

Cape Town, South Africa

Control of Undertakings that Sell Liquor to the Public

Legislation as at 17 January 2014

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Control of Undertakings that Sell Liquor to the Public
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Cape Town South Africa

Control of Undertakings that Sell Liquor to the Public By-law, 2014

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To provide for the control of undertakings selling liquor to the public including the control of trading times in order to ensure a safe and healthy environment in the City of Cape Town; and to provide for matters related thereto.

WHEREAS a municipality may, in terms of section 156 of the Constitution, make and administer by-laws for the effective administration of matters which it has the right to administer;

WHEREAS it is the intention of the City to set trading times and enforcement mechanisms for the control of licensed undertakings that sell liquor to the public and which are situated within the jurisdiction of the City of Cape Town;

AND NOW THEREFORE, BE IT ENACTED by the Council of the City of Cape Town, as follows:-

Interpretation

1. Definitions

In this By-law, unless the context indicates otherwise –

"agricultural area" means an area predominantly zoned for agriculture or any other equivalent zoning, with the 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;

"authorised official" means a delegated employee of the City's Directorate: Safety and Security, Liquor Enforcement and Compliance Unit and includes any other authorised official delegated to enforce the provisions of this by-law;

"business premises" means a property from which business is conducted and may include a restaurant, pub, bar or tavern or other building for similar uses, but excludes a place of entertainment, guest accommodation establishment, hotel, sports and community club;

"casino" means a casino as defined in the National Gambling Act, 2004 (Act No. 7 of 2004) and includes a hotel, business premises, venue for hosting of events, place of entertainment or other recreation facility or tourist attraction as part of the complex;

"City" means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998, or any structure or employee of the City acting in terms of delegated authority;

"compliance notice" means a written instruction of an authorised official as contemplated in section 7;

"Council" means the Municipal Council of the City;

"general business area" means an area predominantly zoned general business or any other equivalent zoning, 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;

"guest accommodation establishment" means premises used as temporary residential accommodation, and includes the provision of meals for 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 excludes a hotel;

"hotel" means premises used as temporary residential accommodation for transient guests where lodging or meals are provided for compensation, and includes –

- (a) a restaurant forming part of the hotel;
- (b) a conference and entertainment facility that is subservient and ancillary to the dominant use of the premises as a hotel; and
- (c) premises licensed to sell liquor for consumption on the property,

but excludes an off-consumption facility, guest accommodation establishment, dwelling house or dwelling unit;

"industrial area" means an area predominantly zoned general industry or any other equivalent zoning, with the purpose to accommodate all forms of industry including manufacturing and related processing, but excludes noxious or hazardous risk activity;

"licensee" means a person who is licensed to sell liquor in terms of the Act and includes the manager who is responsible for the management of the business and is subject to the same duties, obligations and liabilities as the licensee;

"liquor" means liquor as defined in 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 purpose to accommodate low intensity commercial and mixed use development serving local needs of a convenience goods, personal service or small scale business nature or serve as an interface between general business, industrial and adjacent residential areas;

"off-consumption premises" means the place of business from which a licensee sells liquor to be consumed at a location removed from the place of business;

"on-consumption premises" means the place of business and location in which liquor is sold and consumed;

"organised function" means a celebration, party or similar festivity shared at a licensed premises;

"person" means a natural person or a juristic person;

"place of entertainment" means a place used predominantly for commercial entertainment which may attract relatively large numbers of people, operate outside standard business hours or generate noise from amplified or live music or revelry on a regular basis, and includes a cinema, theatre, amusement park, dance hall, gymnasium, totalisator or facility for betting, gambling hall, karaoke bar and nightclub, but excludes a casino;

"population certificate" means an occupancy certificate aimed at the prevention and control of overcrowding as contemplated in the City of Cape Town By-law relating to Community Fire Safety, 2002;

"residential area" means an area predominantly zoned informal, single or general residential or any other equivalent zoning, with the purpose to accommodate predominantly single-family dwelling houses in low to medium density neighbourhoods, as well as higher density living accommodation and which includes controlled opportunities for home employment, additional dwellings and low intensity mixed use development;

"**sell**" includes –

- (a) to supply, exchange, offer for sale, display for the purpose of sale; or
- (b) to authorise, direct or allow a sale, supply, exchange, offer for sale or display for sale;

for the exchange of money or any other type of consideration; and "sale" and "sold" have corresponding meanings;

"**small holding or rural area**" means an area predominantly zoned rural 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 process, and includes Champagne;

"**sports and community club**" means premises or a facility used for the gathering of community or civic organisations or associations, sports clubs or other social or recreation clubs run mostly not for profit and may include community service clubs and community centres or similar amenity facilities, but excludes a night club;

"**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 City in terms of section 6 of this By-law;

"**suspension notice**" means a written notice to suspend extended liquor trading days and hours as contemplated in section 8;

"**subcouncil**" means a political substructure of Council which has been delegated with certain powers and duties of Council;

"**the Act**" means the Western Cape Liquor Act, 2008 (Act No. 4 of 2008);

"**winery**" includes premises or facilities which are used in the production of wine and such premises or 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) a restaurant and other food services; or
- (b) a subsidiary retail facilities to tours or visitors, and

"**zoned**" means zoned as the case may be in terms of the City of Cape Town Zoning Scheme Regulations; and "zoning" has a corresponding meaning.

2. Application

This By-law is applicable to licensees that sell liquor to the public within the jurisdiction of the City.

3. General prohibition

No person may sell liquor to the public for on consumption or off consumption –

- (a) outside of the days and hours that have been determined by the City; and
- (b) without a valid liquor licence that has been issued as contemplated in the Act.

Standard trading times

4. On-consumption 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; and
 - (b) during the hours of trade as set out in the Schedule.
- (2) A licensee may allow a patron to complete the consumption of liquor on the premises at a time when the sale of liquor is not permitted by this By-law, but may not allow such consumption on the premises for more than 30 minutes after the time permitted by this By-law.
- (3) Despite the provisions of this By-law, a licensee as contemplated in subsection (1), may sell sparkling wine to guests who are part of an organised function where admittance is controlled –
 - (a) from 08h00 to 11h00 for seven days a week; and
 - (b) as part of a meal.
- (4) A hotel or guest accommodation establishment licensed to sell liquor for on consumption, may provide access to a bar facility inside each private suite or room for the enjoyment of a guest occupying such private suite or room.

5. Off-consumption premises

A licensee may sell liquor for off-consumption on any day of the week from 09:00 to 18:00, except on Sundays.

Extended trading times

6. Application for extended days and hours

- (1) Subject to subsection (5), (6) and (7) a licensee may upon payment of the required fee, submit a written application to the City to extend the liquor trading days and hours of licensed premises.
- (2) The City may approve, amend or refuse an application for an extension of liquor trading days and hours for both on and off consumption premises.
- (3) An application for the extension of trading days and hours is not automatically renewable and –
 - (a) must be submitted to the City for consideration on an annual basis; and
 - (b) may be approved by the City, subject to the imposition of conditions for extended liquor trading days and hours.
- (4) No application will be considered or processed for approval by the City during the period starting 1 December and ending 15 January of the following year.
- (5) No licensee of on-consumption premises located in categories 1, 2 and 6 in the Schedule may apply for an extension of liquor trading hours.
- (6) The City may approve, amend or refuse an application for the extension of liquor trading hours –
 - (a) up to 04:00 the next day for on-consumption premises that fall within categories 3 to 5 of the Schedule; and
 - (b) up to 20:00 for off-consumption premises from Monday to Saturday.
- (7) The City may approve, amend or refuse an application for Sunday trading between the hours of 11:00 to 18:00 for off-consumption premises.

- (8) No rights accrue to any licensee who has submitted an application for extension of trading days and hours before the proof of written approval is received from the City by such licensee.
- (9) The City must, before approving an application for the extension of trading days and hours, reasonably and fairly consider further factors which must include, *inter alia* –
 - (a) the validity of the liquor licence;
 - (b) where applicable, the validity of a business licence issued in terms of the Businesses Act of 1991 (Act No. 71 of 1991);
 - (c) location category as per the Schedule;
 - (d) previous suspension, amendment or revocation of extended trading days and hours including previous records of complaints investigated and confirmed in respect of the last twelve months preceding a current application for extension;
 - (e) the proximity of the licensed premises to surrounding residential zoned area, cultural, religious and educational facilities;
 - (f) outcome of community consultation and the recommendation of the relevant ward;
 - (g) the potential impact on the surrounding environment;
 - (h) whether it is in the public interest to approve and grant an extension of trading days or hours; or
 - (i) a motivation from the applicant dealing with 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.
- (10) The basis and rational behind all decision-making must be recorded.

7. Compliance notice

- (1) An authorised official may serve a compliance notice on a licensee thereby instructing such licensee to comply with the provisions of this By-law.
- (2) The compliance notice must specify –
 - (a) the contravention and the expected remedy of the contravention;
 - (b) the time frame in which the licensee must remedy the contravention and comply with any lawful instruction contained in the compliance notice; and
 - (c) the consequences of failure to comply with paragraphs (a) and (b).
- (3) A licensee commits an offence if such licensee fails to adhere to the instructions contained in a compliance notice.

8. Suspension, amendment and revocation of extended liquor trading days and hours

- (1) An authorised official may–
 - (a) after the time frame specified in the compliance notice has lapsed; and
 - (b) upon delivery of a suspension notice to the licensee immediately suspend extended trading days and hours for a maximum period of 7 working days.

- (2) The suspension notice must–
 - (a) specify the reasons and the timeframes in which such suspension of extended liquor trading days and trading hours will be in effect; and
 - (b) specify the subcouncil to which such suspension will be reported.
- (3) The authorised official must immediately report such suspension in writing, to the subcouncil responsible for that area in the City, substantiating the criteria that influenced the decision to deliver a suspension notice to the licensee.
- (4) The criteria contemplated in subsection (3) may include –
 - (a) contravention of this By-law; and
 - (b) failure to adhere to the compliance notice.
- (5) The subcouncil –
 - (a) must consider the suspension report of the authorised official;
 - (b) must allow the licensee to make written representations;
 - (c) must confirm, amend or revoke the decision of the authorised official to suspend the extended hours of trade of the licensed premises;
 - (d) may immediately amend or revoke the extended days and hours of trade, and
- (6) The subcouncil must immediately inform the licensee in writing of any decision and action taken in terms of subsection (5).
- (7) No person may continue selling liquor to the public during the period in which the extended days and hours of liquor trading have been suspended, amended or revoked.
- (8) The City may not be held responsible for any loss of income suffered by a licensee during any period of suspension of extended trading days and hours.
- (9) The City must inform the Western Cape Liquor Authority of any decision to confirm, amend or revoke the extended hours of trade.

Prevention of sale of liquor and seizure of liquor

9. Prevention of sale of liquor and seizure of liquor

- (1) The City may, in the instance that the licensee has contravened this By-law and failed to adhere to a compliance or suspension notice that was served –
 - (a) cause the prevention of sale of liquor; and
 - (b) seize any liquor on the premises in accordance with the procedures 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 City may recover any costs incurred by the City from the licensee.

10. Display of signage, population certificate and other obligations of licensee

- (1) The licensee must ensure that the relevant approval relating to hours of trade and zoning together with the population certificate are always present and displayed on the premises.
- (2) Licensees must ensure that the licensed premises meets and complies with all environmental health, planning, safety laws and with conditions imposed by the City.

11. Safety and security

The licensee must ensure that reasonable safety and security measures are in place for the protection of patrons of the licensed premises by ensuring that, *inter alia* –

- (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); the City of Cape Town Community Fire Safety By-law, 2007 and any other permission granted by the City; and
- (c) there is adequate lighting on the outside of the premises where patrons and staff access and exit the licensed premises.

12. Nuisances

A licensee 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.

13. Offences and penalties

Any licensee who –

- (a) contravenes sections 3; 4; 5; 6; 7; 8(7); 10; 11 or 12;
- (b) fails to comply with any compliance notice served in connection with this By-law,

is guilty of an offence and is upon conviction, liable to a fine or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

14. Right of appeal

Any licensee or objector whose rights have been affected by a final decision taken by a subcouncil with regards to –

- (a) an application for extended trading days and hours; or
- (b) the amendment or revocation of extended trading days and hours,

may appeal against that final decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

15. Repeal

The following By-laws are hereby repealed:

- (a) The City of Cape Town: Liquor Trading Days and Hours By-law, 2010 (PG6788; LA 22327); and
- (b) The City of Cape Town: Liquor Trading Days and Hours By-law, 2010 as amended in 2012 (PG6990; LA 24493).

16. Short title

This By-law is called the City of Cape Town: Control of Undertakings that Sell Liquor to the Public By-Law, 2013.

Schedule

Trading hours for on-consumption licensed premises

Location category & licensed premises type	Maximum permitted trading hours
1. Residential area	
Guest accommodation establishment	11:00 – 23:00
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
Hotel	11:00 – 02:00 following day
Casino	
2. Local or neighbourhood business area including mixed use areas	
Guest accommodation establishment	11:00 – 23:00
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	11:00 – 24:00
Hotel	11:00 – 02:00 following day
Casino	
3. General business area	
Guest accommodation establishment	11:00 – 02:00 following day
Business premises	

Location category & licensed premises type	Maximum permitted trading hours
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
Hotel	
Casino	
4. Industrial area	
Business premises	11:00 – 02:00 following day
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
5. Agricultural area	
Guest accommodation establishment	11:00 – 02:00 following day
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
Winery	
Hotel	
6. Small holding or rural area	
Guest accommodation establishment	11:00 – 24:00
Business premises	
Place of entertainment	

Location category & licensed premises type	Maximum permitted trading hours
Sports and community club excluding special events requiring temporary licences	
Winery	
7. Other ad-hoc locations	
Vehicles or mobile undertakings used for tourist or entertainment or recreational purposes as per definition of 'premises' in section 1 of the Act, except where City of Cape Town Special Events By-law determines otherwise	11:00 – 24:00
Special events or temporary licensed premises	As determined by City of Cape Town Event Permit granted in terms of the City of Cape Town Events Policy and approved by the appropriate Sub Council
8. Cape Town International Airport	
Limited to the International Passenger Departures Area	00:00 – 24:00

Note: Determination 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 homogeneously (e.g. a business zoned premises in the middle of a residential area), the actual zoning, consent or departure use rights of the subject licensed premises will take precedence in order to determine the category.