

# CAPE AGULHAS MUNICIPALITY

## By-Law relating to House Shops

*To identify, control and order house shops in the municipal authority's jurisdiction*

### Arrangement of Sections

1.	Definitions	1
2.	Application of this by-law	3
3.	Classification of house shop	3
4.	Application for house shop	4
5.	Requirements for a house shop	5
6.	Restrictions	6
7.	Non-liability of the municipality	7
8.	Compliance notification	7
9.	Application	8
10.	Transitional arrangements	8
11.	Delegation	9
12.	Penalty Clause	9
13.	Short title and commencement	9
14.	Appendix A	10

## 1. Definitions

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

**"authorized officer"** means an employee of the Council appointed by the municipal manager to exercise the powers of an authorized official in terms of this by-law;

**"approval period"** a maximum of five years under the Land Use Planning Ordinance No 15 of 1985, after which the applicant must re-apply for extension;

**'category one'** a House shop operated for profit within existing structures, where formal advertising takes place, stock purchased and delivery takes place, business hours are maintained and the predominant use of the site is residential, with the house shop secondary;

**"category two"** A House Shop where the predominant use of the site is for business purposes; stock is stored in bulk on site and shop owners overnight in the shop;

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

**" house shop "**the operation of a retail business from a dwelling or outbuilding for the convenience of the immediate community by the owner of the dwelling or outbuilding, who must occupy said building or dwelling, provided that the overall use of the dwelling will remain residential;

**municipal manager** "means a person who is appointed by the council under the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

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

**"national building regulations"** means the National Building Regulations promulgated under the National Building Regulations and Building Standards Act 103 of 1977;

**"public nuisance"** means any act, omission or condition that is materially unsightly, harmful or dangerous to the health, the ordinary comfort, convenience, peace or quiet of the public or adversely affect the safety of the public;

**"zoning scheme"** zoning scheme promulgated in terms of the Land Use Planning Ordinance No 15 of 1985;

**"zoning scheme regulations"** Section 7 and Section 8 Scheme Regulations under the Land Use Planning Ordinance No 15 of 1985.

## **2. Application of this by-law**

- (1) This by-law applies to the entire jurisdiction of the Cape Agulhas Municipality.
- (2) The provisions of this regulation does not derogate from the provisions of any other legislation.

## **3. Classification of house shop**

- (1) House shops are classified into two categories, namely-
  - (a) Category One and;
  - (b) Category Two.

(2) A Category One house shop is –

- (a) a house shop with a profit aim;
- (b) a house shop with a business area identified within existing structures;
- (c) a house shop where formal advertising takes place;
- (d) a house shop for which stocks are purchased and delivered;
- (e) a house shop where business hours are maintained;
- (f) a house shop where entertainment in the form of game machines, pool tables and a juke-box are made available;
- (g) a house shop where the predominant use of the premises remains residential, with the house shop secondary.

(3) A Category Two house shop is –

- (a) a house shop where the predominant use of the site is for business purposes;
- (b) a house shop where bulk inventory is stored on site; and
- (c) a house shop where the shop owners overnight in the shop.

#### **4. Applications for house shops**

- (1) Only the owner of the property may apply to operate a house shop.
- (2) An application for approval of a house shop will be done in terms of the Land Use Planning and specifically as a departure.
- (3) The following documents must accompany an application for a house shop:
  - (a) The fully completed application form as outlined in Appendix A to this by-law;
  - (b) A locality plan of the business component of the proposed house shop;
  - (c) Evidence of the written consent of all adjacent / adjoining owners to the proposed house shop on the relevant premises;
  - (d) A motivation of the applicant to establish a house shop on the premises.
- (4) The application will be advertised in the local press and by registered letter to immediately adjacent property owners.
- (5) The application will only be advertised after the appropriate application fee, as determined by Council from time to time, has been received.
- (6) Thirty days will be granted by the municipality to comment.

- (7) The Municipal Manager or an authorized official will consider the application and make a decision as to the approval, or non-approval.
- (8) The applicant and objectors, if applicable, will be notified in writing of the decision of the Municipal Manager or his / her authorized official.
- (9) Objections in terms of Section 4(6) will be handled in terms of the Land Use Planning Ordinance, No. 15 of 1985.

## **5. Requirements for a house shop**

- (1) House shops must meet the following requirements-
  - (a) The house shop may only be operated from a structure that adheres to the Scheme Regulations applicable to that particular area and the National Building Regulations;
  - (b) The business component of the house shop may not exceed 45% of the total floor space of the structure;
  - (c) The lot on which the house shop is operated must have a primary residential dwelling;
  - (d) The house shop may not be located within the road reserve;

- (e) The approval for the operation of the shop may not result in less than 80% of the property in the street, being non-residential;
  - (f) Where a house shop is classified as a category two house shop, an application for the rezoning of the property must be submitted, but the fact that an application is made for rezoning cannot be seen as an automatic approval of the rezoning application;
- (2) The Council reserves the right to withdraw the approval at any time if any of the aforementioned guidelines are not met or transgressed.

## **6. Restrictions**

- (1) Any new structure or change to the existing dwelling or structure must fit in with the residential character of the area.
- (2) The business portion of the house shop may not be increased.
- (3) All legislation, regulations and safety measures regarding the operation of the house shop and the wares there-in must be complied with 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 issued to the registered owner of the premises and is not transferable.
- (7) The business activities may only occur during the hours determined by the Municipality.
- (8) An applicant wishing to erect signage -
  - (a) must apply to the Municipality in advance;
  - (b) may only erect one unlighted sign or notice, not exceeding 2000cm<sup>2</sup> , displaying only the name of the owner, the business and the type of business;
  - (c) must obtain the Municipality's written approval in advance.
- (9) Only registered property owners may trade.
- (10) The Municipality may require parking on the premises.

## **7. Non-liability of the municipality**

The municipality is not liable for any loss or damage, direct or consequential, suffered or sustained by the owner of the House Shop as a result of the approval of the House Shop.



## **8. Compliance Notices**

- (1) Whenever an authorized employee finds that any person contravenes any provision of this by-law or due to any person's actions or failure a situation arises that a public nuisance or potentially could lead to a public nuisance, such an employee is authorized to issue a compliance notice on such a person.
- (2) The notice issued under subsection 8(1), shall contain the following –
  - (a) The provision of the law that is contravened or will be contravened if the condition is allowed to continue;
  - (b) The measures to be taken to remedy the situation, and
  - (c) The period within which the notice must be complied with.

## **9. Application**

- (1) The provisions of this regulation does not derogate from the provisions of any other legislation under which provision is made for control of House Shops as provided in that legislation.

## **10. Transitional arrangements**

A person who can prove that the Council at the time of implementation of this by-law has already granted approval to a house shop may continue to act in accordance with the approval in terms of such law, provided that: -

- (a) The provisions contained in the original approval remain in effect;
- (b) The initial approval will be valid only in respect of the premises for which it was approved, and
- (c) No approval from the original applicant to another person may be transferred.
- (d) The owner of the House Shop show evidence of Council approval.

## **11. Delegation**

The municipal manager may delegate any power or duty conferred to him/ her under the provisions of this by-law to any official of the municipality.

**12. Penalty clause**

- (1) A person who contravenes or fails to comply with any provision of this by-law is guilty of an offense and liable on conviction to a fine.
- (2) A person who fails to comply with a notice served under subsection 8, or a requirement by an authorized employee in the exercise of his or her powers or the pursuance of his duties, is guilty of an offense and liable upon conviction to a fine.

**13. Short title and commencement**

This By-Law is the Cape Agulhas Municipality By-law on House Shops and come into force on the date of the publication in the Provincial Gazette.