

Swartland, South Africa

Control of Undertakings that Sell Liquor to the Public

Legislation as at 11 November 2022

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Swartland South Africa

Control of Undertakings that Sell Liquor to the Public By-law, 2022

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Under section 156 of the Constitution of the Republic of South Africa, 1996, the Swartland Municipality enacts as follows:—

1. Definitions

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts, and unless the context indicates otherwise—

"agricultural area" means an area predominantly zoned agriculture or any other equivalent use, 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;

"Authority" means the Western Cape Liquor Authority established in terms of the Act;

"business premises" means a building or land from which business is conducted and includes a shop, supermarket, restaurant, office, financial institution and buildings for similar uses, but does not include a place of assembly, place of entertainment, institution, service station, motor repair garage, industry, industrial hive, noxious trade, risk activity, adult entertainment or bottle store;

"closed days" means Christmas Day and Good Friday;

"general business area" means an area predominantly zoned general business or any other equivalent use, 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 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 excludes a hotel;

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

- (a) a restaurant or restaurants forming part of the hotel;
- (b) conference and entertainment facilities that are subservient and ancillary to the dominant use of the 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 area" means an area predominantly zoned general industry or any other equivalent use, with the purpose to accommodate all forms of industry including manufacturing and related processing, but excludes noxious or hazardous risk activity;

"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;

"licensed premises" means any place, land, building or part of a building in respect of which a license has been issued by the Authority in terms of the Act and includes a vehicle or vessel which is mainly used for the conveyance of tourists or passengers;

"liquor" means liquor as defined in section 1 of the Act;

"neighbourhood business area" means an area predominantly zoned neighbourhood business or mixed use or any other equivalent use, with the purpose to accommodate low intensity 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;

"nuisance" means any act or omission or condition on any premises, vehicle, street or public place, including any building, structure, vehicle or vessel which is offensive or dangerous, or which interferes with the ordinary comfort, convenience, peace or quiet of other people or which may adversely affect the safety or comfort of people;

"place of entertainment" means a place used 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, totalisator or facility for betting, gambling hall, karaoke bar and nightclub;

"residential area" means an area predominantly zoned residential or general residential or any other equivalent use, 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;

"small holding" 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;

"sparkling wine" means an effervescent wine resulting from the fermentation of grapes, whether by natural or artificial process, and includes champagne;

"special event" means a fundraising event in aid of an educational or welfare organisation, any exhibition, sports meeting, cultural meeting or artistic performance;

"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;

"temporary license" means a temporary license issued by the Authority to—

- (a) the holder of an on consumption license; or
- (b) in exceptional circumstances, the holder of an on and off consumption license;

"Swartland Municipality" means the Swartland Municipality established by the Establish Notice published in Provincial Notice No. 5589 of 2000, as amended, and "Municipality" has a corresponding meaning;

"the Act" means the Western Cape Liquor Act, 2008 (Act No. 4 of 2008), as amended, read together with relevant Regulations;

"weekday" a day of the week, excluding Saturday and Sunday;

"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, wine sales and 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

"wine shop" means a place to sell packaged liquor for consumption off the premises;

"zoning", when used as a noun, means a category of directions regulating the development of land and setting out the purposes for which the land may be used and the land use or land use provisions applicable in respect of the said category of directions, as determined by the Zoning Scheme;

"zoning scheme" means zoning scheme regulations which have been approved in terms of the Landuse Planning Ordinance, Ordinance 15 of 1985 Swartland Municipality: Land Use Planning By-law published in Provincial Notice Nr. 8226 of 2020.

2. Purpose of by-law and application

- (1) To provide for the control of undertakings selling liquor to the public in order to ensure a safe and healthy environment in the Swartland; 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.
- (2) This by-law applies to all premises, situated within the area of jurisdiction of the municipality, on which a business trading in liquor is operated, including:
 - (a) undertakings selling liquor to the public for consumption on the licenced premises;
 - (b) undertakings selling liquor to the public for consumption off the licensed premises;
 - (c) undertakings selling liquor to the public for consumption on and off the licensed premises.

3. 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; and
 - (b) during the hours of trade as set out in the Schedule.
- (2) Despite subsection (1), a hotel or guest accommodation establishment licensed to sell liquor may offer a room service facility at any time of the day.
- (3) Despite the provisions of this by-law, a licensee as contemplated in subsection (1), may serve sparkling wine—
 - (a) from 08:00 for seven days a week;
 - (b) as part of a meal; and
 - (c) to guests who are part of an organised function where admittance is controlled.
- (4) 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.

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

- (1) A licensee, excluding wineries and wine shops, may sell liquor for consumption off the licensed premises from Monday to Saturday from 09:00 to 20:00, but not on Sundays and closed days.

- (2) Licensed wineries and wine shops may sell liquor for consumption off the premises on the following days and hours:

- (a) from Monday to Saturday from 09:00 to 20:00; and
- (b) on Sundays from 09:00 to 17:00,

but not on closed days.

5. 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 section 4 and 5.

6. Special events and temporary licenses

Where the Authority refers an application for a special events license or a temporary license in terms of section 48 of the Act to the municipality for comments or recommendation, the municipality may recommend a deviation from the trading hours as determined in the Schedule to this by-law.

7. Appointment of authorised officials

The municipality may appoint any official to implement and enforce the provisions of this by-law.

8. Determination of licensed premises type

Where the definition or category of any licensed premises type as reflected in items 1 to 6 of the Schedule to this by-law is uncertain or difficult to determine, an authorised official as contemplated in section 6 may determine the definition thereof in order to determine the trading hours applicable thereto.

9. Compliance and enforcement

- (1) An authorised official may, for the purposes of ensuring compliance with the trading hours determined in terms of this by-law, at reasonable times enter any licensed premises or any premises in respect of which an application in terms of this by-law has been submitted;
- (2) When entering premises in terms of this section, the authorised official must identify himself or herself to the person in charge of the premises.
- (3) An authorised official may issue and serve a notice of compliance on the licensee or any person in control of licensed or unlicensed premises, calling upon such person to comply with the provisions of this by-law.
- (4) A compliance notice must stipulate—
 - (a) the provisions of the by-law that is contravened;
 - (b) the act or omission constituting non-compliance;
 - (c) the measures which must be taken to comply;
 - (d) the date or time by which compliance must be achieved, where applicable; and
 - (e) the possible consequences of non-compliance.

10. Application for extended trading hours

- (1) Notwithstanding the provisions of sections 3, the holder of an on-consumption license may, upon payment of the required fee, apply to the municipality to trade on weekdays preceding a public holiday, excluding closed days, during the hours set in the Schedule for trading on a Friday and a Saturday.

- (2) The provisions of subsection (1) shall not apply to holders of on-consumption licenses on premises located in categories 1 en 2 of the Schedule.
- (3) Applications must be made in the prescribed manner and must be submitted at least fourteen days prior to the date on which extended hours are needed. Late applications shall not be considered.
- (5) Applications for extended trading hours shall be restricted to a maximum of three per premises per calendar year.

[Please note: numbering as in original.]

- (6) No application in terms of sub section (1) shall be considered or processed during the period 1 December and 15 January of the following year.
- (6) No rights shall accrue to any licensee who has submitted an application for extension of trading hours before the written proof approval is received from the municipality by such licensee.
- (7) The municipality must, when considering an application for the extension of trading hours, consider applicable factors which may include—
 - (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 records of complaints in respect of the twelve months preceding the application for extension of hours;
 - (e) the proximity of the licensed premises to surrounding residential zoned area, cultural, religious and educational facilities;
 - (f) the potential impact on the surrounding environment;
 - (g) whether it is in the public interest to approve and grant an extension of trading hours;
 - (h) a motivation from the applicant dealing with—
 - (i) the possible risks to the surrounding community and the creation of noise or other nuisances;
 - (ii) measures to control or alleviate possible risks and nuisances; and
 - (iii) possible benefits of extended liquor trading hours on the surrounding community.
- (8) The municipality, in considering the application, may request input from—
 - (a) the relevant ward committee;
 - (b) adjacent residents which may be affected;
 - (c) the local Community Policing Forum;
 - (d) the designated liquor officer of the S A Police Service; and
 - (e) any relevant community organisation such as church groups, ratepayers or business forums'
- (9) The municipality may issue an approval for extended trading hours subject to any conditions and the basis and rational behind all decision-making must be recorded.

11. 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;
 - (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 of 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 or person in control of the premises.

12. 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 centimeters 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.

13. Safety and security

- (1) Licensees must ensure that the licensed premises meets and complies with all environmental, planning and 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 licensed 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 bylaw 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.

14. 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.

15. 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) The licensee is responsible to ensure that there shall be no loitering by patrons outside the liquor premises and that all sales and consumption of liquor shall be confined to the liquor premises.

16. Objection against renewal of licenses

- (1) The municipality or any of the institutions or persons contemplated in section 9(9) shall have the right to lodge representations against the automatic renewal of a liquor license within its jurisdictional area—
 - (a) where the licensed premises is not zoned for such use in terms of the municipality's town planning scheme regulations; or
 - (b) where the licensed premises has, since the last renewal of such license, been the subject of a complaint or complaints received by the municipality.
- (2) The municipal manager must lodge such representations in writing with the Authority before 31 July of the year preceding the year in respect of which the renewal will apply.

17. Appeal

A person or judicial entity whose rights are affected by a decision of the municipality in terms of delegated authority may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

18. Offences and penalties

- (1) A licensee who contravenes sections 3, 4 or 5 of this by-law or fails to comply with a notice issued in terms of section 9, commits an offence.
- (2) A person who hinders or obstructs an authorised official in the execution of his or her duties commits an offence.
- (3) Any person contravening the provisions of this by-law shall upon conviction be liable to—
 - (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment;
 - (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
 - (c) a further amount equal to any costs and expenses that have been incurred by the municipality as result of such contravention or failure.

19. Repeal

The By-law relating to Control of Undertakings that sell Liquor to the Public as published in *Provincial Gazette* No 7394 on 22 May 2015 is hereby repealed.

20. Short title

This by-law shall be known as the Swartland Municipality By-law Relating to the Control of Undertakings that sell Liquor to the Public and shall come into operation on the date of publication hereof in the *Provincial Gazette*.

Schedule

Trading hours for consumption of liquor on licensed premises

Location category & licensed premises type	Maximum permitted trading hours
1. Residential area	
Guest accommodation establishment	Monday – Thursday: 09h00 – 23h00 Friday – Saturday: 09h00 – 24h00 Sunday: 11h00 – 23h00
Business premises	
Sports and community club excluding special events	
2. Neighbourhood business area including mixed use areas	
Guest accommodation establishment	09h00 – 24h00
Business premises	
Place of entertainment	
Sports and community club excluding special events	
3. General business area	
Guest accommodation establishment	Monday – Thursday: 09h00 – 24h00 Friday – Saturday: 09h00 – 02h00 next day Sunday: 09h00 – 24h00
Business premises	
Place of entertainment	

Location category & licensed premises type	Maximum permitted trading hours
Sports and community club excluding special events	
Hotel	
4. Industrial area	
Business premises	Monday – Thursday: 09h00 – 24h00 Friday – Saturday: 09h00 – 02h00 next day Sunday: 09h00 – 24h00
Place of entertainment	
Sports and community club excluding special events	
5. Agricultural area / Small holdings	
Guest accommodation establishment	09h00 – 02h00 next day
Place of entertainment	
Sports and community club excluding special events	
Winery	
Hotel	
6. 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 any other Swartland Municipality By-law determines otherwise	09h00 – 24h00
Special events or temporary licenses	As determined by the authorisation issued by the Authority in terms of section 48 of the Act after consultation with the municipality.