

# FOURWAYS GARDENS

## Homeowners Association

### **FOURWAYS GARDENS: ECONOMIC ACTIVITY POLICY**

#### **1. Introduction**

- 1.1 Fourways Gardens was established as a residential estate with the primary goal being to create an upmarket and aesthetically pleasing and secure living environment. The Fourways Gardens Homeowners Association was established to administer the common interest of its residents and empowered to plan, implement and uphold a “secure family lifestyle”.
- 1.2 The Fourways Gardens Homeowners Association uses various controls on development to ensure that quality housing and landscaping was established and is maintained. In this manner, this lifestyle was created and the financial investment of each homeowner was protected.
- 1.3 One of the relevant controls in the creation of Fourways Gardens Estate was the zoning of all residential properties as “Residential 1” in terms of the Town Planning Scheme Regulations, which Regulations permit a density of one dwelling unit per stand with its land use restricted to residential purposes.
- 1.4 It should be noted that the Fourways Gardens Estate was designed as an estate with single residential occupation of each individual stand. Based on this principle, the planning engineers used criteria for the design of the infrastructure such as roads, water supplies, drainage, electrical services etc. In the event that these infrastructural services become overutilised, and uncontrolled, the quality and tranquillity of a “secure family lifestyle” could be compromised for all residents of the Fourways Gardens Estate. The development was established with certain capacities in mind and the infrastructure was designed accordingly.

#### **2. Legislation and Rules**

- 2.1 This policy regulating economic activity and business use encapsulates principles from the Johannesburg Town Planning Scheme, 1979, the Home Office Policy developed during 1991 in terms of the Johannesburg Town Planning Scheme, read together with the Sandton Town Planning Scheme, 1980, as revised and the Regional Spatial Development Framework. This Policy comprises the trustees guide for you as’, to how they implement the provisions of the Estate Rules, which limit certain freedoms and uses of property.

2.2 The Articles of Association of Fourways Gardens Homeowners Association (Association incorporated under S21), the Fourways Gardens Conduct Rules and Fourways Gardens Architectural Design and Building Regulations are applied in the manner set out in this policy. Should any rule and/or provision of the Fourways Gardens Home Office Policy conflict with the Articles of Association of Fourways Gardens Homeowners Association and/or its abovementioned rules, such Articles of Association and/or rules shall take precedence.

### 3. **Definitions**

“Area” means the Township of Fourways Extensions 8, 10, 15, 18 and 44, including the entire Bushwillow Road, from its intersection with Uranium Road (with the exclusion of the Agora Shopping Centre) to Richards Road.

“Business” or “Economic activity” means the conduct of any non-residential or commercial or business or professional activity, from any Erf within the Area, whether for profit or not, and will **exclude** any manufacturing and/or retail and/or repair service and/or industrial or similar usages and/or any business use which may require a license in terms of the Business Act, 1979, in respect of which businesses consent will not be given. The phrase “Business use” shall have a concomitant meaning;

“Employee” means any person employed by or working for any employer and receiving or entitled to receive any remuneration, and any other person whomsoever who in any manner assists in the carrying on or conducting of the business of an employer.

“Erf” means any dwelling unit or land or other structure utilised for any purposes within the Area.

“Floor area” means the sum of the area covered by the building at the floor level of each storey.

### 4. **Pre-Amble**

4.1 It is recorded that Fourways Gardens Estate is a residential estate with its overwhelming and primary land use being for residential purposes only.

4.2 Applications to deviate from this primary use may be considered by the Board of Trustees and each application will be treated and considered on its own merit.

4.3 No application for the rezoning of any Erf for any Business use will be considered and all such applications will be declined and/or objected to. Furthermore, no applications for medium and/or large scale home offices, as described in the Home Office Policy of 1991 of the Johannesburg Town Planning Scheme, 1979, will receive favourable consideration.

- 4.4 Irrespective of the duration of any existing Business in operation in the Fourways Gardens Estate, any and all owners conducting any Businesses within the Area shall apply for consent in terms of this policy, before continuing or establishing such Business or Business use.
- 4.5 The Board of Trustees reserves the right in terms of the Articles of Association to approve or decline any application.

## 5. **Application Procedures**

- 5.1 All applications for authority to conduct any Business use shall be submitted to the Board of Trustees, in writing, prior to the commencement of any Business use and shall contain, and not be limited to the following information:
- 5.1.1 Name and proposed type of business to be conducted
  - 5.1.2 Physical address
  - 5.1.3 Number of employees to be employed (Direct and/or indirect)
  - 5.1.4 Description of proposed operations including a site plan indicating the portions of any erf which will be used for a business use, including the size thereof, the position thereof and the number of on-site parkings
  - 5.1.5 Anticipated number of visitors/clients (per month)
  - 5.1.6 Any other information which should reasonably be provided to the trustees for purposes of considering the application.
- 5.2 All Applicants accept that the Board of Trustees and/or its employees could inspect the property concerned to verify the particulars so supplied and, each application will be considered, independently of other applications, by the Board of Trustees at their formal meetings which occur from time to time.
- 5.3 The Trustees shall have an unfettered right to refer any application to any immediate surrounding neighbours of the erf concerned, for comments and, thereafter, the Board of Trustees' decision in respect of the application concerned shall be final and binding on all Members of the Fourways Gardens Homeowners Association, including such neighbours whether or not they furnished comment, objection or support.. It is specifically provided that this decision shall not be subject to arbitration in terms of the Rules of the Fourways Gardens Homeowners Association.
- 5.4 Those applications for Business use which have been approved are subject to annual review by the Board of Trustees (presently on the 31<sup>st</sup> of March each year) who shall be entitled to revoke such approval, or refuse to allow an annual renewal for any reason, whatsoever, within their sole discretion. If an approval is revoked or not renewed, the applicant will receive advice thereof in writing, and the conduct of a Business use on that erf will thereafter be illegal. The Board of Trustees reserve the right to report such illegal activity to the Local Authority or take such other action as might be appropriate, including Court action or the imposition of fines and/or penalties in terms of the Articles and the Conduct Rules.

- 5.5. The consent granted by the Board of Trustees shall be of indefinite duration, save that the Trustees shall be entitled, at any time, and upon reasonable notice, to the party concerned, to withdraw their consent for any reason which they might deem sufficient for such purposes.
- 5, 6 No person may commence any Business use in the Area without first obtaining the written consent of the Trustees for such Business use in terms hereof.

6. **Conditions under which Business uses shall be considered**

The Trustees shall apply, but not be limited to, the following principles in considering any application for permission to conduct a Business use:

- 6.1 No Business use, which is not compatible with the surrounding land use, or which may, in the opinion of the Trustees, cause an actionable nuisance to fellow residents or interference with the amenities of the neighbourhood, may be conducted. The existing character of the area should be maintained.
- 6.2 Without limitation thereto, no erf may be used for any retail purpose, including a shop, nor for a public garage, mechanical workshop, a manufacturing industry (including home industries) or a noxious industry or garden service.
- 6.3 No erf may be used to publicly display goods, whether in a window or otherwise which can be viewed externally.
- 6.4 A maximum of 20% (twenty percent) of the Floor area of the structures on any erf, including outbuildings, as per approved building plans, may be used for home office purposes.
- 6.5 A maximum of 2 Employees (including “flexi time”, “temporary” or “sales representative appointees”) can be employed on any Erf within the Area at any one time (excluding persons who ordinarily and permanently reside there)..
- 6.6. No person may display any notice or sign on the buildings and/or boundary wall of the erf permitted to conduct a Business use, other than a signboard as permitted in Section D, Clause 5 of the Fourways Gardens Conduct Rules, indicating a name only, provided that such sign and the design thereof shall first be approved by the Board of Trustees in writing.
- 6.7 The employee(s) of and any owner who has been granted consent for a Business use shall park their vehicles on the erf concerned.
- 6,8. All employee(s), invitees or visitors to an approved business shall comply with the Fourways Gardens Access Control Policy and Procedures, and any directions of the Board of Trustees or the Estate Manager. The Fourways Gardens Homeowners Association reserves the right to limit the number of entrants allowed for any business, or to determine a fee to be paid towards the operation of the access control systems which are in place.

- 6.9. Each member of the Fourways Gardens Homeowners Association shall be and remain liable and responsible for the conduct of any person, whether client, employee, invitee, or in any other capacity, who enters the Fourways Gardens Estate for purposes of such business use.
- 6.10. A Business use may not generate any excessive noise of any nature.
- 6.11. If it is necessary to make any alterations to any Erf for purposes of a business use, consent shall be sought for such alterations in terms of the Fourways Gardens Architectural Design and Building Regulations, which application shall be made simultaneously with the application for consent for a business use. Should consent be granted for a business use and an application to authorise any alterations to the Erf is made separately, then upon filing of the application for authority for the alterations, the business use consent shall, *ipso facto*, and without notice whatsoever, lapse and be withdrawn. The Board of Trustees shall then consider both the application for business use and the application for authority to perform alterations afresh.
- 6.12. Should a complaint be received regarding the conduct of a Business use, the Board of Trustees will investigate the complaint and refer such complaint for action and/or comment and/or decision in terms of the Articles of Association and / or Conduct Rules.

**Penalties**

Should the Board of Trustees establish that a Business use is conducted in contravention of this policy, the procedures as set out in the Conduct Rules and / or Articles of Association may be followed to rectify the situation, without prejudice to the Association’s rights in terms of any law.

**Approved by the Fourways Gardens Board of Trustees:**

**Dated:** .....

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