

MATZIKAMA MUNICIPALITY

AMENDED BY-LAW ON LIQUOR TRADING DAYS AND HOURS

To provide for the control of undertakings selling liquor to the public in order to ensure a safe and healthy environment in the Matzikama municipal area; to provide for days and hours of trade in liquor by licensed undertakings that sell liquor to the public; and to provide for matters related thereto.

Preamble

WHEREAS a Municipality has the executive authority, in terms of Section 156(1)(a) read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996, to control undertakings that sell liquor to the public;

WHEREAS a Municipality may, in terms of Section 156(2) of the Constitution, make and administer by-laws for the effective administration of the matters which it has the right to administer;

WHEREAS a Municipality may, in terms of Section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), pass by-laws and take decisions;

WHEREAS it is the intention of the Municipality to set trading days and hours for all licensed premises, business or outlets situated within the Matzikama municipal area that sell liquor to the public, in terms of Section 59(2) of the Western Cape Liquor Act, 2008 (Act 4 of 2008);

AND NOW THEREFORE, BE IT ENACTED by the Council of the Matzikama Municipality, as follows:

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1. Definitions

(1) In this By-law, unless the context indicates otherwise;

“Act” Means the Western Cape Liquor Act, 2008 (Act 4 of 2008);

“Agricultural zoned areas” means an area predominately zoned agriculture or any other equivalent zoning, with purpose to promote and protect agricultural activity on a farm as an important economic, environmental and cultural resource, where limited provision is made for non-agricultural uses to provide owners with an opportunity to increase the economic potential of their properties, without causing a significant negative impact on the primary agricultural resource;

“Appeal Tribunal” means an Appeal Tribunal established in terms of Section 25(1) of the Act;

“Authority” means the Western Cape Liquor Authority established by Section 2(1) of the Act;

“bar” - any open bar or any part of licensed premises exclusively or mainly used for the sale and consumption of liquor which shall include any counter or barrier across which drink is or can be served to the public or in relation to any hotel, pub or tavern, includes any part of the hotel, pub or tavern that is used principally or exclusively for the sale, supply or consumption of liquor;

“bus” see “motor vehicle”

“business premises” means a property on which business is conducted and may include a restaurant, pub, bar or taverns or other building with similar uses, but exclude a place of entertainment, guest accommodation establishment, hotel, sports and community club;

“Business zoned areas” means an area predominantly zoned general business in terms of the Zoning Scheme, with the purpose to promote economic activity in a business district and development corridor, and includes a wide range of land uses such as business, residential and community uses;

“Council” means the Municipal Council of the Municipality as elected;

“designated liquor officer” means a person designated as such in terms of Section 73(1) of the Act;

“Exceptional circumstances” means any circumstances which is not made provision for in this By-Law.

“farmstall” means a building or structure which does not exceed 100m² in floor space, including storage facilities, where a farmer sells products produced and processed on his farm (in other words not products which are purchased), whether to his own employees or to the general public.

“Guest accommodation establishment” means premises used as temporary residential accommodation for, and includes the provision of meals to, transient guests for compensation and includes a backpacker’s lodge, a bed-and-breakfast establishment, guest house and guest farm or lodge, as well as facilities for business meeting, conferences, events or training sessions of resident guests, but exclude a hotel;

“Hotel” means a property used as temporary residential accommodation for transient guests where lodging or meals are provided for compensation, and includes:

- (a) a restaurant or restaurants forming part of a hotel;
- (b) Conference and entertainment facilities that are subservient and ancillary to the dominant use of a premises as a hotel;
- (c) Premises which are licensed to sell alcoholic beverages for consumption on the property, but excludes an off-consumption facility, guest accommodation establishment, dwelling house or dwelling unit;

“Industrial zones” means an area predominantly zoned industrial that accommodate all forms of industry, but do not include noxious or hazardous trade risk activities;

“licensee” means any person who is licensed to sell liquor in terms of the Act and includes any licensed premises, business, outlet or land use activity from which liquor is sold;

“liquor” means liquor as defined in Section 1 of the Act;

“Liquor License Tribunal” means the Liquor Tribunal as defined in Section 1 of the Act;

“rural business or neighbourhood business area” means an area predominantly zoned local business or mixed use or any other equivalent zoning, with the purposes to accommodate low density commercial and mixed use development serving local needs of convenience goods, personal service or small scale business nature or serve as an interface between general business, industrial and adjacent residential area;

“Matzikama Municipality” means the Matzikama Municipality established by the Establish Notice published in Provincial Notice No. 481 of 2000, as amended, and **“Municipality”** has a corresponding meaning;

“micro-manufacturer” - a producer of liquor who in a calendar year does not produce more than the prescribed volume.

“motor vehicle” means a vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer or an agricultural or other implement designed or adapted to be drawn by such vehicle and include vehicles designed or adapted to transport passengers;

“neighbourhood” means a part of a town where people live;

“night club” means any place of entertainment which may generate noise from karaoke, amplified or live music or revelry, and includes a theatre, amusement park and dance hall;

“Off-consumption license” a license entitling the licensee to sell liquor for consumption only away from the licensed premises and "off-consumption" has a corresponding meaning;

“Official” means any person authorized by the Authority to perform the function of an officer under this By-law and includes any member of the South African Police Services and any person appointed in terms of the Act;

“On-consumption license” - a license entitling the licensee to sell liquor for consumption only on the licensed premises and "on-consumption" has a corresponding meaning.

“person” means a natural person or a juristic person which may include –

- (a) a licensee or any person in charge or managing the licensed premises for the purposes of the sale of liquor;
- (b) any body of persons corporate or unincorporated,
- (c) any company incorporated or registered as such under any law or any village management board, or like authority.

“premises” includes any place, land, building or conveyance or any part thereof which is registered or which is seeking to be registered to trade in liquor;

“place of entertainment” means a place used predominantly for commercial entertainment (which may operate on a daily basis or as scheduled) which may attract relatively large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis, and includes a cinema, theatre, amusement park, dance hall, gymnasium, facility for betting, gambling hall, karaoke bar and night club;

“place of recreation” means a sport field, amusement park or similar public place intended for communal recreation, mainly in the open air;

“registered premises” means premises on or from which a licensee conduct his or her business;

“Residential zoned area” means an area predominantly zoned Residential 1, 2 or 3 or any other equivalent zoning, with the purpose of accommodate predominantly single-families in low and medium density neighbourhoods, as well as higher densities living accommodation and which include controlled opportunities for home employment, additional dwellings and low intensity mixed use development;

“Responsible Manager” means a manager that will take overall responsibility for the processing of liquor license application and appeals;

“restaurant”- Any premises where the sale and supply of food to the public for consumption on the premises is the principal purpose of business which may include a bar/pub (where the supply of liquor is for on-consumption only);

“room service facility” means a mini bar or self-help facility or the consumption of liquor in guest rooms and call-up service for resident guests;

“sell” includes supply, exchange, offer for sale, display for the purpose of sale or authorize, direct, or allow a sale;

“selling hours” means the time during which a licensee is allowed to sell liquor in terms of the Schedule;

“small holding or rural area” means an area predominantly zoned Agriculture or any other equivalent zoning, with the purpose to accommodate smaller rural properties that may be used for agricultural purposes, but may also be used primarily as places of residence in a more country or rural setting;

“sparkling wine” means an effervescent wine resulting from the fermentation of grapes, whether by natural or artificial processes, and includes Champagne;

“Special event” – a fundraising event (organised from time to time) in aid of an educational / welfare organisation, any exhibition, sports meeting, cultural gathering or artistic performance;

“Sports and Community club” means premises or facility used for the gathering of community or civic organization or associations, sports clubs or other social or recreational clubs run mostly not for profit and may include community service clubs and community centres or similar amenities, but excludes a night club;

“Specific business” – (Spesifieke besigheid) a business use of a particular nature but within Zoning scheme regulations promulgated in terms of Sections 7 & 8 of the Land Use Planning Ordinance, 1985 (No 15 van 1985) (definitions) or replacement By-Law with applicable content and that is prescribed for a specific site by the Council;

“standard trading” means trading days and trading hours as contemplated in Sections 4 and 5 of this By-law, and excludes extended trading days and hours that may be approved by the Municipality in terms of Section 7 of this By-law;

“tavern” – a place whose main business is the supply/serving of liquor, food and various forms of entertainment.

“temporary license” refer to Section 48 of the Act

“tourist facility” – amenities for tourists such as lecturer rooms, restaurants, gift shops, and restrooms permitted by the Council as a consent use, but does not include overnight accommodation;

“trading days” means the days on which liquor may be sold during trading hours;

“trading hours” means the hours during which liquor may be sold during trading days;

“undertaking” means a business involved with the sale of liquor to the public;

“winery” includes premises or facilities which are used in the production of wine and such premises and facilities include facilities for crushing grapes and fermentation and aging of wine, tasting rooms, barrel and storage rooms, bottling rooms, tank rooms, laboratories or offices and other accessory or ancillary facilities incidental to the production of wine, which may include:

- (a) Restaurants and other food services; or
- (b) Subsidiary retail facilities to tourists or visitors

“zoned” means zoned and zoning as the case may be in terms of the applicable zoning scheme or any applicable law and **“zoning”** has a corresponding meaning;

“zoning scheme” means the zoning scheme applicable to the area in force with the area of jurisdiction of the Matzikama Municipality.

- (2) In this By-law, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has that meaning read together with the applicable Land Use Scheme Regulations and the By-Law relating to streets, public places and the Prevention and suppression of nuisances.

2. Purpose of By-law

The Municipality, acting in terms of the powers granted to it in the Act, adopts this By-law with the aim of regulating the hours during which liquor may be sold and matters related thereto.

3. Application of By-law

This By-law applies to all premises, situated within the area of jurisdiction of the Municipality, on which a business in the trading of liquor;

- (a) Those selling liquor to the public of consumption on the licensed premises;
- (b) Those selling liquor to the public of consumption off the licensed premises; and
- (c) Those selling liquor to the public of consumption on and off the licensed premises.

4. Trading days and hours for sale and consumption of liquor on licensed premises

- (1) A licensee may sell liquor for consumption on the licensed premises on the following days and hours:
 - (a) on any day of the week, with the exception that places of entertainment, sports bars, pubs, nightclubs will not be allowed to trade on closed days for instance Sundays, Good Friday, Christmas day, Ascension day and other religious days; and
 - (b) during the hours of trade as set out in the Schedule.
- (2) A licensee who sells liquor for consumption on licensed premises may not allow any consumption of liquor on the licensed premises at a time when the sale of liquor is not permitted.
- (3) Despite the provisions of this By-law, a licensee as contemplated in subsection (1), may serve sparkling wine:
 - (a) From 08:00 to 00:00 for seven days a week; and
 - (b) As part of a meal; and
 - (c) To guests that are part of an organized function where admittance is controlled.
- (4) A hotel or guest accommodation establishment licensed to sell liquor for consumption on the licensed premises may provide access to a pre stocked bar facility inside each private suite or room for the enjoyment of a guest occupying such private suite or room. Such hotel or guest accommodation establishment is prohibited restocking such bar facility during the hours the establishment is not allowed to trade in liquor.

- (5) A hotel or guest accommodation establishment licensed to sell liquor for consumption on the licensed premises may not provide liquor to guests or visitors outside of the standard trading hours unless it is from the pre stocked bar facility and the users are guests occupying on that day and time the private suites or rooms in accordance with (4);

5. Trading days and hours for sale of liquor for consumption off licensed premises

- (1) A licensee may sell liquor for consumption off the licensed premises on the following days and hours:
 - (a) on any day of the week with the exception of Sundays, Good Friday, Christmas day provided such exception does not apply to a winery and/or tourist facility consisting of a wine and/or liquor shop, or any other facility related to the wine industry; and
 - (b) during the hours of trade as set out in the schedule
- (2) No undertaking may sell liquor in excess of 150 liters in one day to any person who is not in possession of a valid liquor license in terms of the Act and a (an approval for the specified business) business permit in terms of the Municipal by-laws.

6. Trading days and hours for sale and consumption on and off the licensed premises

A licensee of premises upon which liquor may be sold for consumption on and off the licensed premises may sell liquor in terms of the trading hours prescribed in subsection (4) and (5).

EXTENDED TRADING TIMES

7. Application for extended trading days and hours

- (1) Any licensee may, upon payment of the required fee (as set out in the approved yearly tariff schedule of the Municipality), submit a written application to the Municipality to extend the trading days and hours in respect of licensed premises.
- (2) The Municipality may approve or refuse an application for an extension of trading days and hours.
- (3) No rights accrue to any person who has submitted an application for extension of trading days and hours before the proof of written approval is received from the Municipality by such person.
- (4) The Municipality may, upon written notice to the applicant, impose conditions for trade during extended days and hours.
- (5) The Municipality must, before approving an application for the extension of trading days and hours, consider factors which may include, *inter alia* –
 - (a) outcome of community consultation and whether it is in the public interest to approve and grant an extension of trading days or hours;
 - (b) the proximity of the licensed premises to surrounding residential zoned area, cultural, religious and educational facilities;
 - (c) the planning and zoning requirements of the Municipality;

- (d) where applicable, the validity of a business license issued in terms of the Businesses Act of 1991 (Act No. 71 of 1991);
- (e) the potential impact on the surrounding environment;
- (f) previous suspension, amendment or revocation of extended trading days and hours;
- (g) the validity of the Liquor license;
- (h) reports from the Western Cape Liquor Authority; and
- (i) a motivation from the applicant dealing with the facts mentioned above and the impact of –
 - (i) the risks to and nuisances on the surrounding community;
 - (ii) mitigation measures to assist the control of risks and nuisances; and
 - (iii) possible benefits of extended liquor trading hours and days on the surrounding community.

8. Suspension, Amendment and Revocation of Extended Liquor Trading days and Hours

- (1) An authorized official may, upon delivery of a written notice to the licensee or person in charge, immediately suspend extended trading hours for a maximum of 7 working days for the non-compliance of a condition in terms of the Act, this By-Law or any conditions of the liquor license.
- (2) The written notice as contemplated in subsection (1), must specify the reasons and the timeframes in which such suspension of extended trading days and trading hours will be in effect.
- (3) The written notice as contemplated in subsection (1), must call on the licensee to supply written reasons within 48 hours to the Municipal Manager on why the extended trading hours should not be revoked.
- (4) The authorized official must, in writing, report such suspension to the Municipal Manager.
- (5) Council or its delegate must, upon consideration of the suspension report of the authorized official and the representation by the licensee –
 - (a) determine trading hours and days in respect of the business and may impose such conditions as it may deem fit; and
 - (b) report any decision to confirm, amend or revoke the extended hours of trade to the Western Cape Liquor Authority.
- (6) No person may continue selling liquor to the public during the period in which the extended days and hours of trading in liquor have been suspended, amended or revoked.
- (7) The Municipality will not be held responsible for any loss of income suffered by a licensee during any period of suspension of trading days and hours.

PREVENTION OF ILLEGAL SALE OF LIQUOR AND SEIZURE OF LIQUOR

9. Prevention of illegal sale of liquor and seizure of liquor

- (1) An authorized official may prevent or seize the illegal sale of liquor –
 - (a) where liquor is sold from a premises where the sale of liquor is not permitted in terms of the Municipal zoning scheme; or
 - (b) where liquor is sold in contravention of this By-law; or
 - (c) where liquor is sold outside the hours and days as specified by this By-law or the conditions, imposed by the Western Cape Liquor Authority or the Municipality, in respect of that business; and
 - (d) cause the temporary closure of the premises and / or seize any liquor on the premises in accordance with the Standard Operating Procedure on Impoundment of the Municipality and the Search and Seizure provisions as contemplated in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2) Where the sale of liquor is prevented and liquor is seized as contemplated in subsection (1), the Municipality may recover any costs incurred by the Municipality from the licensee.

10. Display of signage and other obligations of the licensee

- (1) The licensee or person in charge must ensure that inside the business, to the satisfaction of the Municipality, a certificate issued by the Municipality stating the zoning or land use for purposes of this By-law and stating the approved hours of trade; are prominently displayed.
- (2) The licensee or person in charge must ensure that on the outside of the business, to the satisfaction of the Municipality, the following are prominently displayed on the front door or window of the premises in characters not less than five centimetres in height:
 - (i) the hours of trade of the business as approved by the Municipality; and
 - (ii) the liquor license number under which the business trade.

11. Safety and Security

- (1) Licensees must ensure that the licensed premises meets and complies with all environmental, planning, safety laws and that the conditions imposed by the Municipality are adhered to.
- (2) The licensee or person in charge must ensure that reasonable and adequate safety and security measures are in place for the protection of the public/clients of the likened premises by ensuring, amongst others but not limited to, that –
 - (a) the storage of goods and equipment and the condition of the premises and any structure thereon do not cause a danger to the safety of patrons inside the premises;
 - (b) the premises adheres to the requirements of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), and any other permission granted or by-law promulgated by the Municipality; and
 - (c) there is adequate lighting on the outside of the premises where the public/clients and staff access and exit the licensed premises.

12. Liquor premises must be weapon free

Right of admission to liquor premises is reserved and no weapons or sharp objects are permitted inside on consumption liquor premises. A safe should be available at all times on consumption liquor premises in case persons in possession of guns or sharp objects need access to the premises.

13. Nuisances

- (1) Any person selling liquor to the public must take all reasonable steps to ensure that noise from the liquor premises remain within the walls of such liquor premises at all times.
- (2) Any person selling liquor to the public must take reasonable steps to ensure that the residents of the surrounding community are not unreasonably affected and inconvenienced by noise or other nuisances emanating from the premises.
- (3) The licensee remains liable and responsible for all land pollution and littering within the liquor premises. The licensee is also responsible for all land pollution and littering outside the liquor premises flowing from the licensed premises. The liquor premises and surrounding areas must be kept clean at all times.
- (4) There shall be no loitering by patrons outside the liquor premises and all sales and consumption of liquor shall be confined to the liquor premises.

14. Offences and Penalties

- (1) Any person who contravenes or fails to comply with any –
 - (a) provision of this By-law;
 - (b) condition or instruction served in connection with this By-law; or
 - (c) written notice from an authorised official,on conviction, and subject to penalties prescribed in terms of any other law, is guilty of a first, second and/or third category offence.
- (2) A person who is guilty of an offence may be sentenced up to a maximum of two (2) years imprisonment and/or a fine and/or community service.
- (3) A court which sentences any person to community service for an offence in terms of this By-law must impose a form of community service which benefits the environment and/or community if it is possible for the offender to serve such a sentence in the circumstances.

15. Appeal

- (1) The Appeal Tribunal must consider any appeal against, or an application for the review of a decision of the Authority in terms of Section 20(3) of the Act;
- (2) An applicant or interested and affected party who is aggrieved by a decision of the Authority, lodge with the Authority a notice of appeal or review as prescribed;

16. Repeal

The provisions of any By-laws (including (4/2012) previously promulgated by the Municipality or by any of the disestablished Municipalities now incorporated in the Municipality area hereby repealed as far as they relate to matters provided for in this By-law.

17. Short title and commencement

This By-law shall be called the By-law on liquor trading days and hours of Matzikama Municipality, and shall come into operation on the date of publication thereof in the Provincial Gazette.

SCHEDULE

A	License in terms of Section 33(a) of the Act for micro-manufacturing and sale of liquor for consumption <i>both on and off</i> the premises.		
		TRADING HOURS	
	1. Agricultural zoned area & Rural area	On-consumption	Off-consumption
	Winery (farmstall)	10:00 – 02:00	8:00 – 20:00
	2. Industrial zones		
	Winery	10:00 – 02:00	8:00 – 20:00
B	License in terms of Section 33(b) of the Act for the sale of liquor for consumption <i>on</i> the premises where liquor is sold.		
	1. Residential zoned area	On-consumption	
	Guest accommodation establishment	10:00 – 00:00 (see Section 4)	
	Business premises / Specific business		
	Place of entertainment / Place of recreation		
	Sports & community club (excluding special events requiring temporary licenses)		
	Hotel	10:00 – 02:00 (see Section 4)	
	2. Rural or neighbourhood business areas		
	Guest accommodation establishment	10:00-00:00 (see Section 4)	
	Business premises / Specific business		
	Place of entertainment / Place of recreation		
	Sports & community club (excluding special events requiring temporary licenses)		
	Tourist facility		
	Hotel		
	3. Business zoned areas / General Business		
	Guest accommodation establishment	10:00 – 02:00 (see Section 4)	
	Business premises / Specific business		
	Place of entertainment / place of recreation		
	Sports & community club (excluding special events requiring temporary licenses)		
	Hotel		
	4. Industrial zones		
	Business premises / Specific business	10:00 – 02:00 (see Section 4)	
	Place of entertainment / Place of recreation		
	Sports & community club (excluding special events requiring temporary licenses)		

5.	Agricultural zoned area & Rural area		On-consumption	
	Guest house accommodation establishment		10:00 – 02:00 (see Section 4)	
	Business premises / Specific business			
	Place of entertainment / Place of recreation			
	Sports & community club (excluding special events requiring temporary licenses)			
	Hotel			
	Winery			
	Tourist facility			
			TRADING HOURS	
C	License in terms of Section 33(c) of the Act for the retail sale of liquor for consumption <i>off</i> the premises where liquor is sold.			
			Off-consumption	
	Bottle store, retail food store, off-sales, wholesaler,			08:00 - 20:00 Mo-Sa (see Section 5)
	Tourist facility			08:00–20:00 Mo-Su (see Section 5)
D	License in terms of Section 33(d) of the Act for the sale of liquor for consumption <i>on</i> and <i>off</i> the premises where liquor is sold.			
		On-consumption	Off-consumption	
	Exceptional circumstances (temporary license, on-consumption only)	10:00-00:00 Mo-Th 10:00-02:00 Fr -Sa 10:00-22:00 Su	09:00-20:00 Mo-Sa 09:00-16:00 Su	
E	License in terms of Section 33(e) of the Act for the sale and consumption of liquor <i>on</i> and <i>off</i> the premises at a special event.			
		On-consumption	Off-consumption	
	Concert / festival / Sporting event / entertainment event (as determined by special applications and / Liquor tribunal)	10:00-23:00 Mo-Th 10:00-00:00 Fr-Sa 10:00-20:00 Su	09:00-20:00 Mo-Sa 10:00-13:00 Su	
F	A temporary license in terms of Section 33(f) of the Act for the sale and consumption of liquor <i>on</i> or <i>off</i> the premises.			
	The days and hours will be the same as contained in this schedule, depending on the type of license and the location of the event for which the application is made.			
Note: Determine of application of applicable location category				
Where the location category as set out above is unclear or in dispute or difficult to determine or areas are not zoned homogenously (eg. a business zoned premises in the middle of a residential area) then the actual zoning, consent use or departure rights of the subject licensed premises will take precedence in order to determine the category.				