



## **KNYSNA MUNICIPALITY: HOUSE SHOPS POLICY**

### **1. PURPOSE**

To formulate a policy with regard to the establishment of house shops on residential premises located within the Knysna Municipal Area.

### **2. BACKGROUND**

The policy under consideration is specifically aimed at achieving sustainable land use control guidelines to allow house shops to operate from residential premises.

At present Knysna Municipality regulates the establishment of house shops on an ad-hoc basis in terms of temporary use departures from the zoning schemes applicable to the area the house shop is located in, except for those areas that are zoned as “informal residential”. There are limited controls in place to identify appropriate sites for these types of micro- business enterprises and there is currently no policy in place to manage house shops.

Cognizance should be taken in the preparation of the policy of the fact that the framework within which the house shops will be allowed to operate can become a sensitive issue, especially in the poorer communities which these “shops” mostly serve. It is thus essential that a balance is achieved between implementing a framework to manage these businesses and the perceived constitutional right of an individual to generate an income from the premises they reside in.

In terms of planning theory and practice the following issues need to be taken into consideration;

- a) The operation of a house shop is a way in which a homeowner with very little capital can enter into business and make a living or get started in the building of a business venture. House shops are therefore beneficial in terms of micro enterprise development and economic development in general.
- b) House shops, because they are embedded in the community, offer a very high degree of convenience to local people who often have limited mobility. Therefore they enhance the quality of life for people who use them.
- c) House shops create social space where neighbours can meet while making purchases, thereby performing a potentially important informal social meeting space.
- d) Shops by their nature are places where people congregate to a greater extent than at ordinary houses and the owner of the property has only a commercial relationship, not, necessarily a personal relationship with the people who go there. They therefore make it easier for outsiders to enter the community and have a legitimate explanation for being there, whether their real reason is legitimate or not. This reduces security within residential neighbourhoods.
- e) Because they are also spaces where business transactions take place and goods are bought and sold house shops are relatively easy covers for illicit commercial activity such as the sale of liquor and drugs. This can lead to social problems.
- f) In the South Africa context house shops are sometimes owned by foreigners and this can cause tension either because of competition with local business people or because of perceptions of commercial exploitation.

Controlling the establishment of shops in the existing business and industrial areas of Knysna generally does not present a problem for the municipality as formal zoning rights are in place and “new” rights can be accommodated in terms of rezoning and departure /consent applications. However, problems exist in the historically disadvantaged townships where discriminatory planning principles only made provision

for residential uses and the backlog in housing provision took priority over other land uses. These planning principles resulted in the creation of unregulated business establishments as experienced today.

### **3. DEFINITION OF A HOUSE SHOP**

According to the Draft Knysna Integrated Zoning Scheme Regulations a House Shop is defined as follows:

*“Means an enterprise for the selling of goods for retail trade purposes from a dwelling unit provided that the dominant use of the dwelling unit concerned shall remain for the living accommodation of a single family; the floor area of a house shop shall not exceed 25m<sup>2</sup>.”*

A house shop shall include, but is not limited to, a convenience retail business that sells groceries and other food stuffs, as well as convenience services such as a hair salon and barber, cell phone / landline airtime sales and service, photocopy and faxing service, tyre sale and repair, shoemaker services, road side take-away, butchery, bakery, second hand clothing shop and pharmacy.

A liquor store (off sales) is not considered a house shop as it has a wider servicing area than the surrounding community. *(See Knysna Municipality Tavern policy)*

It must be noted that the above definition includes operation of a retail trade from a dwelling house, second dwelling, outbuilding or any other legal structure as approved by Council, by one or more of the occupants residing permanently on the respective residential property.

### **4. OBJECTIVES OF THE HOUSE SHOP POLICY**

This house shop policy aims to achieve the following:

- To provide a set of criteria that will assist Council in the assessment of all applications for house shops;

- Outline the process which should be followed in order to obtain land use rights to operate a house shop;
- Specify the criteria against which a house shop application is measured in order for Council to consider and reach a decision with respect to the application;
- Provide conditions which should be adhered to once approval is granted for a house shop; and
- Provide law enforcement measures which could be taken against the house shop owner should he/she be in contravention of these conditions.

## **5. SCOPE AND APPLICATION**

This policy is applicable to all existing house shops (both approved and unapproved) and new applications for house shops relevant to residential neighbourhoods within the urban areas of Knysna Municipality, including the outlying towns of Rheenendal, Keurhoek, Karatara, and Sedgefield.

## **6. LEGISLATIVE AND REGULATORY FRAMEWORK**

The Knysna Municipality still utilises four (4) separate zoning schemes to regulate/manage land uses in the area under its control, being the Knysna Zoning Scheme Regulations (1992) including the Informal Zone; Sedgefield Zoning Scheme Regulations (1980); Noetzie Zoning Scheme Regulations (2000); and Section 8 Zoning Scheme (e.g. Brenton, Belvidere, Keurhoek, Rheenendal and the rural areas in between). The municipality is in the process of integrating these zoning schemes to enable an Integrated Land Use Management System. This new policy should therefore be applicable both to the four existing schemes and to the new Integrated Zoning Scheme.

In the absence of the Integrated Zoning Scheme, the policy will need to be informed primarily by existing legislation and policy guidelines.

## **6.1 Land Use Planning Ordinance, 1985 (No. 15 of 1985)**

In terms of Section 36 of the Land Use Planning Ordinance, 1985 (Ord 15 of 1985) a land use application can only *“be refused on basis of a lack of desirability of the contemplated utilisation of land concerned, including the guideline proposals included in a relevant structure plan in so far as it relates to desirability, or on the basis of its effects on existing rights concerned (except against an alleged right to protect against trade competition)”* and *“regard shall be had, in considering relevant particulars, to the safety and welfare of the members of the community concerned, the preservation of the natural and developed environment concerned or the effect of the application on the existing rights concerned.”*

## **6.2 Existing Zoning Scheme Regulations**

House shops are handled as temporary use departures from the Knysna, Sedgefield, Noetzie- and Section 8 Zoning Scheme Regulations in terms of section 15 of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985). A temporary departure is allowed for a maximum period of five (5) years and approval can be extended for a further five (5) years.

In terms of the Notice P.N.465/1992 dated 25 September 1992 applicable in the Northern Areas for informal residential zoned properties “any occupier of any unit of accommodation may utilize such unit for any social, educational, religious, occupational or business purposes subject to the following conditions:

- The dominant use of the property shall remain residential;
- The use concerned shall not be disturbing to the neighbours; and
- The use concerned shall not interfere with the amenity of the direct neighbourhood.

Furthermore it is stated that land zoned for street purposes may be utilized for business purposes without erection of any permanent structures; provided that the council may terminate such utilization if there is in its opinion interference with pedestrian or vehicular movement, or with the amenity of the neighbourhood.

It is important to recognise, therefore, that for as long as the existing zoning regulations remain in place, there is a presumption that a house shop can be operated on any property in the informal residential areas.

### **6.3 Draft Integrated Zoning Scheme Regulations for Knysna, 2008**

The draft integrated zoning scheme makes provision for a “house shop” as a consent use under Informal Residential. This means that once the Integrated Zoning Scheme is adopted people operating house shops in informal areas will have to apply to Council for consent to continue operating the shops.

## **7. CRITERIA AND CONDITIONS FOR ASSESSMENT OF LAND USE RIGHTS TO OPERATE A HOUSE SHOP**

### **7.1 House Shop Extent and Position**

- The extent and position of the house shop should be clearly indicated on a plan and shall not exceed 25m<sup>2</sup>, (excluding any ablution facilities); and
- The trading area of the house shop shall be restricted to within the boundaries of the property.

### **7.2 Locality**

House shops should ideally be located along existing and proposed activity spines and activity nodes as indicated in the latest Knysna Spatial Development Framework. These areas are usually highly accessible to the general public and are areas where business facilities should be concentrated.

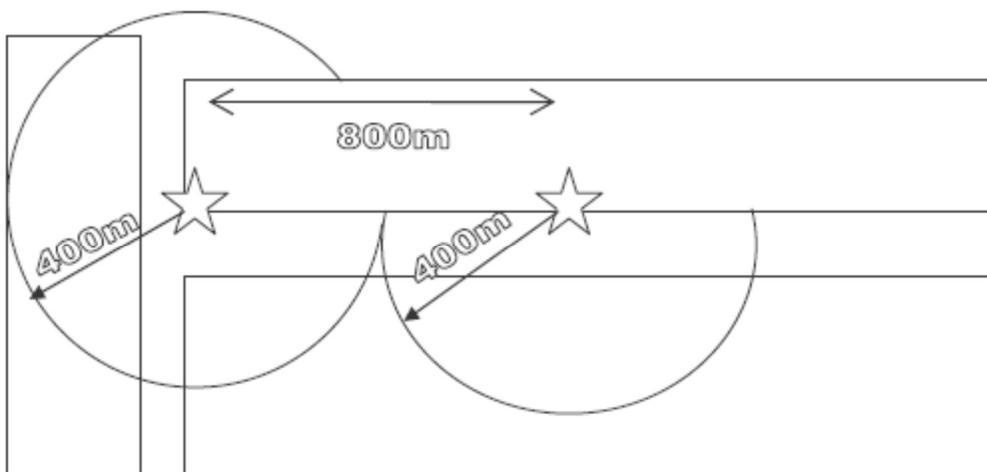
If a house shop is to be located within a residential area it should preferably be situated at a corner property where it has the potential to ultimately develop into a corner shop. The locality of the corner site should further be of such a nature that it serves a fairly

wide target market in the neighbourhood and the shop has a reasonable chance of developing into a feasible business.

House shops should, ideally, not be located mid-block within a residential area. This type of locality only serves a very small portion of the population and has no potential to grow into a feasible business. Furthermore, house shops in this location draw outsiders' right into the heart of the community. However, a house shop located mid-block may be considered in special cases where the house shop will be serving a wider area and there are no corner house shops in the area.

### 7.3 Number of house shops per area

The number of house shops within a predominantly residential area should be restricted in order to protect and enhance the character of the residential environment, protect the residents' rights to a quality human friendly living environment, to protect the vulnerable members of the community and to ensure that any adverse social impacts and unlawful activities can be controlled. Only house shops that are located in locations which can expand into fully fledged corner shops should be permitted. The number of shops permitted will thus depend on the number of premises available where the house shop can expand into fully fledged corner shops. However house shops located in a residential areas, which sell similar convenience goods should be located outside the 400m buffer zone i.e. in radius and 800m apart.



#### **7.4 The structure on the property**

- The property shall have a main residential dwelling unit on it;
- The dominant use of the property shall remain residential;
- 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 cognizance of the residential character of the area; and
- All additional (built) structures, including renovations to build structures with the intention of accommodating the house shop, shall be subject to building plan approval of Council;
- Containers may not be used to trade from.

#### **7.5 Operating hours**

House shops should have limited operating hours so as to respect the residential sense of place of the area it is located in. Trading hours of house shops in the residential areas should thus be restricted to protect residents' rights. It is recommended that trading hours be limited to:

07h00 22h00 in the residential areas; and 06h00 to 23h00 for properties located in recognized business areas, activity nodes and along activity corridors.

Trading hours may be further restricted subject to comments received from the public during the application process.

#### **7.6 Compatibility with other surrounding land uses**

The location of house shops must also take into account their compatibility with other land uses generally found in the residential area that they are located in or adjacent to.

#### **7.7 Ablution Facilities**

The House shop operator shall have access to ablution and hand-washing facilities.

## **7.8 Citizenship**

All applicants must submit a certified copy of South African ID and in the case of foreign nationals, legal documents for residing in South Africa i.e. work permit etc. and proof of residence must be submitted.

## **7.9 Other Regulations**

- House shops operated from Council owned land should have a lease agreement in place;
- The house shop must comply with the following health regulations if food is to be sold or prepared in the house shop's premises, namely:

(a) that the owner obtains a business license for the preparation of meals as required in terms of the Business Act, 1991 (Act 71 of 1991);

(b) that the premises comply with the general hygiene requirements for food premises and the transport of food Regulation 918 of 1999 as promulgated under the Health Act, 1977, (Act 63 of 1977);

(c) that a Certificate of Acceptability be obtained as required by the Health Act, 1977 (Act 63 of 1977);

(d) that the premises comply with government notice R975 of 2000 relating to the smoking of tobacco products in public places as promulgated in terms of Section 2 of the Tobacco Products Control Act, 1999 (Act 12 of 1999) as amended.

## **7.10 General conditions of approval**

The following general conditions shall apply to all house shops:

- The rights to operate a house shop are NOT TRANSFERRABLE;
- No person(s) may sleep/overnight within the shop if it is located in other structure on the erf;
- A house shop is restricted to the selling of daily household goods and services;

- The sale of liquor or alcoholic beverages, storage or sale of gas and gas containers, paraffin and other hazardous substances as well as the operation of vending machines, video games, gambling machines or pool tables is prohibited;
- The extent and position of the retail component shall be clearly defined on a plan, and shall not exceed 25m<sup>2</sup>. In cases of outbuildings or containers; an additional area of 15m<sup>2</sup> can be applied for in order to accommodate any water closet, change room, and/or storeroom;
- Any new structure, or alteration to the existing dwelling unit or outbuilding, must conform to the residential sense of place of the area concerned;
- Trading must be restricted to the property and the dwelling unit and not take place on the sidewalks;
- All signage must be in accordance with the Knysna Bylaw on Advertising and Outdoor signage;
- If stock is to be delivered the deliveries must be restricted to normal business hours which is 8:00 to 17:00;
- Jukeboxes will not be allowed within a house shop. Should music be played in a house shop, it must be limited to listening music set at a low volume and speakers may not be placed outside the house shop;
- The display of certificates obtained from Eden District Municipality in respect of health regulations and Knysna Municipality in respect of the business licenses, where food is to be sold or prepared;
- The erf 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.

## **8. LAW ENFORCEMENT**

All applications for house shops are to be sent to the Law Enforcement Section of the Knysna Municipality and the SAPS for their comments so as to ascertain whether:

- any criminal activities such as illegal gambling, sale or distribution of narcotics, etc. have occurred or alleged to have occurred on the property;

- incidents such as murders, stabbings, fights, etc. have been reported in the immediate vicinity of the property;
- the area poses a risk for vehicular or pedestrian accidents; and
- any illegal sale of liquor has been reported.

The house shop approval will be revoked should any of the evidence of any of the abovementioned is submitted.

### **8.1 Non-compliance with approval conditions**

- If approval conditions are not complied with the Town Planning Section will issue a written notice to the owner to rectify any irregularities within 7 (seven) days.
- If objections are received with regard to the legally approved house shop the Town Planning Section will evaluate the legality of the objections and if necessary inform the owner about these objections and will request the owner to comply with the approval conditions.
- If there is failure to comply with the general conditions of approval further legal action will be taken by Council. If necessary a court interdict will be obtained against the owner of the property forcing him to suspend trade from the property.
- In the case of a criminal offence, the matter is to be referred to the state prosecutor's office for further legal recourse.

### **8.2 Withdrawal and lapsing of an approval**

Approval is granted to the owner of the property to run a house shop from his dwelling unit and will be withdrawn under the following circumstances:

- When the property is alienated.
- In the event of the death of the owner.
- Valid objections have been received and the owner has not responded to the objections and adequately addressed the problems.

- If the owner of the property is convicted of a crime involving drug abuse, selling of drugs, the illegal sale of liquor, operating a shebeen or tavern from the house shop, prostitution, crimes involving weapons or fire arms or assaults.
- Where the owners ends the approved activity.

## **9. VALIDITY PERIOD OF APPROVAL**

A house shops is a temporary land use and only approved for a period of 5 (five) years. For the approval not to lapse, the owner must apply before 4 (four) years and 11 (eleven) months has lapsed, for the extension of the approval for a further period of 5 (five) years.

## **10. THE APPLICATION**

### **10.1 Application details to be submitted with the Town Planning department**

The following documents and information must be submitted before an application to rectify an unregulated house shop / a new house shop can be considered:

- Completed application forms;
- Proof of payment;
- Power of attorney or Owner's consent (if owner is not the applicant);
- Certified copy of ID and in the case of a foreign national legal documents for residing in South Africa and proof of place of residence must be submitted;
- Locality plan;
- Site development plan;
- Surrounding land use plan;
- Copy of title deed;
- Internal photos of the existing house shop clearly showing each room used by the shop, furnishings, fittings, floor coverings, ablution facilities, internal storage areas, etc. (if applicable);
- External photos clearly indicating the external finishes of the structure which is used, its relationship to the existing dwelling unit on the erf, external storage

areas, parking areas, treatment of erf boundaries, garbage disposal area, signage. (if applicable);

- The owner of the existing or proposed house shop must provide a full motivation stating the type of house shop being applied for and as to why it should be approved.

## **10.2 Advertising and processing of applications**

All applications for unregulated or new house shops shall be advertised as follows:

- Registered Notices shall be served on surrounding property owners affording those 30 days to comment. Copies of these notices may also be served by hand to these property owners or comment forms can be submitted by the applicant from the neighbours;
- Notices shall be served on surrounding organizations such as community, welfare, educational and religious organizations as well as other commenting government departments affording them 30 days to comment;
- Notices shall be served on the Ward Committee of the area as well as the Ward Councillor affording them 30 days to comment;
- The applicant shall be granted a maximum of 30 days to comment on the objections / comments received;
- A report on the application shall be compiled and will be sent to the delegated official or the applicable Committee, as the case may be, for a decision / final recommendation;
- The decision / final recommendation will then be communicated to the applicant and any objector by registered post; and
- The applicant or objector, as the case may be, shall be afforded a right of appeal in terms of the provisions of the Land Use Planning Ordinance (No. 15 of 1985), which right must be exercised within 21 days of registration of the decision notice.