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Cape Agulhas Municipality House Shop By-law

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Commences on 3 November 2015 unless otherwise noted

[The municipality published a similar House Shop by-law on 2012-12-14. It is presumed that this by-law repeals the older by-law.]

WHEREAS section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

AND WHEREAS Part B of Schedule 4 to the Constitution lists Municipal Planning as local government matters to the extent set out in section 155(6)(a) and (7);

AND WHEREAS the Cape Agulhas Municipality seeks to manage, control and regulate municipal land use planning and any matters connected therewith;

BE IT ENACTED by the Council of the Cape Agulhas Municipality, as follows:—

To identify, classify and regulate house shops within the authority's area of Jurisdiction

1. Definitions

In this by-law, unless the context otherwise indicates:

"**authorised official**" means an employee of the Council appointed by the Municipal Manager to exercise the powers of an authorised official in terms of the provisions of this by-law;

"**approval period**" means a maximum of five years in terms of the Standard Bylaws for Municipal Land Use Planning, after which an extension for the period must be applied for;

"**Council**" means the municipal Council of the municipality;

"**house shop**" means the operation of a retail business from a dwelling for the convenience of the immediate community by the registered owner of the dwelling, who must occupy the dwelling; provided that the primary use of the dwelling shall remain residential;

"**municipal manager**" means a person appointed by the Council in terms of the Local Government: Municipal Structures Act, 1998 ([Act 117 of 1998](#));

"**municipality**" means the Cape Agulhas Municipality;

"**national building regulations**" means the National Building Regulations promulgated in terms of the National Building Regulations and Building Standards Act, 1977 ([Act 103 of 1977](#));

"**public nuisance**" means any act, omission or condition which is offensive to the public, which is detrimental to or dangerous for public health, which materially interferes with the ordinary comfort, convenience peace or quiet of the public or which adversely affects the safety of the public;

"**zoning scheme**" means a zoning scheme promulgated in terms of the Land Use Planning Ordinance 15 of 1985 or the Integrated Zoning Scheme promulgated in terms of SPLUMA, 2013 ([Act 16 of 2013](#));

"**zoning scheme regulations**" means Section 7 and Section 8 of the Scheme Regulations in terms of the Land Use Planning Ordinance 15 of 1985 or the Integrated Zoning Scheme promulgated in terms of SPLUMA, 2013 ([Act 16 of 2013](#));

2. Application of this by-law

(1) This by-law is applicable to the entire area of jurisdiction of the Cape Agulhas Municipality.

- (2) The provisions of this by-law do not derogate from the provisions of any other legislation.

3. Classification of house shops

- (1) House shops are classified as follows:
- (a) a profit-seeking house shop;
 - (b) a house shop with an identified shop area inside an existing dwelling;
 - (c) a house shop where formal advertising takes place;
 - (d) a house shop where goods are purchased and delivered;
 - (e) a house shop where business hours are maintained;
 - (f) a house shop where entertainment may be provided in the form of game machines and pool tables;
 - (g) a house shop where the primary use of the premises is residential and the secondary use is for the purposes of a house shop.

4. Applications for house shops

- (1) Only the registered owner of the property (and who resides on the property) may apply to operate a house shop.
- (2) Only the registered owner, who resides on the property, may operate the house shop.
- (3) An application for approval of a house shop shall be made in terms of SPLUMA, 2013, which application shall be for a departure.
- (4) The following documents must accompany an application for a house shop:
- (a) The fully completed application form;
 - (b) A locality plan of the business component of the proposed house shop;
 - (c) Proof of the written consent of all surrounding/adjacent owners for a house shop to be operated on the relevant premises;
 - (d) A motivation by the applicant for the establishment of a house shop on the premises.
- (5) The application shall be advertised in the local newspaper(s) and per registered letter to directly adjacent property owners.
- (6) The application shall only be advertised once the relevant application fee, as determined by Council from time to time, has been paid.
- (7) The municipality shall grant thirty days for comment on or objections to the proposed application.
- (8) The Municipal Manager or his/her authorised official shall consider the application and make a decision regarding the approval or nonapproval thereof.
- (9) The applicant and objectors, if applicable, shall be notified in writing of the decision of the Municipal Manager or his/her authorised official.
- (10) Objections in terms of Section 4(7) of this by-law shall be dealt with in terms of SPLUMA, 2013.

5. Requirements for a house shop

- (1) House shops must meet the following requirements –
- (a) The house shop may only be operated from a dwelling that complies with the Scheme Regulations applicable to the specific area and the National Building Regulations;

- (b) The business component of the house shop may not exceed more than 33% of the total floor area of the dwelling;
 - (c) The erf from which the house shop is operated must contain a dwelling as a primary residential property;
 - (d) The house shop may not be located within the road reserve;
 - (e) The approval for the operation of the house shop may not result in less than 80% of the property in the specific street being nonresidential by nature;
 - (f) In the case of a house shop being classified as a category two house shop, an application must be made for the rezoning of the relevant premises, but the fact that an application for rezoning must be submitted cannot be viewed as an automatic approval of the relevant rezoning application.
- (2) Should any of the aforementioned provisions not be complied with or contravened, the Council reserves the right to withdraw the approval at any time.

6. Restrictions

- (1) Any alterations to the existing dwelling must blend in with the residential character of the area concerned.
- (2) The business portion of the house shop may not be extended.
- (3) All legislation, regulations and safety measures regarding the operation of the house shop and merchandise therein must be adhered to by the owner.
- (4) The operation of the house shop may not cause a public nuisance.
- (5) No explosive or flammable substances may be kept or sold.
- (6) Consent to operate a house shop is granted to the registered owner of the premises and is not transferable.
- (7) The business activities may only take place between 06:00 and 22:00.
- (8) Should an applicant wish to erect advertising signage –
 - (a) an application must be submitted in advance to the municipality;
 - (b) only one unlighted sign or notice, no larger than 2 000 cm² in extent, indicating the name of the owner, business and the nature thereof only, may be displayed;
 - (c) the prior written approval of the municipality must be obtained.
- (9) Only the registered owners of the property may be involved in trading.

7. Non-liability of the municipality

The municipality shall not be liable for any direct or consequential loss or damage suffered or sustained by the owner of the house shop premises as a result of or arising from the approval of the house shop.

8. Compliance notices

- (1) Whenever a law enforcer finds that any person contravenes any provision of this by-law or that a situation arises which causes a public nuisance or which could possibly lead to a public nuisance as a result of any person's actions or failure to act, such law enforcer may serve a fine of R2 000 on such a person.
- (2) Should a notice be served, it must contain the following –
 - (a) The provision of the by-law that is being or will be contravened, should the situation be allowed to continue;

- (b) The measures to be taken to rectify the situation; and
- (c) The timeframe for compliance with the notice.

9. Application

The provisions of this by-law do not detract from the provisions of any other legislation in terms of which provision is made for the control of house shops as stipulated in that legislation.

10. Transitional arrangements

- (1) A person who can prove that the Council has already granted approval for the operation of a house shop at the time of implementation of this by-law may continue to act in accordance with the approval in terms of such by-law, provided that:
 - (a) The registered owner reapplies to the Council within six months of the proclamation of this by-law;
 - (b) Approval is not transferred from the original applicant to another person; and
 - (c) The owner of the house shop provides proof of the Council's approval.

11. Delegation

The Municipal Manager may delegate any power or function conferred on the Municipal Manager in terms of the provisions of this by-law in writing to an official of the municipality.

12. Penalty clauses

- (1) A person who contravenes any provision of this by-law is guilty of an offense and a fine of R2 000 could be imposed on conviction.
- (2) A person who fails to comply with a notice served in terms of Subsection 8 or fails to meet a requirement of an authorised employee during the exercise of his or her powers or the performance of his or her duties, is guilty of an offense and a fine could be imposed on conviction.

13. Short title and commencement

This amended by-law is known as the Cape Agulhas Municipality House Shop By-law and comes into effect on the date of the publication thereof in the Provincial Gazette.