



Swellendam Municipality
Land Use Planning:
Fines and Contravention Penalty Policy
2026

Date of Approval: 01-05-2026

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Municipal Manager

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DEFINITIONS:

For the purposes of this policy, unless otherwise stated, the following definitions shall apply:

Applicant: Means any person and/or business entity appointed to submit a land use application on behalf of the registered erf's owner / owning entity.

Authorised Employee: Means the municipal employee authorised to make a decision on applications submitted in terms of the applicable bylaw, in terms of Council's System of Delegations.

Bylaw: Refers to the Swellendam Municipality: Bylaw on Municipal Land Use Planning, 2020, as amended from time to time.

Contravening Property Owner: Means the registered owner of the erf on which a contravening land use has been found to be occurring.

Contravention: Refers to any registered erf, and/or structure / building, or any part thereof that was erected or is currently utilised on that erf, in contravention of the prescripts of the Swellendam Municipality: Bylaw on Municipal Land Use Planning, 2020 and/or the Swellendam Integrated Zoning Scheme Bylaw, 2020, as amended from time to time.

Conditions of Approval: Refers to the conditions to be complied with, imposed by the Municipality, when granting approval of a land use application.

Council: Means the Municipal Council of the Swellendam Municipality.

Land Use Planning Appeal Authority: Means the Executive Mayor of the Swellendam Municipality.

Land Use Planning Application: Means an application contemplated in terms of the Swellendam Municipality: Bylaw on Municipal Land Use Planning, 2020, read together with the Swellendam integrated Zoning Scheme Bylaw, 2020, as amended from time to time.

Contravention Penalty: Means a monetary amount determined, in terms of this policy, payable by a person / entity who is in contravention of the Swellendam Municipality: Bylaw on Municipal Land Use Planning, 2020, read together with the Swellendam Integrated Zoning Scheme Bylaw, 2020, as amended from time to time.

Land Use Rights: Refers to the lawful utilisation of land imposed in terms of the zoning scheme by-law and/or the approval, issued as a consequence of a land use application.

Municipality: Refers to the Swellendam Municipality.

Zoning Scheme: Refers to the Swellendam Integrated Zoning Scheme Bylaw, 2020, as amended from time to time.

1. INTRODUCTION

Planning legislation makes provision for the payment of fines and penalties for the contravention of municipal zoning schemes and land use regulations. There are two mechanisms utilised for this purpose: Fines / Admission of Guilt Fines, issued in terms of the Criminal Procedures Act, 51 of 1977 and the National Building Regulations and Building Standards Act, 103 of 1977, and Contravention Penalties, as provided for in the Swellendam Municipality By-law on Municipal Land Use Planning, 2020.

- **Fines / Admission of Guilt Fines:** Typically, these are pre-determined monetary amounts (e.g. R1000.00 to R5000.00) for specific, listed, offences, as approved by a competent Court under the Criminal Procedures Act, 1977 (Refer **Annexure A**). Admission of Guilt Fines are usually issued by a Peace Officer. In land use related matters, an Admission of Guilt Fine is typically served if a transgressing party is found not to be adhering to a Compliance Notice. Crucially, the payment of an Admission of Guilt Fine does not legalise the offence, or absolve the transgressing party from rectifying the non-compliance. It is noted that upon conviction (or on payment of the Admission of Guilt Fine) the transgressing party will receive a criminal record.
- **Contravention Penalties:** These are tariffs imposed for commencing with a land use activity without prior approval or authorisation. Ultimately, Contravention Penalties are imposed as a condition of approval, when an identified, unauthorised land use is "regularised" through the consideration of a land use application. In other words, a Contravention Penalty can only be imposed if the land use application is approved.

Whilst the legislation makes provision for the imposition of a penalty as a condition of approval, the legislation does not set out criteria or guidelines on how and when to determine its payment. This policy serves to set out the requisite criteria or guidelines.

2. PURPOSE OF THIS POLICY

The purpose of this policy is to:

- Provide a set of criteria to assist the Municipality in determining when a contravening land use triggers the payment of a Contravention Penalty;
- Provide a set of criteria to assist the Municipality in determining the quantum payable by an owner / owning entity guilty of a contravention; and
- Outline the processes which to be followed when an owner / owning entity is found to have contravened the provisions of the applicable by-law and / or zoning scheme.

3. STATUTORY FRAMEWORK

The legislative basis for applying fines and penalties is set out as follows:

3.1 Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

Section 26(2) (a) of the Spatial Planning and Land Use Management Act (SPLUMA) states that land may be used only for the purposes permitted in a Land Use Scheme (read "Zoning Scheme"). Section 32(1) of SPLUMA further states that a Municipality may pass By-laws aimed at enforcing its Land Use Scheme. Section 58(1) of SPLUMA states that a person is guilty of an offence if that person uses land contrary to a permitted land use as contemplated in terms of Section 26(2).

3.2 Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)

Section 30 of the Land Use Planning Act (LUPA) states that no person may utilise or develop land unless the utilisation or land development is permitted in terms of a Zoning Scheme or an approval consistent with the Act and applicable Bylaws.

3.3 Swellendam Municipality: By-law on Municipal Land Use Planning, 2020

Section 86(1)(a)-(b) of the By-law states that *"A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years, or to both a fine and such imprisonment if he or she - (a) Contravenes or fails to comply with sections 15(1) and (4), 20(1), 21(4), 31(1), 59(3), 62(2) or 88(2); or (b) Utilises land in a manner other than prescribed by the zoning scheme without the approval of the Municipality"*.

Section 86(2) also states that *"An owner who permits his or her land to be used in a manner set out in subsection (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment"*;

Further, Section 86(3) states that *"A person convicted of an offence in terms of this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission."*

Importantly, Section 86(4) of the said By-law states that *"The municipality may adopt fines and contravention penalties, to be imposed in the enforcement of the said By-law"*; whilst Section 66(2)(z) of said Bylaw stipulates that the payment of a contravention penalty in respect of the unlawful utilisation of land may be laid down as a condition of approval in respect of a land use application.

4. STEPS IN THE FINE / LAW ENFORCEMENT PROCESS – FINES AND PENALTIES

The Standard Operating Procedure is summarised as follows:

- A written complaint is received and captured, and / or a contravention is noted.
- An acknowledgement letter / communique is sent to the complainant – as applicable.
- A land use contravention folder / docket is compiled, which includes all relevant documentation, or the complaint is included on a transgressions list for record purposes – as applicable.
- A desktop investigation and site inspection are conducted to confirm/deny the contravention. A report is compiled, or the matter is summarised on the transgressions list for record purposes – as applicable.
- The complainant is informed of the outcome of the inspection – as applicable.
- If no contravention is found, the complaint is closed, which is noted in the file or on the transgressions list.
- If a contravention is identified, a Compliance Notice is issued. In terms of Section 87(1) of the By-law; the municipality must serve a Compliance Notice on an owner or the owning entity if it has reasonable grounds to suspect that the owner or the owning entity is guilty of an offence in terms of Section 86.

- The Compliance Notice will include instructions, in terms of Section 87(2.) detailing the steps required to rectify any contravention and the timeframe within which this must be completed. This may include the submission of a land use application for consideration.
- The owner / owning entity must comply with the instructions set out in the Compliance Notice, or object to the Compliance Notice, within the allocated timeframe.
- Should an objection be received, the Notice can either be confirmed, varied or withdrawn, based on the evaluation of the objection. The complainant is informed of the decision.
- If the person complies with the Compliance Notice, a Compliance Certificate may be issued in terms of Section 91 of the By-law.
- Importantly, Section 90 of the By-law enables the Municipality to act against an owner / owning entity who fails to comply with a Compliance Notice, which constitutes a further offence, and for which an additional fine can be imposed. In this event the Municipality can issue a fine in terms of the Criminal Procedures Act and / or recommend to the owner / owning entity that a land use application be lodged (if applicable), which would attract a Compliance Penalty on approval.

5. CRITERIA FOR THE DETERMINATION OF THE APPLICABILITY OF A CONTRAVENTION PENALTY

A Contravention Penalty is applicable if:

- A registered erf and/ or building / structure, or portions thereof are utilised for purposes other than what is permitted by way of the Zoning Scheme and/or land use application approval; and
- A registered property and/ or building / structure, or portions thereof are utilised in contravention of an existing land use application's conditions of approval, resulting in the need for a new land use application; and
- The resultant land use application is approved.

6. PROCEDURE IN DETERMINING THE QUANTUM OF THE CONTRAVENTION PENALTY

- The quantum of a Contravention Penalty may only be determined in conjunction with a consequent land use planning application, which aims to rectify the contravening land use.
- The Contravention Penalty quantum must be stipulated as a condition of approval, and included in the decision letter in respect of the applicable land use planning application.
- A Contravention Penalty cannot be determined in the event of a land use planning application being refused. In that event, the contravening owner / owning entity must immediately, or within the period determined by the Municipality, after the final decision has been issued, cease the unauthorised land use, as per Section 87(2)(a)
- Method of Calculation of the Quantum: (current Municipal **valuation per square metre** of the registered erf) x **25%** x (**area** of the land use contravention). Note: the **area** of the land use contravention will be based on the Site Development Plan submitted as part of the land use planning application, and as determined by the municipal official dealing with the application, in conjunction with the Senior Manager Town Planning and Building Control.
- A component of the calculated quantum will always comprise a base quantum, in other words a minimum fee, payable. The base quantum for a Contravention Penalty is to be determined by Council and included in the annual Municipal Tariff List. The base quantum is payable in all instances.

*Approved Base Quantum = R5000.00
(27 Feb 2026)*

- The Compliance Penalty payable is a composite of the base quantum, as per the Municipal Tariff List, and the calculated quantum (as specifically calculated for the transgressing erf).
- An owner / owning entity may submit an appeal against the calculated quantum of a Contravention Penalty, not the base quantum. The Appeal Authority may resolve to; uphold, waive or reduce (to a maximum of 50%) the calculated quantum payable. The Appeal Authority is to provide comprehensive, written reasons for its decision. An application fee for the appeal itself is payable, as per the Tariff List approved by Council annually.

7. PAYMENT OF CONTRAVENTION PENALTIES

- A Contravention Penalty is to be paid as a single lump sum to the Municipality, within 30 days of the final notification letter relating to the land use planning application being issued.
- Confirmation of payment to be lodged with the Directorate Infrastructure and Planning Services (Sub-Directorate Land Use Planning – Town Planning and Building Control), for co-ordination purposes.
- Failure to make payment in full in respect of a Contravention Penalty, within the requisite time period, may result in the following:
 - The land use application decision not vesting (thus voiding the decision taken).
 - The Municipality not granting approval of building plans related to the contravening land use; and / or
 - The initiation of legal proceedings in terms of the Swellendam Municipality: Bylaw on Municipal Land Use Planning, 2020, as amended from time to time, or in terms of the Criminal Procedures Act, as applicable.

8. CASES IN WHICH CONTRAVENTION PENALTIES WILL NOT BE DETERMINED / REQUIRED

- Contravention Penalties will not be determined or required in instances where the relevant land use planning application cannot be supported from a land use planning perspective (in terms of current legislation) or is refused by the decision-maker. The normal procedures in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977) will therefore be applicable in such cases.
- Contravention Penalties will not be determined or required in instances where applications to regularize existing land uses have already been submitted for consideration at the time of the complaint, or at noting of the contravention, or where the land use in question is not defined in the zoning scheme.
- Contravention Penalties will not be determined or required, if documentary evidence can be provided by the property owner / owning entity, that the contravening land use has been operational for less than 3 months, from the date of noting of the contravention by the Municipality and the requisite land use application has been lodged, and so acknowledged by the Municipality.
- This policy does not supersede the fines/penalties imposed in terms of any other law.
- Contravention Penalties will not be determined or required in the event of unauthorized building work, where the land use is in keeping with the land uses permitted in terms of the Zoning Scheme and/or the land use application approval. In such an event the provisions of the National Building Regulations and Building Standards Act, in relation to fines in terms of that legislation, will apply.

- Contravention Penalties will not be determined or required for Applications for Departure or Relaxation of Building Development Parameters, in terms of the Integrated Zoning Scheme, excluding applications to deviate from the necessary height restrictions.

9. OTHER REGULATIONS

The payment of a Contravention Penalty does not preclude the contravening property owner / owning entity from receiving fines imposed in terms of any other legislation.

10. EXISTING LAWFUL USES

All existing land uses that have been approved in terms of a previous Zoning Scheme and subsequently acted on in a continuous and uninterrupted manner, but which is in contravention with the current Zoning Scheme and this Policy, will not be considered an offence, but will be considered a lawful non-conforming pre-scheme use. Proof of the non-conforming use is to be provided to the Directorate Infrastructure and Planning Services (Sub-Directorate Land Use Planning – Town Planning and Building Control).

11. COMMENCEMENT DATE

Unless otherwise specified, the commencement date of this policy will be the date of adoption by Council, and shall remain in effect until it is reviewed, revoked or amended by said Council.

Note: As per Council's resolution dated 27 February 2026, the Municipal Manager was mandated to approve the policy in the event that there were no objections, from the first day of the month that follows the closing date for public comment.

Annexure A: Admission of Guilt Fines



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MEMORANDUM

Date: 20 July 2023

Enquiries: Mrs. A. Vorster

Mrs./Ms. Antoinette Pearcey-Botha
The Magistrate
Swellendam Magistrate's Court
88 Voortrek Street
Swellendam
6740

Dear Madam

APPROVAL OF MUNICIPAL FINES

Attached please find the proposed fine list for Swellendam Municipality pertaining to the admission of guilt fines in terms of Section 57(5) of Criminal Procedures Act, 1977 (Act 51 of 1977), in respect of offences determined by me in relation to the National Building Regulation and Building Standards Act 103 of 1977 and the By-Law on Municipal Land Use Planning 2020 for the Magisterial District of Swellendam.

Yours faithfully.


Mrs. A. Vorster
MUNICIPAL MANAGER

DETERMINATION OF ADMISSION OF GUILT FINES

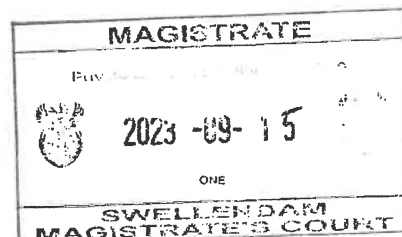
The admission of guilt fines in terms of Section 57(5) of Criminal Procedures Act, 1977 (Act 51 of 1977), in respect of offences determined by me in relation to the National Building Regulation and Building Standards Act 103 of 1977 and the By-Law on Municipal Land Use Planning 2020 for the Magisterial District of Swellendam are as per the attached Annexure, with effect from:

DATE:.....15/09/2023.....



MAGISTRATE OF SWELLENDAM

STAMP:



SWELLENDAM MUNICIPALITY



ADMISSION OF GUILT FINES

(SWELLENDAM MUNICIPALITY: BY-LAW ON MUNICIPAL LAND USE PLANNING, 2020)

Section Contravened	Description of Transgression	Approved Fines
S15(1)	Commencing, continuing, or causing the commencement or continuation of land development, other than the subdivision or consolidation of land referred to in Section 24, without the approval of the Municipality in terms of Subsection (2).	R5000
S15(5)	Not complying with the conditions of approval and applicable provisions of a Zoning Scheme while exercising a use right granted in terms of an approval.	R5000
S21(1)	Subdividing of land without approval of the Municipality in terms of Section 15(2), and which is not exempted in terms of Section 24.	R5000
S21(4)	Construction a building or a structure on a land unit forming part of a subdivision which is not confirmed, as contemplated in Subsection (1), and for which construction was not approved by the Municipality before the confirmation of the subdivision.	R5000
S31(1)	Consolidation of land without the approval of the Municipality in terms of Section 15(2) and which is not exempted in terms of Section 24.	R5000

S59(3)	Interfering with a person/official referred to in Subsection (1) who is conducting an inspection in terms of Subsection (1).	R5000
S62(2)	Knowingly lodging false information, or making a false statement, in support of an application in terms of the By-Law on Municipal Land Use Planning.	Court appearance
S88(2)	Failing to comply with a Compliance Notice within the period stated in the Notice.	R5000
S86(1)(b)	Utilizing land in a manner other than that prescribed by a Zoning Scheme, without the approval of the Municipality.	R5000
S86(1)(c)	Failing to transfer all common property arising from a subdivision to the Home Owner's Association upon the registration of the first land unit.	R5000
S86(1)(d)	Supplying particulars, information or answers in an application, or in an appeal against a decision on a application, or in any documentation or representation related to an application or an appeal, knowing it to be false, incorrect or misleading, or not believing it to be correct.	R5000
S86(e)	Falsely professing to be an Authorised Employee or interpreter or assistant of an Authorised Employee.	R5000
S86(f)	Hindering or interfering with an Authorised Employee in the exercise of any power or performance, of any duty, of that employee.	R5000
S86(2)	Any owner permitting his or her land to be used in a manner set out in subsection (1)(b) and who does not cease the use, or take reasonable steps to ensure that the use ceases, or who permits a person to continue to contravene a Zoning Scheme.	R5000

SWELLENHAM MUNICIPALITY



ADMISSION OF GUILT FINES

(National Building Regulations and Building Standard Act No.103 of 1977)

ARTIKEL / REGULASIES ARTICLE / REGULATIONS		WET/VERORDENING ACT/REGULATION	BOETE/ FINES
1.	Artikel 4 (1) Bou sonder goedgekeurde bouplan (Eienaar en Bouer)	Wet op Boustandaard Wet 103 van 1977 soos gewys.	R4000+R100/dag
	Section 4 (1) Build without building plan approval (Owner and Builder)	Act on Building standard Act 103 of 1977 as shown.	R4000+R100/day
2.	Regulasie A25 (10) & (11) Versuim om te voldoen aan betalings met betrekking tot 'n Kennisgewing bedien om bouplanne in te dien.	Nasionale Bouregulasies	R2000
	Regulation A25 (10) & (11) Failure to comply with payments in relation to a Notice served to submit building plans.	National Building Regulations	R2000

Section 57 (5) of the Criminal Procedures Act, 1977 (Act 51 of 1977)

3.	Artikel 14 - 4 (a) Okkupeer van gebou voordat Okkupasie Sertifikaat uitgereik is.	Wet op Boustandaard Wet 103 van 1977 soosgewys	R3000
	Section 14 - 4 (a) Occupation of building before Occupation Certificate is issued.	National Building Regulations and Building standard Act 103 of 1977	R3000
4.	Regulasie A22 (3) Giet beton vir fondasie en toegooi van rioolwerk voordat die nodige inspeksie uitgevoer is.	Nasionale Bouregulasies	R2000
	Regulation A22 (3) Pouring concrete on foundation trenches and back-filling sewer trenches before the requisite inspections.	National Building Regulations	R2000
5.	Artikel 39 (2) Oortreding van bepalings soos in 'n Soneringskema opgeneem.	Verordening op Munisipale GrondGebruikBeplanning	R4000
	Section 39 (2) Transgression of provisions included in a Zoning Scheme.	By-Law on Municipal Land use Planning	R4000
6.	Regulasie A25 (5) Wesenlike afwyking van 'n goedgekeurde bouplan sonder nodige goedkeuring.	Nasionale Bouregulasies	R2000
	Regulation A25 (5) Significant deviation from an approved building plan without necessary approval.	National Building Regulations	R2000
7.	Regulasie E1 (1) Sloop van gebou sonder toestemming.	Nasionale Bouregulasies	R2000
	Regulation E1 (1) Demolition of building without permission.	National Building Regulations	R2000
8.	Regulasie F8 (1) & (2) Oormatige bourommel/afval- vullis op bousterrein.	Nasionale Bouregulasies	R1000
	Regulation F8 (1) & (2) Excessive building rubble/waste on construction site.	National Building Regulations	R1000
9.	Regulasie F9 (2) Onvoldoende skoonmaak van terrein by voltooiing van gebou.	Nasionale Bouregulasies	R1000
	Regulation F9 (2) Inadequate clearance of site on completion of building operations.	National Building Regulations.	R1000

10.	Regulasie F1 (4) Hantering ten opsigte van bou of sloopwerk moet binne betrokke erfgrens geskied.	Nasionale Bouregulasies	R1000
	Regulation F1 (4) Undertaking of any building or demolition work must be confined to within the relevant property boundary/construction site.	National Building Regulation	R1000
11.	Regulasie F11 (1) Onvoldoende voorsiening van sanitêre geriewe op bouperseel.	Nasionale Bouregulasies	R3000
	Regulation F11 (1) Inadequate Ablution facilities provided on building site.	National Building Regulations	R3000
12.	Artikel 13 (1) Uitvoering van klein bouwerke sonder toestemming.	Wet op Boustandaard Wet 103 van 1977 soos gewys.	R500
	Section 13 (1) Undertaking Minor Building work without authorisation.	Act on Building standard Act 103 of 1977 as shown.	R500
13.	Regulasie 3 (1) Vertoon van advertensie sonder goedkeuring.	Verordening insake Buite Reklame en Advertensietekens, 2021.	R500
	Regulation 3 (1) Display of advertisement without approval.	By-Law Relating to Outdoor Advertising and Signage, 2021.	R500