

## **WITZENBERG MUNICIPALITY**

### **Draft Amended House Shop By-law**

#### **To control and regulate house shops within the authority's area of Jurisdiction**

#### **PREAMBLE**

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 Witzenberg Municipality seeks to manage, control and regulate municipal land use planning and any matters connected therewith;

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

#### **SCHEDULE**

##### **Classification of Sections**

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

## 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 and includes a law enforcement officer;

**“approval period”** means a maximum of five years in terms of the Witzenberg Land Use Planning By-Law, P.N. 289/2015, after which an extension for the period must be applied for;

**“Business Act”** means the Business Act, 1991. (Act No 71 of 1991).

**“Business Licence”** means a licence or permit issued by a local government in terms of the Business Act, 1991, that allows an individual or company to conduct a business within the Municipal jurisdiction”

**“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;

**“illegal goods”** means –

- (a) goods which may not been lawfully acquired or disposed of;
- (b) goods that are prohibited from sale or distribution under any applicable national, provincial, or municipal law;
- (c) counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997)
- (d) goods that are required to be, but have not been, imported or produced in terms of the provisions of the Customs and Excise Act, 1964 (Act No 91 of 1964);
- (e) stolen goods; or
- (f) goods that do not meet mandatory safety or quality standards as prescribed by relevant legislation;

**“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 Witzenberg 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;

**“spaza shop”** refer to the definition of house shop, it has the same meaning

**“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 except for informal settlements of the Witzenberg Municipality.
- (2) The provisions of this by-law do not derogate from the provisions of any other legislation.
- (3) No person may operate a house shop without prior approval by the municipality in terms of this By-Law.

## **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 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 owner of the property, and who resides on the property, may apply to operate a house shop.
- (2) An application for a house shop will be done in terms of the Witzenberg Land Use Planning By-Law, P.N. 289/2015 and specifically as a departure.
- (3) The following documents must accompany an application for a house shop:
  - (a) The fully completed application form;
  - (b) A site and floor 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) Application fee as per the Council's tariffs;
  - (e) Copy of the applicant's Identity Document.
- (4) The application will be circulated to the municipal departments and local Councillor for comment.
- (5) Thirty days will be granted for comment.
- (6) The authorized official will consider the application and make a decision within a timeframe not exceeding 3 months as to whether to approve the application or not.

- (7) The applicant and objectors, if applicable, will be notified in writing of the decision of the authorized official.
- (8) Objections will be handled in terms of the Witzenberg Land Use Planning By-Law, P.N. 289/2015.

## **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 extent and location of the business component must be indicated on a scaled plan, and shall not exceed 45% of the total floor area of the dwelling-house;
  - (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 part of the house utilised as the shop may not be occupied.
- (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) All legislation, regulations and safety measures regarding the operation of the house shop and merchandise therein must be adhered to by the owner.
- (3) The operation of the house shop may not cause a public nuisance.
- (4) No explosive or flammable substances may be kept or sold.
- (5) Consent to operate a house shop is granted to the registered owner of the premises and is not transferable.
- (6) Business hours will be determined by the municipality.
- (7) 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 cm<sup>2</sup> 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.
- (8) Only the registered owner and his direct dependants, who reside on the property, may operate the house shop.
- (9) Additional service connections will not be allowed;
- (10) The total amount of house shops allowed per street is as follows:

Street length shorter than 100m – 1 shop  
Street length 100m to 200m – 2 shops  
Street length 200m to 400m – 3 shops  
Street length 400m and over – 4 shops

## **7. Business Licence**

- (1) A House-Shop / Spaza shop owner, must apply for a business licence.
- (2) A municipality must issue a business licence if it is properly applied for, unless –

- (a) the applicant does not comply with the relevant provisions of this by-law;
  - (b) the goods or services provided by the business are illegal; or
  - (c) the house-shop do not comply with the requirement relating to town planning or any law which applies to those premises.
- (3) The municipality must be satisfied that the applicant will be in actual and effective control of the business
- (4) A Municipality may grant a licence on condition that-
- (a) The house shop comply with the requirement relating to town planning, or any other law which applies to those premises and
  - (b) Certificate of Acceptability is issued by the District in terms of the GN R638 of 22 June 2018: Regulations governing general hygiene requirements for food premises, the transport of food and related matters and / or
- (5) Application form for a business licence can be accessed physically at the municipal offices and on the Municipal Website.
- (6) Application fee as determined by Council is payable.
- (7) The delegated official is responsible to establish and maintain a database of issued business licences.
- (8) The municipality reserves the right to conduct background checks on applicants, including liaising with law enforcement agencies, to verify the legality of their business activity.
- (9) The applicant, if successful, will be issued with a business licence that must be displayed and be available for inspection.
- (10) A business licence holder may not transfer a business licence to any other person in any manner, except in the event of death of a business licence holder. In case of death, an executor and or dependent can apply to the Municipality in the form of an affidavit to continue with the house-shop, and the Municipality can on its discretion approve or not approve the application for transfer.
- (11) A business licence must be renewed annually.

## **8. Trading Hours**

House Shops / Spaza shops should have limited operating / trading hours, in order to protect the residential character of the area the area located in. Trading Hours shall be limited to between **06h00** to **22h00** daily.

## **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 an authorised official or law enforcement officer 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 an official or officer is authorized to issue a compliance notice 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. Penalties**

Whenever a law enforcement officer finds that any person contravenes any requirement or restriction of this by-law, such law enforcement officer may serve a fine on such a person as approved by the Magistrate or notice to appear in court.

## **10. 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 and or spaza's as stipulated in that legislation.

## **11. 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) Approval is not transferred from the original applicant to another person; and
  - (b) The owner of the house shop provides proof of the Council's approval.
  - (c) The registered owner within 6 months of the proclamation of this by-law shall comply with the requirements and restrictions under this By-Law.

## **12. 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 authorised official of the municipality.

## **13. Failure to comply**

- (1) If a person fails to comply with a compliance notice the Municipality may—
  - (a) lay a criminal charge against the person; or
  - (b) apply to the Court for an order restraining that person from continuing the illegal activity, to demolish, remove or alter any building, structure or work illegally erected or constructed without the payment of compensation or to rehabilitate the land concerned; or
  - (c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted.

(d) in the case of a business licence, the municipality may withdraw the approval.

**14. Short title and commencement**

This by-law is called the Amended Witzenberg Municipality House Shop By-law 2025 and shall be in operation on the date of its promulgation in the Provincial Gazette.

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