Swartland, South Africa

Display of Posters and Banners By-law, 2010

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Swartland
South Africa

Display of Posters and Banners By-law, 2010

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The object of this By-Law is to regulate the display of posters within the municipal area of Swartland Municipality in a manner that is sensitive to the environment. This By-Law seeks to strike a balance between advertising opportunities on the one hand, and the conservation of visual, tourist, environmental and heritage characteristics on the other hand.

In addition, posters and banners should not compromise traffic safety and should not adversely affect the character of a locality.

1. Definitions

In this By-Law, unless the context otherwise indicates:

"**Banner**" means any material upon which a sign is displayed in such a manner as to be fully legible in windless conditions, attached to one or more ropes, poles or flagstaffs projecting vertically, horizontally or at an angle, or attached to buildings or special structures, but excludes banners carried as part of a procession. A flag which is not displayed on an approved flag pole shall for the purposes of this By-Law, be deemed to be a banner;

"**Municipality**" means Swartland Municipality and includes any Executive Councillor, or Committee established by the Municipality, or any employee thereof, acting in connection with this By-Law by virtue of a power vested in the Municipality and delegated to such employee by the Municipality;

"**National road**" means a national road as defined in the National Roads Traffic Act No 93 of 1996;

"**New sign**" means any sign first displayed after the promulgation of this By-Law;

"**Organ of state**" means:

(1) any department of state or administration in the national, provincial or local sphere of government;

(2) any other functionary or institution:

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any other legislation;

"**Peace officer**" means a traffic officer and also a traffic warden appointed in terms of section 3A of the National Roads Traffic Act No 93 of 1996 and includes any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act No 8 of 1959, and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334(1) of the Criminal Procedures Act No 51 of 1977, any person who is a peace officer under that section;

"**Pennon**" means temporary signs capable of being attached to the municipal electrical light standards and/or pasted to fixed designated structures within road reserves to advertise events, campaigns and including elections or referenda;

"**Poster**" means temporary signs capable of being attached to the municipal electrical light standards and/or pasted to fixed designated structures within road reserves to advertise events, campaigns and including elections or referenda;

"**Public place**" means any public road as defined in the National Road Traffic Act No 93 of 1996;

"**Road Reserve**" means the area contained within the statutory width of a road, and includes roadways, shoulders and sidewalks and the airspace above such roadways, shoulders and sidewalks and all other areas within the road reserve boundary;

"**Traffic Sign**" means a road traffic sign as prescribed in the National Road Traffic Act No 93 of 1996;

"**Traffic Signal**" means a road traffic signal as prescribed in the National Road Traffic Act No 93 of 1996.

2. Submission of Applications

2.1 No person shall display or erect any poster or banner or use any sign for advertising without the Municipality's approval in terms of this By-Law.

2.2 Every person intending to display a poster or banner shall submit a written application to the Municipality accompanied by the following information:

(1) a copy of the poster to be displayed;

(2) particulars of the specific campaign which the poster will advertise; and

(3) particulars of the time frame, i.e. dates of display.

2.3 Every application must be accompanied by the prescribed deposit as determined by the Municipality from time to time. No posters shall be put up before such deposit has been paid in full.

3. Different Types of Applications

Only posters, banners and notices in the following categories may be displayed and will be considered by the Municipality:

(1) Posters with the main purpose of advertising a religious, sporting, educational, cultural, tourism, charity or similar event of a non-commercial nature, provided that such event are to take place within the boundaries of the municipal area;

(2) Newspaper headline posters of the day of a daily, weekly or week-end newspaper;

(3) Posters for parliamentary, provincial or municipal elections (including by-elections) and referenda as well as campaigns by state and parastatal institutions to promote democracy, good governance or similar principles, or any national, provincial or municipal Imbizo, or similar event;

(4) Posters for public awareness campaigns and notices of a public meeting.

4. Charges

The Municipality shall, from time to time, determine a charge for the removal of posters by the Municipality, which charge shall be recovered from the applicant's deposit in the event of any or all of the posters not being removed by the applicant on the date it is required to be removed in terms of the approval granted by the Municipality. The full or the remained of the deposit, after such charges were deducted, shall only be paid out by the Municipality when all posters are removed.

5. General Factors For Consideration of Approval

In considering an application for the erection of a poster in terms of this By-Law or an amendment or condition attaching or to be attached to an approval, the Municipality shall have regard to the following factors:

(1) No poster or banner may display any material or graphic which, whether in form, contents or both, may reasonably be expected to cause offence to the public or an identifiable class of persons.

(2) No poster or banner may be displayed or will be allowed to be displayed that will be detrimental or may otherwise negatively impact on the environment, whether artificial or natural.

(3) If a sign constitutes a danger in any manner or is obscene, in the opinion of the Municipality, the Municipality itself may, without serving any notice, carry out the removal of such sign.

6. Standard Structural Requirements

In addition to the requirements in Schedules 1 and 2 to this By-Law, the following conditions will apply:

(1) The person by whom a poster or banner is erected shall be liable for the maintenance thereof.

(2) Every poster or banner and its support structure shall be kept in a state of good repair.

(3) Where any poster or banner becomes torn or damaged or otherwise falls into a state of disrepair, the person owning and/or displaying such poster or banner shall within three (3) working days of a notice to do so, remove it.

(4) Posters or banners must be located at a height that discourages vandalism.

7. Traffic Safety Requirements

7.1 Posters may not be erected at places where they are an unacceptable distraction for drivers or where drivers turn, negotiate curves or traffic merges, diverges or weaves.

7.2 Posters may not be erected where they could contribute to an unsafe traffic condition or within 50 metres from on and off ramps of public roads and traffic directional signs and gantries.

7.3 Posters may not be erected in an area where the traffic volume, the average following headway or accident history requires a higher than average degree of awareness from drivers.

7.4 Posters may not be attached to or obscure a traffic sign or traffic signal specifically provided for in the South African Road Traffic Signs Manual and/or the South African Development Community Road Traffic Signs Manual.

7.5 Posters may not be erected within the road reserve of any public road unless specifically provided for in this By-Law.

7.6 In the event of traffic safety requirements not being adhered to, or when the display of posters or banners in any way is regarded detrimental to traffic safety, the Municipality's peace officers may forthwith remove such posters or banners without obtaining the applicant's consent.

8. Legal Requirements

All posters to be erected and/or displayed within the area of jurisdiction of the Municipality must, in addition to complying with this By-Law, comply with all other applicable legislation, including any applicable Zoning Scheme Regulations.

9. Approval

The Municipality may, at any time, withdraw an approval granted in terms of this By-Law or its predecessor or amend any condition or impose a further condition in respect of such approval, if a poster

is in a state of disrepair, no longer complies with any provision of this By-Law or is substantially altered from the original application by way of graphic content.

10. Appeal

10.1 Any person whose rights are affected by a decision made in connection with this By-Law by the Municipality may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

10.2 The Municipal Manager must promptly submit the appeal to the appropriate appeal authority.

10.3 The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or renovation of a decision may detract from any rights that may have accrued as a result of the decision.

10.4 When the appeal is against a decision taken by:

(1) a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;

(2) the Municipal Manager, the Executive Committee or Mayor is the appeal authority; or

(3) a Political Structure or Political Office Bearer, or a Councillor, a Committee of Councillors, who were not involved in the decision and appointed by the Municipal Council for this purpose, is the appeal authority.

10.5 An appeal authority must commence with an appeal within six weeks after receipt of the appeal and decide the appeal within a reasonable period.

11. Damage to Municipal Property

11.1 No person shall, in the course of erecting or removing any poster or banner, cause damage to any tree, electric standard or service or other municipal installation or property and street furniture.

11.2 Any person who damages municipal property shall be liable for the repair costs.

12. Offences

12.1 Any person who:

(1) contravenes or fails to comply with any provision of this By-Law;

(2) contravenes or fails to comply with any requirements set out in a notice issued and served to him or her in terms of this By-Law;

(3) contravenes or fails to comply with any condition imposed in terms of this By-Law;

(4) knowingly makes a false statement in respect of any application in terms of this By-Law,

shall be guilty of an offence and on conviction shall be liable to a fine or imprisonment as set out hereinbelow; and

in the case of a continuing offence, to a fine, as set out hereinbelow, for every day during the continuation of such offence after a written notice has been issued by the Municipality requiring discontinuance of such offence; and

for a second or subsequent offence, liable on conviction to a fine or imprisonment as set out hereinbelow.

12.2 The fines and penalties applicable to offences in terms of this By-Law are:

(1) upon conviction of a first offence, the guilty party shall be liable to a fine not exceeding R500.00 as adjusted in terms of the Adjustment of Fines Act No 101 of 1991 from time to time, or, in default of payment, to imprisonment for a period not exceeding two months;

(2) in the case of a continuing offence, the guilty party shall be liable to a further fine not exceeding R300.00 as adjusted in terms of the Adjustment of Fines Act No 101 of 1991 from time to time, for every day during the continuance of such offence;

(3) upon conviction of a second or subsequent offence, the guilty party shall be liable to a fine not exceeding R1 000.00 as adjusted in terms of the Adjustment of Fines Act No 101 of 1991 from time to time or in default of payment, to imprisonment for a period not exceeding six months.

12.3 Unlawful posters removed by the Municipality shall be reclaimed within one month on payment in full of any costs incurred by the Municipality in the removal of the said sign as well as the costs of any storage charges incurred in the storage of such poster. Any unlawful posters removed by the Municipality and not reclaimed within one month of removal shall be disposed of by the Municipality to defray its removal and/or storage costs.

13. Presumptions

Any person charged with an offence in terms of this By-Law who is:

(1) the owner of any land or building on which any poster was or is displayed, shall be deemed, until the contrary is proved, to have knowingly displayed such poster, or caused or allowed it to be displayed;

(2) alone or jointly with any other person responsible for organizing, or in control of any meeting, function or event, to which a poster relates, shall be deemed, until the contrary is proved, to have knowingly displayed every poster displayed in connection with such meeting, function or event or to have caused or allowed them to be so displayed;

(3) the person whose name appears on a poster or whose product or services are advertised on such poster, shall be deemed, until the contrary is proved, to have displayed such poster, or to have caused or allowed it to be displayed unless the contrary is proved.

14. Enforcements and Removal of Posters and Banners

14.1 If any poster displayed is in contravention of these By-Laws, the Municipality may serve a notice on the person whose product or services are advertised, calling upon such person to remove such poster or carry out such alteration thereto or do such work as may be specified in such request or notice, within a time frame specified therein.

14.2 Should the Municipality's demands, as set out in the notice referred to above, not be carried out within the time period specified therein, the Municipality may, with a Court Order, remove the poster, provided that no such Court Order shall be necessary in the event of the said poster being displayed on the property belonging to the Municipality, prior to removal thereof.

14.3 In the event of the Municipality removing a poster, the Municipality shall not be required to compensate any person for any loss or damage occasioned by or in respect of such removal.

14.4 Any costs incurred by the Municipality in removing posters may be recovered from the person on whom the notice was served, subject to paragraph 4 of this By-Law.

15. Service of Notices

Where any notice or other document is required by these By-Laws to be served on any person, it shall be deemed to have been properly served if served personally on him/her, or any member of his/her

household, apparently over the age of 16 years, at his place of residence, or on any person employed by or with him/her at his place of business, or if posted by registered post to such person's residential or her business address, as it appears in the record of the Municipality, or if such person is a company or close corporation or a trust, if served on any person apparently employed by that company, close corporation or a trust, if served on such person at the registered office, or sent by registered post to such office.

16. Magistrate's Court Jurisdiction

Notwithstanding anything to the contrary contained in any law relating to Magistrate's Courts, a Magistrate shall have jurisdiction, on the application of any Local Authority, to make an Order for the enforcement of the provisions of this By-Law or of any approval, refusal or condition applicable in terms thereof.

Schedule 1

Advertising of Banners

In addition to the conditions contained in this By-Law, the following will apply in respect of the erection of banners:

1. Approval for third party advertising on banners shall only be granted for a function or event conducted for religious, educational, social welfare,animal welfare, sporting, civic, tourism or cultural purposes or to a function or event relating to a municipal, provincial or parliamentary election or referendum. The display of such banners shall comply with the Municipality's standard conditions relating to the display of banners as set out hereinbelow.
2. The display of banners is prohibited on any bridge or across any public road, and along any road designated by the Municipality from time to time, unless specific consent has been obtained from the Municipality.
3. Banners may not be attached so as to interfere with or constitute a danger to passing pedestrians of vehicular traffic.
4. No banner shall be larger than $3m^2$ except with the prior written approval of the Municipality.
5. No banner may be displayed within 30m of any road traffic sign or traffic signal.
6. Banners are not to be affixed to traffic signal poles or other poles which carry road traffic signs, other natural features, street furniture or other municipal property.
7. Banners may not be affixed in such a way that they unfairly prejudice other businesses/organisations or obscure any approved existing signs.
8. Only one first party advertising banner per location will be permitted unless the Municipality's written permission is obtained for more than one banner and the applicant is to submit in writing the time frame required for the erection of such banner, which time frame shall not exceed days, unless the Municipality has specified, in its approval, that a longer period has been granted.

Schedule 2

Posters

In addition to the conditions contained in this By-Law, the following will apply in respect of the display of posters:

1. No more than an aggregate of 50 posters per function, or event may be displayed (except election posters) in a designated area.
2. The posters may not exceed 0.9 x 0.6m in area.

3. Posters are to be attached to Municipal electricity light poles where available and only pasted posters may be affixed to designated structures which are approved by the Municipality for the express purpose of pasting posters. They are not to be affixed to traffic signal poles, or other poles which carry road traffic signs, poles erected for any other purpose, or any other street furniture, walls, fences, trees, rocks or other natural features.

4. Posters may not be pasted on municipal electric light poles, electrical boxes, electrical substations and walls, but are to be mounted on board and affixed securely with stout string or plastic ties unless a permanent frame has been approved for this purpose. No securing material with a metal content is permitted.

5. Posters on towers, telecommunication masts or pylons will not be permitted.

6. Only one poster per function or event may be displayed on a pole.

    (i) No poster may be displayed within 30m of any road traffic sign or traffic signal.

    (ii) Posters may not be displayed more than 14 days before the date of the function. They must be removed within three days after the event in order to qualify for a refund of the deposit.

7. The Municipality may designate areas where the display of posters will not be permitted.

8. The Municipality or its agent shall remove any poster displayed in contravention of the abovementioned conditions.

9. Any poster not removed by the date referred to above shall be removed by the Municipality.

10. The display of unauthorised posters is illegal and such posters will also be removed by the Municipality or its agent.

11. All posters are to be removed by the applicant within three working days after the date of the event, or the date determined in terms of the approval granted, whichever comes first.

12. The display of posters purely for commercial advertising or by commercial bodies for profit is not permitted.