

**SWARTLAND MUNICIPALITY  
FILMING BY-LAW**

**June 2019**

## SWARTLAND MUNICIPALITY

### FILMING BY-LAW

**WHEREAS** Swartland Municipality recognises the important role that filming plays in the economy of the Western Cape; and

**WHEREAS** Swartland Municipality wishes to put in place a means of protecting the rights to privacy and the rights to a safe and tranquil home environment of all the inhabitants in the Swartland Municipal area; and

**WHEREAS** Swartland Municipality is committed to make every effort to facilitate the processing of applications for permission to film in its area of jurisdiction; and

**WHEREAS** Swartland Municipality wishes to provide a comprehensive facility for the processing of film applications while still acting within the constraints of the provisions of the Constitution and existing legislation;

**NOW THEREFORE** Swartland Municipality enacts as follows:

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## CHAPTER 1: DEFINITIONS, APPLICATION AND APPOINTMENTS

### 1. Definitions

In this by-law, unless inconsistent with the context:

**"applicant"** means a person who applies to the municipality to carry out filming in the jurisdictional area of the municipality;

**"authorised official"** means an official of the municipality authorised to administer, implement and enforce the provisions of this by-law;

**"filming"** means the recording of images, moving or still, whether on film or by video tape, electronically or by any other means and thus the development and physical production of digital and cinematographic recordings, television and video for any commercial or film school purposes, but excludes the video recording of a wedding ceremony or other private celebration or event for the purpose of making a video record thereof, for its participants, or the recording of current affairs or news for immediate release;

**"municipality"** means the Swartland Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and, where the context so requires, includes—

- (a) the Council;
- (b) a political structure or a political office bearer of the municipality, authorised or delegated to perform a function or exercise a power in terms of this by-law;
- (c) a duly authorised representative of the municipality;
- (d) the municipal manager; and
- (e) an authorised official.

**"municipal manager"** means the person appointed by the municipality as municipal manager;

**"municipal land"** means any land, the ownership of which is vested in the municipality or which is under the control of the municipality;

**"permit"** means a film permit granted in terms of this by-law;

**"prescribed tariff"** means a tariff determined, and imposed by the municipality in terms of the Tariff By-law.

**"Tariff By-law"** means the Swartland Municipality Tariff By-law promulgated by the municipality in terms of section 75 of the Local Government: Municipal Systems Act, No 32 of 2000, or any decision by the Council in terms of section 75A of that Act to levy and recover fees, charges or tariffs.

### 2. Application of by-law

(1) This by-law applies to all film activities that take place within the jurisdictional area of the municipality, whether on private or municipal land.

(2) This by-law does not derogate from the provisions of any other legislation.

(3) Notwithstanding the provisions of subsection 2(2), the provisions of the Land Use Planning By-law insofar as use rights conferred on any property are concerned, are subject to the provisions of this by-law.

(4) This by-law binds the state.

(5) This by-law does not apply to private filming studios licensed pursuant to the Businesses Act, Act 71 of 1991.

### **3. Appointment of authorised officials and delegation**

- (1) The municipal manager may appoint employees of the municipality as authorised officials.
- (2) The municipal manager may delegate any of his or her functions and duties, in terms of this by-law, to an authorised official of the municipality.

## CHAPTER 2: FILM PERMITS

### 4. Permission for filming

No person may film in the jurisdictional area of the municipality without a permit unless it is exempted in terms of the definition of filming and Schedule 2 of this by-law.

### 5. Application for a film permit and requirements

(1) A person, who intends carrying out filming for which permission is required, must submit a written application supporting the Film Permit Application Form to the municipal manager; provided that any other person taking part in the same filming, need not also apply for permission, if such person is under the control of the applicant.

(2) An application made in terms of this section must be made at least two weeks prior to commencement of filming and must contain at least the following information- refer to Schedule 1 of this by-law-

- (a) the name, address and occupation of the applicant or, if the application is made on behalf of a company, the company name, registration number, directors, contact details of the company and the person applying on behalf of the company;
- (b) full particulars of the person who will oversee the filming, if such person is not the applicant;
- (c) full details of locations where the filming is intended to be carried out, the proposed starting and finishing times and the number of persons, vehicles, implements or other apparatus that will be used; and
- (d) general details of the purpose of any one or more of the actions to be carried out.

(3) An applicant must pay the prescribed tariff.

(4) If filming activities are to take place on private land, within the jurisdiction of the municipality, the owner of the property must provide written consent for an application for a film permit.

(5) An application must contain proof of notices served or signatures of affected neighbours (should consultation be required), as identified by a planning official from the municipality. Consultation with the public is required subject to the nature and impact of the shoot as depicted in Schedule 2 of this by-law.

(6) The applicant shall agree to, and provide the following-

- (a) indemnification to protect the municipality from any action, claim, damage or loss whatsoever and pay legal fees reasonably incurred by the municipality arising from the issuance of the approval or the use of public or private land;
- (b) appropriate indemnity cover showing a comprehensive policy of public liability and property damage insurance for the filming event with regard to-
  - (i) any accident, against loss or damage resulting from bodily injury to or death of one or more persons and loss of or damage to property.
  - (ii) stunts, special effects, pyrotechnics or any other activity which may put the public or property at risk.
- (c) a security deposit or an amount determined by the municipality, to ensure that municipal property being used for filming is restored to the condition it was in prior to its use or occupation;

(7) The applicant shall accept full responsibility and resultant costs for traffic control, crowd control, barricades, safety precautions and clean-up;

(8) The applicant shall be responsible for signage, notifying emergency management services, including municipal traffic and law enforcement and residents of the road closure or the event and

provide proof from the emergency service and municipal traffic and law enforcement, acknowledging the event.

(8) The applicant shall appoint an Environmental- or Heritage Control Officer for the duration of the shoot should the area be environmentally or culturally sensitive.

## **6. Consideration of application**

- (1) The municipal manager may-
  - (a) grant or refuse a permit;
  - (b) grant an extension of time for any permit;
  - (c) suspend a permit, for reasonable cause, for such period as he or she may determine; and
  - (d) cancel a permit for reasonable cause.
- (2) The suspension or cancellation of a permit shall be subject to reasonable notice being given to the permit holder, except in a case where it is reasonable and justifiable to suspend or cancel such permit without prior notice.
- (3) The municipal manager may require the completion and submission of a new application where circumstances relating to the filming activity changes.
- (4) No person to whom a permit has been granted under this by-law may change a location where filming takes place without first applying to the municipal manager to have the location amended.
- (5) A permit issued in terms of this by-law shall not be transferrable without the permission of the municipal manager and shall be kept at the location where filming is taking place and presented on request.
- (6) A permit issued in terms of this by-law does not absolve the permit holder to comply with any other applicable legislation.

## **7. Control of filming**

- (1) Filming related activities include, but are not limited to:
  - (a) the interruption of traffic on public roads;
  - (b) the interruption of pedestrian traffic on sidewalks;
  - (c) wires or cables running across or over sidewalks or public roads;
  - (d) the use of generators, tripods or dollies on sidewalks or public roads;
  - (e) activities that have an impact on public parking, public open spaces or beaches;
  - (f) activities that will generate noise or air pollution;
  - (g) activities that may cause pollution by uncontained rubbish; and
  - (h) activities that may cause damage to private property or municipal property.
- (2) The municipal manager or relevant authority may authorise the temporary closure of any public space, street or highway or portion thereof, during the period specified in a film permit.
- (3) Where a street or highway or portion thereof has been temporarily closed under this section, no person shall use the street or highway or portion of it during the period of closure except for pedestrian traffic, emergency vehicles or under authority of the permit.

## **8. Rights of film permit holder**

Notwithstanding any other by-law of the municipality, where a film permit has been issued under this by-law, the holder of it may use the property, street or park or part thereof named in the film permit for

the purposes and period specified in the permit, upon the terms and conditions set out in the approval and as contained in any agreement entered into pursuant to this by-law.

## CHAPTER 3: COMPLIANCE AND ENFORCEMENT

### 9. Compliance notices

- (1) Where an authorised official has reasonable grounds to believe that a provision of this by-law is being contravened or likely to be contravened, he or she may issue a compliance notice to the applicant or the person in charge of the filming.
- (2) A notice issued in terms of subsection (1) must state-
  - (a) the activity that constitutes a contravention;
  - (b) the provision of the by-law that is being contravened or will be contravened if the condition is allowed to continue;
  - (c) the measures that must be taken to rectify the condition;
  - (d) the time period in which the notice must be complied with; and
  - (e) the right of the person being served to respond to the allegations in the notice.
- (3) If a person, on whom notice was served in terms of subsection (1) fails to comply with the requirements of the notice, the municipal manager may take such steps as may be necessary to rectify the condition, at the cost of the applicant.

### 10. Right of entry and inspection

An authorised official of the municipality may at all reasonable times enter the location where filming is taking place to determine compliance with this by-law.

## CHAPTER 4: GENERAL PROVISIONS

### 11. Serving of notices

- (1) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served –
- (a) when it has been delivered to that person personally;
  - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
  - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;
  - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
  - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the premises to which it relates;
  - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or
  - (g) when it has been delivered, at the request of that person, to his or her e-mail address.

### 12. Exemptions

- (1) Notwithstanding the provisions of this by-law, the municipality may exempt any person or categories of persons from any or all these requirements and may impose any other requirements it deems appropriate.
- (2) The municipality may not grant an exemption under subsection (1) until it has-
- (a) taken reasonable measures to ensure that all persons whose rights may be adversely affected by the granting of the exemption, including but not limited to adjacent landowners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
  - (b) provided such person with a reasonable opportunity to object to the application; and
  - (c) duly considered any objections raised.

### 13. Appeal

A person whose rights are affected by a decision delegated by the municipality 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 21 days of the date of the notification of the decision.

**14. Offences and penalties**

- (1) A person who contravenes or fails to comply with any of the provisions of sections 2, 4, 6(4), 6(5), 7(3) or 9(3) commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.
- (2) It is an offence to-
  - (a) furnish false information to an authorised officer in respect of any issue pertaining to this by-law;
  - (b) to refuse to co-operate with the request of an authorised officer made in terms of this by-law; or
  - (c) to hinder or obstruct an authorised officer in the execution of his or her duties in terms of this by-law.
- (3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.

**15. Short title and commencement**

This By-law shall be known as the Swartland Municipality: Filming By-law and shall come into operation on the date of publication thereof in the Provincial Gazette.

**SCHEDULES**

**SCHEDULE 1: PROFORMA APPLICATION FOR A PERMIT TO EXECUTE FILMING AND RELATED ACTIVITIES WITHIN THE JURISDICTION OF THE SWARTLAND MUNICIPALITY**

<b>On Private property</b>	<b>YES</b>	<b>NO</b>	<b>On Swartland Municipality property</b>		<b>YES</b>	<b>NO</b>
<b>Individual application</b>	<b>YES</b>	<b>NO</b>	<b>On behalf of Company application</b>		<b>YES</b>	<b>NO</b>
<b>Type of Shoot in accordance with Schedule 1</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>	<b>Very Large</b>	
<b>Fees payable per day</b>						
<b>Full name of applicant/company/directors of company:</b>						
<b>Mobile number/s of the above:</b>						
<b>Occupation/position of applicant/registration number of company:</b>						
<b>Street Address of applicant/company:</b>						
<b>Postal Address of applicant/company:</b>						
<b>Full Name of Project Manager:</b>						
<b>Mobile Number of Project Manager:</b>						
<b>Full details of location where filming will be taking place – provide erf numbers:</b>						
<b>Name of the owner of the property:</b>						
<b>Approval from the land owner to allow for filming on the property: (if property is registered in a trust or company a trustee/company resolution will be required providing power of attorney to the relevant person)</b>						
<b>Name:</b>				<b>Signature:</b>		

<b>Full details of the following:</b>	
a) Starting date	
b) Finishing date	
c) Maximum number of persons to be on site at any time	
d) Maximum number and type of vehicles to be on site at any time	
e) Location of base camp if required (provide erf number)	
o Owner of the remote base camp	
o Approval of owner to use the property as remote base camp	<u>Signature:</u>
f) List of all major equipment to be on site and the estimated area required for such equipment	
g) General purpose and description of the major actions to be carried out	
h) If on Private/Public property the following detail must be provided:	
<ul style="list-style-type: none"> <li>• If only notices needs to be served on surrounding residents/owners as per the Schedule 1 provide a list of names of all affected residents (list of affected residents/owners to be obtained from Swartland Municipality – to include their addresses and contact details) and their signatures/or confirmation of emails send to confirm that notices have been served.</li> <li>• If consent from surrounding residents/owners is required as per Schedule 1 provide a list of names of all affected residents/owners (list of affected residents/owners to be obtained from Swartland Municipality) and their signatures to confirm that they have no objection to the proposed shoot. <i>*Require 80% of surrounding resident/owners consent.</i></li> </ul>	*
i) Copy of Safety Plan if required according to Schedule 1.	
j) Copy of Traffic Plan if required according to Schedule 1.	
k) If located on environment/cultural sensitive areas provide contingency plan to ensure limited impact on these areas as well as the details of the environmental officer to be involved.	
Signature of Applicant:	
Date of application:	
For Official Use Swartland Municipality Stamp of receipt of application	

**SCHEDULE 2: CATERGORISATION OF SHOOTS**

<b>Category</b>	<b>Shoot Size</b> (as defined by number of vehicles and cast and crew members)	<b>Shoot Description</b>	<b>Permit Application Requirements</b>	<b>Public Participation</b> prior to or simultaneously to permit application
<b>Micro shoot</b>	1 to 3 vehicles* and or 8 or less cast and crew with duration of 1 to 2 days.	<ul style="list-style-type: none"> <li>• Small still mobile shoots/commercials.</li> <li>• No generators, lights of structures.</li> <li>• No road closures.</li> </ul>	<ul style="list-style-type: none"> <li>• Permit required prior to filming.</li> <li>• Completed permit application form and relevant information to be submitted 5 days before commencement of filming.</li> </ul>	Notification to be delivered to surrounding neighbours/owners as determined by the municipality.
<b>Small shoot</b>	4 to 6 vehicles* and/or 15 or less cast and crew with a duration of up to 4 days.	<ul style="list-style-type: none"> <li>• Still and mobile shoots/commercials.</li> <li>• Small generators with limited lights.</li> <li>• No structures constructed.</li> <li>• No road closures.</li> <li>• No special effects and/or stunts</li> </ul>	<ul style="list-style-type: none"> <li>• Permit required prior to filming.</li> <li>• Completed permit application form and relevant information to be submitted 5 days before commencement of filming.</li> </ul>	Notification to be delivered to surrounding neighbours/owners as determined by the municipality.
<b>Medium shoot</b>	7 to 10 vehicles* and/or 16 to 20 cast and crew.	<ul style="list-style-type: none"> <li>• Still shoots, commercials and features.</li> <li>• Small generators with limited lights.</li> <li>• Minimal and minor structures.</li> <li>• No special effects or stunts.</li> <li>• No road closures.</li> </ul>	<ul style="list-style-type: none"> <li>• Permit required prior to filming.</li> <li>• Completed permit application form and relevant information to be submitted 2 weeks before commencement of filming.</li> <li>• No more than 6 vehicles parked on/at site in residential areas. Additional vehicles, larger trucks and larger vehicles to be parked at remote base camp to be identified by the applicant.</li> </ul>	Public consultation** required.  Extent of consultation to be determined by the municipality.
<b>Large Shoot</b>	11 to 18 vehicles* and/or 21 to 50 cast and crew	<ul style="list-style-type: none"> <li>• Still shoots, commercials and features;</li> <li>• Minor/moderate generators with</li> </ul>	<ul style="list-style-type: none"> <li>• Permit required prior to filming.</li> <li>• Completed permit application form and relevant information to be</li> </ul>	Public consultation** required.

		<p>lights;</p> <ul style="list-style-type: none"> <li>• Moderate structures;</li> <li>• Minor special effects and/or stunts.</li> <li>• Traffic assistance required.</li> <li>• On road and land.</li> <li>• Road closure required.</li> </ul>	<p>submitted 2 weeks before commencement of filming.</p> <ul style="list-style-type: none"> <li>• No more than 6 vehicles parked on/at site in residential areas. Additional vehicles, larger trucks and larger vehicles to be parked at remote base camp to be identified by the applicant.</li> <li>• Permit application to include: <ul style="list-style-type: none"> <li>○ A traffic plan.</li> <li>○ A safety plan.</li> <li>○ Location of remote base camp.</li> </ul> </li> </ul>	<p>Extent of consultation to be determined by the municipality.</p>
<b>Very Large Shoot</b>	<p>More than 18 vehicles* and/or more than 50 cast and crew members</p>	<ul style="list-style-type: none"> <li>• High impact shoot &amp; commercials and features.</li> <li>• Extensive generators and lights sets.</li> <li>• Large and several structures.</li> <li>• Large special effects and/or stunts required.</li> <li>• Traffic assistance required.</li> <li>• Major lane/road closures.</li> <li>• Considerable noise impact.</li> <li>• Early morning or night shoots.</li> </ul>	<ul style="list-style-type: none"> <li>• Permit required prior to filming.</li> <li>• Completed permit application form and relevant information to be submitted 2 weeks before commencement of filming.</li> <li>• No more than 6 vehicles parked on/at site in residential areas. Additional vehicles, larger trucks and larger vehicles to be parked at remote base camp to be identified by the applicant.</li> <li>• Permit application to include: <ul style="list-style-type: none"> <li>○ A traffic plan.</li> <li>○ A safety plan.</li> <li>○ Location of remote base camp.</li> </ul> </li> </ul>	<p>Public consultation** required.</p> <p>Extent of consultation to be determined by the municipality.</p>

\*vehicles – meaning small utility vehicles and small pick-up trucks not exceeding a gross mass of 9 000kg. If larger trucks and vehicles (busses) are used they should be located at a remote base camp after deliveries.

\*\*Public consultation – require 80% consent from public as determined by the municipality.