



DRAKENSTEIN

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House Shop Policy

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Signed by the City Manager 	Signature Date 29 July 2020



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DEFINITIONS

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

Application	Means an application contemplated in terms of the By-law and/or zoning scheme.
Authorised Employee	Means the employee authorised to make a decision on applications for house shops, in terms of Council's system of delegations.
By-law	Refers to the Drakenstein By-law on Municipal Land Use Planning, 2018, as amended from time to time.
Consent use	Refers to a land use right granted to a property owner on a temporary or permanent basis, in terms of the respective By-law and zoning scheme.
Conditions of approval	Refers to the measures that are put in place in order to ensure that the house shop is compliant with relevant legislation, policies, norms and standards.
Co-operative	Means the ability of the house shop to operate as a distributor of products.
Council	Means the municipal Council of the Drakenstein Municipality.
Departure	Relates to an application in terms of the By-law in order to depart from the standard development parameters contained in the zoning scheme.
Dwelling unit	Means a group of interrelated rooms and ancillary facilities for the accommodation of a single household and can be a dwelling house, second dwelling house, third dwelling unit, employee housing or a dwelling unit in an apartment building or a group housing scheme.
Foreign National	A person who does not have citizenship status to reside in the Republic of South Africa.
House shop	Refers to the use of a portion of a dwelling house or outbuildings or structure, such as wendy houses, temporary structures or containers, on the premises for the sale of convenience goods to the public, that allow for the serving of goods to customers directly from the street.
House shop operator	Refers to the person who is the permanent resident or operator of the house shop, to whom the house shop approval is granted.
Land use rights	Refers to the lawful utilisation of land imposed in terms of the zoning scheme and/or land use application approvals.
Municipality	Means the Drakenstein Municipality.
Neighbours' permission	Means a land use in any zone provided for in the zoning scheme, the use of which may only be exercised if the written permission of the affected neighbours have been obtained, in which case the Municipality's permission is deemed to have been granted.
Overlay Zone	Relates to a designated area identified in the zoning scheme in which the development rules or use rights relating to that specific area or



	land unit may differ from that in the base zone, or may set new development rules or use rights.
Technical approval	Refers to an application in the zoning scheme in which no neighbours' permission is required, and in which the land use may only be exercised once the Municipality has approved a site development plan.
Zoning scheme	Refers to the Drakenstein Zoning Scheme By-law, 2018, as amended from time to time.

1. INTRODUCTION

The existing Drakenstein Municipality Integrated House Shop Policy has been in operation in the municipal area since 2013. At the time, the policy was the first of its kind, aimed at regularising the house shop/spaza shop industry.

Since adoption, the policy has been operating seamlessly, and house shop operators have largely been complying with the policy ever since. A significant amount of approvals have been issued since the adoption of the policy, with only a few cases of house shop operators not complying with their conditions of approval being reported, subsequently leading to the revoking of approvals and/or the institution of legal proceedings.

However, the house shop policy is based on a suite of national, provincial and municipal legislation, policies and frameworks, the bulk of which have been repealed in Drakenstein Municipality. The most important legislation involved is the repeal of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985) together with the various zoning schemes adopted in terms thereof and other legislation, namely the Paarl Zoning Scheme Regulations, Wellington Zoning Scheme Regulations, Mbekweni Township Establishment Conditions, as well as the Section 8 Zoning Scheme Regulations.

The above-mentioned legislation have been repealed and subsequently replaced with the Drakenstein By-law on Municipal Land Use Planning and the newly adopted Drakenstein Zoning Scheme By-law. These by-laws have completely changed the manner in which land uses are managed throughout the municipal area, including house shops. The need has therefore arisen to review the existing house shop policy, in order to align it with the new suite of planning legislation in Drakenstein Municipality.

2. PURPOSE OF THE HOUSE SHOP POLICY

The purpose of the house shop policy is to:

- 2.1 Provide a set of criteria that will assist the Municipality in the assessment of all applications for house shops;
- 2.2 Outline the processes which should be followed in order to obtain the necessary land use rights to operate a house shop;
- 2.3 Provide law enforcement measures which could be taken against the house shop owner/operator, should it be found that the house shop is operating in contravention with the conditions of approval, or be operating illegally; and
- 2.4 To align the house shop policy with the current suite of planning legislation in Drakenstein Municipality.

3. STATUTORY FRAMEWORK

3.1 NATIONAL BUILDING REGULATIONS AND STANDARDS ACT, ACT 103 OF 1977

This Act stipulates that a building plan for a structure to be used as a house shop, albeit for the conversion of a portion of an existing house or garage or a new structure (permanent or temporary), must be submitted to the Municipality for approval.

3.2 DRAKENSTEIN BY-LAW ON MUNICIPAL LAND USE PLANNING, 2018, AS AMENDED

Section 15(1) of the Drakenstein By-law on Municipal Land Use Planning, 2018, as amended, states that no person may commence, continue, or cause 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).

Section 15(2)(n) further states that the owner or his agent may apply to the Municipality for the development of the land concerned, which involves a consent use contemplated in the zoning scheme.

3.3 DRAKENSTEIN ZONING SCHEME BY LAW, 2018

Section 15(1) of Drakenstein Zoning Scheme By-Law, 2018, stipulates that consent use applications are made in terms of the Planning By-law. In this regard, house shops are categorized as consent uses in the Conventional Housing Zone, Multi-Unit Housing Zone, as well as the Community Use Zone.

It should also be noted that a house shop is permitted as a technical approval in the Agriculture Zone. In this regard, Section 13(1) states that where a land use falls in the "Technical Approval" column of a land use table in a zone, it may only be exercised once the Municipality has approved a site development plan. It is furthermore important to note that applications for technical approval are not meant to be evaluated in terms of desirability, but only against technical compliance with the provisions of the zoning scheme. No right of appeal exists against the refusal of a technical approval.

In addition, in terms of the Local Economic Development Overlay Zone contained in the zoning scheme, approval of house shop applications are deemed to be granted in the event of the applicant obtaining the affected surrounding property owners' written permission. Should the applicant fail to obtain the written permission of the affected surrounding property owners, permission is deemed not to have been granted, and in which an ordinary consent use application must be submitted.

4. GUIDELINES AND PARAMETERS FOR HOUSE SHOPS

The following section serves to provide clear guidelines and parameters which will be used by the Municipality in evaluating the merits of house shop applications, or in cases of technical approvals, the criteria in ensuring technical compliance with the zoning scheme and policy.

4.1 EXCLUSIONS FROM THIS POLICY

4.1.1 The provisions of Paragraph 4 do not apply to the properties located within the Local Economic Development Overlay Zone, as indicated in the zoning scheme.

4.1.2 Notwithstanding point 4.1.1 above, a 20l refuse bin must be provided by the operator at all house shops, and must be easily accessible to the clients at all times.

4.1.3 The standard conditions applicable to house shops located in the Local Economic Development Overlay Zone, as indicated in the zoning scheme, shall be applicable to house shops in these areas.

4.2 CRITERIA AND CONDITIONS FOR EVALUATING APPLICATIONS FOR HOUSE SHOPS

4.2.1 HOUSE SHOP OPERATOR

4.2.1.1 A house shop operator must be a permanent resident of the property on which the house shop is being proposed.

- 4.2.1.2 When submitting a house shop application, sufficient proof must be provided that the operator permanently resides on the property. Such proof includes, but is not limited to, a title deed, municipal account or a lease agreement between the operator and the owner of the property.
- 4.2.1.3 The Municipality will consider, only in exceptional circumstances and with sufficient motivation, to allow the operation of a house shop, where the operator is not a permanent resident of the property.

4.2.2 HOUSE SHOP STRUCTURE AND EXTENT

- 4.2.2.1 An operator may utilise a portion of a dwelling unit in which he permanently resides in order to operate the house shop, on condition that all other parameters contained in the zoning scheme are adhered to.
- 4.2.2.2 The total floor area occupied by the house shop, including storage of goods, may not exceed 25% of the coverage of the property or 30m², whichever is the lesser.
- 4.2.2.3 The trading area of the house shop shall not extend beyond the cadastral boundaries of the property.
- 4.2.2.4 The serving counter of the house shop must be set back at least 1.5m from the street boundary to allow sufficient space for clients, and the pavement must not be obstructed by any goods or clients.

4.2.3 ADDITIONAL PERMITTED STRUCTURES

- 4.2.3.1 Additional and alternative structures (built or temporary) may be erected in order to operate a house shop, provided that the property shall have a main residential dwelling unit on it.
- 4.2.3.2 The dominant use of the property shall remain residential.
- 4.2.3.3 The trading area may not be used for sleeping/habitable purposes.
- 4.2.3.4 Any new or additional structures (built or temporary) erected with the purpose of accommodating the operation of a house shop shall be done with due cognisance of the residential character of the area.

- 4.2.3.5 All additional (built) structures, including renovations/extensions to existing built structures, with the intention of accommodating the house shop, shall be subject to the submission and approval of a building plan by the Municipality.

4.2.4 ABLUTION FACILITIES

- 4.2.4.1 The house shop operator shall have unfettered access to ablution and hand-washing facilities on the property, at all times.

4.2.5 CITIZENSHIP AND EMPLOYMENT

- 4.2.5.1 All house shop operators must submit a certified copy of their ID and in the case of a foreign national, legal documents permitting the foreign national to stay in South Africa, proof that they may operate a business or be employed therein, as well as their proof of place of residence.
- 4.2.5.2 In the case of a foreign national, legal documents must include, amongst others, a business visa, workers visa, asylum visa or permanent residency documentation which allows the respective individual the right to be a business owner/entrepreneur and or employed therein.
- 4.2.5.3 A house shop operator may employ no more than two additional persons, which may or may not be permanent residents on the property, to assist with the operation of the house shop.
- 4.2.5.4 A certified copy of the necessary applicable documents of the person(s) assisting the house shop operator must accompany the house shop application.
- 4.2.5.5 In the event of a change in the person(s) assisting the operator with the operation of the house shop, the operator shall inform the Municipality thereof, and submit certified copies of the new persons' ID documents or documents (if applicable) as per Paragraph 4.2.5.2.

4.2.6 TRADING HOURS

- 4.2.6.1 The house shop shall not operate outside the hours of 06:00 and 22:00 daily.
- 4.2.6.2 Notwithstanding the afore-mentioned clause (Paragraph 4.2.6.1), the Municipality may at any given time amend or alter the operating hours of any approved house shop, if it is deemed necessary.



4.2.7 SIGNAGE

- 4.2.7.1 Only 1 un-illuminated sign, with a maximum of 2000cm² in size, which can be affixed to the wall of the house/second dwelling/third dwelling/outbuilding/container/caravan or any other legal structure as approved by the Municipality, shall be permitted.
- 4.2.7.2 No illuminated-, mobile-, freestanding-, or protruding signs shall be allowed.
- 4.2.7.3 No signage of any nature may be erected beyond the boundaries of the property on which the house shop is located.

4.2.8 ADDITIONAL FACILITIES

- 4.2.8.1 No additional facilities in the form of video games, pool tables, vending machines, jukeboxes, or limited pay-out gambling machines shall be permitted.

4.2.9 RESTRICTION ON PRODUCTS SOLD

- 4.2.9.1 The following products may not be stored and/or sold from house shops:
- (a) Sale of fireworks, sale or storage of gas or flammable fuel or gas/fuel containers, alcoholic beverages, or any other substance deemed to be of an illegal nature.

4.2.10 OTHER REGULATIONS

- 4.2.10.1 All house shops must comply with health, safety and fire regulations in terms of the relevant legislation.

4.2.11 CASES IN WHICH APPLICATIONS FOR HOUSE SHOPS WILL NOT BE CONSIDERED

- 4.2.11.1 When the house shop operator has not obtained the written permission/Power of Attorney of the registered owner of the property.
- 4.2.11.2 Where the house shop operator illegally occupies the land on which the house shop is being proposed.
- 4.2.11.3 When the house shop is being proposed to operate from a municipal rental unit, which has not yet been transferred to the

tenant/beneficiary, except where the deed of sale makes provision for immediate occupation or where Council has granted its consent for the tenant/beneficiary to operate a house shop.

4.3. STANDARD CONDITIONS OF APPROVAL

4.3.1 Approval for the operation of a house shop shall be linked to the specific property and the house shop operator of the respective property, with a Power of Attorney from the registered owner of the respective property, if applicable.

4.3.2 The rights to operate a house shop are NOT TRANSFERRABLE.

4.3.3 Any deviation from the standard conditions of approval for the operation of a house shop can only be considered upon application.

4.3.4 The house shop may not be operated as a co-operative.

4.3.5 A 20l refuse bin must be provided by the operator and must be easily accessible to clients at all times.

4.3.6 Building plans must be submitted for approval in all instances for the structures or portions thereof, which is to be utilised for the operation of the proposed house shop.

4.3.7 A certificate of acceptability must be obtained from the Cape Winelands District Municipality in all instances where food are prepared and processed.

4.3.8 The house shop approval must be displayed on the premises at all times.

4.4 PUBLIC NUISANCE

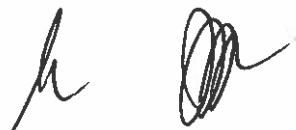
4.4.1 The house shop may not constitute a noise nuisance (people shouting, loud music being played, extraction fans, etc) and/or create a nuisance for any neighbouring property owner (as a result of vehicles parking in the street, damaging neighbour's property, smoke from fires, cars hooting/stopping in front of neighbours' property, etc).

5. APPLICATION PROCEDURES

5.1 The application process in order to obtain the necessary land use rights to operate a house shop, will be as follows:



- 5.1.1 The applicant must submit an application to the Land Use Planning and Surveying Section, on the prescribed application form together with the necessary supporting documentation. The form will make provision for the comments of the adjoining property owners as well as the relevant Ward Councillor.
- 5.1.2 An application fee shall be payable and may vary depending on the type of application required. This application fee may be reviewed on an annual basis, as in the case of all other land use application fees.
- 5.1.3 In cases where house shops are proposed from properties which formed part of municipal human settlement projects, the transfer to the beneficiary of which has not yet been affected, the applicant must provide written confirmation that the property owner is in fact the beneficiary of the property. The Land Use Planning and Surveying Section will also confirm these details during the processing of the application.
- 5.1.4 The surrounding property owners, Ward Councillor and/or Ward Committee are required to indicate their support or objection in respect of the proposed house shop, on the applicant's prescribed application form. Once all surrounding owners, Ward Councillor and/or Ward Committee have indicated that they do not object and that the applicant has proved that the proposed house shop will comply with the guidelines and parameters for house shops as indicated in this policy (see paragraph 4), a letter of approval will be issued by the Corporate Services Department, upon approval of the application by the authorised employee or the Municipal Planning Tribunal, in terms of the Municipality's system of delegations.
- 5.1.5 If one or more of the adjoining property owners, Ward Councillor and/or Ward Committee object to the application, the objection(s) will be forwarded to the applicant for comments. Once the applicant's response to this objection has been received, a report will be compiled by the Land Use Planning and Surveying Section for consideration by the authorised employee or Municipal Planning Tribunal for final decision-making. The applicant and objector(s) will thereafter be informed of the decision by the Corporate Services Department, together with their right of appeal against the decision to the Executive Mayor.
- 5.1.6 All approvals will be made subject to the standard conditions of approval applicable to house shops. Additional conditions may be imposed on a case by case basis.
- 5.1.7 After approval has been received, the applicant must submit building plans for approval, which will be scrutinized via the normal building plan application process, and will be evaluated in terms of environmental health regulations, fire prevention regulations,



technical building requirements, compliance with land use application conditions of approval, etc.

6. LAW ENFORCEMENT PROCEDURES

- 6.1 Law enforcement in respect of house shops will be dealt with in accordance with Chapter IX of the By-law, or any other corresponding chapter or any other relevant municipal by-laws dealing with land use enforcement and compliance.
- 6.2 Notwithstanding Paragraph 6.1 above, all existing house shops that do not have approval will be required to cease all activities with immediate effect, until the necessary application is undertaken and finalised in terms of the applicable By-law and/or Policies. In this regard the initial steps will be taken by the Land Use Planning and Surveying Section, but in case of non-compliance be handed over to Law Enforcement for finalization.

7. EXISTING LAWFUL HOUSE SHOPS

- 7.1 All house shops that have legally been approved in terms of a former zoning scheme and subsequently acted on, which is in contravention with the zoning scheme and this policy, will not be considered an offence, but a lawful non-conforming use.

8. DISCLAIMER

- 8.1 Where the provisions of this policy contradicts with the provisions of the zoning scheme and/or any other law, then the provisions of the zoning scheme and/or that law will take precedence.
- 8.2 The Municipality may, at any given time, alter or amend any approval conditions pertaining to the relevant approved house shop, if it is deemed necessary.

9. COMMENCEMENT DATE

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

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