

SWELLENDAM MUNICIPALITY



HOUSE SHOP POLICY, 2019

Approved by Council under item A111 on 25 MARCH 2019

1. PURPOSE

To provide policy direction for the consideration and establishment of House Shops on zoned residential erven within the Swellendam Municipal Area.

2. OBJECTIVES OF THE HOUSE SHOP POLICY

This document aims to achieve the following:

- Set out the Policy's scope and application.
- Provide a definition of "House Shop" from a regulatory and operational perspective.
- Specify the basic conditions and criteria against which a House Shop application is measured, in order to reach a decision on an application.
- Outline the application procedure to be followed to obtain the requisite land use rights to operate a House Shop;
- Provide a set of General Conditions of Approval to be adhered to once an approval is granted.
- Set out the law enforcement measures to be taken against the owner of a House Shop should he/she be in contravention of the conditions.

3. SCOPE AND APPLICATION OF THE POLICY

This Policy is applicable to all applications for House Shops, received after the date of approval of the Policy by Council. The Policy applies to all registered, zoned residential properties located within the Swellendam Municipal area, including the outlying towns of Malagas, Infanta, Rietkuil, Stormsvlei and Ouplaas.

4. DEFINITION OF A HOUSE SHOP

The Swellendam Integrated Zoning Scheme Regulations, 2014, defines a House Shop as follows:

***"House Shop** means the conducting of a retail trade (excluding the trade of fresh meat and scrap metal) from a dwelling-house by one or more occupants of the dwelling-house concerned, who shall reside in the dwelling-house; provided that the dominant use of the dwelling house concerned shall remain for the living accommodation of a family"*

It is noted that a House Shop must be conducted from a dwelling-house. A dwelling house is defined as follows:

***"Dwelling-House** means a building containing only one dwelling-unit, together with the customary outbuildings usually associated with such a unit, including a garden shed, one domestic accommodation unit and a hot-house, and means the same as dwelling".*

In terms of the definitions, a House Shop must be located within a dwelling-house. However, a dwelling-house includes its customary outbuildings (as usually related to a residential zoning). The outbuildings are ancillary and subservient to the main building on a land unit and includes a building for the garaging of motor vehicles, storage purposes, laundry etc. and / or any other uses usually and reasonably associated with the main building, which may include a building for domestic accommodation and a garden shed. It follows then, that a House Shop can only be approved on a formally registered property. **NB – as the Municipality is the owner of all land in an informal settlement, house shops cannot be accommodated in an informal settlement; also the informal settlement is an interim occupancy and no shops should be allowed; there is no subdivision with allotted sites.**

Given the above, the various business enterprises that are visible and operational in informal settlements are, by definition, not House Shops. These enterprises are technically also not directly subject to the provisions of the By-Law on Municipal Land Use Planning and / or the IZS – in other words no application for a House Shop can be considered and / or approved in informal settlements.

Accordingly, although these businesses can / do play a central role within these communities, their prevalence and continued existence hinges entirely on the Municipality's broad approach towards the planning, growth and development of these areas.

It is noted that the bulk of House Shops in Swellendam, as recently approved, comprise separate "wendy house" type structures, which are considered as outbuildings linked to the zoning of the property. However, given that such structures are specifically approved for the use, they cannot then also be utilized for accommodation / sleeping purposes, without a specific subsequent approval.

From an operational perspective, House Shops are regulated as a Consent Use in terms of the Swellendam Integrated Zoning Scheme Regulations, 2014, as is provided for on Residential Zone I zoned properties.

In terms of Section 19(3) of the Swellendam Municipality: By-Law on Municipal Land Use Planning, 2015, an application for Consent Use may be approved permanently or for a period specified in the conditions of approval, as imposed in terms of Section 66 of said the By-Law. Given the very fluid and dynamic nature of House Shops, a period of approval should be specified. It is recommended that the period of approval for a House Shop be three (3) years with an option to extend – please refer to Section 9 below.

Finally, the primary purpose of a House Shop is to provide easy access to essential consumer items in a local community. Its core business is groceries, pre-packaged food items and perhaps fresh vegetables, as well as various convenience services such as airtime sales and key cutting, and shoemaker services etc. A liquor store (off sales) is specifically excluded as it may only operate on a property with a business zoning. House Shops are also specifically excluded from trading in gas and / or gas containers, and the operation of video game consoles and pool tables (which fall within the parameters of other zonings). It is noted that there are no specific requirements for on-site parking for House Shops, as most clients come on foot.

5. CRITERIA AND CONDITIONS FOR ASSESSMENT OF HOUSE SHOPS

- **Location**

Ideally House Shops should be located along existing and proposed activity spines or within the activity nodes set out in the Swellendam Spatial Development Framework, 2014, (SDF). These areas are usually highly accessible to the general public and are areas where business facilities should be concentrated in the future.

If a House Shop is to be located within a residential area it should preferably be situated on a corner erf, where it has the potential to ultimately develop into a corner shop with a business zoning. The corner erf should further be of such a nature that it serves an extensive component of the target market in the neighbourhood and the shop has a reasonable chance of developing into a feasible business enterprise. It is noted that corner erven are often larger than adjoining properties and adjoin fewer neighbours, thus causing less of a direct impact on residents.

House Shops should, ideally, not be located mid-block within a residential area. This location only serves a very limited segment of the population and usually has no potential to grow into a feasible business. Furthermore, House Shops in this location would have the tendency to draw outsiders into the heart of the community, which is not ideal. Deliveries etc. in mid-block locations also tend to be a problem, as a result of higher pedestrian road use in such areas and lack of parking. Municipal services are then also more often damaged, given the tight turning circles to access these areas.

A House Shop located in a mid-block position may be considered in special cases, such as where it comprises a larger than average erf, is physically centrally located within the block, and / or where it would be located further than 150m from the corner of the block. The location of House Shops must also take into account the general compatibility with adjoining land uses and the density of development in an area. Easy vehicle access should also be a key consideration.

- **Density of House Shops**

The number of House Shops within a predominantly residential area should be restricted. A restriction on the number of House Shops and / or their density will serve to protect and enhance the character of the residential environment, protect residents' rights to a quality living environment, protect vulnerable members of the community and ensure that any adverse social impacts and unlawful activities can be controlled.

Although each application for a House Shop should be treated on its merits, the overall density of residential development in an area and the prevailing site sizes should be considered as central considerations. With this in mind, ideally no new House Shops should be located within a radius of 150m of an existing House Shop or a zoned business property. A radius of 250m is considered to be an appropriately sized area for a House Shop to service, particularly as it is aimed to be a local convenience that serves surrounding residents. **It should also be noted that no house shop may be approved if the land use zoning (including consent) on a particular street is changed with more than 20%.**

- **House Shop Structure, Extent and Placement**

The nature and extent of a House Shop on a property shall in all cases be subservient and ancillary to the existing dwelling unit, and not impact negatively on the ability to utilize the overall property for residential purposes. The following shall apply:

- All applicant properties shall have an existing dwelling-unit on it.
- The dominant use of the dwelling-house structures, and of the property, shall remain residential.
- The maximum extent of a House Shop shall be 20m², all inclusive.
- The placement and extent of a House Shop must be clearly indicated on a Site Development Plan (SDP) that forms part of the application process and approval – the SDP must be drawn up by a registered draftsman or architect.
- No House Shop may be operated from within a state subsidized house, although a separate House Shop structure may be erected elsewhere on the property (as per the definition of dwelling-house), subject to the policy requirements.
- The trading area of a House Shop shall be restricted to within the denoted footprint of an existing structure, or that of a new structure, as illustrated on the Site Development Plan, all of which will remain within the definition of “dwelling-house” in terms of the IZS. No products may be stored and or exhibited outside of the approved House Shop premises / structure.
- The House Shop to be located within the building envelope of the applicant property; requests to relax the building lines to accommodate a House Shop must be carefully considered and motivated.
- All applications for House Shops which involve additional (built) structures, and / or renovations to existing built structures, shall be subject to the lodgment and approval of building plans.

- **Operating Hours**

All House Shops shall be subject to operating hours, given that they are approved as a Consent Use only and usually located within a relatively densely developed residential area. Operating Hours for House Shops shall be 06h00 to 22h00 daily, although the hours may be adjusted on a case to case basis, dependent on the locality and nature of adjoining land uses. Operating hours for a particular House Shop may also be restricted, based on comments received from the public during the application process or based on weighted feedback received from neighbours once the House Shop is operational.

- **Ablution Facilities**

The House Shop operator shall have easy / direct access to ablution and hand-washing facilities at all times **and the basic fee for the availability of water and sanitation be charged at a business rate.**

- **Ownership**

Experience has shown that independent, third party operators of House Shops on a residential property (sub-letting), generally do not have an overall positive impact on the local community, for a variety of reasons. In terms of this policy therefore, the following ownership criteria shall apply:

- Only the registered owner of a property and / or a member(s) of his immediate family residing within the dwelling-unit on the premises may operate a House Shop from those premises, in the first instance.
- In the case of a tenant, the person must demonstrate that he/she resides within the dwelling-unit on the property and has a valid rental agreement for full extent of the property (erf) - ideally the rental agreement should cover the full approval period of the House Shop.

It is noted that the approval to operate a House Shop will be specifically made out to an individual on a particular erf, and is not transferable. The approval lapses if the property is sold or alienated.

As House Shops offer a “soft” entry into business enterprise, all effort must be made upfront to properly identify the applicant and to ensure that the operator is in fact a legal resident. To this end all applicants for a House Shop must include a certified copy of their South African Identity Document, and in the case of foreign nationals all the necessary legal documentation to reside / work in South Africa i.e. resident permit, work permit etc. The onus rests with foreign nationals to ensure that they have a valid Asylum Seeker Permit (where applicable) at all times. Failure to produce such a permit on request will result in the House Shop application and / or approval being withdrawn immediately and the House Shop being closed.

- **Municipal Services**

Existing Municipal services to an applicant property **will be adjusted to reflect a business rate.** This is of particular relevance to electricity supply. The applicant property will be limited to one electrical service connection, which may not be split into two electrical supplies and will be metered by only one meter (shared supply). The erf is also limited to its existing electrical supply capacity (60 amp). The property will also continue to be serviced by 1 water and 1 sewer connection.

In the case of subsidized services, the benefit will be withdrawn on approval of a House Shop on the property, implying that the owner / tenant will pay standard residential tariffs **together with refuse removal levy for the collection of their refuse at least twice per week** for the entire property if he / she elects to operate a House Shop from the premises.

- **Other Regulations**

All House Shops must comply with the health, safety and fire regulations in terms of relevant legislation. Other than fresh vegetables, only pre-packaged food that is properly labelled and supplied by a registered food dealership may be sold from the shop. No food may be produced or handled on the premises.

6. APPLICATION PROCEDURE

As noted above, all applications for House Shops are considered as a Consent Use in terms of the Integrated Zoning Scheme Regulations, 2014, and are processed as per the provisions of the By-Law on Municipal Land Use Planning. The following documentation and information must be submitted to the Department Town Planning and Building Control before an application for a new

House Shop, or the regularization of an existing House Shop, can be considered:

- Completed application forms.
- A comprehensive motivation for the House Shop on the applicant property, made in terms of land use principles set out in the Land Use Planning Act No.3 of 2014, including the type of merchandise to be sold.
- Proof of payment.
- Power of Attorney or owner's consent (if owner is not the applicant).
- Copy the Rental Agreement (in the case of a tenant).
- Certified copy of the South African Identity Document and in the case of a foreign national, asylum seeker permit, legal documents for working / residing in South Africa.
- A Locality Plan.
- A Site Development Plan.
- A surrounding Land Use Plan.
- Copy of the applicant property's title deed.
- Copy of the property's Surveyor General's Diagram.
- Internal and external photos of the existing / proposed House Shop, showing the area to be used, its relationship to the existing dwelling unit on the erf, treatment of erf boundaries, rubbish disposal area, signage, parking (if applicable), external storage, furnishings, fittings, floor coverings, ablution facilities, internal storage areas, etc. (if applicable).

On receipt of the requisite documentation, the application will be circulated to the adjoining property owners and placed on the Municipal website. The applicant will also be required to place a notice of the application on the property for public consideration. Applications for House Shops are not advertised in the local newspapers given the prohibitive cost. **Notices, advertising the application for comments, are provided to ward councilors and placed on the property. It is the ward councillor's responsibility to engage with their ward residents on the application and provide inputs before the closing date provided for in the advertisement.** After consideration of all the relevant documentation, and the comments and recommendation made by the Department Town Planning, in terms of the IZS, the By-Law and the land use principles contained in the Land Use Planning Act, the Authorised Official will make a decision on the application.

On receipt of the Consent Use approval, the requisite Building Plans can be considered (where applicable).

7. GENERAL CONDITIONS OF APPROVAL

The following General Conditions of Approval shall apply to all House Shops, which shall be included in the letter of approval:

- The Letter of Approval and Site Development Plan must be available within the House Shop at all times and be provided on request.
- The onus rests with the owner / tenant to ensure that he/she has a valid residence permit / work permit and an Asylum Seeker Permit at all times (if applicable). Failure to produce such a permit on request will result in the approval being withdrawn immediately and the house shop being closed.
- A House Shop may only be operated from a structure that complies with the Swellendam Integrated Zoning Scheme Regulations, 2014, and has been approved by the Department Town Planning and Building Control.
- The Consent Use approval is valid for three (3) years; an application for extension may be submitted provided it is lodged within the period of the original approval.
- **The renewal application will be circulated to the ward councillor only, for their input.**
- The approval to operate a House Shop is not transferrable (to another erf or to another person).
- There must be an existing dwelling-unit on the property that is occupied by the owner or a legal tenant.

- The House Shop may only be operated by the registered owner / legal tenant of the entire property (in accordance with a valid rental agreement) - the registered owner / legal tenant is to reside within the dwelling-unit on the property.
- Subletting of only a portion of the property is not permitted.
- No person(s) may sleep within the House Shop structure.
- The House Shop must be tended to directly by the owner / legal tenant (or his / her immediate family who reside within the dwelling-unit on the property) to whom the approval has been issued, no outside assistants are to manage the shop.
- The operation of the House Shop may not create a public nuisance.
- The operating hours for a House Shop are between 06h00 and 22h00 daily, unless determined otherwise for a particular property.
- A fire extinguisher (4.5kg) must available in the House Shop at all times.
- Any person who has secured Municipal approval to operate a House Shop and elects to cease its operation shall inform the Municipality thereof in writing.
- Only one House Shop shall be allowed on a property.
- No person shall own or operate more than one (1) House Shop or permit it to be operated on his / her behalf.
- If stock is to be delivered, the deliveries must be restricted to normal business hours which is 8:00 to 17:00.
- No Jukeboxes will be allowed within a House Shop.
- Only one unilluminated advertising sign, not bigger than 90cm x 60cm will be permitted for a House Shop; a separate application will need to be made to the Municipality in terms of the By-Law on Outdoor Advertising, and such signage may not be erected within the road reserve.
- No heavy-vehicle deliveries will be allowed to the premises.
- **The applicant property will be limited to one electrical service connection, which may not be split into two electrical supplies and will be metered by only one meter (shared supply). The erf is also limited to its existing electrical supply capacity. Refer – Page 5**
- No food may be prepared or processed on the premises.

8. LAW ENFORCEMENT AND COMPLIANCE

- **Background Checks**

All applications for House Shops are to be sent to the Division Law Enforcement of the Swellendam Municipality and the South African Police Services for background checks on the applicant and the property. All House Shops will be inspected continuously to monitor compliance.

- **Withdrawal / Termination of an Approval**

Approval to operate a House Shop will be withdrawn / terminated under the following circumstances:

- Non-compliance with the Conditions of Approval.
- If the property is sold and/or alienated.
- In the event of the death of the owner / tenant.
- Valid objections have been received and the owner / tenant has not responded to the objections and / or adequately addressed the problems.
- If the owner / tenant of the property is convicted of a crime relating to illegal activities linked to the operation of the House Shop.
- If the owner / tenant terminates the activity.
- **If more than 75% of the residents within the 250m radius provide a petition that they want the house shop to stop operating due to unsuitability to the sense of community or culture of the residents.**

- No other house shop allocation within that 250 m radius will be approved within a period of 12 months, after an approval have been rescinded on request of the community.

Non-compliance with the Conditions of Approval can lead to notification for the immediate termination of the approval and ultimately the closure of the House Shop. Non-compliance will trigger immediate legal action by Council, which could include a fine and / or a court order to cease operations. In the case of a criminal offence, the matter will be referred to the State Prosecutor's office for further legal recourse.

The Municipality will accept no responsibility whatsoever for the stock (storage, deterioration or otherwise) or the loss of income caused in the event of the forced closure of a House Shop and / or the termination of an approval. In the event of a forced closure of a House Shop, the Municipality may give the owner / operator a period of up to 48 hours to sell and or to make alternative arrangements for the merchandise – circumstances permitting.

9. VALIDITY PERIOD OF APPROVAL

Given the fluid and dynamic nature of the land use / activity, a Consent Use approval for a House Shop is valid for three (3) years. The approval may be extended (to the current operator) by a further three (3) years, provided the application for extension is received prior to the existing approval lapsing. The onus lies with the existing operator to ensure that he / she applies timeously for an extension. If an application for extension is not received within the said period, a new Consent Use application will have to be lodged for consideration. It is reiterated that the approval is not transferrable (to another erf or to another individual), implying that each new owner / operator will have to lodge an application for consideration. The primary purpose of these measures is to better manage land use in the local area and to ensure that we are aware of the bona fides of each owner / operator.