

## **BITOU HOUSE SHOP POLICY 2024**

**Approved by Council Resolution C/6/131/04/24**

### **1. BACKGROUND**

House Shops in Bitou have to date been regulated by Municipal Town Planning/ Zoning Schemes. A property zoned “informal residential” could operate a House Shop as a primary right (without the need for any approvals), subject to certain restrictions, which include the House Shop not constituting a nuisance, and the owner/ operator having to reside on property.

More recently, the Bitou Municipal Council and affected local communities have expressed a need for increased regulation of the proliferation and operation of House Shops within Bitou. A lack of the active regulation of House Shops in the past has led to numerous unwanted consequences for affected communities. Such consequences, whether as a direct or indirect result of House Shops, typically include:

- nuisance to neighbouring properties/ residents (which is often a consequence of House Shops being situated in unsuitable localities/ in the middle of residential areas, and leading to a congregation of people and activities);
- the sale of illegal substances (such as drugs and unlicensed goods/ contraband), which are often not sold by the House Shop itself, but by third parties that utilise the shops as a guise;
- the harboring of illegal immigrants, and resulting incidents of xenophobia.

It is for the above reasons, amongst others, that local communities and the Municipal Council have requested the increased regulation of House Shops.

Even though the current Municipal Zoning Schemes regulate House Shops to a certain extent, they do not touch on detailed aspects such as the locality, size, sale of illegal substances and contraband, benefits/ preference to the local community and xenophobia. This Policy aims to address the aforementioned shortcomings.

House Shops typically serve previously disadvantaged and less affluent communities, which are most susceptible to economic and social shocks. It is thus essential that a balance is achieved between the perceived constitutional right of an individual to generate an income from the premises they reside at, and implementing policy to manage/ control such “businesses” in order to lessen the negative effects thereof on surrounding residents/ residential areas.

The following factors have been taken into consideration as backdrop to this Policy:

- a) The operation of a House Shop is a way in which a homeowner/ occupant with very little capital can start a business venture and earn a living. House shops can therefore be beneficial in terms of micro-enterprise development and economic development in general.
- b) Because House Shops are embedded in the community, they offer a high degree of convenience to local persons, who often have limited mobility. Therefore, they enhance the quality of life for their customers.
- c) House shops often create social spaces where neighbours can meet while making purchases, thereby being a potentially important informal social meeting space.

d) The owner/ operator has only a commercial relationship, and not necessarily a personal relationship with the patrons. House Shops therefore make it easier for illegal immigrants to enter communities and have a legitimate explanation for being there.

e) Because they are spaces where business transactions take place and goods are bought and sold, House Shops are relatively easy covers for illicit commercial activities, such as the sale of drugs. This can lead to social problems.

f) In the South African context, House Shops are often owned by foreigners. This can cause tension, either because of competition with local businesses, or because of perceptions of commercial exploitation.

Controlling the establishment and operation of shops in the formal business and industrial areas of Bitou generally does not present a problem, as formal business rights are required in such cases, which are obtained at the time of Township Establishment, or by means of rezoning, consent use, departure or similar applications. This means that potential problems can be considered and addressed at an early stage, such as whether the location is suitable for the type of business, including the layout and design of the business, etc. House Shops are generally more prevalent in historically disadvantaged areas/ townships, where discriminatory planning practices often did not make sufficient provision for formal business sites, which resulted in the creation of often 'unregulated' business establishments as experienced today.

## 2. DEFINITION OF A HOUSE SHOP

For purposes of this Policy, a House Shop is defined as follows:

***“Means the conducting of a retail trade from a dwelling house, second dwelling, shelter or outbuilding by one or more occupants who reside on the property; provided that the dominant use of the property remains for the living accommodation of the occupants”.***

The above definition is in accordance with the new Bitou Zoning Scheme By-law 2023.

The Bitou Zoning Scheme By-law also stipulates the following with regards to House Shops, which requirements are also incorporated into this Policy for sake of convenience and alignment:

- (a) The development parameters applicable to “dwelling house”, “second dwelling” and “shelter” apply.**
- (b) On-site parking must be provided in accordance with the provisions of this By-law.** (this particular requirement is not incorporated into this Policy, as it is considered impractical due to the small size of typical informal residential properties, as well as the nature of House Shops, which primarily cater for pedestrians).
- (c) Any new structure or alteration to the property to accommodate the “house shop” must be reconcilable with the residential character of the area, particularly with regard to the streetscape, and must be capable of reverting to use as part of the “dwelling house”, “second dwelling” or “shelter”.**
- (d) In the absence of a Municipal policy or by-law on house shops, the total area used for a house shop must be indicated on a site development plan and shall not exceed 60m<sup>2</sup> or 50% of the total floor space of the dwelling units on the land unit, whichever is smaller.**

With respect to point (a) above, the applicable development parameters regulate aspects such as the allowable height of structures, coverage, building lines, etc. The afore-mentioned parameters differ depending on the type of structure that is used to accommodate the House Shop (formal house vs informal dwelling).

With respect to point (b) above, the current on-site parking requirement for house shops as per the Zoning By-law is one parking bay per 25m<sup>2</sup> of the Gross Leasable Area of the shop. As mentioned above, this requirement is not incorporated into this Policy. This means that an operator should be allowed to depart from the parking provisions in terms of the Zoning By-law. However, a suitable area of at least 6 meters long by 3 meters wide must be available for deliveries/ the off-loading of goods. This area does not have to be on the property/ premises itself, and may be on adjoining the street verge, should the street verge be wide enough to accommodate a vehicle safely.

The stipulations of the Zoning By-law will apply over and above the stipulations in this Policy, but have been aligned in order to ensure consistency.

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

This House Shop Policy aims to achieve the following:

- a) Provide information regarding the process to be followed to obtain the necessary permissions to operate a House Shop;
- b) Specify the criteria against which a House Shop application will be assessed by the Municipality;
- c) Provide conditions that should be adhered to once approval is granted for a House Shop; and
- d) Provide law enforcement measures that can be taken against House Shop operators that contravene this Policy.

### **4. SCOPE AND APPLICATION**

This Policy applies to all existing and new House Shops in the Bitou Municipal area.

### **5. CRITERIA TO OPERATE A HOUSE SHOP**

#### **5.1 Extent and Position**

- a) The extent and position of a House Shop must be clearly indicated on a site plan; and
- b) A House Shop shall be restricted to within the boundaries of the applicable property.

#### **5.2 Locality**

House shops should ideally be located along existing and/ or proposed activity nodes and corridors. Such areas are usually highly accessible to the general public, and are areas where businesses should be concentrated.

If a House Shop is to be located within a residential area, it should preferably be situated on 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 that the shop has a reasonable chance of developing into a feasible business.

House shops should ideally not be located mid-block within residential areas. This type of locality only serves a small portion of the population, and has little potential to develop into feasible businesses. Furthermore, House Shops in such locations typically have undesirable consequences on the amenity of the surrounding residential neighbourhood. A House Shop that is located mid-block may only be considered in special cases, where the House Shop will be serving a wider area, and where there are no corner shops in that area.

The location of House Shops must also take into account their compatibility with other land uses found in the immediate area, such as places of worship and residential properties.

### **5.3 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, to protect the rights of residents to a quality living environment, and to ensure that any adverse social impacts and unlawful activities can be regulated. The number of shops permitted will thus depend on the number of premises available where a House Shop can expand into a fully fledged corner shop. As a general rule, House Shops in residential areas offering similar goods or services should not be located within the same block.

### **5.4 Buildings/ Structures on the property**

- a) The property shall have a residential dwelling unit on it.
- b) The dominant use of the property shall be (and remain) for residential purposes.
- c) Any existing or proposed structures/ buildings (permanent or temporary) or portions thereof that accommodate a House Shop shall conform to the residential character of the area and comply with the applicable building regulations/ standards.
- d) House Shops may not be operated from a container, except where such container complies with the relevant building regulations.

### **5.5 Operating hours**

House shops should have limited operating/ trading hours, in order to protect the residential character of the area they are located in. Trading hours shall be limited to between **06:00** and **20:00** daily. Operating hours that differ from the above (more or less restrictive) may be approved by the Municipality with the support of the applicable Ward Committee, subject to the site context and comments received during the application process.

### **5.7 Ablution facilities**

The operator of a House Shop must have access to ablutions/ toilet and hand-washing facilities on the property.

### **5.8 Citizenship**

The operator of a House Shop must submit a certified copy of his/ her valid South African Identification Document (ID). In the case of a foreign national, legal documents for residing in South Africa, e.g. a work permit, and proof of residence, may be submitted in lieu of a South African ID. Only South African citizens, or foreign nationals legally residing and working in the country, may own and/ or operate a House Shop.

### **5.9 General Conditions**

The following general conditions shall apply to all House Shops:

- a) House shops operating from Council-owned property should have a valid lease agreement in place.
- b) House shops must comply with the relevant health regulations if food is to be sold or prepared on the premises, including but not limited to the following:
- (i) that the owner/ operator obtains a business license for the preparation of meals as required in terms of the Business Act, 1991 (Act 71 of 1991);
  - (ii) that the premises complies 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);
  - (iii) that a Certificate of Acceptability be obtained as required by the Health Act, 1977 (Act 63 of 1977);
  - (iv) that the premises complies 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.
- c) The right to operate a House Shop vests in the property and the owner/ operator.. As soon as the property or the owner/ operator changes, the right to operate a House Shop lapses.
- d) If there is a change in owner/ operator of an approved House Shop, the onus is on the new owner/ operator to comply with this Policy in order to continue operating the House Shop.
- e) No person may sleep/ overnight/ reside in any portion of a structure used for purposes of a House Shop.
- f) House shops are restricted to selling or providing daily household goods and services.
- g) The sale of liquor and/ or alcoholic beverages, the storage and sale of hazardous substances, and the operation of vending machines, video games, gambling machines and/ or pool tables is prohibited.
- h) Trading shall ideally be restricted to within the permissible structures on the property. However, trading may take place outside the building or on the street reserve, subject to:
- (i) compliance with zoning restrictions;
  - (ii) no permanent structures being erected; and
  - (iii) not prohibiting pedestrian/ cyclist movement or the provision of other Municipal services along the street verge.
- i) Any signage must comply with the relevant Municipal Bylaw on signage.
- j) The delivery of stock is restricted to the allowable operating hours as indicated under section 5.5.
- k) Jukeboxes are not allowed. Should music be played, it must be limited to background music set at a low volume (as may be determined by the Municipality), and speakers may not be placed outside any structures accommodating the House Shop.
- l) Certificates in respect of health regulations and business licenses, where food is to be sold or prepared, must be displayed as required;
- m) 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.
- n) House Shops shall be registered with the Companies and Intellectual Properties Commission (CIPC).
- o) Waste Management/ removal – an additional Municipal rate may be levied for the removal of waste generated by House Shops, to be determined the Municipality, as such Shops typically generate much more waste than typical residential properties.

- p) An owner/ operator shall only operate 1 (one) House Shop at any given time, and shall not have any involvement whatsoever in more than one House Shops, including obtaining the services of other persons to run a House Shop on their behalf.
- q. The sale of tobacco products is prohibited to persons under the age of 18 (eighteen) years.
- r. Patrons should ideally be served over-the-counter as with a typical “tuck shop” layout, and not “supermarket style” where patrons are allowed to enter/ walk into shops.
- s. This Policy does not apply to other types of home businesses, such as shebeens, game shops, hairdressers, motor workshops and the like. Such other home businesses shall be regulated in terms of the applicable Zoning Scheme By-law.
- t. The sale of Liquefied Petroleum Gas (LPG) and paraffin is prohibited, for safety reasons.
- u. The Municipality reserves the right to adjust the rating category of the relevant property accordingly, thus leading to increased property rates, should it deem such an adjustment necessary.

## **6. LAW ENFORCEMENT**

Copies of applications for House Shops are to be circulated to the Law Enforcement and Traffic sections of Bitou Municipality and the SAPS for their comments, to ascertain whether:

- a) Any criminal activities such as illegal gambling, sale or distribution of narcotics, etc. have occurred or alleged to have occurred on the property.
- b) Any incidents such as murder, stabbings, fights, etc. have been reported in the immediate vicinity of the property.
- c) The area poses a risk for vehicular or pedestrian accidents.
- d) Any illegal sale of liquor has been reported.

An application for a House Shop may be refused should evidence of any of the abovementioned be found.

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

a) In instances where the owner/ operator of a House Shop does not comply with the provisions of this Policy or in terms of the relevant Zoning By-law, the procedure to address non-compliance as stipulated in the By-law on Municipal Land Use Planning for Bitou shall be followed.

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

An approval for a House Shop may be withdrawn if:

- a) Valid complaints are received, and the owner/ operator does not adequately address the complaints.
- b) If the owner/ operator is convicted of a crime involving drug abuse, selling of drugs, the illegal sale of liquor or other goods, operating a shebeen or tavern from the House Shop, prostitution, crimes involving weapons or fire arms or assaults.
- c) Where the owner/ operator ceases the approved activity for a period of 6 (six) months or longer.
- d) if the owner/ operator does not comply with his/ her approval conditions in terms of the relevant Zoning By-law.

## **7. VALIDITY PERIOD OF APPROVAL**

- a) A House Shop is a temporary land use, intended to serve as an incremental step towards a formal business, and can therefore only be approved for a maximum period of 5 (five) years.
- b) The owner/ operator may apply for an extension of an approval for a further period of 5 (five) years, but the total approval period may not exceed 10 (ten) years.

## **8. THE APPLICATION**

### **8.1 Application documents to be submitted to the Municipality**

All existing and new House Shops must apply for approval in terms of this Policy. Submission of the following documents/ information is required in order for a House Shop application to be considered:

- a) Completed application form
- b) Proof of payment of application fee
- c) Power of attorney (if applicant is not the property owner)
- d) Certified copy of applicant's ID, and in the case of a foreign national legal documents for residing in South Africa and proof of place of residence
- e) Locality plan
- f) Site layout plan
- g) Land use plan (indicating the land uses of surrounding properties within a 100m radius of the subject property)
- h) Copy of Title Deed
- i) Internal photographs of the structure/s to be utilised as the House Shop, clearly showing each room, furnishings, fittings, floor coverings, ablution facilities, internal storage areas, etc. (if structure is existing)
- j) External photographs of the structure/s to be utilised as the House Shop, clearly indicating the external finishes, its relationship to the existing dwelling unit on the erf, external storage areas, relationship to the property boundaries, garbage disposal area, signage (if structure is existing)
- k) A full motivation, stating the type of House Shop being applied for and why it should be approved, based on the location and other requirements as set out in this Policy.

The requirements for consent use applications in terms of the relevant By-law on Municipal Land Use Planning will apply above and beyond the requirements specified above. The application in terms of this policy, as well as the consent use application in terms of the Planning By-law, may be carried out as one process/ application if authorised by the Town Planning section.

### **8.2 Advertising and processing of applications**

All applications shall be distributed for comment and processed as required for consent use applications in terms of the relevant By-law on Municipal Land Use Planning. This includes (but is not limited to) informing adjacent property owners of the proposed House Shop, and affording them an opportunity to comment on such application.

## **9. Enforcement of Policy**

As the issues surrounding House Shops are multi-faceted, successful implementation of the Policy will require collaboration by multiple stakeholders. Broad roles and responsibilities are hereby set out in order to guide the enforcement of the Policy:

#### 9.1. Bitou Municipality

##### a. Town Planning

Enforce the Zoning By-law; send non-compliance notices to property owners if House Shops do not comply with the requirements of the Zoning By-law, and initiate litigation for continued non-compliance.

b. Building Control – Enforce compliance with building standards in terms of the National Building Regulations and Building Standards Act 1977 relating to structures utilised for House Shops.

##### c. Local Economic Development

Educate/ inform House Shop operators of the requirements in terms of this Policy. Provide small business support where applicable.

##### d. Law Enforcement

Act against nuisance complaints (excessive noise or music/ juke boxes/ game machines, loitering, etc.).

##### e. Finance (Rates)

Correctly categorising/ rating House Shops; ensuring that they are adequately billed for increased refuse removal etc.

#### 9.2. Garden Route District Municipality – Health Services

Issue Health Certificates for food preparation. Act against House shops operating without valid Health Certificates.

#### 9.3. South African Police Services (SAPS)

Act against criminal activities, the sale of illegal substances/ drugs, etc.

#### 9.4. National Department of Home Affairs (DHA)

Enforce immigration laws/ take action against illegal immigrants/ persons without work permits.

END