



Mogale City

Local Municipality

**MOGALE CITY LOCAL MUNICIPALITY
HOME BASED ENTERPRISE POLICY
DRAFT REVIEW
2026**

PREPARED BY: DEVELOPMENT PLANNING

(DEPARTMENT OF ECONOMIC DEVELOPMENT SERVICES)

AUGUST 2026

TABLE OF CONTENTS

Heading	Page
1. Background	2
2. Problem Statement	3
3. Purpose	4
4. Objectives of the Policy	4
5. Principles, Norms & Implementation of the Policy	5
6. Scope & Review	6
7. Definitions and Interpretation	6
8. The Legal and Contextual Framework, Policies and Procedures	13
9. Policy Principles	13
10. Development Rights, Consent Usage & Policy Compliance	13
11. Application procedures	14
12. Site Plan Development Guidelines	15
13. Scope and Application of Policy 13.1 Area of application 13.2 Land Use Scheme regulations & Implications	15
14. The Policy Criteria to be used in the consideration of Consent for Home Based Enterprise	16
15. Conditions to be complied with in the application of the Policy	17
16. Additional Conditions to be placed on approval of Taverns.	18
17. Additional Conditions to be placed on approval of Bed & Breakfast (BnB's)	19
18. Additional Conditions to be placed on approval of Guest House	19
19. Additional Conditions to be placed on approval of Spaza Shops	20
20. Objections	20
21. Appeal	21
22. Law Enforcement	21
23. Transitional Arrangements	21
24. Commencement Date	21
25. Existing Policy repealed	21

1. BACKGROUND

- a) During 2006, the Municipality approved a Home-Based Enterprise Policy which referred to all business activities that are operated from residential and agricultural areas, with an exclusion of all hazardous and noxious industries (e.g panel beating, spray painting, candle manufacturing etc). The Policy stipulated that the residential character of such properties shall be maintained, and the dominant use shall remain **Residential** or **Agricultural** at all times.
- b) The HBE was limited to the **Bed and Breakfast, Guest Houses (Tourist Based), Small scale Retail, Hair and Beauty Salons, Tea Gardens, Taverns** and other similar or related business activities. The Policy indicated that applications for these business activities may be made in residential areas and be evaluated according to certain specified conditions.
- c) The above Policy (2006) was developed as a replacement for the Liquor Licence Policy 2001 for consideration of liquor licence applications, however the Policy (2001) could not address all the requirements pertaining to tavern as alluded to in the relevant liquor act.
- d) All applications for HBE, were required to be made in terms of Section 10,11 and 12 of Annexure F; Clause 14 of the Krugersdorp Town Planning Scheme, 1980; and Clause 7 of the Peri Urban Town Planning Scheme, 1975.
- e) In 2018, Mogale City Municipality approved its SPLUMA By-law which only came into effect after being promulgated and the municipality began to receive applications in terms of SPLUMA from July 2018. In terms of the By-law, all the unopposed land development applications are only decided by the Authorised Official (Municipal Manager), and the opposed applications are decided by the Municipal Planning Tribunal (West Rand District Planning Tribunal).
- f) The By-law was developed in compliance with the Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013 came into operation in 2015. The Act promote consistency and uniformity in its approach to spatial planning and land use management through setting out parameters for application procedures and decision making by authorities responsible for land use and land development applications.
- g) It has brought fundamental changes in municipal planning processes to enhance the manner in which municipalities have been performing spatial planning, land use management and land development duties.
- h) In 2022 The MCLM-Land Use Scheme was adopted in terms of Section 24(1) of the SPLUMA, in substitution of the following Town Planning Schemes previously in operation to the area of jurisdiction of the MCLM:
 - Krugersdorp Town Planning Scheme, 1980;
 - Krugersdorp Amendment Scheme 1472 of 2012;
 - Peri-Urban Areas Town Planning Scheme, 1975; and
 - Annexure F as per the Black Communities Development Act, Act 4 of 1984.

2. PROBLEM STATEMENT

- a) Since August 2008, the Development Planning Directorate has been flooded with applications for Home-Based Enterprise, including taverns or liquor licenses and other business activities. Between 2008 and March 2024, the applications processed in the residential areas in terms of the Home-Based Policy 2006 are 279 taverns, 231 daycare, 64 spaza shops, 18 Home based care, 15 guest houses, 12 HBEs and 10 Bed and Breakfasts businesses. The record shows that taverns and daycare applications are dominating in the residential areas hence the issue of sustainability and regulating may be a concern.
- b) During 2019, the Municipality with the support of COGTA conducted the Land Use Audit for the entire jurisdiction area of MCLM. This has enabled the Municipality to understand of the prevalence of different types of land uses as well as distribution, patterns, and trends thereof throughout the municipal area. The Land Use Audit identified total of 20 186 potential illegal uses across the municipality of which majority are Home Based Enterprise business activities in residential and agricultural zoned areas.
- c) Research shows that throughout the world it is an acceptable practice for HBEs to operate in residential areas, as they contribute towards the quality of lives of household members. There is a strong relationship between housing and home-based enterprises, as dwellers are able to consolidate their dwellings and make ends meet through the income earned. In a sense that, many households would not have a dwelling without their home-based enterprise and many enterprises would not exist without the use of a dwelling.
- d) HBEs fill the gaps within communities that chain stores or established dealers cannot meet. Furthermore, they offer convenience of accessibility after hours and they are more often within a reasonable distance.
- e) MCLM acknowledges the current economic decline and high rise of unemployment which claimed its toll to the need for an alternative family income. To overcome financial burdens, the Municipality promotes and supports HBEs as alternative methods and mechanisms of income generation to the citizens.
- f) Despite these advantages, a number of challenges were also highlighted regarding HBEs in the residential areas, including parking demands, putting undue strains on Municipality's services such as electricity, water supply and solid waste management as well as loss of property rates tax generation.
- g) It should be noted that based on the legacy of unequal development that has shaped the urban fabric, particularly in the apartheid townships, the Municipality doesn't have adequate policy frameworks to mitigate between market forces and structured urban development and management. This requires the formulation of contemporary policy approaches to deal with HBEs.

- h) As much as HBEs are necessary, they could pose a threat to human health, safety, high levels of noise, related incidences of crime and environmental pollution and the character and sense of place of residential neighborhoods. One way to control such challenges is to have strict rules to regulate HBEs and to identify those types that could be permitted in the residential areas.
- i) In the light of the above, it is evident that Regulatory measures are therefore necessary to ensure optimal functioning of the HBEs, at the same time ensuring they are sustainable. It is for this reason that the Home-Based Enterprise Policy 2006 is reviewed and replaced with Home Based Enterprise 2026 which seeks to address the shortcomings and stimulate economic growth in the residential zoned areas in line with SPLUMA principles.

3. PURPOSE

- a) The purpose of the policy is to review the existing Home-Based Enterprise Policy (HBEP) 2006 and provide a new Policy according to which applications for **liquor licenses (tarvens/shebeens), Bed & Breakfast, Guest Houses (tourist based), Small Scale Retail, Restaurants, Hair & Beauty Salons, Tea Gardens, Spaza/house shops and other similar or related activities** in Mogale City can be evaluated. This policy will, except for applications on business premises, include the primary business rights that are allowed in **Residential 5 Zone** in terms of MCLM Land Use Scheme 2022, which is applicable in the former black townships.
- b) The Policy will further address the conditions that should be imposed when such applications are supported by Council.

4. OBJECTIVES OF THE POLICY

- a) The Policy, within the parameters of the existing legislation, will enable the regulation and promotion of harmonious development and at the same time will protect the residential fabric of the area. Furthermore, it should enable appropriate market forces to operate freely within the residential areas and introduce healthy competitiveness. All the applications will be processed in the prescribed manner and will have to comply with prescribed criteria.
- b) The above-mentioned objectives are to be achieved through a Strategy or Policy that establishes an effective Land Use Management mechanism hence this Policy.
- c) The number of applications that Development Planning Directorate receives is an indication of a dire need for the economically challenged citizens for a properly structured system to enter the economic arena.
- d) The Policy will enable the regulation and coordination of Land Uses; it will protect the environment and establish a revenue base for the municipality.
- e) To nominate location requirements and development standards for Home-Based Enterprises which reflect broad community attitudes and expectations.

- f) To provide appropriate guidelines for Homebased Enterprises that will ensure that such are at reasonable distance from nominated sensitive land uses and will not cause disturbance or otherwise have a detrimental impact on the amenity of the surrounding neighbourhood.
- g) To promote the efficient use of land as an increasingly limited resource in MCLM.
- h) To encourage innovation in Home-Based Enterprise design to create a strong sense of community, a pleasant living environment and manage environmental impacts.
- i) To provide appropriate guidelines that will regulate the scale of Home-Based Enterprises as well prevent their over-concentration in certain areas
- j) To identify appropriate health and occupational safety requirements relating to the equipping and management of Home-Based Enterprises.
- k) To ensure that the principles of Sustainable Development are applied to the design of Home-Based Enterprises with particular emphasis on compliance with all relevant legislation.
- l) To ensure that the protection and enhancement of the character and sense of place of neighbourhoods and prevailing views in MCLM.
- m) Make arrangements for any extraordinary circumstances to be considered by MCLM.

5. PRINCIPLES, NORMS & IMPLEMENTATION OF THE POLICY

In order for the Policy to fulfil its purpose in the context of the MCLM LUS regulations and respective development rights conferred, the Policy must unfold in accordance with existing legislation and other relevant policies. If a Policy is in conflict with any legislation and its regulations, the latter takes precedence, and the Policy becomes irrelevant from a legal perspective. Consequently, land use management and the acquisition of development rights for Home-Based Enterprises must be implemented in the following manner:

- a) All officials and role players in the Spatial Planning and Land Use Management System of the municipality must implement this Policy in a way that it is compliant with the Development Principles and Norms and Standards prescribed in Chapter 2 of SPLUMA.
- b) The Policy must comply with:
 - i. The Development imperatives, Principles and Regulations stemming from the SPLUMA act, MCLM SPLUMA By-Law of July 2018, MCLM LUS 2022 and their subsequent amendments.
 - ii. Policy and legislation addressing universal access.
 - iii. Municipality's Integrated Development Planning (IDP), Spatial Development Framework (SDF), Precinct Plans, Local Development Plans, Capital Investment/

Expenditure Plans and other municipal policies right to environments that are not harmful to any person and fauna or flora within the MCLM Municipal area of jurisdiction and is consistent with other applicable legislation.

- c) The implementation of the policy must give effect to:
 - i. Section 156(1) of the South African Constitution (Act No. 108 of 1996, hereafter, the Constitution) in accordance with Schedules 4B and 5B, since local municipalities are responsible for municipal planning, land management, childcare, health and building regulations.
 - ii. Section 24 and Section 156(1) of the Constitution entrenching the rights of tenants and all residents of the MCLM Municipal area to “an environment that is not harmful” and the right of all “to choose their trade, occupation, or profession freely” in a manner which is regulated in terms of the law and municipal planning.
 - iii. The Promotion of Administrative Justice (Act No 3 of 2000, PAJA) in accordance with Section 33 of the Constitution and the Intergovernmental Relations Framework (Act No 13 of 2005, IGRA) accords everyone in South Africa the right to administrative action which is lawful, procedurally fair, just and accountable. This right includes the right to the provision of written reasons for infringements of PAJA and the imperatives of good governance and efficient administration of municipal responsibilities in accordance with this policy.

6. SCOPE & REVIEW

- a) The scope of this Policy encompasses the entire (wall-to-wall) MCLM area of jurisdiction, including Peri-urban, former Annexure F and Informal settlements areas as defined in the MCLM LUS.
- b) The existing Policy is reviewed in order to ensure alignment with the SPLUMA compliant SDF, LUS, Precinct Plans and other applicable Local Area Plans, Strategies, Policies and Regulations.
- c) Prio to July 2018, all applications for HBE, were required to be made in terms of Section 10,11 and 12 of Annexure F; Clause 14 of the Krugersdorp Town Planning Scheme, 1980; and Clause 7 of the Peri Urban Town Planning Scheme, 1975. The SPLUMA By-Law was promulgated and implemented on 1st July 2018.
- d) The MCLM LUS was adopted in 2022 and it accords development rights to properties and buildings in accordance with particular zones which are regulated in the public interest through a continuum of permissible, prohibited, and Municipal Consent development and usage intensities.

7. DEFINITIONS AND INTERPRETATION

- a. The definitions listed in this Policy are aligned with the content of the current MCLM LUS 2022 and SPLUMA Bylaw 2018.
- b. Home Based Enterprise Applications submitted to the municipality prior to the approval of the LUS 2022, must comply with the definitions of the existing applicable LUS. Such definitions

shall be amended accordingly should the definitions in the LUS be amended in the light of the recommendations of this Policy and subsequent consultation processes.

- c. The non-Scheme related definitions are also required for Policy coherence.

DEFINITIONS AND INTERPRETATIONS

TERM	DEFINITIONS
Home Based Enterprise (MC Land Use Scheme 2022)	means the use by a small-scale enterprise of a portion of a dwelling house, second dwelling and/or outbuildings for artistic, social, religious, professional services or occupational purposes with the aim of deriving income therefrom by the occupant – provided that: • The enterprise is undertaken by a maximum of three (3) persons, of which at least one is a full-time resident of the property • The dominant use of the property shall remain residential • The written supportive comments from surrounding owners shall be obtained • The business shall not be noxious • The business shall not interfere with the amenity of the neighbourhood • Sufficient parking shall be available as stipulated in terms of Clause 36 of this Land Use Scheme, where parking provision can be relaxed by the Municipality in instances with the necessary merit • Requirements imposed by the Municipality and dictates of other Municipality policies as amended from time to time are met • No title condition applicable to the property may be transgressed, and • Only the following land uses shall be considered for home enterprise: • Professional office usage of Service enterprise • Service industry, and • Limited retail including sale of goods which are manufactured on site.
HomeEnterprise (Existing Policy 2006)	Shall refer to all business activities that are operated from residential and agricultural areas, with an exclusion of all hazardous and noxious industries (e.g panel beating, spray painting, candle manufacturing etc) the residential character of such properties shall be maintained, and the dominant use shall remain Residential and or Agricultural at all times. For the purpose of this report HBE shall refer to and limited to the following business activities, Bed and Breakfast, Guest Houses (Tourist Based), Small scale Retail, Hair and Beauty Salons, Tea Gardens, Taverns and other similar or related activities.
Service Enterprise	means land and/or buildings or a part thereof used for the supply of personal services and goods incidental thereto for compensation and which is excluded in the definition of bakery, office, institution, filling station, public garage, professional usage, bank, funeral parlour, noxious use, risk activity, light industry, industry and medical consulting room and include such activities as for example hairdressers, beauty parlours, spa / hydro and wellness centre; - Provided that the provision of personal services as listed in Schedule 1 (Item 2) of the Business Act, Act 71 of 1991 shall be subject to a licence in terms of the said Act.

Service industry	means a use which in the opinion of the Municipality is a small-scale industry incidental to the need of the local community and the retail trade and which, in the opinion of the Municipality, will not interfere with the amenity of the surrounding properties or be of nuisance value by virtue of noise, appearance, smell or activities or for any other reason whatsoever, but excludes a public garage.
House Shop /Spaza / Tuck Shop	means part of the dwelling house / unit or outbuilding, which provides a necessary local retail function to the community, supplying essential pre-packed and / or pre-wrapped items and / or foodstuff, excluding liquor and meat. A house shop is not a general business or retail function on a residential erf and the residential component remains the main use of the erf.
Tavern or Shebeen	means a residential building or dwelling unit or part thereof constructed, designed or adapted for use for social gatherings and for the consumption of liquor on the premises and may include the consumption of non-alcoholic beverages and the preparation and consumption of food, but shall not include any off-sale activity – provided that the dominant use shall remain residential for the occupant of the said dwelling unit and subject to the consent of the Municipality and compliance of applicable health and safety laws, regulations and the Gauteng Liquor Act, Act 2 of 2003.
Teagarden / Coffee Shop	means a land and a building designed and used for the preparation or retail sale of meals and refreshments usually in a garden setting. Operational hours as determined by Municipality. The area used for a teagarden may be restricted by the Municipality and is further subject to the policies of the Municipality as amended from time to time – provided that the establishment and operation of a teagarden for the sale or supply of any foodstuff in the form of meals for consumption on or away from the property shall be subject to a licence in terms of the Business Act, Act 71 of 1991.
Guest House	means an enterprise for the temporary accommodation of transient guests and which is conducted from a dwelling house or a building with not more than 16 rooms that have specifically been designed for such purposes and may include a conference facility catering for business meetings or training sessions on the property. Only one (1) kitchen per establishment shall be allowed and meals and all facilities shall be provided to and are for the exclusive use of guests.
Bed and Breakfast	means a dwelling house or a second dwelling unit which the occupant of the dwelling supplies lodging and breakfast for compensation to transient guests who have permanent residence elsewhere, provided that: the dominant use of the dwelling house concerned shall remain for the living accommodation of one family and does not include self-catering. • The establishment does not include a guest house, a lodge and conference facilities, and • In addition to a Bed and Breakfast, a home enterprise may be permitted subject to the consent of the Municipality.
Beauty Parlour	means land and buildings used for providing facial and body treatments, massages, hot and cold-water facilities for relaxation or invigoration, nail manicure and tip replacement or repair, pedicure, hair dressing or other body treatment for humans and may include the sale of only products which are ancillary and subservient to the main use and does not include a shop and adult entertainment business

Owner	Means as defined in the SPLUMA Bylaw 2018
Adequate	when used to describe a standard or manner in which anything required by this By-Law shall be done, means the standard or manner that, in the opinion of and the Town and Regional Planner or "authorised official" is sufficient to safeguard public interest and to achieve the purpose and apply the norms and intent of this policy and "adequately" has a corresponding meaning.
Ambient sound level	means the reading on an integrating impulse sound level meter taken at a measuring point in the absence of any alleged disturbing noise at the end of a total period of at least 10 minutes after such meter was put into operation in terms of the Noise Control Regulations GR 2544 of 1990 in terms of Section 25 of the Environment Conservation Act (Act No. 73 of 1989).
Amenity	means those qualities or conditions in an area, which may be: (i) a locality, (ii) a precinct, (iii) a district, or (iv) any defined area, that contributes to the pleasantness, harmony and coherence of the environment and to the public's enhanced enjoyment of any permitted use. Amenity includes the normative requirement that all qualities and conditions of usage are to be respectful of the multicultural values and customs of all inhabitants of the site, area, locality, precinct, district or any defined area where the development may have an impact on the enjoyment of the area.
Authorised official	Means as defined in the SPLUMA Bylaw 2018
Coverage	Means as defined in the Land Use Scheme 2022
Existing use (rights)	Means as defined in the Land Use Scheme 2022
Family	Means as defined in the Land Use Scheme 2022
Floor Area	Means as defined in the Land Use Scheme 2022
Floor Area Ratio	Means as defined in the Land Use Scheme 2022
Frontage	The length of the boundary of an Erf which fronts onto an existing or proposed road.
Human Dignity	refers to an individual or group's sense of self-respect and self-worth, physical and psychological integrity and empowerment. Human dignity is inherent to every human being, inalienable and independent of the state. In contrast, other human rights can be suspended in a state of emergency or limited in terms of law of general application. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 8).
Inclusion	is a universal human right and aims at embracing the diversity of all people irrespective of race, gender, disability or any other differences. It is about equal access, opportunities, eliminating discrimination, and intolerance for all. It is about a sense of belonging: feeling respected, valued for who you are; feeling a level of supportive energy and commitment from others so that you can best fully participate in society with

	no restrictions or limitations. Inclusion implies a change from an „individual change model“ to a „system change model“ that emphasises that society has to change to accommodate diversity, i.e. to accommodate all people. This involves a paradigm shift away from the specialness“ of people to the nature of society and its ability to respond to a wide range of individual differences and needs. Inclusion is the ultimate objective of mainstreaming. White Paper on the Rights of Persons with Disabilities, South African Office of the Deputy President, 2015: 9).
Independence	means a state of being whereby available and adequate support services, assistive devices and personal assistance to persons with all disabilities enables persons with disabilities to exercise choice, bear responsibility and participate fully in society. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 9)
Independent living	means the ability of a person to live just like anyone else, to have opportunities to make decisions that affect their lives and to be able to pursue activities of their own choosing with the necessary support to enable persons with disabilities to live independently. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 9).
Interested Person/party	As defined in the SPLUMA Bylaw 2018
Liquor	As defined in the Gauteng Liquor Act 2014 (Act 3 of 2014)
Municipal Consent	means the consent, in writing, by the Municipality for any activity on, or use of land or buildings for which an application is made, in terms of the applicable Land Use Scheme and other relevant legislation. The intention of the Municipal Consent applications process is to accord consideration of applications that have low impact consequences for the overall character of the zone in which such an application is located.
Municipality	As defined in the MCLM Bylaw, 2018.
National Building Regulations and Building Standard Act	As defined in the MCLM Bylaw, 2018.
Nodes	As defined in the MCLM SDF 2022.
Norms and Standards	Spatial and Development Planning, policy, and legislation are required to deal with specific subject matter in such a way that transformative planning is achieved across the country by establishing applicable norms and standards which are in accordance with the rights and duties contained in the Constitution. In this Policy, “ norms ” refer to the universal rights and duties accorded to all people and to the environment in the South African Constitution and Bill of Rights. “ Standards ” associated with each norm specify the various social, environmental, economic administrative, spatial, cultural, and technical specifications/ measurements/conditions that are set in accordance with each norm that the standard is associated with.
Noise disturbance	means any sound which disturbs or impairs or may disturb or impair the convenience or peace of any person.

Noise level	As defined in the Land Use Scheme 2022
Occupant / Occupier	As defined in the Land Use Scheme 2022
Outbuilding	As defined in the Land Use Scheme 2022
Owner	As defined in the MCLM Bylaw, 2018
Ownership	in relation to property, means the person or entity in whose name that property is registered in a deeds registry, and may include the holder of a registered servitude right or registered lease, and any successor in title.
Peace officer	means a peace officer as defined in terms of the Justice of the Peace and Commissioners of Oaths Amendment Act No 36 of 1986.
Permit	means a public health permit issued by the Municipality in terms of the section 2; the WRDM Municipal Health Services By-Laws of 2011.
Person	As defined in the MCLM Bylaw, 2018,
Permitted liquor trading hours	as per the Gauteng Liquor Act, 2014 (Act No. 3 of 2014).
Premises	As defined in the Land Use Scheme 2022
Powers and Functions	If any provision in this Policy vests or imposes any power, function or duty of the Municipality in or on an employee of the Municipality, and such power, function or duty is in terms of Section 81 (2) of the Local Government: Municipal Systems Act, (Act No. 32 of 2000), or any other law, assigned to a service provider: (a) the reference to such employee shall be read as a reference to the service provider; or (b) where applicable, an employee of the service provider authorized by it.
Property	As defined in the MCLM Bylaw, 2018
Public nuisance	As defined in the Land Use Scheme 2022
Public place	As defined in the MCLM Bylaw, 2018,
Segregation	means a system that keeps different groups separate from each other, either through physical dividers or using social pressures and laws, or programmes thereby treating them differently. It is the action or state of setting someone or something apart from others causing separation, setting apart, keeping apart on the basis of differences defined by a system. It also results in exclusion, closeting, protection, shielding, partitioning, division, detachment, disconnection, dissociation; sequestration and partition (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 12).
Scheduled use	means a use listed in Schedule 3 of the WRDM Municipal Health Services By-laws of 2011.
Social Cohesion	is the degree of social integration and inclusion in communities and society at large, and the extent to which mutual solidarity finds expression among individuals and communities. A community or society is cohesive to the extent that the inequalities, exclusions, and disparities based on ethnicity, gender, class, nationality, age, disability or any other distinctions which engender divisions distrust and conflict are

	reduced and/or eliminated in a planned and sustained manner. Community members are therefore active participants, working together for the attainment of shared goals, designed and agreed upon to improve the living conditions for all. (White Paper on the Rights of Persons with Disabilities, South African office of the Deputy President, 2015: 13).
Residential Areas	a residential area is a type of land use where the predominant use is housing. In areas that are zoned residential, buildings may include single family housing, multiple family housing such as apartments, duplexes, and townhouses.
Residential Use	As defined in the Land Use Scheme 2022
Self-contained Residential	means a Building utilised for habitable residential Unit” purposes and which shall comply with the following requirements – (a) the unit shall be for the accommodation of not more than 2 persons who shall be aged parents of the owner or, in exceptional circumstances satisfactory to the Council, other members of the owner's family; (b) the unit shall comprise not more than one bedroom, a lounge/dining room, a kitchen and a bathroom/ toilet; (c) except in special circumstances satisfactory to the Council, the unit shall not be accessible from within a Dwelling or Outbuilding to which it may be attached; (d) the total floor area of the unit shall not exceed 25% of the total coverage of the Dwelling on the Site, save with the Municipal Consent of the Council. Provided further that, if the owners of the properties adjoining the site in question, as well as any other owners and/or organisations whom the Council may determine, give their consent in writing to a unit in excess of 25% of the total coverage of the dwelling on the site, the Council may waive the Municipal Consent procedure.
Site Development Plan (SDP)	As defined in the Land Use Scheme 2022
Zoning	As defined in the Land Use Scheme 2022

8. THE LEGAL AND CONTEXTUAL FRAMEWORK, POLICIES AND PROCEDURES

The following legislations and documentations are applicable to this policy:

- a) Constitution of South Africa, 1996 (Act No. 108 of 1996).
- b) SPLUMA, 16 of 2013
- c) Liquor Legislation
 - i. Liquor Act (Act No. 59 of 2003) and its regulationsf 2004.
 - ii. The Gauteng Liquor Act, 2014 (Act No. 3 of 2014, as amended) and its regulations.
- d) MCLM SPLUMA By-law 2018
- e) MCLM Home Based Enterprise Policy 2006
- f) MCLM Land Use Scheme 2022
- g) MCLM Township Regeneration Strategy
- h) Gauteng Township Economic Development Act 2022

- i) Land Use Audit 2019
- j) Draft Informal Trading Policy 2023
- k) MCLM Itinerant Traders Policy
- l) MCLM By-laws For Control of Signs & Advertising Hoardings 2024
- m) Mogale City Wide Township Economic Development Programme
- n) WRDM Municipal Health Services By-law 2011 ((Review 2024)
- o) Noise Control By-law of the WRDM 2024
- p) MCLM Draft Parking Bylaw 2024

9. POLICY PRINCIPLES

- a) In reviewing the MCLM Home Based Enterprise Policy, consideration was given to the existing HBE Policy (2006), and these principles are at the core of the Policy:
 - i. Enable and encourage bona fide illegal traders to regularise their businesses.
 - ii. Improve the application process to be simpler and user friendly.
 - iii. Encourage community involvement in determining the location of Home Base Enterprises (especially taverns).
 - iv. Accept extraordinary circumstances and management of such enterprises without including the legal use of road reserves without interfering with the rights of the community
 - v. Improve enforcement in respect of illegal Home-Based Enterprise Uses with a focus on regularisation.
 - vi. The Municipality to be actively involved in the issuing of liquor licenses.
 - vii. The process to provide for the public, ward councillor and ward committees to be involved in the decision-making process, location and approvals on applications.

10. DEVELOPMENT RIGHTS, CONSENT USAGE & POLICY COMPLIANCE

- a) The MCLM LUS accord development rights to properties and building processes in accordance with particular use zones. These use zones regulate permissible, prohibited, and Municipal Consent usage. In terms of the MC-LUS, provisions of Home-Based Enterprises are stipulated under Clause 17.
- b) In respect of the “Municipal Consent” zones, the Municipal Planning Officials can assess and evaluate the applications for compliance with the HBE Policy and LUS regulations and recommend approval if it is compliant or recommend that the application be turned down if it is not compliant.
- c) Interested and affected parties can also object to the application based on amenity, procedural, substantive, or normative flaws within the application.
- d) In addition, the Municipal Consent accorded can be withdrawn if the Policy and LUS regulations as well as conditions of approval are not adhered to. Municipal Consent should only be granted if the character of the area and the amenity of the area is not adversely affected by the establishment of the proposed Home-Based Enterprise.
- e) Incentive zoning is recommended in accordance with the imperatives of the SDF as called for in SPLUMA. Where demand is identified, Council may update the incentive zoning structure.

11. APPLICATION PROCEDURES

In this regard:

- (a) The submission of applications shall be in terms of Section 43 of the SPLUMA Bylaw 2018 law which regulates applications in accordance with the adopted MCLM Land Use Scheme 2022 in respect of land development.
- (b) A written application accompanied by the required fees and appropriate accompanying documentation to MCLM in respect of the relevant properly shall be made by the owner of the land or building in a prescribed manner.
- (c) The application process requirements are depicted in Schedule 1 and shall be fulfilled by the applicant on the MCLM Form -1 of the By-law.
- (d) The municipality considers/ evaluate the application for procedural and substantive compliance with Schedule 1 of Section 43 of, the normative substance of the SPLUMA By-Law as well as the procedural elements 2 of SPLUMA.
- (e) These procedures include the displaying of notice on the land under consideration by the applicant and the serving of individual notices as per the provisions of the By-law. Interested and affected parties can also object to the application based on amenity, procedural, substantive, or normative flaws within the application.
- (f) Once the administrative process which includes public participation and responses is concluded, the municipal decision-making authority, must consider the application including the information contained.
- (g) During the administrative process the municipality reserves the right to request additional information/studies that may be required for the best assessment of the application.
- (h) The municipal decision-making authority in terms of the provisions of Section 41 (5) has 30 days to make a decision on an application.
- (i) The municipal planning team may call for a Site Development Plan (SDP) and a motivation from the applicant proving the desirability, and market demand for the development in the said location. Where the demand is established, floatation and incentive zoning is recommended in accordance with the imperatives of the SDF as called for in SPLUMA.
- (j) The power of the Municipality to grant its consent or its approval shall include the power to refuse consent or approval and, if consent or approval has been granted, the power to impose any conditions that it may deem fit.

- (k) If the owner of the relevant property is in breach of a condition upon which any consent or approval was granted by Municipality, the Municipality may serve a notice upon such an owner or the occupant of the property concerned, calling on him/her to remedy such a breach. If the relevant breach is not remedied as required in such notice, the responsible authority may terminate such consent or approval.
- (l) The notice referred to in the above paragraph (j) shall require that the breach be remedied within a specific period in terms of Section 26 (Law enforcement) of this Policy.

12. SITE DEVELOPMENT PLAN GUIDELINES

- a) In circumstances where a Site Development Plan is required in terms of this Policy, the SDP must show the layout, extent, position, and elevations of buildings on the proposed development of a site. This shall include:
 - i. Site layout and landscaping specifications.
 - ii. Slope analysis and topography.
 - iii. The Gross Floor Area (GFA); Floor Area Ratio (FAR) and Coverage of the proposed development.
 - iv. Subject property building footprint in relation to neighbouring properties including measurement to indicate proximity.
- b) The SDP can only be considered in accordance with the provisions of Clause 40 of LUS and if any other consideration called for by Municipality or Sector Department are addressed to the satisfaction of the Municipality
- c) The SDP, Building Plans and Landscape Plans may require the comments of other relevant Departments as the Municipality deem necessary and their subsequent amendments prior to approval.
- d) No application for building plan approval in terms of the National Building Regulation Act shall be granted by the Municipality, unless the SDP has first been approved by the Municipality.
- e) An approved SDP shall be considered as setting additional development rules applicable to the development rights accorded in terms of the applicable Zone in which the development is located.
- f) The establishment shall not require any additions or alterations to a building on a site that would prevent the building from reverting to being used as a single family “dwelling” in the event of the use ceasing; and
- g) Any application for amendment to the SDP, shall comply with the Municipality’s requirements for such amendments.
- h) A waste management plan may be requested by the Municipality
- i) Any consideration of special circumstances or departure will be subject to the scrutiny of the relevant Municipal competent authority.

13. SCOPE AND APPLICATION OF POLICY

13.1. Area of application

This Policy is to guide the effective and responsible use of Home-Based Enterprise in MCLM. When adopted, this policy will apply to the whole area of jurisdiction within MCLM, including Informal Settlements areas defined as Transitional Residential areas in the LUS.

13.2. The Land Use Scheme regulations and Implications.

- a) The MCLM LUS was established in terms of SPLUMA and is implemented to accord development rights to land within the Municipality's jurisdiction. The LUS define a number of Zones and Reservations within which development rights are classified as being either expressly permissible, expressly prohibited or which may be permitted by the Council's Municipal Consent.
- b) Home enterprises are permissible as Primary Uses in the Transitional Residential Zone (Informal Settlements) and Business 4 zone subject to exclusions as per the provisions of the MCLM Land Use Scheme.
- c) The Home enterprises are only permissible through Written Consent based applications in the Residential 5 Zone in terms of the Land Use Scheme.
- d) Home Enterprises are only permissible through Consent Use based applications in the Residential 1 zone and Farm land / Agricultural Holding Residential Zone in terms of the Scheme.
- e) The Council must consider any applications for its Consent in terms of a procedure which is laid down in section 43 and the associated provisions of the SPLUMA By-Law which prescribes the application processes from 1st July 2018.
- f) Where an existing zoning regulation prescribes standard development parameters (i.e. height, building lines, parking), this Policy does not replace these similar provisions, but is applied where such a provision does not exist, or in addition to such provisions.

14. THE POLICY CRITERIA TO BE USED IN THE CONSIDERATION OF GRANTING CONSENT FOR A HOME-BASED ENTERPRISE

- a) A Home-Based Enterprise must be operated from a building or associated immovable Structure approved in terms of the National Building Regulations & Building Standards Act, 103 of 1977, and thus informal/temporary structures or containers cannot be permitted. (What about Transitional Residential Areas???)
- b) The granting of such Consent may not interfere in anyway with the amenity of the area.
- c) Such Consent should be preferable located:
 - i. Nearby established business/activity nodes
 - ii. Along busy arterial roads that carry heavy traffic flow
 - iii. In mixed land uses area whereby such land uses will complement the diversity of land uses
- d) Any new structure or alteration to the existing house or outbuilding must fit in with the development intensity and character of the relevant area.
- e) The presence of a residential component should be considered in those cases whereby the location of "Home Based Enterprise" is considered to be more sensitive than others.
- f) The scale and or intensity of the activity should be defined in terms of height, coverage and floor area so that the impact may be controlled.
- g) Parking is of great importance and depending on the scale of the operation and its location, it must be adequately addressed the provisions of parking requirements in terms of Clause 39 of MCLM LUS shall be applicable.
- h) The environment must be protected, and noise pollution must be controlled.
- i) Aesthetically, the development should blend with the neighborhood / environment and signage should be adequately controlled.

- j) The hours of operation shall and number of employees shall be determined by the Municipality .
- k) Building Plans shall be submitted for approval and no further additions and alterations should be carried out without any further consent of the Municipality.
- l) The use of the property as a Home-Based Enterprise shall be restricted in floor area to be determined by the municipality. i.e the business component may not exceed 50% of the total floor area, excluding toilets, restrooms and storage place.
- m) Home Based Enterprises shall be generally small scale and not clustered so that they integrate with adjoining land uses.
- n) Specific requirements from various internal Departments such as Community Services, DIEM must be addressed.
- o) The Consent may be subject to review and a time limit may be imposed.
- p) The Council may impose any other condition that it feels necessary in order to protect the amenity of the area.
- q) The Council may refer the application to certain interested parties (e.g. Councillors, leaders of the community) if it feels that additional public opinion is necessary.
- r) The owner of Home-Based Enterprise shall apply for and obtain a Municipal Business License prior to commencing any operations.
- s) Maximum floor area of HBE?????

15. CONDITIONS TO BE COMPLIED WITH IN THE APPLICATION OF THE POLICY.

- a) An application for a Home-Based Enterprise shall be lodged in terms of the provisions and procedures of the applicable legislation.
- b) The activity may not be noxious or hazardous to the health and safety of the surrounding property owners.
- c) The activity may not be a nuisance to the neighbours.
- d) The main use of the property shall remain residential.
- e) The business operating hours shall be as per applicable legislation or determined by the Municipality.
- f) Parking shall be provided as per Clause 39 of the MC LUS 2022
- g) A Site Development Plan and building plans shall be submitted as per Section 12 of this Policy.
- h) No building shall be erected on the property before such plans have been approved, and the whole development of the property shall be in accordance with the approved plans. The SDP shall show the following:
 - i. The sitting, height, coverage and where applicable, the floor area ratio of all buildings and structures.
 - ii. Vehicular entrances and exits to and from the property to any existing or proposed public street, which shall be sited, constructed and maintained, to the satisfaction of the Municipality.
 - iii. Entrances to buildings and parking areas
 - iv. Building restriction areas (if any)
 - v. Parking, on and off-loading facilities (on and off loading to be provided on site). No parking is permitted on the sidewalks and no trading is permitted on either the sidewalks or road reserve.
 - vi. The elevation treatment of all buildings and structures
- i) The applicant shall conduct no other use than that of a Home-Based Enterprise, as approved by the Municipality

- j) If there is any change in use or the owner wants to conduct an additional use on the property, the owner/occupant should apply for such use(s) as prescribed .
- k) The applicant may not advertise in any way on the property, except as provided in terms of the provisions of the relevant LUS, advertising by laws or advertising policy of the municipality.
- l) All activities relating to the home-based enterprise shall be within the property. Trading must be restricted to the boundaries of the property and within the street building lines.
- m) Access for people with a disability should be provided in accordance with all relevant legislation
- n) All health requirements and by-laws shall be adhered to
- o) The storage or sale of any explosive or flammable goods (excluding matches) are not permitted from a property.
- p) The relevant sign may only indicate the name and nature of the business. Signs sponsored by the liquor industry including branding are permitted.
- q) The Municipality's grounds for reviewing a decision: should the business cause a nuisance or criminal activity be reported after approval, the approval will be withdrawn. Similarly, if the property owner deviates from the municipal planning authority, business licence or liquor licence authority conditions, the approval will be withdrawn.
- r) Should the applicant fail to comply with any of the above conditions, the permission granted will not be valid and the municipality may suspend or withdraw the permission granted.

16. ADDITIONAL CONDITIONS TO BE PLACED ON APPROVAL OF TAVERNS.

- a) The Consent approval to be granted will be valid for a period of 24 month after which the owner may request for extension of another 24 months.
- b) Under the Transitional Residential Zone (Informal Settlements), the Temporary Written Consent for a period of 12 months will be granted, which may be extended with consent from Municipality.
- c) Tavern owners must apply annually to the Gauteng Liquor Board as per section 62 of the Gauteng Liquor Licencing Act, 2014 (Act No. 03 of 2014) for the renewal of their licences.
- d) The holder of an on-consumption liquor licence from a tavern premises, as per section 50(6) of the Gauteng Liquor Act, 2014 (Act No. 03 of 2014, as amended) must ensure that the licensed premises are separate from any other dwelling, especially a residential dwelling, and if attached to a dwelling, it must be separated by means of walls constructed out of brick and mortar, separate access points of entry into the licenced premises and securable doors.

- e) If the property owner deviates from the municipal planning authority, business licence or liquor licence authority conditions, the approval will be withdrawn.
- f) No Tavern is permitted in flats or municipal rental units or allowed to encroach upon public open spaces or road reserves.
- g) The relevant sign may only indicate the name and nature of the business. Signs sponsored by the liquor industry including branding are permitted.
- h) On stands less than 300sqm additional parking can be provided by neighbouring properties through a formal parking lease that can be presented to MCLM.
- i) In instances where the tavern scale extends to the road reserve an additional motivation will be required and a lease agreement with the municipality needs to be present. The municipality reserves the right not to approve such applications if the motivation cannot prove mitigation aspects to a public nuisance.
- j) Taverns close to a taxi rank or public transport amenities may be considered for a parking relaxation.
- k) In terms of section 48(5) of Gauteng Liquor Act, 2014 (Act No. 03 of 2014, as amended):
 - i. The proposed premise may not be located within a circumference of 500 metres of any religious or learning institutions; and
 - ii. The proposed premise may not be located within a circumference of 500 metres of other licensed premises within residential areas.
 - iii. No criminal record: there must be no record of any criminal activity on the property under application.
 - iv. Nuisance: no activities which may cause a nuisance or disturbance to the residents in other neighbouring residences are permitted.
- i). The approval will be linked to the owner and/or permanent resident of the property and will lapse in the event of any change of ownership / occupation.

17. ADDITIONAL CONDITIONS TO BE PLACED ON APPROVAL OF BED & BREAKFAST (BnB's).

- a) The scale restriction must not exceed 3 rooms / 6 paying lodgers / guests per land unit, to ensure single dwelling character of premises is maintained.
- b) No more than 3 employees shall be employed by the owner as part of the establishment.
- c) Bona fide staff quarters shall not be regarded as rooms for lodgers/guests and may not be converted to guest accommodation to restrict scale of operation and ensure staff quarters aren't used by visitors as additional accommodation.

- d) Second businesses on same premises as the bed and breakfast establishment will not be permitted.
- e) A place of entertainment, functions, conference facilities or other events will not be permitted.
- f) Parking shall be provided in terms of Clause 39 MC LUS, 2022.
- g) No disturbance from loud music or other sources after 22:00, except with separate approval from Council.

18. ADDITIONAL CONDITIONS TO BE PLACED ON APPROVAL OF GUEST HOUSE.

- a) Maximum size: 16 rooms (32 guests) permitted. Scale restricted to ensure the nature of the establishment remains compatible with surrounding residential character.
- b) Form and scale of development determined by development parameters of particular zone (i.e. floor space, building lines, height) and set out on SDP.
- c) Council may determine / restrict the number of establishments in a locality / guest rooms per establishment and lay down conditions necessary to mitigate the impact of the establishment, in order to protect the area's character.
- d) Buildings can be free standing or linked structures, but residential character of particularly streetscape to be retained.
- e) Second business (or home occupation) on same premises as guest house establishment not permitted
- f) Encourage location in higher intensity land use areas in order to reduce impact on quiet single dwelling neighbourhood character.
- g) May not gain vehicular access from a public road with a reserve narrower than 9m.
- h) With regard to maximum number of establishments in a particular locality, cumulative impact on services infrastructure must form part of assessment.
- i) Desirable locations that are encouraged include:
 - i. properties larger than 300m²;
 - ii. properties near intersections and collector (class 4 and higher) roads;
 - iii. properties near public open spaces / areas / amenities;
 - iv. near or within neighbourhoods and areas designated for higher density and mixed use development.
 - v. Larger guesthouses preferably closer to local nodes or main roads
- j). Where parking requirements in terms of Clause 39 of the MC LUS, 2022 are not possible, parking may be provided on abutting or nearby property, subject to a notarial tie being registered, or similar agreement, as approved by Council.
- k). No disturbance from loud music or other sources after 22:00 , except with separate approval from Council.

19. ADDITIONAL CONDITIONS TO BE PLACED ON APPROVAL OF SPAZA SHOPS

- a) The main use of the property shall remain residential, and the operator shall reside in the dwelling unit.
- b) The size of a Spaza Shop shall not exceed 36m² in extent.
- c) The activity shall not be noxious.
- d) The activity shall not interfere with or negatively influence the amenities of the surrounding area.

- e) No sleeping/boarding shall take place inside the shop
- f) All vehicular and pedestrian access shall be to the satisfaction of the Municipality.
- g) No food shall be prepared and sold on the erf unless such is approved by the Health Services Department
- h) The Municipality may impose any other condition/s that it deems necessary to protect the amenities of the area or neighbourhood.
- i) No alcoholic drinks/ beverages shall be sold from Spaza Shops.
- j) A notice or sign displayed on the property to indicate and advertise the business being conducted from the dwelling shall be to the satisfaction of the municipality in terms of size, position and design.
- k) A trading license be obtained from the relevant department of the municipality.
- l) No tobacco products shall be sold to persons under the age of 18 years.

20. OBJECTIONS

- a) Where the application has received objections as referred to in the paragraph 11(d),-Section 43(4) to (5) of the MCLM SLUMA By-Law,2018 shall apply.

21. APPEAL

- a) An applicant who feels aggrieved by any decision of the Municipality, as contemplated in this paragraph, may appeal to the Authorised Official within twenty-eight days of the decision terms of Section 71 of the MCLM SPLUMA By-law, 2018.
- b) The By-law provides that, if the Authorised Official, any of his/ her sub-delegates or Municipal Planning Tribunal refuses to give a decision on any application or delays unreasonably in giving a decision, the applicant may appeal to the Authorised Official.

22. LAW ENFORCEMENT

- a) The Municipality shall enforce compliance of this Policy with the provisions of SPLUMA By law and LUS.
- b) Section 78 SPLUMA By-law provides for enforcement and give Council the right to investigate a complaint/alleged illegal activity, to ascertain the validity and/or extent thereof. It also allows Council to serve a notice on an offender to cease activities which may also include a notice of intent to take further legal action, if required. The monitoring and control of the illegal entities will be carried out in terms of Clause 56 of the MC LUS, 2022.
- c) All other sets of legislation (Acts, municipal by-laws and regulations) that are potentially applicable to the operation of Home-Based Enterprises. e.g. building regulations, nuisance/noise by-laws, tobacco legislation and health and safety by-laws shall at all times be complied with.

- d) What is strictly prohibited in this Non-compliance with this Policy is strictly prohibited and offenders will be subject to fines and closure, and illegal activities must be suspended whilst they make the necessary applications to legalise their activities.

23. TRANSITIONAL ARRANGEMENTS

On adoption, this Policy may only be applied to the extent that it doesn't contradict existing legislation, LUS and By-laws or where an application for additional rights / land use change is being considered.

24. COMMENCEMENT DATE

The Home-Based Enterprise Policy shall come into effect from the date that notice of adoption is published in the Gauteng Provincial Gazette.

25. EXISTING POLICY REPEALED.

- a) The existing Home-Based Enterprise Policy 2006 is automatically rendered null and void with the adoption of this Policy.
- b) This Policy shall be called the Home-Based Enterprise Policy 2024 for all areas within the jurisdiction of MCLM. The shortened title of the Policy shall be Home-Based Enterprise Policy 2026.