



Trustee Position Paper relating to the operation of a business within Fairhaven Country Estate (FHCE)

1. Introduction

The purpose of this position paper is to set out the guidelines which the Trustees of the Fairhaven Country Estate Homeowners Association (FHOA) will follow in considering an application from a Homeowner¹ (HO) for them or their tenant to operate a business within the Estate and the process they will follow if they want to revoke the permission granted.

2. Executive Summary

- 2.1. FHOA Trustees will conditionally approve the operation of a business by a HO or their tenant within the Estate provided the HO:
 - 2.1.1. gives assurances that such business activity will be in conformity with the City of Cape Town's (CoCT) zoning regulations applicable to FCHE and the conditions imposed by the FHOA;
 - 2.1.2. ensures that the conduct of the business will not:
 - 2.1.2.1. create a nuisance to fellow HO's in the estate,
 - 2.1.2.2. increase the security risk within the estate.
 - 2.1.3. acknowledges that the Trustees reserve the right to suspend or revoke their permission if any of the above assurances are not being complied with at any point in time and that penalties will be levied for non-compliance.
 - 2.1.4. Acknowledges that, in cases where a tenant is operating a business, the FHOA relationship will be with the HO and any penalties levied will be for the HO's account.

3. What is Fairhaven?

- 3.1. When Homeowners purchased their stands in FHCE they were probably influenced by the Developers sales pitch which emphasised a:
 - tranquil setting surrounding by nature,
 - state of the art security system to give peace of mind and a
 - peaceful setting in which to relax.²

The developers of Fairhaven portrayed the estate in a form that homeowners bought into.

- 3.2. In order to create and maintain the Estate's characteristics, trustees will manage the FHOA in a manner that ensures the envisaged lifestyle is represented by not allowing activities that

¹ Homeowner means for the purpose of this document, a legal person who has title to an erf within FHCE.

² Refer to Appendix 1 for excerpts from the Fairhaven web site

could be detrimental to the lifestyle and security enjoyed by homeowners and the value of their properties.

- 3.3. Until directed otherwise by the number of Homeowners required to change the constitution or conduct rules, trustees will continue to be guided in managing the estate on the abovementioned principles³

4. Primary condition for approval

- 4.1. The Primary condition for Trustees to approve a homeowner "additional use" activity is that the activity will not be a nuisance to homeowners of FCHE nor will it negatively impact the character of FHCE.
- 4.2. It will be the homeowner's responsibility for proving to the trustees that the conduct of the envisaged "Additional Use" activity will not constitute a nuisance to FCHE as defined or negatively change the character of FHCE.
- 4.2.1. The definition of a nuisance (which has been guided by the CoCT definition of nuisance) in this regard, is as follows:
'nuisance' means any act, omission or condition which in the FHOA trustees opinion is offensive, injurious or dangerous to health, materially interferes with the ordinary comfort, convenience, peace or quiet of the homeowners, or which could adversely affect the safety of the homeowners and the general public, having regard to the:
- 4.2.1.1. appropriateness of the activities in question being carried out/operated within FCHE,
 - 4.2.1.2. impacts which result from these activities;
 - 4.2.1.3. ambient noise level of FCHE ;
 - 4.2.1.4. smell level created by such additional use activity ;
 - 4.2.1.5. increase in security risks to the homeowners of FCHE and the
 - 4.2.1.6. prospect for traffic congestion within FCHE
- 4.2.2. For the avoidance of doubt, any activity that results in the movement of people and/or vehicles on a regular basis during the course of a day, or which results in FCHE roads being congested for any period, will be deemed to be a nuisance factor and the additional use right causing that disruption will not be permitted.

5. City of Cape Town Zoning for FHCE

- 5.1. The CoCT has zoned FHCE as being Single Residence Zone 1: Conventional Housing (SR1)
- 5.2. The purpose of a SR1 zone is to:
"provide for predominantly single-family dwelling houses and additional use rights in low to medium density residential neighbourhoods . . . Limited employment and additional accommodation opportunities are possible as primary . . . provided that the impacts of such uses do not adversely affect the surrounding residential environment"⁴.
- 5.3. COCT have applied the following specified use restrictions to SR1 Properties:
- 5.3.1. Primary Use⁵.
Property may be used as a:
- 5.3.1.1. dwelling house,
 - 5.3.1.2. private road and

³ Clause 59 The Constitution of The FHOA sets out the process to be followed if homeowners are not in agreement with Trustee decisions

⁴ CoCT Zoning Scheme regulations Chapter 5, clause 5.1

⁵ CoCT Zoning Scheme regulations Chapter 5, clause 5.1.1(a)

- 5.3.1.3. in accordance with additional use rights as specified. These additional use rights allow for the following activities subject to conditions stipulated by CoCT.

These are:

- 5.3.1.3.1. A Home Occupation,
- 5.3.1.3.2. Bed and Breakfast Establishment and
- 5.3.1.3.3. Home childcare.

- 5.4. Homeowners need to note that CoCT only allow one additional use right to be exercised at any point in time without obtaining consent from them. Due to the density of dwellings in FHCE and the need to maintain the FHCE core characteristics (discussed in 3 above), the FHOA trustees will not provide consent for a HO to make use of two or more additional use rights at the same time.

- 5.4.1. Trustees will need to be satisfied that all the conditions stipulated by the CoCT will be adhered to and in addition will impose such other reasonable conditions as they deem necessary in order to maintain the character of the Estate.

The additional rights allowed by CoCT and additional conditions imposed by FHOA trustees are recorded in Appendix B, C, D and E.

Trustees reserve the right to amend these conditions based on prevailing circumstances in the future.

5.5. Management of conditions imposed by CoCT and FHOA for making use of additional rights.

- 5.5.1. Homeowners will be required to sign an undertaking with the FHOA that they will adhere to the CoCT and FHOA conditions.
- 5.5.2. The FHOA reserve the right to require any homeowner making use of an additional right to prove to the FHOA that they are continuing to follow the conditions and
- 5.5.3. acknowledge that the FHOA will impose penalties in accordance with the penalty process stipulated in the constitution of the Estate if they breach the conditions.
- 5.5.4. The process of imposing and the amount of penalties are discussed in Appendix F⁶. These may be amended by Trustees from time to time depending on prevailing circumstances.

5.6. Consent Uses

CoCT have identified certain activities that would require specific consent from CoCT before such use is carried out on an erf designated as SR1.

Trustees will deem as inappropriate any use of a property that requires specific consent from CoCT, and such use will not be permitted in FCHE.

6. Place of Work vs Place of Business

Trustees recognise that due to several factors, businesses allow their employees to work from home.

In order to accommodate these situations trustees, clarify the following.

- 6.1. Homeowners employed by a business (whose registered and physical addresses are external to FHCE) are permitted to work from home without requiring the approval of the FHOA

⁶ FHCE Constitution, Clause 58.

provided that the activity does not create a nuisance as defined nor does it involve having fellow employees working with them on the same erf within FHCE.

- 6.2. If employees of an external business, who do not reside within FCHE, are going to travel to FHCE to perform their work under the direction of a HO, approval from the FHOA is required as trustees will deem such activity to be a Home Occupation. In such instances, the HO is to provide credible reasons why the workers cannot be based at their normal place of work.

7. Revocation of an approval

Trustees reserve the right at any point in time to cancel any approval granted to a homeowner if the carrying out of an "additional use right" is deemed to be a nuisance to FCHE.

8. Imposition of Penalties for non-compliance

Homeowners making use of an additional right need to be cognisant of the fact that the trustees of the FHOA will impose penalties if any of the conditions required to be met for an additional use right is not adhered to .

A schedule of penalties is reflected in Appendix F.

9. Review of Position

Trustees reserve the right to review and amend this position paper if circumstances arise which, in their opinion, warrant such review.

Appendix A

Excerpts from Fairhaven Country Estate Website www.fairhavenestate.co.za setting out the nature and characteristics of Fairhaven

"Fairhaven Country Estate is situated on the popular Bizweni Road, Somerset West, overlooking the magnificent mountain ranges of the Helderberg, bordered by vineyards and mirrored by the seemingly endless blue shimmer of False Bay. **The estate offers sweeping views of the magnificent landscape and a tranquil setting surrounded by nature**, with contemporary architectural guidelines and beautifully manicured gardens. You truly can have it all at Fairhaven Country Estate."

And

"If you've always dreamed of arriving home to **the peace of mind of state-of-the-art security**, surrounded by vineyards and nature, magnificent sea and mountain views right on your doorstep, a great environment for your family to explore **and a peaceful setting to relax** at the end of a long day, then look no further than Fairhaven Country Estate. "

And

"Away from the hustle and bustle of town but with amenities close by, Fairhaven offers the **perfect balance of convenience and lifestyle**".

Appendix B

Conditions applicable to all Additional Use rights.

The following conditions are based on the CoCT zoning regulations for SR1 as amended by the FHOA. FHOA amendments are highlighted in bold italics. In order to compare the FHOA amendments to the CoCT requirements, the full CoCT zone regulations can be found at the following link. The relevant chapter is chapter 5.

http://www.sans10400.co.za/wp-content/uploads/2013/06/Cape-Town-Zone-Scheme_Regulations_Nov_2012_Part1.pdf

1. ***Only one of the activities listed as additional use rights shall be conducted on any land unit as a primary use at any point in time.***
2. The dominant use of the property shall be a dwelling house for accommodation of a single family;
3. The proprietor of the activity concerned shall live on the property;
4. The conditions stipulated in Appendix C, D and E (whichever is applicable) shall be adhered to;
5. Any new structure or alteration to the property to accommodate an additional use right shall be compatible with the residential character of the area, particularly regarding the streetscape, and shall be capable of reverting to use as part of the dwelling house.
6. ***If deemed necessary by the trustees, the FCHE architectural committee will review the property to ensure that no FCHE architectural guidelines are broken. No permission will be granted if the conduct of the business results in the dwelling not being in conformity with the architectural guidelines. Any fees incurred in assessing whether the property falls within the architectural guidelines will be for the HO account***
7. ***No more than two employees shall be engaged by the occupant in the activity concerned. Such employees are to be registered with the FHOA for security purposes.***
8. ***Any employee of a HO engaged in an additional use activity is responsible for their employees compliance with the FHCE conduct rules. Any transgression of the rules will result in the HO being penalised accordingly.***

Appendix C

Home Occupation

1. CoCT definition of Home Occupation

'home occupation' means the practising of an occupation or the conducting of an enterprise from a dwelling house, second dwelling, dwelling unit or outbuilding by one or more occupants who reside on the property; provided that the dominant use of the property concerned shall remain for the living accommodation of the occupants, the property complies with the requirements contained in the CoCT zoning scheme for a home occupation and home occupation does not include a house shop.

2. The following, CoCT and FHOA conditions shall apply where a portion of a property is used for purposes of a home occupation.
 - 2.1. No home occupation shall include a noxious trade, risk activity, adult entertainment business, adult services, adult shop, sale of alcoholic beverages, motor repair garage, funeral parlour or activities that are likely to generate a public nuisance, including but not limited to panel beating and spray painting, auto electrician, joinery; builders yard, welding works
 - 2.2. Only goods which have been produced or assembled in the home occupation may be sold from the property;
 - 2.3. ***No goods for sale shall be publicly displayed and no external evidence of the home occupation shall be visible from a public street.***
 - 2.4. ***No advertising sign shall be displayed***
 - 2.5. No activities shall be carried out which constitute or are likely to constitute a source of nuisance to FHCE, or generate waste material which may be harmful to the area or which requires special waste removal processes;
 - 2.6. ***Off-street parking shall be provided at a ratio of 1 parking bay per 25 m² area used for the home occupation.***
 - 2.7. The total area used for all home occupation activity on a land unit, including storage, shall not consist of more than 25% of the total floor space of the dwelling units on the land unit or 50 m², whichever is the lesser area; The storage of all goods and equipment connected with the home occupation shall be inside a building or screened from neighbours and the public street;
 - 2.8. Not more than two vehicles may be used in connection with a home occupation, and no one vehicle shall exceed 3 500 kg gross weight;
 - 2.9. The hours of operation shall not extend beyond 08:00 to 17:30 on Mondays to Fridays, and shall not include public holidays, **Saturdays** or **Sundays**; and
 - 2.10. Council **and the FHOA** may, at any stage, call for a cessation of the home occupation activity or impose **additional** conditions in order to minimise any potential nuisance to surrounding neighbours **or the general residents of FHCE.**

Appendix D

Bed and Breakfast Establishment

1. CoCT definition of Bed and Breakfast Establishment

'bed and breakfast establishment' means a dwelling house or second dwelling in which the owner of the dwelling supplies lodging and meals for compensation to transient guests who have permanent residence elsewhere; provided that:

- (a) the dominant use of the dwelling house concerned remain for the living accommodation of a single family; and
- (b) the property complies with the requirements contained in the CoCT Zoning scheme for a bed and breakfast establishment;

2. Conditions for operating a bed and breakfast establishment which are applicable where a portion of a property is used as a bed and breakfast establishment or where rooms are let to lodgers. The Conditions in bold italics are conditions imposed by FHOA trustees in addition to or in replacement of, CoCT conditions.
 - 2.1. No more than 3 rooms per land unit shall be used for bedroom accommodation for paying guests or lodgers, and
 - 2.2. no more than 6 paying guests or lodgers shall be supplied with lodging or meals at any time;
 - 2.3. No alcoholic beverages shall be sold except to resident guests for consumption on the premises with meals;
 - 2.4. Guest rooms shall not be converted to, or used as, separate self-catering dwelling units;
 - 2.5. Meals may only be supplied to guests or lodgers who have lodging on the property, employees, and the family residing in the dwelling;
 - 2.6. ***No advertising sign shall be displayed;***
 - 2.7. Weddings, receptions, conferences, training or any similar activities are not permitted from a bed and breakfast establishment;
 - 2.8. No activities shall be carried out which constitute, or are likely to constitute, a source of nuisance; and
 - 2.9. Guests/Lodgers vehicles are to be parked off the street and off the road reserve.
 - 2.10. All Lodgers are to comply with the conduct rules of the Estate and the HO will be penalised for every transgression of the rules by their guests.

Appendix E

Home Child Care

1. CoCT Definition of Home Child Care

'home childcare' means the use of portion of a dwelling house or outbuildings by the occupant to provide day care, after school care or instruction for a limited number of infants or children

2. Conditions for providing a Home Childcare facility. Conditions in bold italics are conditions imposed in by FHOA trustees in addition to
 - 2.1. No more than 6 children shall be enrolled at the home childcare facility at any time;
 - 2.2. ***Such Children must be ordinarily resident within the Estate.***
 - 2.3. Services shall be primarily day care or educational and not medical;
 - 2.4. ***The HO providing the service needs to obtain the consent of all HO's whose properties are adjacent to the Service providers property where they indicate their acceptance for the activity to take place and are aware of the noise levels that may result from such activity from time to time.***
 - 2.5. Services shall not operate outside the hours of 07:00 to 18:00 on Mondays to Fridays, and shall not include public holidays, ***Saturdays*** or Sundays;
 - 2.6. Indoor and outdoor play space shall be provided in accordance with any health requirement or a policy plan as might be approved by CoCT from time to time, and outdoor play space shall be fenced off from any public street;
 - 2.7. ***Such play space must conform to the FHCE Architectural guidelines and will require to be approved by the controlling architect. Any fees payable in this respect will be for the HO concerned account.***
 - 2.8. ***No advertising sign shall be displayed, and***
 - 2.9. At least one off-street parking bay shall be provided, plus one additional parking bay which is suitable for the use of parents to drop off or collect their children

Appendix F

Schedule of Penalties for noncompliance with conditions for making use of an additional right as envisaged by CoCT Zoning Regulations.

Imposition of any penalties relating to use of an erf for business purposes will be in accordance with clause 70 of the constitution and affected HO rights in this regard are outlined therein.

Schedule of Fines

| Occurrence | Penalty |
|---|--|
| Home Occupation | |
| First Identification of non-compliance | Written Warning. |
| After the expiry of 30 days from issuing the warning to the homeowner | R5000 |
| Every week thereafter the fine will be R5000 multiplied by the number of weeks since the first fine was | <p>R5000 multiplied by the number of weeks that have passed since the first imposition of the fine.</p> <p>For example: Situation not rectified to satisfaction of trustees after three weeks of first fine being levied the homeowner will be levied with a fine of R15000 (R5000 x 3). For the third week.</p> <p>Homeowners making use of "additional right" use of their property need to be cognisant that non-compliance over the course of a month could result in penalties of R50,000 and would increase significantly if no response to a transgression is made timeously.</p> <p>Whilst this is acknowledged as being draconian it is strongly believed that it is essential to ensure the character of FCHE is not tarnished in any way and to maintain the envisaged character of the Estate and to encourage a homeowner who is not in compliance to either become compliant or desist from the activity within FCHE.</p> |
| Non-compliance of guests to FCHE conduct rules | R1000 for every occurrence. |
| Bed and Breakfast Establishment | |
| Non-compliance with CoCT and FHCE rules pertaining to Bed and Breakfast Establishments | R1000 for every occurrence |
| Non-compliance of guests to FCHE conduct rules. | R1000 for every occurrence |

Declaration in respect of operating a business within
Fairhaven Country Estate(FHCE)

I _____

ID No/Passport Number _____

Being the *owner*¹/*tenant*² of the owner of Erf _____ within FHCE:

Initials

1. Acknowledge that I have read and understood the Trustee position paper relating to the operation of a business within Fairhaven Country Estate (dated _____).
2. Confirm that the business activity will be in conformity with the City of Cape Towns (CoCT) zoning regulations applicable to FCHE and the conditions imposed by the Fairhaven Home Owners Association(FHOA).
3. Will ensure that the conduct of the business will not:
 - 3.1. Create a nuisance to fellow home owners in the Estate and/or
 - 3.2. Increase the security risk within the Estate (whether real or perceived).
4. Acknowledge that, in cases where a tenant is operating a business, the FHOA relationship will be with the owner of the property and any penalties levied will be for the owners account.
5. Understand and acknowledge that the Trustees reserve the right to suspend or revoke their permission if any of the above assurances are not complied with at any point in time and that penalties will be levied for non-compliance
- 6.² Acknowledge, that the owner of the property which I am occupying, can recover any penalties levied by the FHOA relating to compliance with FHOA conduct and business use rules.

Signed at _____ on _____ 20__

Home Owner/Tenant: _____

Witness: _____

Witness: _____

¹ In the situation where the owner is not a natural person, that persons authorised representative.

² Delete which is not applicable.



Dear Homeowner

On behalf of Homeowners Association, we would like to welcome you to Fairhaven Country Estate.

You have bought on an exclusive up market Estate. Along with your move comes a completely different lifestyle which takes some getting used to for those who have not previously enjoyed living on an estate. That lifestyle involves some restriction to the way you might previously have lived but aims to maintain a certain standard and more importantly protect and enhance the substantial investment you have made. It is important that you familiarise yourselves and your family, and if applicable your tenants with the constitution and Estate rules.

We are here to help and provide a service to you, please use that service and if you are unsure about what you can or cannot do, we will be only too delighted to assist.

We trust that you will find your feet quickly, settle comfortably and feel very much at home enjoying the fine country living.

CONTACT TELEPHONE NUMBERS

HOA Office : 021 1802 735

Security: 021 1801 735

REFUSE REMOVAL

The refuse removal takes place once a week on a Monday and the local municipality is responsible for this function. It is the responsibility of the owner to arrange for a black wheelie refuse bin from the municipality. (See application form attached). They require proof of ownership as well as a copy of your ID. Kindly place your recyclable items in a clear plastic bag – this will also be collected on Mondays.

PRE PAID ELECTRICITY

Kindly confirm with the HOA office that your meter has been activated. Please refer to the attached document outlining the process to purchase electricity.

RULES

Please refer to attached document.

DOMESTIC STAFF

Domestic Staff must be registered on the access control system. They will gain access through the turnstile. Please refer to Registration of Employee form attached.

GENERAL

For the convenience of the residents, Amanda is available on site during the day to see to day-to-day queries.

Please do not hesitate to contact us if you require any additional information.

Kind regards

The Homeowners Association – Fairhaven Country Estate