

PROVINCE OF THE WESTERN CAPE

# Provincial Gazette Extraordinary

8348

Friday, 6 November 2020

PROVINSIE WES-KAAP

# Buitengewone Provinsiale Koerant

8348

Vrydag, 6 November 2020

---

*Registered at the Post Office as a Newspaper*

## CONTENTS

*(\*Reprints are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)*

Page

### LOCAL AUTHORITY

Mossel Bay Municipality: Filming By-law ..... 2

# MOSSEL BAY MUNICIPALITY



## FILMING BY-LAW

To facilitate and regulate filming within the Mossel Bay municipal area, to provide for the issuing of a film permit; to provide for filming in environmental sensitive areas; to provide for the use of municipal services during filming; to provide for the duties of film permit holder; authorised official to provide for prohibitions, conditions, offences and penalties and to provide for matters incidental thereto.

### PREAMBLE

**WHEREAS** section 156(5) of the Constitution of the Republic of South Africa, 1996 in general authorizes a Municipality to execute any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

**WHEREAS** section 156(2) of the Constitution of the Republic of South Africa authorises a Municipality to make By-laws for the effective administration of matters which it has the right to administer;

**WHEREAS** the Council recognises the important role that filming plays in the economy of the Western Cape and that it is committed to make every effort to facilitate the processing of applications for permission to carry out filming in its area of jurisdiction;

**WHEREAS** this needs to be done in an orderly manner;

Be it therefore, enacted by the Council of the Municipality of Mossel Bay.

## **TABLE OF CONTENTS**

1. DEFINITIONS
2. APPLICATION OF THIS BY-LAW
3. CONTROL OF FILMING
4. APPLICATION FOR FILMING
5. NOTICE OF INTENDED FILMING
6. PERMISSION FOR FILMING AND FILMING-RELATED ACTIVITIES
7. FILMING ON PUBLIC ROAD
8. INSURANCE
9. FILMING IN ENVIRONMENTAL SENSITIVE AREAS
10. USE OF MUNICIPAL PROPERTY AND SERVICES
11. RIGHT OF INSPECTION AND ENTRY
12. EXEMPTIONS
13. COMPLIANCE NOTICE
14. OFFENCES AND PENALTIES
15. CONFLICT
16. SHORT TITLE

## 1. DEFINITIONS

(1) In this By-Law, words used in the masculine gender include the feminine, the singular the plural and vice versa;

**“Authorised official”** means an employee of the Mossel Bay Municipality or any other person who is appointed 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 and includes any other authorised official delegated to enforce the provisions of this by-law;

**“The Council”** means the Municipal Council of the Mossel Bay Municipality.

**“Employee”** means an employee of Mossel Bay Municipality.

**“Environmental sensitive areas”** means land and water areas containing natural features or ecological functions, and structures, building and landscapes of such significance as to warrant their protection in the best long-term interest of the people and environment of Mossel Bay Municipality, and includes:

- (a) Open space areas, identified as having significant biodiversity value;
- (b) Wetlands;
- (c) Rivers and Riparian Areas;
- (d) Floodplains;
- (e) Estuaries;
- (f) Coastal Dune System, Rocky Shores and Intertidal Zones;
- (g) Sites of historical and cultural significance and value to Mossel Bay Municipality;

**“Filming”** means the recording of images, moving or still, whether on film or by video tape, electronically or by any other means, but excludes the video recording of a wedding ceremony or other private celebration or event for purposes of making a video record thereof for its participants, still photography or the recording of current affairs or news for immediate release;

**“Film permit”** means a permit issued in terms of Section 6 of this By-law;

**“Film production assignment”** corresponding meaning as filming;

**“Film-related activities”** means all activities attendant to filming, including but not limited to:

- (a) interruption of traffic on public roads, public parking or pedestrians on sidewalks for the purpose of carrying out a film production assignment;
- (b) the running of wires or cables across or over sidewalks or public roads for the purpose of carrying out a film production assignment;
- (c) activities that are conducted on beaches, beach or launch sites, coastal areas, public launch sites, vehicle launch sites or stadiums for the purpose of carrying out a film production assignment;
- (d) the use of generators, tripods or camera dollies on sidewalks, public roads or public parking for the purpose of carrying out a film production assignment;
- (e) activities that have an impact on public parking and public open spaces and environmentally protected areas for the purpose of carrying out a film production assignment;
- (f) filming activities that will generate noise and air pollution;
- (g) use of animals on set for the purpose of carrying out a film production assignment;
- (h) filming activities that will impact on a municipal property; and
- (i) any other activity that may be determined by the Municipality as being undertaken for the purpose of carrying out a film production assignment;

**“Municipality”** means the Municipality of Mossel Bay established in terms of Section 12 of the Municipal Structures Act, 117 of 1998 and includes duly authorised agent, service provider or any employee thereof acting in connection with this By-law by virtue of a power vested in the Municipality and delegated or sub-delegated to such agent service provider or employee;

**“Municipal Manager”** means the Municipal Manager of the Municipality.

**“Municipal property”** means property owned by, leased by or under the control of the Municipality;

**“Prescribed tariff”** means the tariffs determined and imposed by Council to levy and recover fees, charges or tariffs;

**“Permit holder”** means a person who has been issued with a film permit in terms of this By-law;

**“Person”** means a natural person or a juristic person.

## **2. APPLICATION OF THIS BY-LAW**

- (1) This By-law:
  - (a) applies to all filming which occurs within the jurisdiction of the Municipality;
  - (b) does not derogate from the provision of any other legislation; and
  - (c) binds an organ of state.

## **3. CONTROL OF FILMING**

- (1) No person may carry out any filming on municipal property or in a public place –
  - (a) without a valid film permit issued by the Municipality;
  - (b) otherwise than in accordance with any applicable legislation, terms and conditions as may be determined by the Municipality;
- (2) The provisions of subsection (1) also apply to film-related activity on municipal property or in a public place where the actual recording of the film takes place on land other than municipal property or a public place;
- (3) The Municipality may exercise its rights to access or intervene in a film production assignment of film-related activities if the Municipality deems there to be or is of the opinion that there is an emergency.

## **4. APPLICATION FOR FILMING**

- (1) Any person who intends to conduct filming within the Mossel Bay Municipality must submit an application to the authorised official of the Municipality;
- (2) The application for filming must include, but is not limited to, the submission of the following documents:
  - (a) completed film permit application form with the following information:
    - (i) full particulars of the name, address and occupation of the applicant or, if the application is made on behalf of a company, its registration number, directors, etc.;

- (ii) full particulars of the person who will be in charge of the filming, if such person is not the applicant;
  - (iii) full details of such 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;
  - (iv) general details of the purpose of any one or more of the actions to be carried out;
- (b) proof of public liability insurance;
  - (c) proof of payment of the prescribed fee / tariff;
  - (d) proof of necessary notices as per section 5 hereunder;
  - (e) signed indemnity form;
  - (f) any licenses required in terms of the South African Civil Aviation Authority (SACAA) for the use of drone;
  - (g) any other document or information that may be requested by the Municipality.
- (3) An application should be made within ten (10) days prior to commencement of filming or film-related activities.

## **5. NOTICE OF INTENDED FILMING**

- (1) The applicant must ensure that notice of intended filming is given in the local newspaper and any other media or communication means as deemed necessary by the authorised official;
- (2) The notice must include—
  - (a) full particulars of the name, address, occupation and contact details of the permit holder;
  - (b) full particulars of the person who will be in charge of the filming, if such a person is not an applicant;
  - (c) full details of such 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:
  - (i) the filming activities to be carried out;
  - (ii) roads or other municipal services that might be temporarily closed during the filming;
- (3) The authorised official must ensure that such notice be placed on the Municipality's website;
- (4) The notice should be placed prior to the commencement of filming or film-related activities.

## **6. PERMISSION FOR FILMING AND FILMING-RELATED ACTIVITES**

- (1) On receipt of an application for filming, the authorised official must obtain the necessary comments from all directorates of the Mossel Bay Municipality and must compile a full report with recommendations for consideration by the Municipal Manager;
- (2) The Municipal Manager will consider the report and will have full authority to approve or disapprove the application and may impose any conditions.

## **7. FILMING ON PUBLIC ROAD**

- (1) Any person who intends to use any National or Provincial road(s) situated within the Municipality for filming purposes, must file such request with the Provincial and Municipal Traffic Department for consideration and approval;
- (2) Filming on Municipal public road(s) must be approved and the applicant must adhere to conditions as deemed necessary by the relevant traffic departments.

## **8. INSURANCE**

- (1) The production company must provide evidence to the satisfaction of the Municipality of appropriate—
  - (a) indemnity cover against third party liability claims; and
  - (b) specialised risk insurance inter alia, blanket liability or work cover, where stunts, special effects, pyrotechnics or any other activity which may put the public at risk is involved;



- (2) The Municipality shall not be liable for damages or compensation arising from filming or film-related activities conducted by the production company or anything lawfully done in good faith by the Municipality or any authorised official thereof in terms of this By-law.

## **9. FILMING IN ENVIRONMENTAL SENSITIVE AREAS**

- (1) The Municipality may require the production company to conduct an environmental impact assess, mentor compile and implement an Environment Management Programme if the Municipality deems the filming to have a potential adverse impact on the environment;
- (2) This By-law does not absolve the production company from complying with any other applicable national or provincial environmental legislation;
- (3) Any person who intends to conduct filming on adjacent or in close proximity to an environmental sensitive area may be required to –
  - (a) compile and implement an Environmental Management Programme, where such filming is a micro, small or medium shoot; or
  - (b) conduct an Environmental Impact Assessment, where such filming is a large or very large shoot;
- (4) The Environmental Management Programme or Environmental Impact Assessment referred to in subsection (3), must be submitted to the Mossel Bay Municipality: Environmental Officer for approval;
- (5) Where an environmental authorisation is required in terms of the National Environmental Management Act, 2007 (Act No. 7 of 2007), its Impact Assessment Regulations and listing notices or specific environmental management Acts, this may be submitted in lieu of the Environmental Impact Assessment or Environmental Management Programme in terms of this By-law;
- (6) The Municipality may require compliance with any norm or standard for film shooting in environmentally sensitive areas;
- (7) The Municipality may prohibit filming in certain conservation areas having significant and sensitive biodiversity attributes.

## **10. USE OF MUNICIPAL PROPERTY AND SERVICES**

- (1) The Mossel Bay Municipality may prescribe a fee, charge or tariff to allow filming or filming-related activities in the Municipal district and for the use of Municipal premises, facilities and services subject to the Municipality's By-law regulating the use thereof;
- (2) The Mossel Bay Municipality must consider any application for filming and may:
  - (a) approve the application subject to conditions;
  - (b) request additional information to be furnished within a specific timeframe;
  - (c) reject the application and provide reasons therefore;

## **11. RIGHT OF INSPECTION AND ENTRY**

An authorised official of the Municipality may, for any purpose connected with the enforcement of this By-law, at all reasonable times and without prior notice enter any public or private place:

- (a) where filming, filming-related activities and/or film production assignment is being carried out; or
- (b) if he or she has reasonable grounds to suspect that filming, filming-related activities and/or a film production assignment is being carried out, in order to carry out such examination, inquiry or inspection as he or she may deem necessary.

## **12. EXEMPTIONS**

Notwithstanding the provisions of this By-law, the Municipality may, on written request, exempt any person or class of persons from any or all of the requirements of this By-law and during consideration of such exemption it may impose any conditions or requirements it deems appropriate.

## **13. COMPLIANCE NOTICE**

- (1) An authorised official may serve a compliance notice on a permit holder thereby instructing such holder to comply with the provisions of this By- Law;

- (2) The compliance notice must specify:
  - (a) the contravention and the expected remedy of the contravention;
  - (b) the timeframe in which the permit holder must remedy the contravention and comply with
  - (c) the consequences of failure to comply with paragraphs (a) and (b);
- (3) A permit holder commits an offence if such holder fails to adhere to the instructions contained in a compliance notice.

#### **14. OFFENCES AND PENALTIES**

- (1) Any person who -
  - (a) obstructs or hinders the municipality in the exercising of the powers or performance of functions or duties under this by-law;
  - (b) contravenes or fails to comply with a provision of this by-laws;
  - (c) fails to comply with the terms of a notice served upon him in terms of this by-law -  
is guilty of an offence and liable on conviction to:
    - (i) a fine or imprisonment, or to both such fine and such imprisonment; and
    - (ii) in the case of a continuing offence, to an additional fine or an additional period of imprisonment, or to both such additional fine and imprisonment for each day on which such offence is continued.

#### **15. CONFLICT**

In the event of an inconsistency between the English, Afrikaans or Xhosa text, the English text shall prevail

#### **16. SHORT TITLE**

This By-Law shall be known as the Mossel Bay Municipality Filming By-Law and takes effect on date of publication thereof.