

BELA BELA MUNICIPALITY

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(i) **DEFINITIONS**

In this by-law, unless inconsistent with the context:-

“Consent use” means a permanent use right granted to the owner in terms of the respective zoning scheme.

“Council” means the Bela Bela Municipality.

“Departure” refers to a use right granted on a temporary basis to the owner, additional to- and with due cognisance of the primary right on the affected site in terms of Town Planning and Township Ordinance 15 of 1986.

“ECD” refers to Early Childhood Development Centres, such as a crèche, pre-school, etc.

“HSL” refers to the Household Subsistence Level as defined in the LED Strategy.

“Land Use Rights” means the right to utilise land in accordance with the zoning thereof, including any departure and consent use approved for that land.

BCD Act: refers to the Black Communities Development Act, Act 4 of 1984.

EM&MC: Executive Mayor and Mayoral Committee

IDP: refers to the Bela Bela Municipality’s Integrated Development Plan.

LED Strategy: refers to the Local Economic Development Strategy of Bela Bela Municipality.

LFTE Act: Less Formal Township Establishment Act, Act 113 of 1991.

LUPO: refers to the Town Planning and Township 15 of 1986.

PSDF: refers to the Limpopo Provincial Spatial Development Framework.

SDF: refers to the Bela Bela Municipality’s Spatial Development Framework.

1. INTRODUCTION

1.1. PREAMBLE

At the Mayoral Committee meeting held on 19 August 2010 it resolved that a report be compiled with respect to the regularising of the House Shop/Spaza shop industry. This recommendation was based on the allegations made that several subsidy-scheme houses were being converted to house shops without the necessary permits and approvals from Council. To this, it was agreed to review the current regulatory measures relative to this industry which could assist in addressing aspects giving rise to social conflict in the Bela Bela Municipal Area.

This by-law document aims to be the first house shop by-law for the Bela Bela Municipal Area. This by-law will remain in effect until promulgation of a new Integrated Zoning Scheme for Bela Bela Municipal Area.

1.2. OBJECTIVES OF THE HOUSE SHOP BY-LAW

This house shop by-law aims to achieve the following:

- 1.2.1. To provide a set of criteria that will assist Council in the assessment of all applications for house shops.
- 1.2.2. Outline the process which should be followed in order to obtain land use rights to operate a house shop;
- 1.2.3. Provide law enforcement measures which could be taken against the house shop owner should he/she be in contravention of these conditions or be operating illegally.

1.3. DEFINITION OF A HOUSE SHOP

A House Shop is defined as follows:

An activity that entails the operation of a retail trade from a dwelling house, 2nd dwelling, flat, outbuilding, container or caravan (or any other legal structure as approved by Council) by one or more of the occupants residing permanently on the respective residential property.

1.4. POLICY STATEMENT

In order to encourage the development of sustainable neighbourhoods, this policy endeavours to ensure balanced consideration for the risks, desirability, impact and socio-economic issues that house shops hold for the residential neighbourhoods of Bela Bela Municipal Area.

1.5. SCOPE AND APPLICATION

The ***survey undertaken to ascertain the general trends in the house shop sector*** is applicable to all existing house shops (illegal/legal) relevant to residential neighbourhoods within the urban areas of Bela Bela Municipality.

This **by-law** will be legally enforceable to LUPO-proclaimed areas which include the towns of Paarl, Wellington, Hermon, Gouda, Saron and all rural farms in Drakenstein.

2. POLICIES

2.1. LIMPOPO SPATIAL DEVELOPMENT FRAMEWORK PLAN (PSDF), June 2009

The Limpopo Spatial Development Framework (PSDF) is based on the three pillars of Sustainability, namely, Ecological Integrity (health of the planet), Social Equity (situation of the People) and Economic Efficiency (attainment of Prosperity).

Ecological Integrity broadly refers to the environment's ability to continuously being able to provide for and sustain life. Social Equity broadly refers to creating and maintaining an environment whereby the needs of all are fulfilled, materially and morally. Economic Efficiency refers to an environment whereby prosperity for all can be achieved through the optimisation of benefit at the lowest cost. In other words, if society's needs are met prosperity can be achieved through economic efficiency.

These three pillars of Sustainability are also referred to as the ***triple bottom line relationship framework***.

This guiding principle is of particular relevance to the dynamics and challenges surrounding the House Shop industry and consequently an important consideration in the formulation of a House Shop by-law.

2.2. BELE BELA INTEGRATED DEVELOPMENT PLAN (IDP) (2014-2015)

This Plan is the most recent Integrated Development Plan (IDP) for the Bela Bela Municipality. It is an all-encompassing plan affecting all areas and levels of Council. It broadly provides a breakdown of the strategic approach Bela Bela Municipality intends adopting in addressing the needs and challenges the Municipal Area currently faces.

The IDP stipulates that Bela Bela's core strategy is the eradication of poverty, job creation and inequality through sustainable development. In essence, the strategy is aimed at dealing with the current local challenges of poverty and others but with the intention of ensuring a thriving and self-sufficient society with high levels of living. The IDP is therefore a strategic planning instrument which is utilised to guide and assist in municipal planning, decision-making, allocating responsibilities, budgeting, etc, as per all development priorities identified.

In keeping with the strategy of eradication of poverty and creation of jobs, Strategic development priorities have been identified as part of the IDP process. These serve as the drivers of the development agenda and include:

1. Sustainable and quality living environment with efficient infrastructure;
2. Economic prosperity based on a dynamic, diverse and shared economic base;
3. Improve quality of life and social wellbeing;
4. Efficient and financially viable municipality;
5. Democratic and Accountable governance;
6. Institutional Excellence.

The IDP is a fairly high level strategy and does not provide detailed proposals of ways to address the issue of house shops. It does however allude to entrepreneurial activities such as house shops.

2.3. BELE BELA SPATIAL DEVELOPMENT FRAMEWORK PLAN (SDF)

The Bela Bela Spatial Development Framework plan was **approved in November 2010** in terms of the Municipal Systems Act (32/2002). However, the key principles and objectives hereof have been observed, particularly in the decision making process of typical land use applications, since the overall aim and proposals of the SDF must be aligned with that of the Limpopo Provincial Spatial Development Framework (PSDF) which is already approved.

The most notable and relevant objectives of the SDF to the house shop policy are quoted below:

In facing the challenges confronting the municipal area, the primary focus of the Bela Bela Municipality through this Spatial Development Framework (SDF) should be geared towards:

- (a) The alleviation of poverty through the spatial restructuring of the municipality over time and in so doing redress the imbalances created through the system of apartheid;*
- (b) Increased accessibility to existing and new services, infrastructure and opportunities to enhance the overall quality of life of communities;*
- (c) Providing new and reinforcing existing opportunities for economic development and spreading the benefits thereof to a large majority of the population;*
- (d) Protection of the natural resource base of the municipality;*

The SDF identifies the need to prepare a Local Economic Development Strategy that will support the establishment of small business initiatives. The LED Strategy is discussed in paragraph 2.4. (below).

2.4. BELA BELA LED STRATEGY, **October 2006**

The Bela Bela LED Strategy has **identified 6 objectives** in order to achieve its vision of “*Working together to create a place of opportunity*”.

Five of these six objectives can be viewed as having an impact and/or being relevant to the house shop industry. These five objectives are as follows:

- 2.4.1 To stimulate and maximise economic growth in the formal and informal sectors to achieve 6% growth by 2014**
- 2.4.2 To increase the number of job/ economic opportunities, especially for the unskilled by creating 12 500 additional jobs by 2014**
- 2.4.3 To maximise the social wage (indirect income) of the indigent and vulnerable by reducing the number of people with no income from 10.4% to 5.2% of the population**
- 2.4.4 To increase the skills, capacity and networks of the poor by reducing illiteracy by 10% and ensuring 50% of children attend ECD centres**
- 2.4.5 To improve the asset base, income and living standards of the poor and halve the number of people living below the HSL.**

Furthermore, the LED Strategy identifies several roles for government (including Council) in assisting to achieve the Council's Vision. One of these being Council's role of acting as a *Regulator and Enforcer* whereby it should enforce measures to be able to regulate certain industries such as the house shop industry, for example, the implementation of measures enforcing environmental, zoning- and licensing regulations, etc.

3. STATUTORY FRAMEWORK

3.1. TOWN PLANNING AND TOWNSHIP ORDINANCE, ORDINANCE 15 OF 1986

In terms of the Town Planning and Township Ordinance (15/1986), section 36 stipulates that any land use application shall be refused solely on the basis of lack of desirability of the proposed use and not on the basis of protection against trade competition.

3.2. NATIONAL BUILDING REGULATIONS AND STANDARDS ACT, ACT 103 OF 1977

This Act stipulates that a building plan for a structure to be used as a house shop, albeit for the conversion of a portion of an existing house or garage or a new structure (permanent or temporary), must be submitted to Council for approval.

3.3. APPLICABILITY OF THE INTEGRATED HOUSE SHOP BY-LAW TO AREAS WITHIN BELA BELA MUNICIPAL AREA

Areas within Bela Bela Municipal Area									
	Paarl	Wellington	Rural Farms	Hermon	Gouda	Saron	Mbekweni	OR Tambo	Carterville
Applicability of the House shop By-Law	√	√	√	√	√	√	√	√	√
Applicability of the NHBRC regulations	√	√	√	√	√	√	√	-	-
Consideration for Title deed restrictions	√	√	√	√	√	√	√	-	-
Business rights in addition to residential usage	-	-	-	-	-	-	√	√	√
consideration of zoning scheme parameters/ regulations annexed to LFTE Act or BCD Act.	√	√	√	-√	√	No zoning scheme applicable (see para 3.7 above)	√	√	√
Application to Council [Y/N]	Y	Y	Y	Y	Y	Y	Y	Y	Y

√ : applicable
- : not applicable

4. HOUSE SHOP BY-LAW

The following section serves to provide clear guidelines and parameters as to that which will be considered favourably or not by Council.

4.1. CRITERIA AND CONDITIONS FOR ASSESSMENT OF LAND USE RIGHTS TO OPERATE A HOUSE SHOP

4.1.1. HOUSE SHOP EXTENT AND POSITION

- 4.1.1.1 The extent and position of the house shop should be clearly indicated on a plan and shall not exceed 35sqm or 25% of the total coverage, whichever is the lesser (excluding any ablution facilities).
- 4.1.1.2 The trading area of the house shop shall be restricted to the boundaries of the property.

4.1.2. THE STRUCTURE ON THE PROPERTY

- 4.1.2.1 The property shall have a main residential dwelling unit on it.
- 4.1.2.2 The dominant use of the property shall remain residential.
- 4.1.2.3 The trading area may not be used for sleeping/habitable purposes.
- 4.1.2.4 Any new or additional structures (built or temporary) erected with the purpose of accommodating the operation of a house shop shall be done with due cognisance of the residential character of the area.
- 4.1.2.5 All additional (built) structures, including renovations to built structures with the intention of accommodating the house shop, shall be subject to building plan approval of Council.

4.1.3. ABLUTION FACILITIES

- 4.1.3.1 The House shop operator shall have access to ablution and hand-washing facilities on the property.

4.1.4. CITIZENSHIP

- 4.1.4.1 All applicants to submit a certified copy of their ID and in the case of a foreign national legal documents for residing in South Africa and proof of place of residence.

4.1.5. TRADING HOURS

- 4.1.5.1 The house shop shall not operate outside the hours of 06h00 and 22h00 daily.

4.1.6. ADVERTISING SIGNAGE

- 4.1.6.1 Only 1 un-illuminated sign, with a maximum of 1sqm in size, which can be affixed to the wall of the house / 2nd dwelling / flat/ outbuilding / container / caravan or any other legal structure as approved by Council, shall be permitted.
- 4.1.6.2 No illuminated, mobile, freestanding, or protruding signs shall be allowed.

4.1.7. ADDITIONAL FACILITIES

- 4.1.7.1 No additional facilities in the form of video games, pool tables, vending machines, jukeboxes, gambling (slot) machines shall be permitted.

4.1.8. RESTRICTION ON PRODUCTS SOLD

The following products **may not** be stored and/or sold from house shops:

- 4.1.8.1.1 Alcoholic beverages, fireworks, gas, paraffin, petrol, diesel, adult entertainment, narcotics or any illegal substances/drugs.

4.1.9. OTHER REGULATIONS

4.1.9.1 All house shops must comply with health, safety and fire regulations in terms of the relevant legislation.

4.2. STANDARD CONDITIONS OF APPROVAL

- 4.2.1 Approval for the operation of a house shop shall be linked to the specific property and the house shop operator of the respective property, with a Power of Attorney from the registered owner of the respective property, if applicable.
- 4.2.2. The rights to operate a house shop are NOT TRANSFERRABLE.
- 4.2.3. Only a permanent occupant of that specific property may temporarily assist with the running of the house shop.
- 4.2.4. A house shop may not be operated as a co-operative.
- 4.2.5. Any deviation of the standard conditions for the operation of a house shop can only be considered upon application.

4.3 PUBLIC NUISANCE

The 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, holding of events in the neighbourhoods without the permission of municipality, etc).

5. APPLICATION PROCEDURE

The application process to obtain the necessary land use rights to operate a house shop will be as follows:

- 5.1. The applicant shall submit an application to the Land Use Planning Section on the prescribed application form. The form will make provision for the comments of the adjoining neighbours.
- 5.2. An application fee will apply and may vary depending on the area and type of application required (consent use/temporary departure, etc.). This application fee may be reviewed on an annual basis, as in the case of all other land use application fees.
- 5.3. Surrounding property owners, Ward Councillor and/or Ward Committees are required to indicate their support or objection to the proposed house shop on the applicant's prescribed application form. Once all surrounding owners, Ward Councillor and/or Ward Committees have indicated that they do not object and that the applicant has proved that the proposed house shop will comply with the standard conditions as indicated in this by-law (see paragraph 4), a letter of approval will be issued by the Corporate Services Department on recommendation by the Land Use Planning Section as part of a delegated decision making report.
- 5.4. If one or more of the adjoining owners, Ward Councillor and/or Ward Committees object to the application, the objection(s) will be forwarded to the applicant for comments. Once the applicant's response to this objection has been received a report will be compiled by the Land Use Planning Section for consideration by the Executive Mayor

& Mayoral Committee (EM&MC) for final decision-making. The applicant and objector(s) will thereafter be informed of the decision by the Corporate Services Department, with the relevant LUPO appeal process commencing thereafter.

- 5.5. All approvals (delegated or EM&MC) will be made subject to the standard conditions applicable to house shops (eg size, hours and the submission of building plans for approval prior to the execution of the land use rights). Specific conditions relating to, for example, the proposed structure or placement may also be laid down.
- 5.6. Building plans will be scrutinized via the normal building plan application process with such plans to be evaluated relating to inter alia health regulations, fire prevention regulations, technical building requirements and not encroaching onto municipal services.
- 5.7. In Paarl, the rights to operate a house shop are currently considered and approved as a consent use in terms of the Paarl Zoning Scheme Regulations. The consent use is considered as an additional use to the Single Residential Zoning on the property. This is a permanent right attached to the property owner and his/her specific property.
- 5.8. In Wellington, the right to operate a house shop is currently approved as a temporary departure in terms of section 15 of the Land Use Planning ordinance, Ordinance No 15 of 1985. This temporary departure has a validity period of 5 years.
- 5.9. For the towns of Gouda, Hermon, Simondium, Windmeul, Bainskloof and all other rural farms of Drakenstein, an application for a temporary departure in terms of Section 15 of the Town Planning and Township Ordinance, Ordinance No 15 of 1986 is required as these regulations do not make provision for a house shop, per se.
- 5.10. In terms of the regulations annexed to this Act, occupiers are allowed to operate any business from their property as a primary right, with the proviso that the dominant land use remains residential. Application must be made for a house shop in order to determine whether the proposed house shop will effect a public nuisance or not.
- 5.11. The town of Saron has been established in terms of the Rural Areas Act of 1987 which means that there is no zoning scheme in operation. Effectively, this means that all land use applications, including those for rights to operate house shops, are only considered by virtue of title deed restrictions. Application must be made for a house shop whereafter a recommendation will be made to the Department of Human Settlements for a decision.
- 5.12. In terms of the regulations annexed to this Act, occupiers are allowed to operate any business from their property as a primary right, with the proviso that the dominant land use remains residential. By virtue hereof, the National Building Regulations are not applicable in these areas. See paragraph 3.2 above. Application must be made for a house shop in order to determine whether the proposed house shop will effect a public nuisance or not.

6. LAW ENFORCEMENT PROCEDURES

6.1. ILLEGAL HOUSE SHOPS

If somebody is operating a house shop without the necessary approval, the owner/operator will be instructed to terminate the use with immediate effect. Failing to do so, legal proceedings will be instituted.

6.2. SHOP OPERATORS NON-COMPLIANT WITH CONDITIONS OF APPROVAL

If somebody is operating a house shop not in compliance with the necessary conditions of approval, the owner/operator will be instructed to terminate the use with immediate effect. Failing to do so, legal proceedings will be instituted.

6.3. LAW ENFORCEMENT PROCEDURE TO BE FOLLOWED WHERE PUBLIC GRIEVANCES ARE RECEIVED

If written objections are received to a legal house shop, the following process will be followed:

- 6.3.1 A site inspection will be conducted by Council officials and other relevant external departments to ensure compliance.
- 6.3.2 If substantial reasons for transgression could be found, the offender will be informed of the implications thereof.
- 6.3.3 Should the house shop owner still fail to comply legal proceedings will be instituted.

6.4 OTHER CASES WHERE WITHDRAWAL OF LAND USE RIGHTS WILL BE CONSIDERED

The approval will also be withdrawn or shall lapse in the following cases:

- 6.4.1 When the property changes ownership;
- 6.4.2 The owner contravenes any of the said conditions of approval.
- 6.4.3 Where the owner of the house shop ends the approved activity;
- 6.4.4 Termination of the approved activity for a period exceeding 6 months;
- 6.4.5 Misleading/false information provided by the owner/applicant

7. RECOMMENDATIONS

- 7.1. That the various zoning schemes be amended to include a definition and criteria for house shops in all applicable zoning scheme regulations.

- 7.2. Alternatively, a set of Integrated Zoning Scheme Regulations for the entire Bela Bela Area be compiled.

8. COMMENCEMENT AND IMPLEMENTATION

8.1. COMMENCEMENT DATE

Unless otherwise specified, the commencement date of this by-law will be the date of adoption by Council.

8.2. IMPLEMENTATION STRATEGY

The following strategy shall be imposed on adoption of this by-law:

- 8.2.1 That existing house shop operators be granted a window period of 6 months to submit an application to Council for consideration, from the date of adoption of this by-law by Council.
- 8.2.2 That a public awareness campaign be implemented informing the general public of the **House Shop By-Law** on adoption of this policy and simultaneously the need for existing house shop operators to comply.
- 8.2.3 That once Council has received and approved the application for a house shop, that the house shop operator will have 6 months to adhere to the approval conditions. Failing to do so will allow Council to institute procedures outlined in paragraph 6.

8.3. INDEMNITY

The measures of regulation and criteria to be complied with by existing and potential house shop owners, as stipulated by this by-law, are considered adequate to regulate this industry. This by-law shall not create liability on the part of the Bela Bela Municipality or any officer thereof, for any loss suffered by existing (legal/illegal) house shop owners that may result from reliance thereon.