a clear regulatory framework which is constitutionally compliant, indicating with reasonable certainty to those who are bound by it what is required of them so that they may regulate their conduct accordingly.⁸

We implore you to reconsider your regulatory and lawmaking approach and accede to our request for a stakeholder workshop where the aforesaid issues can be distilled, revisited, clarified, and resolved without the need for legal challenge and unduly burdened stakeholders to protect their constitutional rights.

⁸ This constitutional principle was entrenched into our Law in the matter of *Affordable Medicines Trust and Others v Minister of Health and Another* (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005)





As requested above, please advise when you are available to engage in person regarding our comments and regarding our suggestion to facilitate a workshop with the industry and experts to ensure quality regulation.

We are keen to make further investments and exploit existing commercial arrangements within the jurisdictional area of the Municipality in order to develop outdoor advertising in co-operation with the Municipality in a manner where outdoor advertising can co-exist within a balanced environment. We trust that the Municipality will not merely adopt a steamroller approach to promulgating the 2024 Draft Bylaw that is materially deficient as set out herein.

In the circumstances, we await to hear from you and let us know, should there be any queries or uncertainties.

Yours faithfully

A handwritten signature in black ink, appearing to read "Martin Raubenheimer".

Martin Raubenheimer

Per: Managing Director



COMMENT ON THE STELLENBOSCH MUNICIPALITY BY-LAW RELATING TO OUTDOOR ADVERTISING AND SIGNAGE

Stellenbosch Municipality is fortunate to have within its boundaries some of the finest heritage environments in the Western Cape. This draft by-law relating to outdoor advertising and signage is welcomed, as visual clutter through intrusive signage can seriously degrade the character of both urban and rural heritage environments. Rural landscapes, in particular, are vulnerable to visual degradation through inappropriate signage, which can sometimes form an "urban intrusion" into the landscape.

The by-law is therefore broadly supported, but the following detailed comments are suggested in order to strengthen the protection of heritage environments within the municipality against inappropriate signage:

- A) Schedule 1: It is proposed that minimum signage control should occur in transport and industrial zones. However, in Stellenbosch in particular, the station area, as well as the industrial zone between the Krom River and Papagaaiberg, constitutes a heritage environment that has many fine buildings. The station itself is a graded heritage building. In these instances (and numerous others like them, for instance Franschhoek's old railway station or the old Rhodes Fruit Farm factory buildings at the intersection of the R45 and the R310), the minimum control of signage could be highly detrimental to the environment.

It is suggested that a clause be included here that applies a higher degree of control for industrial areas and transport structures that have been identified as heritage resources, or which are part of a conservation area/heritage protection overlay zone/heritage area.

In addition, some of the industrial and transport buildings in the Municipality are older than 60 years, and if any proposed sign impacts or alters building fabric older than 60 years, application to HWC under Section 34 of the National Heritage Resources Act would be required. While the by-law does refer to other applicable legislation and the possible requirement of a Heritage Impact Assessment, it is important that these requirements are more explicitly described in the document.

- B) In a similar vein, for "Section 23: Signs for which the Municipality's approval is not required", what about signs on structures older than 60 years? If the sign impacts or alters building fabric older than 60 years, application to HWC under Section 34 of the National Heritage Resources Act would be required.
- C) Section 21: Liaison forums in the Community. While this section states that the Municipality **may** request community forums to give their input, it should require that registered heritage bodies provide comment on any proposed signage applications within heritage areas (both those areas incorporated in the Zoning Scheme, and those heritage areas endorsed by Heritage Western Cape).
- D) Schedule 4: signs attached to walls of buildings: flat and projecting signs; (5): signs shall not exceed 54m² in total area...
Given the maximum limitations on signs within the rest of the by-law, surely this clause intends to limit the signage attached to walls of buildings to 5.4m² maximum, and not 54m²? Signs affixed directly to buildings could impact many

historic buildings and townscapes in the Municipality, and there are no areas within the towns and villages of the municipality where a 54m² sign could be deemed to be appropriate.

- E) Schedule 7: signs on a verandah, balcony, canopy, supporting columns, pillars and posts. In Stellenbosch, many of the above elements form part of building fabric older than 60 years, and often of historic environments. If a sign impacts or alters building fabric older than 60 years, application to HWC under Section 34 of the National Heritage Resources Act would be required, and comment on the proposed sign from the local heritage bodies would be appropriate. A clause making this explicit would be appropriate here.
- F) Schedule 18: Standard free standing and composite signs for the conservation area. While this schedule is welcomed, and the points within it supported, it is felt that more control needs to be prescribed for signage in conservation areas. In addition to clearly explaining the responsibilities to make various applications to HWC and to the Municipality in terms of the HPOZ, it is suggested that the following points be included:
- Applications for proposed new signs within conservation areas should engage with and receive the comment of any registered conservation bodies within those areas.
 - Signs should, wherever possible, be compatible with traditional materials and in terms of scale, colour and texture. Historical architectural features and/or natural features should not be damaged, concealed, obscured or otherwise altered by proposed signage, and signs that copy an historic style should be avoided (for instance signage in relief plaster on historic building). Rather, the underpinning principle should be that new signs must be sympathetic to the architectural and/or landscape character of the Special Area, but should also be of their own time.
 - Signs within conservation areas should be understated, modern (they should not be pseudo-historical) and neutral in colour and form.
 - Illuminated signs should only employ white light – coloured lighting should not be permitted.
 - Historic signage on buildings and within the conservation areas should be retained as far as possible.

The municipality has a conservation team that is in the process of finalising a CMP for the whole area. It would be prudent to workshop this section of the by-law with them, to ensure that adequate control of signage in historic environments is provided.

Claire Abrahamse



Belangegroep Stellenbosch Interest Group

HM/CB/0815/32

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06-04-2025

Comment by the Stellenbosch Interest Group (SIG) on the *The Draft Stellenbosch Municipality Outdoor Advertising and Signage Bylaw 2024*

Claire Abrahams' comment and recommendations is relevant and must be taken into consideration as part of SIG's comment. (See attached). Abrahamse was a member of the team that compiled the Stellenbosch Municipal Conservation and Management Plan. She was also co-author of the Stellenbosch University Heritage Register. She therefore has invaluable knowledge of the significance of the architecture of Stellenbosch and understands the factors that contributes to the erosion thereof. The SIG supports her recommendations and requests that it be taken in consideration by the Municipality in the revision of this Bylaw.

With reference to the Draft Bylaw the following comments:

The name of the Bylaw is not clear. The Document's heading is *The Stellenbosch Municipality Outdoor Advertising and Signage Bylaw* and the individual pages refer to *The Draft Stellenbosch Municipality Outdoor Advertising By-law 2024*

The former one includes Signage and is preferable.

Signage should replace advertisement. It is essential that Stellenbosch Municipality use the same wording throughout their many Bylaws, in particular when there are cross references as occurs with the Stellenbosch Municipality Draft Zoning Scheme Bylaw 2024 and Draft Stellenbosch Municipality Outdoor Advertising and Signage By-law 2024.

The **Zoning Bylaw** refers to signs and signage and defines sign under definitions:

"sign" means:

- (a) any visible or audible representation of a sign, symbol, signwriting, mural, graphic design, signboard, billboard, screen, blind, boarding or other device by means of which an advertisement or notice is physically displayed; and
- (b) which is visible from any public place, and which is intended to promote any news headlines, business, product, service, brand, person, function, meeting, election or candidate in an election, event or activity, and "advertising" shall have a similar meaning, and
- (c) includes any advertisement, object, structure or device that is in itself an advertisement or is used to display an advertisement.

The Outdoor Advertising Bylaw refers to advertisements and defines them

"Advertisement" means any:

- (a) visible or audible representation of a-
 - i. Word or any abbreviation thereof;

- ii. Name or any abbreviation thereof;
 - iii. Letter; or
 - iv. Figure; or
 - v. Object
- (b) sign or symbol; or
- (c) light which is not solely used as a warning against danger,

The SIG prefers the use of signage throughout the Draft Stellenbosch Municipality Outdoor Advertising and Signage By-law 2024 as it has a wider meaning than advertisement. The alternative is to add sign whenever advertisement is used in the text.

Here is a reference to signage in **the Zoning Bylaw**,

Stellenbosch Municipality – Draft Zoning Scheme Bylaw 2024 – V1 July 2024

SCHEDULE 2

LAND USE DESCRIPTIONS AND DEVELOPMENT PARAMETERS

“Renewable energy infrastructure”

(G) Appurtenant structures

(i) **Signage and advertising P.117**

Signs on renewable energy infrastructures must comply with the laws regulating signage and be limited to signage necessary to—

- (i) identify the operator;
- (ii) provide 24-hour emergency contact numbers; and
- (iii) provide warning of any dangers associated with the structure.

No commercial advertising, including advertising for the provider or operator, may be displayed on any renewable energy infrastructure.

1. DEFINITIONS

The following definitions need attention. Yellow highlights show errors and additional information to be added:

In this Bylaw, unless inconsistent with the context-

“Advertisement” means any:

- (a) visible or audible representation of a-
 - i. Word or any abbreviation thereof;
 - ii. Name or any abbreviation thereof;
 - iii. Letter;
 - iv. Figure/ (add:) Number;
 - v. Object

Official an employee of the Stellenbosch Municipality or any other person who is appointed or authorised thereto to perform any act, function or duty related to the provisions of this By-Law or exercise any power in terms of this By-Law.

Move to correct alphabetic position

“Public Notice” – should be listed before **“Public Place”**

Balcony is not defined. The following definition could be used:

“Balcony” is a platform on the outside of a building, above ground level, with a wall or railing around it.

The definition for Billboard is not logical:

Billboard means any sign, screen, board, hoarding, fence, wall or free-standing structure used or intended to be used for the purpose of displaying an advertisement which is larger than 4.5m² in total surface area;

Replace with:

“Billboard” means *a large board exceeding 4.5m², on which advertisements are shown, especially at the side of a road.*

The following definition for Graphic is not correct:

“Graphic” includes but is not limited to any component which contributes to the visual appearance or aesthetics of an advertisement, including its background;

Replace with:

“Graphic” is a *visual images or designs on some surface, such as a wall, canvas, screen, paper, or stone, to inform, illustrate, or entertain.*

Sign: Definition of sign and signage is missing. See above where reference is made to the definition in the zoning bylaw.

“Street Name Advertisements” means pole-mounted, double-sided ~~internally illuminated or un-illuminated~~ advertisements displayed in combination with names of streets, not exceeding one (1) m².

Add: “These advertisements must be limited to names showing direction only e.g. Guest House name, tourist office.”

Move the definition to correct alphabetic position – after “street furniture.”

~~**“Veranda”** includes a roofed or open platform along the outside of a building cantilever canopy and sunblind;~~

Replace with

“Veranda” is a roofed, open-air structure, attached on the ground floor to the outside of a building. A veranda is often partly enclosed by a railing.

Please note that verandah and veranda are both used in this document. Verandah should be used throughout.

CHAPTER 1

4 SUBMISSION OF APPLICATION

(7) Change 21 days to 30 days for public comment (this is the current time allowed for all other applications put out for public comment.)

(8) (d) Notify all IAPs for comment. (Refer Claire Abrahamse comment)

(10) Change 21 days to 30 days for public comment as in the case of Land Use Applications

6. FACTORS RELATING TO AREAS OF CONTROL, SPECIFIC ADVERTISEMENTS, AND COMMERCIAL-SPONSORED ADVERTISEMENTS

Suggestion: Delete subsections

The Draft Bylaw relating to outdoor advertising and signage refers to the Urban and Rural and Conservation Overlay Zone and the Scenic Routes Overlay Zone as if they are to be adopted sometime in the future, in fact the Zoning Scheme By-Law of 2019 under which the overlay zones fall, was published for public comment, adopted by Stellenbosch Municipal Council on 29 May 2019 and in the Government Gazette on Friday, 27 September 2019.

The By Law approved included maps showing the boundaries of the overlay zoning areas and came into effect on 1 November 2019. Therefore:

Remove subsections (5) to (12)

Subsections (5) to (12) are not relevant in this By-law, they relate to requirements for the Municipality's Zoning Scheme By-law

CHAPTER 2

14. ADVERTISEMENTS FOR WHICH MUNICIPALITY'S APPROVAL (insert:) IS NOT REQUIRED

Correction to be made:

(6) **Window Advertisements:**

replace or by of:

... (Not more than 50% of window and not more than total surface area ~~or~~ of 4m²)

24. EXEMPTIONS

Add cultural considerations.

Notwithstanding the provisions of this Bylaw, the Municipality may, on written application, exempt any person or class of persons from any or all of the requirements of this Bylaw, provided that such exemption is fully motivated and supported by expert studies which confirm that such exemption will not have any detrimental consequences to any environmental, visual, heritage, cultural or traffic considerations. In considering such exemption the Municipality may impose any reasonable conditions or requirements it deems necessary in order to promote the objectives of this By-law or any other applicable legislation.

26. TRANSITIONAL ARRANGEMENTS

Enter correct name of Bylaw containing the overlay zones

(1) Within ~~60 (sixty)~~ (30) days of the promulgation of this By-Law ~~and the Zoning scheme By law 2024 in which the Urban and Rural Conservation Overlay Zone and the Scenic Routes Overlay Zone appears, , whichever occurs later,~~ the Municipality must publish a notice in two local newspapers circulating within its area of jurisdiction, calling for compliance with the provisions of this By-law.

(2) Where an advertisement has been erected or displayed before the date of commencement of this By-law, which advertisement was previously approved by the Municipality or other competent authority, then the owner of the property on which the advertisement has been erected must apply to the Municipality, for approval of the advertisement in terms of this By-

law, within ~~180 (one hundred and eighty)~~ 90 (ninety days) from the date of commencement of this By-law, failing which the previous authorisation shall lapse and the advertisement will be regarded as unlawful and must be removed immediately.

[90 days is sufficient, keep time for applications the same as in subsection (4) to avoid confusion]

SCHEDULE 3: LOCALITY BOUND FREESTANDING AND COMPOSITE ADVERTISEMENTS

Delete subsection 5 which refers to Schedule 18 because this form of advertising cannot be the only or primary way of advertising in conservation and single residential areas:

[According to (5) "In conservation areas and single residential zones **only** standard locality bound, free standing and composite advertisements shall be allowed as prescribed in Schedule 18."

According to Schedule 18:

"Subject to approval and in accordance with this By-Law, the erection and display of standard free standing and composite advertisements will be the **primary** way of advertising in conservation areas and in areas of single residential zoning.]

SUBSECTIONS (3) EN (4) PLA: SERVICE STATIONS

SCHEDULE 4: ADVERTISEMENTS ATTACHED TO WALLS OF BUILDINGS: FLAT AND PROJECTING ADVERTISEMENTS

Two subsections should be added:

- Names and numbers but no other advertisements may be attached to walls of graded buildings.
- Historic signs on buildings may not be removed without municipal approval.

Additional suggestions:

(1) not be allowed within 1 meter of the edge of a roadway nor may it extend to within 1 meter of the edge of a roadway.

(2) not project in front of a wall more than ~~1,5~~ 1 meters in the case of an advertisement which has a clear height of more than 7,5 meters or more than 1 meter in the case of any lesser clear height.

[According to the CSIR manual *Roads: Geometric design and layout Planning, Chapter 7 Vol II* which is in general use in *South Africa*:

7.18 States that the typical width of Footway (sidewalk) width is 1.5m – 2.0m

The projection must be reduced, if the width of the pavement is 1.5m. High vehicles parking will damage the sign. The maximum must be 1m.]

- (5) Remove 'This size restriction may be waived :
- (5) not exceed 5m² in total surface area and may not exceed 20% (in areas of maximum control), 30% (in areas of minimum and partial control) or one-quarter of the overall area of the surface to which they are affixed or painted whichever is the lesser. This size restriction may be waived on condition that:
- (a) an Environmental Impact Assessment be submitted to the Municipality indicating no detrimental environmental impact is envisaged; and

- (b) a Heritage Impact Assessment be submitted to the Municipality indicating no detrimental heritage impact is envisaged; and
- (c) A Visual Impact Assessment be submitted to the Municipality indicating that no detrimental visual impact is envisaged; and
- (d) A Traffic Impact Assessment be submitted to the Municipality indicating that no detrimental traffic impact is envisaged.

Insert highlighted text:

- (8) Apart from 'For sale', 'Sold' and 'To let' advertisements (that may be attached to the walls or fences of residential buildings and flats) no advertisements may be attached to walls or fences of any residential buildings including flats, commercial parking areas, sports fields, or schools and hostels.

SCHEDULE 5: SKY ADVERTISEMENTS

SCHEDULE 6: ROOF ADVERTISEMENTS

The SIG does not support schedules 5 and 6, They are not desirable within the urban or rural areas of the Winelands. **Suggested that they be removed**

~~SCHEDULE 7: ADVERTISEMENTS ON A VERANDA, BALCONY, CANOPY, SUPPORTING COLUMNS, PILLARS AND POSTS~~

Replace with:

SCHEDULE 7: ADVERTISEMENTS ON VERANDAHS, STOEPS, COVERED WALKWAYS AND PARAPETS

Subject to approval in terms of this By-Law ~~and subsection 11 below~~, the erection or display of advertisements on a veranda or parapet ~~balcony, canopy, supporting columns, pillars and posts~~ may only be permitted in areas of partial and minimum control on the condition that they also comply with the following:

- (1) No advertisements may be attached to Historical Buildings.
- (2) No such advertisements will be allowed on or over other architectural features of buildings.
- (3) Such advertisements may be affixed flat onto or painted on a parapet wall, ~~balustrade or railing of a veranda or balcony, and~~ or beam or fascia of a veranda ~~or balcony~~.
- (4) The advertisement may not exceed 1m ~~????~~ in height or project above or below or beyond either end of the surface to which it is affixed, or project more than 250mm in front of the surface to which it is affixed or project over a roadway or within ~~0,6 meters~~ 1 meter of the edge of the roadway.
- (5) ~~Such advertisements may be affixed flat onto or painted on supporting columns, pillars and posts. In this regard . . .~~
- (6) ~~Only one advertisement per column, pillar or post will be allowed.~~ Column, pillar and post are architectural features that should not be used for advertising purposes.
- (7) Such advertisements suspended below the roof of a veranda, ~~canopy or the floor of a balcony~~ may not exceed ~~1,8 meters~~ 1 meter in length ~~or~~ and 600mm in height.
- (8) ~~Every such advertisement~~ Any advertisements suspended below the roof of a veranda must be at right angles to the building line.
- (9) No advertisements suspended under a ~~canopy~~ veranda may extend beyond the external edge of the ~~canopy or~~ veranda to which it is attached.
- (10) All suspended advertisements must have a clear height of at least 2,4 meters.

~~(11) Such advertisements on the roof of a veranda, canopy or balcony, excluding the main roof of a building, must be composed of a single line of freestanding individual, cut-out silhouette letters without visible bracing or other visible means of support and may not be erected along more than two edges of such roof of a veranda or balcony}}~~

~~(12) No such advertisement shall be allowed in a conservation area within a single residential zone unless a Heritage Impact Assessment is submitted which confirms that no negative impact would be made on any heritage resources.~~

(13) The application number as well as the name of the advertising company or owner of the advertisement, must be displayed in a visible area on the advertisement

SCHEDULE 8: ADVERTISEMENTS ON BOUNDARY WALLS AND FENCES AND ON CONSTRUCTION SITE HOARDINGS

- (1) In urban areas of maximum and partial control, the Municipality may approve an application to affix a locality bound advertisement against a boundary wall only if the advertisement is indented into the wall or composed of individual, un-illuminated cutout letters or symbols fixed flat on such wall not projecting more than 50mm from the surface of such wall.
- (2) In areas of minimum control, the Municipality may approve, subject to a Visual Impact Assessment —
 - (a) an application to affix a locality bound advertisement flat onto a boundary wall only if it does not project more than 50mm from the face of such wall; ~~and~~
 - (b) ~~an application to affix a locality bound flat advertisement with a maximum size of 0.5m² onto the permanent fence of property.~~

SCHEDULE 11: TEMPORARY POSTERS, TEAR-DROP BANNERS, BANNERS AND FLAGS ON PUBLIC ROADS AND PUBLIC PLACES

(8) Only one poster or flag per organisation may be erected on every second streetlight pole. (add highlighted text)

SCHEDULE 12: ESTATE AGENT ADVERTISEMENTS

Additional regulation is required allowing no more than six agents' For Sale and To Let advertisements to be permitted in total per house, plot or block of flats

SCHEDULE 16: ADVERTISEMENTS ON MUNICIPAL LAND OR BUILDINGS

(a) Commercial advertisements other than those in section 14 (10).
Incorrect reference 11 (10) perhaps?

(b) Sponsored advertisements

(iv) the maximum size of any such advertisement will be 6m x 3m; provided in the event of a V-shaped advertisement where the size may not exceed two panels of 6m x 3m each.

Add:

For Municipal Buildings situated within areas of maximum control, all conditions applicable to maximum control areas apply.

ORGANISATIONS SCHEDULE 17: ADVERTISEMENTS ERECTED BY OR FOR THE BENEFIT OF NONPROFIT ORGANISATIONS

(5) In addition, the following conditions will apply:

This list (a) to (h) is redundant as all the conditions of this Bylaw will apply to the Nonprofit organisation

SCHEDULE 18: STANDARD FREE STANDING AND COMPOSITE ADVERTISEMENTS ~~IN~~ CONSERVATION AREAS

Delete:

~~"Subject to approval and in accordance with this By Law, the erection and display of standard free standing and composite advertisements will be the primary way of advertising in conservation areas and in areas of single residential zoning."~~

[This cannot be the primary way of advertising in conservation areas and in areas of single residential zoning.]

Dictionary definitions for Free standing and Composite advertisements are:

"Freestanding Advertisement" means any advertisement or group of advertisements contained or displayed on one freestanding structure which is not attached to a building or to any structure or object not intended to be used for the primary purpose of advertising.

"Composite Advertisement" means a single freestanding advertising structure or a wall or any other surface for the display of more than one advertisement]

Ronnie Donaldson
Chairperson