

MATZIKAMA MUNICIPALITY

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 System 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;

“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;

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

“guest accommodation establishment” means premises uses 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 meetings, 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, businesses, 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;

“local 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;

“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;

“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 place use predominantly for commercial entertainment 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;

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

“residential 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;

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

“sell” includes supply, exchange, offer for sale, display for the purpose of sale or authorise, 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;

“sports and community clubs” means premises or facility used for the gathering of community or civic organisations 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;

“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 on trading days;

“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 tours 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 and 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.

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

4. Public participation and duties of municipality

- (1) Upon receipt of a copy of the application to sell liquor from the designated liquor officer as contemplated in Section 37(4) of the Act, and in order to comply with the requirements of Section 40 of the Act, the Municipality must:

- (a) allow the public to have access to the application by posting a copy of the application on all municipal notice boards; and
 - (b) make available copies of such application when requested by a member of the public against payment of a fee as determined by the Municipality from time to time; and
 - (c) subject to subsection (2), instruct the ward councillor in whose ward the proposed premises is situated to submit written comments.
- (2) The ward councillor who receives an instruction as contemplated in subsection (1)(c) must, within 7 days:
- (a) convene a ward committee meeting to solicit the ward committee members' views with regard to the application that the applicant lodged with the Liquor Board;
 - (b) convene a consultative meeting with community of the area within a radius of 100 metres of the premises that are sought to be registered to discuss and solicit their views with regard to the application that the applicant lodged with the Liquor Board;
 - (c) compile and submit a report to the Director Corporate Services stipulating the date of the meetings referred to in subsections (2)(a) and (b), the time of the meetings, the original attendance register with the names and the addresses of the people who attended, indicate whether he or she objects to or recommends the application and what additional conditions he or she proposes, if any; and
 - (d) attach the minutes of the meetings referred to in subsections (2)(a) and (b).
- (3) The municipality must, within 7 days, of receipt of a ward councillor's report consider such report and submit to the Board, within the prescribed period, the documents as contemplated in section 40 of the Act.
- (4) For the purpose of considering a report as contemplated in subsection (3), an official may undertake such investigation or request such information as he or she may deem necessary for consideration by the Municipality, and must submit his or her findings to the Municipality.
- (5) For the purpose of considering a report as contemplated in subsection (3), an official may undertake such investigation or request such information as he or she may deem necessary for consideration by the Authority, and must submit his or her findings to the Authority.

5. 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 during any day of the week and hours of trade as set out in the Schedule and be reviewed by the Municipality from time to time.
- (2) Despite subsection (1) a hotel or guest accommodation establishment licensed to sell liquor may offer a room service facility at any time of day.

- (3) Despite the provisions of this By-law, a licensee as contemplated in subsection (1), may serve sparkling wine:
 - (a) from 08H00 to 23H00 for seven days a week; and
 - (b) as part of a meal; and
 - (c) to guests who are part of an organised function where admittance is controlled.

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

A licensee may sell liquor for consumption off the licensed premises during any day of the week and hours of trade as set out in the Schedule and be reviewed by the Municipality from time to time.

7. Transitional provisions

- (1) Subject to the provisions in the Act, trading hours applicable to a liquor license issued before the commencement of this By-law shall continue to apply until such license is renewed in terms of the Act.
- (2) The trading hours referred to in subsection (1) shall be valid until the license has lapsed as contemplated in Section 62(2) of the Act.

8. Vicarious responsibility

- (1) If the manager, agent or employee of a licensee sells liquor in contravention of Section 5 and 6 of this By-law, the licensee is deemed to have sold such liquor, except where:
 - (a) the licensee neither connived at, permitted or allowed such sale; and
 - (b) the licensee took such steps as he or she was reasonably able take in order to prevent the sale; and
 - (c) the sale did not fall within the scope of the employment or authority of the manager, agent or employee.
- (2) The fact that a licensee has issued instructions prohibiting such sale is not in itself sufficient to prove that he or she took the steps required by subsection (1)(b).
- (3) When a licensee is liable in terms of subsection (1) the manager, agent or employee is also liable therefore as if he or she was the licensee.

9. 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 may, within the prescribed period after receiving reasons for a decision of the Authority, lodge with the Authority a notice of appeal or review as prescribed;

10. Offences and Penalties

- (1) A licensee who contravenes Section 5 and 6 of this By-law commits an offence.

- (2) A licensee who commits an offense referred to in subsection (1) is, on conviction, liable for a fine as the court may deem fit to impose or to a term of imprisonment not exceeding three years, or to both such fine or such imprisonment.
- (3) Any person who commits a continuing offence shall be guilty of an offence for each day during which that person fails to comply with this By-law.
- (4) A court convicting a person of an offence under this By-law may impose alternative sentencing in place of a fine or imprisonment.

11. Repeal

The provisions of any By-laws 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.

12. Short title and commencement

This By-law shall be called the By-law on liquor trading days and hours of Matzikama Municipality (4/2012) and shall come into operation on the date of publication thereof in the Provincial Gazette.

SCHEDULE

A	Licence in terms of Section 33(a) of the Act for micro manufacturing and sale of liquor for consumption both <i>on</i> and <i>off</i> the premises		
		TRADING DAYS AND HOURS	
	1. Small holding or rural areas	On-consumption	Off-consumption
	Cellars / wine makers / home distillers / winery boutiques	11:00-23:00 Mon - Thur 11:00-02:00 Fri - Sat	08:00-20:00 Mon - Fri 08:00-17:00 Sat
	2. Industrial zones		
	Cellars / wine makers / home distillers / winery boutiques	11:00-20:00 Mon -Thur 11:00-02:00 Fri - Sat	08:00-20:00 Mon - Fri 08:00-17:00 Sat
B	Licence in terms of Section 33(b) of the Act for the sale of liquor for consumption <i>on</i> the premises		
	1. Residential areas	On-consumption	
	Pub / bar / tavern	08:00-20:00 Mon - Fri 08:00-17:00 Sat	
	Guest houses / backpacker's / lodges (whether conference facilities included or not)	10:00-02:00 Mon - Sun	
	Events & function centres	10:00-00:00 Mon - Sun	
	Hotel & casino	24 hours every day of the week	
	2. Local neighbourhood and general business centres (business zoned area)		
	Pub / bar / tavern / restaurant / pub and grub	08:00-00:00 Mon - Sat 10:00-21:00 Sun	
	Guest houses/ backpacker's / lodges (whether conference facilities / events / function centres included or not)	08:00-00:00 Mon-Sat 10:00-21:00 Sun	
	Sports and community centres / service clubs / amenity facilities (excludes special events / temporary licences)		
	Night club / karaoke / place of entertainment / discotheque / jazz clubs / escort agency	10:00-02:00 Mon - Sat	
	Hotel & casino	24 hours every day of the week	
	3. Industrial zones		
	Pub / bar / tavern / restaurant / pub and grub	08:00-04:00 Mon - Sat 10:00-22:00 Sun	
	Night club / karaoke / place of entertainment / discotheque / jazz clubs / escort agency	10:00-04:00 Mon - Sat	
	Sports and community centres / service clubs / amenity facilities (includes special events / temporary licenses)	08:00-02:00 Mon - Sat 10:00-22:00 Sun	
	Hotel & casino	24 hours every day of the week	
	4. Small holding or rural areas		
	Pub / bar / tavern / pub and grub / restaurant	08:00-20:00 Mon - Thur 08:00-00:00 Fri - Sat 10:00-20:00 Sun	

	TRADING DAYS AND HOURS	
	4. Small holding or rural areas	On-consumption
	Guest houses / backpacker's / lodges (whether conference facilities / events / function centres included or not)	08:00-00:00 Mon-Sat 10:00-02:00 Sun
	Sports and community centres / service clubs / amenity facilities (excludes special events / temporary licences)	
	Hotel & casino	24 hours every day of the week
C	Licence in terms of Section 33(c) of the Act for the sale of liquor for consumption <i>off</i> the premises	
	1. Residential areas	Off-consumption
	Tavern / off-sales	08:00-20:00 Mon - Fri 08:00-17:00 Sat
	2. Local neighbourhood and general business centres (business zoned area)	
	Liquor or bottle stores / specialised wine shops / retail food store / off-sales	08:00-20:00 Mon - Fri 08:00-17:00 Sat
	Wholesaler	08:00-17:00 Mon - Sat
	3. Industrial zones	
	Liquor or bottle stores / specialised wine shops / retail food store / off-sales	08:00-20:00 Mon - Fri 08:00-17:00 Sat
	Wholesaler	08:00-17:00 Mon - Sat
D	Licence 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	
		On-consumption
	Exceptional circumstances	10:00-00:00 Mon -Thur 10:00-02:00 Fri - Sat 10:00-22:00 Sun
		Off-consumption
		09:00-20:00 Mon - Fri 08:00-14:00 Sat
E	License in terms of Section 33(e) of the Act for the sale of liquor for consumption <i>on</i> and <i>off</i> the premises at a special event	
		On-consumption
	Concert / festival / sporting events / entertainment event (As determined by event permit and / or liquor tribunal)	10:00-23:00 Mon -Thur 10:00-00:00 Fri - Sat 10:00-20:00 Sun
		Off-consumption
		08:00-20:00 Mon - Fri 08:00-17:00 Sat
F	A temporary licence in terms of Section 33(f) of the Act for the sale of liquor for consumption <i>on</i> and <i>off</i> the premises at a special event (see Section 48(1) of the Act)	
		On-consumption
	The days and hours will be the same as contained in this schedule depending on the type of licence and the location of event for which is applied for.	Off-consumption
	<p>Note: Determination of applicable location category</p> <p>Where the location category as set out above is unclear or in dispute or difficult to determine areas which are not zoned homogenously (e.g. a business zoned premises in the middle of a residential zoned area). The actual zoning of the subject licensed premises will take precedence in order to determine the category.</p>	