

LEKWA DRAFT INCENTIVE POLICY FOR
HOME TAVERNS AND TAVERNS



Lekwa Draft Incentive Policy for Home Taverns and Taverns

1. Purpose

To formulate a policy that allows the Lekwa Local Municipality to manage the establishment of House Taverns and Taverns in low-income single residential neighbourhoods and to establish guidelines for appropriate or desirable locations for the development of such land use activities. The objectives of the policy are as follows:

1. Assist citizens to earn an income from their property while limiting any negative impacts of such business enterprises on the rights of the other citizens in the area to a safe, clean, and quiet living environment.
2. Promote an entrepreneurial spirit within these neighbourhoods.
3. Aid in achieving the Municipality's development objectives with regards to encouraging development in functional areas, urban restructuring and corridor orientated development as outlined in the Lekwa Municipal Spatial Development Framework, 2017.
4. Make provision for formal higher order business opportunities in appropriate locations; and
5. Address the regularizing and rectification of existing illegal liquor enterprises.
6. The approval of an application is in the public interest.
7. Ensure that the buildings are suitable for the conducting of the contemplated liquor enterprise.

2. Definition of the House Tavern and Tarven

House Tavern

A house tavern is defined as "an enterprise, conducted from an outbuilding, by the occupant of the dwelling house concerned, for the sale of alcoholic beverages and/or may include consumption of alcoholic beverages by customers on the property, provided that the dominant use of the dwelling house concerned shall remain for the living accommodation of a single family." The House Tavern is permitted on a temporary basis for a period not longer than 5 years.

EXPLANATORY NOTE

A House Tavern is primarily a place where residents and people from outside the area can purchase liquor and other alcohol beverages for consumption on the premises and/or may include an area where customers can relax and interact socially.

According to the proposed land use description above, a House Tavern can be operated from a "second dwelling" or "outbuilding" on a single residential zoned property. The structure or building erected for the House Tavern must be reconcilable with the residential character of the area (similar in nature to buildings found on other properties in the area). The building must be built in a way that with a few alterations, it can be converted back to a "dwelling house", "second dwelling".

At present, a House Tavern falls within the definition of a "Place of Amusement" and thus the land use description of as "other recreational purposes". A Place of Amusement is not permitted on a Single Residential Zone or Residential Multiple property, as either a primary or consent use right. Thus, in terms of planning law, it may only be considered in terms of an application for Temporary Departure processes. Exemption of such processes will be considered as per the criteria contained in the Incentive Policy.

***Note:** A House Tavern is not described in the Lekwa Land Use Scheme 2020. It is recommended that this land use description along with the development parameters will be included when the municipality reviews its Land Use Scheme. "House Tavern" should also be included as a Written Permission under Single Residential Zone in specific catalytic zones.

Tavern

A Tavern is explained as a *"place used predominantly for commercial leisure activities that may attract relatively large numbers of people, operate outside normal business hours or generate noise from such activities on a regular basis."*

A tavern can only be constructed on a property with the required land use rights. A Tavern only allows for sale of alcohol and beverages for consumption on the premises, meaning that sales for consumption of alcohol off the premises is not permitted. Thus, in terms of planning law, if an applicant wants to establish a Tavern on a property that does not have the land use rights it will only be considered in terms of an application for **Rezoning processes**. Exemption of such processes will be considered as per the criteria contained in the Incentive Policy.

Why House Taverns and Taverns shouldn't be allowed in the middle of low-income residential neighbourhoods?

House Taverns and Taverns should not be allowed in the middle of residential neighbourhoods, unless the property is zoned for such purpose e.g. Retail Business, Commercial and Light Industry. The Municipality recognises that these businesses have been abused and that many of these House Taverns and Taverns (associated abuse of alcohol) contributes significantly to major crime in these areas and to anti-social behaviour among the community.

Going forward, the Municipality intends to eradicate problematic liquor concerns located in the middle of residential neighbourhoods, while also allowing for the formalising of existing liquor enterprises in areas the Municipality deemed appropriate or desirable in accordance with the guidelines contained in the policy below.

3. Locality

Liquor enterprises should ideally be located within existing and proposed business nodes as well as along existing and proposed activity corridors and activity spines as indicated in the Lekwa Spatial Development Framework as well as along designated public transport routes and on land already designated (zoned / earmarked) for business or industrial purposes. These areas are usually highly accessible to the public and ideal for the establishment of business facilities.

House Taverns or Taverns should only be allowed within a residential neighbourhood/ informal settlement under the following circumstances:

- a) The liquor enterprise should be located at **least 500m walking distance** away from established **activity corridors, activity streets, business nodes, main taxi routes and established business sites**.
- b) The liquor enterprise should be restricted to a **corner stand** at an intersection of **at least two roads** at a location that would be suitable for the development of a neighbourhood (corner) shop.

- c) The locality of the site is of such a nature that it can serve a wider surrounding area and has a reasonable chance of being developed into a feasible business site in future.
- d) Two or more liquor enterprises may not be permitted on the same street intersection.
- e) Liquor enterprises that comply with all locality criteria as set out in the policy may be allowed to expand over time to become formal businesses.

No new House Taverns or Tavern located mid-block may be allowed. The Municipality may only consider a deviation from the above locality criteria and allow an existing approved House Tavern or Taverns on a Single Residential Zone within Incremental Land Use Zones or less formal settlement provided that:

- a. The locality criteria shall not apply to the existing House Taverns or Tavern that operated lawfully in terms of the rights granted in terms of the Lekwa Land Use Scheme 2020, as well as all other House Taverns that lawfully existed in terms of other applicable planning laws.
- b. No valid objections are received from an interested and affected party/ surrounding neighbour.
- c. The application complies with other aspects addressed by the policy.
- d. The operator of the House Tavern must live on the property – as either the owner, owner's family or as a tenant (boarder).
- e. The House Tavern shall only be allowed as a temporary consent use right for a maximum period of 5 years calculated from the date of adoption of the policy.
- f. The approval shall only be granted to allow the operator of the House Tavern adequate time to find a more suitable location to conduct his/her business; and
- g. It is accepted that no extension of approval will be contemplated.

4. Number of liquor enterprises per area

The number of liquor enterprises located within a predominantly residential neighbourhood should be restricted in order to protect and enhance the character of the residential environment, protect the residents' rights and amenity to a quality human friendly living environment, to protect the vulnerable members of the community and to ensure that any adverse social impacts and unlawful activities can be controlled.

The number of enterprises permitted will thus depend on the number of localities available where fully fledged neighbourhood business nodes can develop.

It is acknowledged that the optimum distance that a resident should walk to access goods and services at neighbourhood level is 500m. It is therefore suggested that House Taverns, may only be located in a residential neighbourhood if it is no closer than 800m walking distance from other liquor enterprises.

(Insert a diagram to illustrate the above)

5. Types of buildings that can be used for a liquor enterprise.

It is a legal requirement for all liquor enterprises to have approved building plans and an occupation certificate in terms of the National Building Regulation & Building Standards Act 1977 (as amended) as well as the SABS 0400 Code of Practice for the Application of the National Building Regulations, as they must be fit for public occupancy. The House Taverns or Tavern can either be operated from existing approved structures on the property (second dwelling or an outbuilding) or from a new structure. The

structure must also be designed in such a way that it can be converted back as part of the “second dwelling” or “outbuilding” in future.

A structure erected for a liquor enterprise in a residential neighbourhood should have a similar appearance to the existing buildings on the property and/or other permanent residential structures in the area, especially when viewed from the street. Acceptable exterior finishes for new structures and business buildings may include face-brick, plastered brick, timber half-rounds, nu-tec board and vibracrete panel walls – preferably painted the same colour as the house - keeping in mind that the finish must not detract from the existing house and other houses in the surrounding area. The roof finishes (flat or pitched roof) will also depend on the materials and finishes found in the surrounding area.

All buildings from which the liquor enterprise is operated must have an adequate foundation or a raised concrete platform on which the structure rests. The buildings should make use of quality fire retardant materials, be structurally sound, and meet the minimum requirements in terms of fire safety, natural or artificial ventilation, natural light, access to a toilet(s) and a hand basin(s) for sanitation purposes (connected to the Municipal network), electrical and plumber certification, and stormwater run-off control (roof with gutters or a concrete apron around structure).

6. Placement of the structure on a property

- a. No structure may be placed in a position which may compromise access to Municipal infrastructure and services such as water lines, sewer lines, stormwater channels/ pipes, fire hydrants and electricity cables, distribution boxes and transformers.
- b. House Taverns shall be located behind the development setback line of the existing house on the property and preferably in front the primary dwelling house to reduce patrons access to the residential portion of the property.
- c. The development parameters applicable to “dwelling house” shall be applied to all House Taverns.
- d. The development parameters applicable to “Place of Amusement” shall be applied to all Taverns.
- e. The buildings of all liquor enterprises that face the street should have an adequate setback the street boundary to permit patrons to enter the facility without impeding pedestrian or non-motorised transport using the sidewalk space in front of the property.

7. Compatibility with other surrounding land uses

The proposed location of a liquor enterprise must have regard to its compatibility with other land uses generally found in a residential area. Thus, it is advised that no liquor enterprise, is authorised or established where its proximity to community uses such as schools, crèches, old age homes, hospitals, clinics, libraries, public open spaces and places of worship is likely to have a negative impact on the facility or within a distance of 200m from such a facility.

House Taverns or Tavern, located in a residential area, should ideally not be located near a Spaza Shop (unless in an area where the agglomeration of these land uses is being encouraged) given the potential of especially children being exposed to anti-social behaviour.

8. Health regulations

Sufficient ventilation (natural or mechanical) and light (natural) must be provided in all structures used for the liquor enterprise. The following health regulations need to be complied with if food is to be sold or prepared from the premises:

- a. Food premises requirements in terms of the Health Act (63 of 1977) Regulations R918
- b. that the premises comply with the general hygiene requirements for food premises and the transport of food regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972);
- c. that a Certificate of Acceptability be obtained as required by regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972); and
- d. that the premises comply with government notice R264 of 30 March 2012 relating to the smoking of tobacco products in public places as promulgated in terms of the Tobacco Products Control Act, 1993 (Act 83 of 1993) as amended.
- e. Noise regulations in terms of the Environment Conservation Act (73 of 1989).

9. Business license

A business license application must be submitted to the Department Planning and Economic Development: Lekwa Local Municipality.

10. Noise nuisance

No liquor enterprise may constitute a noise nuisance (people shouting, music being played loudly, extraction fans, etc), create a nuisance for any neighbouring property owner as a result of vehicles parking in the street, patrons lying drunk in the street, damaging neighbour's property, smoke from fires, cars hooting/stopping in front of neighbours property, etc.

All music played at a House Tavern or Tavern must be limited to listening music set at a low volume and speakers may not be placed outside the premises. Juke boxes will also not be allowed at House Tavern.

Owners of Places of Amusement (Tavern) should apply 3 months in advance for a relaxation of the noise nuisance provision for occasional uses (once-off events) such as for a live band, special sports event, etc to the Local Economic Development Unit of Lekwa Local Municipality.

11. Rectification of illegal liquor enterprises

Following the implementation of this policy, all owners and/or operators of illegal (unauthorised) liquor enterprises (including those who have previously been served a notice) shall be served a notice requiring them to immediately cease the unlawful activity and apply to rectify the contraventions within 30 days of date of notice being served. The owner is also to be informed of the Municipality's willingness to assist / guide the owner and/or operator where possible in rectifying the offense if the owner has or had a valid liquor license and was operating from the property prior to the approval of this policy.

If the owner/ operator responds to the notice and requests assistance, the Municipality's officials will arrange an appointment with this owner or his appointed agent who must present the official with sufficient information such as a liquor license and/or SARS registration dating prior to the approval of this policy, a building plan, a title deed and other relevant information required to assist him/her in rectifying the contraventions on his/her property.

The official must keep record of these engagements and respond to the owner in writing on the pre-application forms with regards to the rectifications that need to be made on the property before land use application can be considered. The official is also to lay out the timeframes for the submission of

the application. The owner or his agent is to revise his development proposal in accordance with the advice received and submit the required land use application in accordance with the policy.

Should the illegal liquor enterprise not have a valid Liquor License, such incident will be reported to the SAPS and/or the MP: Liquor Authority.

If the owner and/or operator adheres to the Municipality's notice, the advice received during the negotiation period, or submit the required application within the timeframe stated by the official, he/she will be permitted to continue operating on the terms stated by the Municipality until the land use application has been finalised.

However, if he/she does not adhere to the Municipality's notice, the advice received during the negotiation period, or submit the required application within the timeframe stated by the official, or the terms that the enterprise may continue to operate, as the case may be, a final notice will be served by the Municipality on this owner and/or operator allowing him/her a final 14 days in which to cease the unauthorised activities.

Should this notice not be adhered to, the Municipality will institute legal action, which can either result in a criminal charge being laid or civil proceedings being instituted to have the illegal land use ceased.

Only once the activity is ceased, the owner and/or operator will be permitted to submit the required land use application but should be advised that the submission of such application does not give them the authority to continue operating.

The submission of the land use application does not guarantee that it will be approved by the Municipality. All land use applications are subject to the prescripts of SPLUMA and thus, no decision can be pre-empted.

12. Processing of applications

Registered notices shall be served on the surrounding property owners affected by the application, affording them at least 21 days to comment. Copies of these notices may also be served by hand to these property owners.

Notices shall also be served on surrounding community, welfare, educational and religious organisations, including the neighbourhood watch, ratepayers' associations and business chamber affording them 30 days to comment, while the Ward Councillor, Ward Committee, SANCA, community policing forum and commenting government departments (including the SAPS) will be provided 60 days to comment.

The applicant shall also place a site notice in a conspicuous position on the site for the duration of the above 30-day commenting period.

The applicant shall be granted a maximum of 30 days to comment on the objections/ comments received, unless otherwise agreed with the Municipality. If the reply is not received, the application shall be processed further.

The Municipality's decision on the land use application will be communicated to the applicant, the ward councillor, any objector, the South African Police Services and the Mpumalanga Liquor Authority.

The applicant and objectors will be afforded a right of appeal in terms of the provisions of the Land Use Planning Bylaw, which right must be exercised within 21 days of registration of the decision notice.

The appeal will be heard by the Appeal Authority of the Municipality, which is presently the Executive Council.

13. Lapsing and revoking of an approval

An approval granted for a liquor enterprise will be withdrawn and lapse in accordance with the provisions of the Spatial Planning and Land Use Management By-law for Lekwa Local Municipality, 2016.

The approval may be revoked should:

- a. it be used for any form of illicit trade or crime.
- b. it be found dumping waste or create unhealthy living conditions.
- c. it becomes a source of noise of public nuisance; or
- d. the phasing requirements for rectifying an existing liquor enterprise not be implemented within the time-frames stipulated;
- e. if not operational for a continuous period of 12 months.
- f. If the owner does not adhere to conditions imposed and compliances notices issued in this regard are not adhered to.

14. General conditions

- I. The owner of the liquor enterprise must be a South African resident of 18 years or older,
- II. The owner of a House Tavern must reside on the premises on a permanent basis and the applicant must sign an affidavit in this regard.
- III. No liquor enterprise may be authorised on rented premises without the written permission of the owner.
- IV. Trading must be restricted to the boundaries of the property and within the street building lines. No trading is permitted on the sidewalks or road reserve.
- V. No person under the age of 18 years may access the liquor enterprise if such person is not under adult supervision. No liquor may be sold to or consumed on the premises by a person under the age of 18 years.
- VI. Trading can only be from permanent structures which have approved building plans. The liquor enterprise may not commence trading if building plans for the structure have not been approved and occupation certificate issued.
- VII. No external evidence of a House Tavern may be visible from the street, except for the advertising sign which is to comply with applicable by-laws.
- VIII. According to the Lekwa Land Use Scheme a Tavern requires 6 spaces per 100m² floor area and/or 1 space per 4 seats and a Place of Refreshment requires 8 spaces per 100m² public floor area and 2 spaces per first 1000m² floor area, or part thereof and 1 space per every 1000m² floor area thereafter.
 - I. If stock is to be delivered, the deliveries must be restricted to normal business hours (08h00 to 17h00 weekdays only).
 - II. The total area to be used for a House Tavern on the property, including storage, shall not exceed 50% of the total floor area of the dwelling(s) on the property, or 60m², whichever is the lesser, but not smaller than 20m².
 - III. Disposal of refuse must be addressed to the satisfaction of the Waste Management Unit of Lekwa Local Municipality.
 - IV. A business license application must be submitted to the Local Economic Development Unit of the Lekwa Local Municipality.

- V. The owner must obtain a certificate from the Directorate: Community Services (Fire Department) which must be openly displayed on the premises, indicating the maximum number of people that may occupy the premises at any given time.
- VI. The Lekwa Local Municipality reserves the right to impose any additional conditions in case of valid objections/complaints having been received.

15. Withdrawal and lapsing of an approval,

An approval granted on a temporary basis to the owner of property / or operator to run a liquor enterprise from his/her property will be withdrawn under the following circumstances:

- a. When the property is alienated, in the instance of residential properties.
- b. In the event of the death of the owner.
- c. Valid objections have been received and an interdict against the owner is obtained.
- d. The owner of the property is arrested in connection with drug abuse, selling of drugs, prostitution, gun incidents, knife stab incidents or any other crime incidents.
- e. Where the owners end the approved activity.
- f. Should the property not be used for what it has been intended for

COMMENT FORM:

DRAFT INCENTIVE POLICY FOR HOME TAVERNS AND TAVERNS

My comment(s) on the above-mentioned policy are:

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That's all that I can comment on.

Thank you

(Please let your comments be specific.)
(Please write clearly, neatly and legibly)