

Short notes on:

ZONING REGULATIONS FOR BUSINESSES RUN IN RESIDENTIAL AREAS

Introduction

If you are contemplating setting up a business in a residential area or from your home, you will need to understand all the relevant regulations regarding the zoning of your property to ensure that you are complying with the bylaws of your council. Unless you've taken the time to thoroughly investigate your city zoning regulations, you're leaving yourself open to the business being shut down before it even sees the light of day, or worse, shut down when you're already in business.

Many people in South Africa run a business quietly and successfully from their homes with no fear of overstepping the bylaws of their relevant councils. However, while your business might cause little or no disturbance, there are businesses that can be disruptive and a nuisance to other residents in the neighbourhood. These factors will always need to be taken into account when starting your business.

Does your business premises need to be rezoned?

Zoning schemes stipulate what type of buildings and what type of activities can occur in a particular area. In technical terms, a zoning scheme is a legal document that records all land use rights on properties in its area of jurisdiction. It also includes regulations pertaining to restrictions on such rights and how they can be exercised. Within a zoning scheme, there are certain actions that can be taken as a right and certain activities that are only permitted with the local authorities consent.

For minor deviations from the zoning scheme, one can get a Departure¹. For major deviations, change in usage and change in the type of building, one requires a Rezoning².

Any business that is run from home infringes the residential zoning regulations because the zoning laws state that a business can only be conducted in areas zoned for business and not in residential

¹ Permanent regulation departure in terms of Section 15(1)(a)(i) of Ordinance 15 of 1985 or Regulation 7(1) of PN 733/1989 in terms of Act 4 of 1984

² Rezoning in terms of Section 17(1) of Ordinance 15 of 1985 or Regulation 5(1) of PN 733/1989 in terms of Act 4 of 1984

areas. In practice, though, most municipalities do not enforce these rules unless the business interferes with the rights of neighbours.

On the surface it makes good business sense to run a small business from home because it saves on expenses, such as renting out an office. However, as the business starts growing, you would be appointing staff, putting up signage and have clients and suppliers parking on the street. These business activities will require you to apply for either a departure or a rezoning.

How to apply for a rezoning or departure

The Land Use Management Application form is used when submitting a planning application to the council. The form is obtainable from the relevant council and needs to be completed in full and accompanied by the relevant supporting information and documentation.

It is important to take into consideration that making this application does not necessarily mean it will be accepted automatically. To apply for rezoning in an area that is not zoned for business, you have to secure a zoning scheme departure or special consent from the City Council as already mentioned above. This process can apparently take up to six months.

Depending on the nature, extent and complexity of the application, processing it generally goes through (a number of or all) the following procedural steps or stage:

- pre-application advice and consultation and obtaining Council's requirements
- submission
- public participation/advertising (once application considered complete), including applicant response to any objections and/or comments received
- detailed technical assessment, including amendments / revisions by applicant if required
- decision
- notification of decision (to applicant and/or objectors)
- appeal (if any, by applicant and/or objectors)

The new Land Use Planning Act, 2014 (LUPA) requires that the decision making authority of first instance is always the relevant municipality and all appeals must also be dealt with at municipal level before escalation to the provincial level.

If an area is not zoned for business, the residents of the neighbourhood usually have strong objections to a rezoning. Businesses in residential areas generate traffic and parking problems and can be noisy. Local councils will take the concerns and objections of residents into consideration with each application and are reluctant to rezone an area for business on the strength of one application. It will be easier to make an application where a group of businesses are already run in a residential area.

Each local authority has a different set of parameters which guides rezoning decisions and each application is considered on its individual merits.

You have to advertise the business's intention to conduct a particular business activity in the local newspapers where after residents and other stakeholders will have the chance to respond with any objections. These objections, as well as the applicant's answers thereto, are taken into consideration by the council board considering the application and they will then grant or deny the departure of your business.

Being granted a departure paves the way for successful zoning approval but, once again, there are no guarantees.

Trading licences

Trading licences are governed by the Business Act 71 of 1991, which sets out certain businesses that require licences to trade. This includes businesses that sell or supply meals or perishable food and provide certain types of health facilities or entertainment.

It is thus of utmost importance to obtain a license (if necessary) to trade before opening the doors of the business. To obtain a trading licence, an application needs to be made to the Licensing Department, which in turn requires reports from the Town Planning and Health and Fire Department. The latter two departments will ensure that your business meets the health and fire regulations and that your proposed premises are in an area zoned for business.

Conclusion

Any business that may disturb neighbours in any way is a risk to run in a residential area. The reality is that if there is any disturbance of the neighbourhood, the courts will rule that the business must move if the neighbours bring an application to court.

If you suspect that you are transgressing the zoning bylaws or want to apply for a rezoning, it is in your business' best interest to obtain legal advice and assistance in this instance. Contact an attorney at SchoemanLaw Inc today to help you start your business and limit risk!

