

KOUGA MUNICIPALITY(EC108)

POLICY ON SPAZA/HOUSE SHOPS

1. **PURPOSE**

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

2. **DEFINING A SPAZA/HOUSE SHOP**

A Spaza/House Shop means *"the conducting of a retail trade from a dwelling house, container or outbuilding (of any acceptable material) by one or more occupants of the dwelling house concerned, who shall reside in the dwelling house; provided that the predominant use of the dwelling house concerned shall remain for the living accommodation of a single family."*

Subject to the definition of a house shop it can also include the letting of a outbuilding for the purpose of a Spaza Shop, by submitting with application, a formal contract agreement between the lesser and the lessee

3. **BACKGROUND**

At present, the Kouga Municipality controls the establishment of house shops on an ad-hoc basis. There are limited controls in place to identify appropriate sites for these types of micro- business enterprises.

The policy is specifically aimed at achieving sustainable land use control lines to allow house shops or similar micro enterprises to operate from residential premises.

The policy takes into consideration existing municipal by-laws and policies.

Cognizance was taken in the preparation of the policy of the fact that the framework within which the house shops are allowed 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 control/manage these businesses and the perceived constitutional right of an individual to generate an income from the premises he resides in.

Controlling the establishment of shops in the existing business and industrial sections of Kouga 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.

Problems however exist in the previously disadvantaged where discriminatory planning principles only made provision for residential uses and no proper

planning is in place to allow for business and industrial land uses. These planning principles resulted in the proliferation of illegal business and industrial establishments experienced today.

It is acknowledged that many of these illegal establishments allow members of the community access to basic goods and services without the need to travel far and that it promotes entrepreneurship (allows people to make a living and access work opportunities). The uncontrolled allowance of these activities can however result in some level of abuse - can act as fronts for illegal activities such as selling of drugs and liquor, etc.

4. **PROPOSED POLICY**

4.1 Locality

Spaza (House) Shops should ideally be located along existing and proposed activity spines and activity nodes as indicated in the Kouga Spatial Development Framework as well as on land already designated for business purposes. These areas are usually highly accessible to the general public and are areas where business facilities should be established.

If a Spaza Shop is to be located within a residential area it should preferably be restricted to a corner stands where it might eventually develop into the traditional corner shop. The locality of the corner site must further be of such a nature that it serves a fairly wide surrounding area and the shop has a reasonable chance of developing into a feasible corner shop.

No Spaza/House Shop located midblock must be allowed. This type of locality does only serve a very small portion of the population and has no potential to grow into a feasible business.

4.2 Number of Spaza/House Shops per area

The number of Spaza/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 and amenity 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. The dominant use of the property shall remain residential, the use concerned shall not be disturbing to neighbours and the use concerned shall not interfere with the amenity of the direct neighbourhood.

4.3 Operating hours

The Spaza/House Shops should have limited operating times so as to respect the residential character of the area it is located. Trading hours in the residential areas should thus be restricted to protect residents' rights. It is recommended that trading hours be limited to 06:00 to 22:00 Monday to Thursday, 06:00 to 23:00 Friday and Saturday and 06:00 to 18:00 on a Sunday or Public Holiday.

4..4 Compatibility with other surrounding land uses

The location of house shops must also take into account its compatibility with other land uses generally found in a residential area. Thus it is advised that no house shop is authorized or established where its proximity to community uses such as schools, crèches, places of worship, old age homes, hospitals, clinics, libraries or public open spaces is likely to have a negative impact on the facility. House shops should ideally not be located in close proximity of a tavern given the potential adverse social implications thereof.

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

5. **LAW ENFORCEMENT**

It is imperative that all applications for a house shop are sent to the Traffic Services/Law Enforcement Section of the Kouga Municipality 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;
- vehicle and/or pedestrian accidents occurred in the vicinity of the property;
and
- any illegal sale of liquor has been reported.

The Spaza/House shop should be refused if any of the abovementioned poses a problem.

6. **GAMING MACHINES, ETC.**

In order to ensure that there is no loitering around the Spaza/House shop, it is recommended that no activity such as video games, gaming machines and pool tables be allowed within a Spaza/House Shop. No place of entertainment will be allowed to operate from a Spaza/House Shop.

7. **HEALTH, BUILDING CONTROL & SAFETY REQUIREMENTS**

- (i) Plans prepared by registered (SACAP) architectural professional for all proposed Spaza/House shop must be formally submitted to the local authority for approval prior to implementation of construction.
- (ii) Approval of all plans by all departments (Town planning, Electrical, Fire, Traffic, Technical and Health).
- (iii) Spaza /House Shops are classified as small shops (F2 in regulation A20 of SANS 10400) and must comply with all the SANS 10400 requirements for this specific classification.
- (iv) Note: All plan approvals are conditional and owners are to comply with all conditions of approval which includes the arranging of the necessary inspections contained in the conditions of approval.
- (v) In order to comply with the necessary health and safety factors, only brick and block structures built with SABS approved material will be considered (no wood or corrugated iron structures permitted).
- (vi) House shops/Spaza area not to be used for habitable area (*i.e cannot be utilized as a room when the shop is closed*).
- (vii) Note:

Containers can only be considered where they comply with the following:-

- (a) The National Building Regulations and Building Standards Act 103 of 1977 & SANS 10400 code of practice must be complied with, which will require a rational design. This means that the container as is will not be acceptable for use as a shop.
- (b) The placement of container type (*i.e converted*) Spaza Shop will have to take place within the erf boundaries to the satisfaction and approval of Council.
- (c) The size of containers will also be restricted to a maximum 20m².

- (viii) There must be separate area for the shop – not exceeding 20 m²
- (ix) All interior walls must be properly painted with an oil based paint, and the area must have a dust proof ceiling and concrete floor and be adequately lighted and ventilated.
- (x) The area must have a separate entrance from the street or a serving hatch for customers.
- (xi) The area must be properly equipped with approved material.
- (xii) The area must be equipped with wash hand basin with cold water, and the method of disposal must be satisfactory from a health point of view.
- (xiii) A standard size refuse bin must be provided and the necessary service from the Cleansing Department arranged.
- (xiv) The area must create no health nuisance nor interfere with the amenity and comfort of the surrounding area by virtue of noise, odour or fumes.
- (xv) If perishable foodstuffs are to be sold, the applicant must comply with the Health departments requirements relating to the sale of these type of commodities.
- (xvi) Only factory wrapped or tinned goods will be allowed to be sold as a general rule.
- (xvii) The Spaza/House Shop must have it's own equipment and no equipment belonging to the dwelling unit may be utilized.
- (xviii) The area must be adequately rodent-free as prescribed by Government legislation.
- (xix) The area may not be used for habitation purposes.
- (xx) The suitability or any proposed area for Spaza/House Shop purposes shall be decided on an AD HOC basis considering the prevailing circumstances.

8. **LEGISLATIVE HEALTH REQUIREMENTS**

The Spaza/House shop must comply with the following health regulations if food is to be sold or prepared from the shop, 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 962 of 2012 as promulgated under the Foodstuffs Cosmetics and Disinfectants Act 54 of 1972;
- (c) that a Certificate of Acceptability be obtained as required by Regulation R962 of 2012
- (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.

9. **PROCEDURE FOR THE APPLICATION OF A BUSINESS LICENCE**

9.1 Planning and Development

An application for Consent Use must be submitted to the Directorate Infrastructure Planning & Development specifically the Planning section.

9.2 Application procedure for the consent of the Council:

- (a) An owner of land intending to apply to the Council for consent for the erection and use of a building, or the use of land in any use zones, for a house shop which requires the consent of the Council, shall upon submission of such application on the standard application form.
- (b) Serve written notice of the proposal, either by registered post or by hand, on the adjoining/affected property owners, whether the property is developed or not, provided that where the written notice is served by hand, a copy of the notice so served shall be signed by the adjoining/affected owner and acknowledging that he/she has received the notice and shall be lodged with the Council in proof of such service.
- (c) Submit the application in writing to the Council.
- (d) Submit such information as may be required by Council.
- (d) Pay such fees as may be levied by the Council.

9.3 The notices mentioned above shall contain the name and address of the applicant and shall state that any objections or representations in connection with such consent shall be submitted in writing simultaneously to the Council and the applicant within 21 days of the date of the written notice.

- 9.4 The Council shall take into consideration any objections and representations received within the said period of 21 days and shall notify the applicant and any person from whom an objection or representation was received of its decision.

10. **DEPARTMENT ENVIRONMENTAL HEALTH**

Upon approval of the Consent Use application by the Department Infrastructure, Planning and Development, a business license and Certificate of Acceptability application must be submitted to the Department: Health & Social Services: Environmental Health Services of the Kouga Municipality and a permit to operate for which there is a charge must be obtained from the Environmental Health Department.

11. **NOISE NUISANCE**

The Spaza/House Shop may not constitute a noise nuisance (people shouting, loud music being played, extraction fans, etc), 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).

All music played in a house shop must be limited to listening music set at a low volume and speakers may not be placed outside the house shop. Juke boxes will not be allowed within a house shop.

At present the approval of house shops does result in a substantial increase in property rates and taxes as well as the loss of government subsidies where the house shop is conducted from a state subsidized dwelling unit. As the turnover of the house shops is relatively small this has the effect that it is virtually impossible to operate the house shop as an economically feasible establishment.

These facts are also not known to the owner of the house shop and usually come as a huge surprise to the owner when he receives his rates and taxes account. These increases are a result of the municipality's rates system which adjusts the rates to business should a house shop be approved. The property owner will be partially exempted from paying business rates and taxes.

11. **GENERAL RULES**

The following general rules shall also apply to all house shops:

- (a) A house shop is restricted to the selling of daily household goods and food. The sale of liquor or alcoholic beverages, storage or sale of gas and gas containers, vending machines, video games or pool tables is prohibited.
- (b) The extent and position of the retail component shall be clearly defined on a plan, and shall not exceed 20 m²
- (c) Any new structure, or alteration to the existing dwelling unit or outbuilding, must conform to the residential character of the area concerned.
- (d) Trading must be restricted to the property and the dwelling unit and not on the sidewalks.
- (e) Trading can only be from structures which have approved plans;
- (f) The owner of the house shop or the person renting the house shop shall not use the house shop for dwelling purposes.
- (g) No more than 3 (three) persons, including the occupant of the dwelling unit, are permitted to be engaged in retail activities on the property.
- (h) Only one un-illuminated sign shall be permitted and shall not exceed 1,5m² in area. Such sign shall indicate only the name of the owner, the name of the business and the nature of the retail trade
- (i) Disposal of refuse must be addressed to the satisfaction of Council.
- (j) If stock is to be delivered the deliveries must be restricted to normal business hours (08h00 to 17h00 weekdays only).
- (k) Council may require on-site parking to its satisfaction.
- (l) Permission to operate a house shop is granted to a particular operator operating from a particular property and is not transferable.
- (m) All owners of house shops must be informed to apply to legalize their house shops within three months after receiving written notice.
- (n) Normal applications fees for departures must be paid.

12. **NON COMPLIANCE WITH CONDITIONS OF APPROVAL**

- (a) If conditions of approval are not complied with the Town Planning Section will issue a written notice to the owner to rectify any irregularities within seven (7) days.

- (b) 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 re-request the owner to comply with the conditions of approval.
- (c) Failure to comply with points (a) and (b) above further legal action will be taken by Council. A court interdict will be obtained against the owner of the property forcing him to suspend trade from the property.
- (d) In case of serious crime, charges must be laid at the South African Police Services.

13. **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 or laps under the following circumstances:

- (a) When the property is alienated.
- (b) In the event of the death of the owner.
- (c) Valid objections have been received and an interdict against the owner is obtained.
- (d) The owner of the property is arrested in connection with drug abuse, selling of drugs, the sale of liquor or the operation of a shebeen from the house shop, prostitution, gun incidents, knife stab incidents or any other crime incidents.
- (e) Where the owners ends the approved activity.


14. **VALIDITY PERIOD OF APPROVAL**

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

15. **ILLEGAL SPAZA/HOUSE SHOPS**

Notices must be served on all illegal Spaza/House Shop owners to immediately stop their activities and to close the said shop within 30 days of the notice. The owners must furthermore also be informed that failure to comply with the notice will result in legal action been taken by the Council. A court interdict will be

obtained against the owner of the property forcing him to suspend trade from the property.



E DU PLESSIS
MUNICIPAL MANAGER

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DATE