Drakenstein, South Africa

Liquor Trading Days and Hours By-law, 2013

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Liquor Trading Days and Hours By-law, 2013
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Drakenstein
South Africa

Liquor Trading Days and Hours By-law, 2013

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Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Drakenstein Municipality, enacts as follows:-

1. Definitions

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

"**agricultural area**" means an area predominantly zoned 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.

"**authorised official**" means any employee of the municipality authorised to enforce or implement the provisions of this by-law;

"**Authority**" means the Western Cape Liquor Authority established in terms of the Western Cape Liquor Act, 2008 (Act 4 of 2008);

"**backpackers lodge**" means a building where lodging is provided per bed or room and such lodging may incorporate cooking, dining and communal facilities or communal areas for the use of lodgers, together with such outbuildings which are normally used therewith, but does not include a hotel, dwelling, second dwelling or group house;

"**bed and breakfast**" means a dwelling or a second dwelling attached to the main dwelling in which the owner provides lodging and or meals for compensation by transient guests who have permanent residence elsewhere, provided that-

(a) in the case where the second dwelling is attached to the main dwelling, the primary use of the main dwelling shall remain for the accommodation of a single family;

(b) no more than five rooms per land unit may be used for the accommodation of paying guests or lodgers; and

(c) the property complies with the applicable zoning scheme for a bed & breakfast establishment;

"**bar**" a retail establishment that mainly serves alcoholic beverages;

"**club**" includes a sports club, community or service club, night club or facility;

"**general business zoned area**" means an area zoned in terms of the Zoning Scheme designed to promote economic activity in business districts and development corridors, and includes a wide range of land uses such as business, residential and community uses;

"**general industrial zoned area**" means an area zoned to accommodate all forms of industry, but does not include noxious trade and risk activity;

"**general residential zoned area**" means a zone designed to provide a healthy, safe and pleasant environment for urban living at higher densities;

"**guest house**" means a dwelling or second dwelling consisting of not more than 15 rooms or 30 guests and which-

(a) is in an establishment which exceeds the restrictions of a bed and breakfast establishment;

(b) is used for the purposes of providing lodging and meals to transient guests for compensation; and

(c) may include facilities for business meetings or training sessions of guests on the property;

"**hotel**" means a property used as temporary residence 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 property as a hotel; and

(c) premises which are licensed to sell liquor for consumption on or off the property,

but excludes a bed and breakfast establishment, guest house, off-consumption facility, back packers lodge or similar lodge or dwelling;

"**karaoke bar**" means an establishment providing interactive entertainment where amateur singers sing along with recorded music or a music video using a microphone and public address system;

"**licensee**" means any person or judicial entity who is licensed to sell liquor in terms of the Act from premises with appropriate land use rights and includes any manager, agent or employee of the licensee;

"**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 any liquid or substance which contains or is intended to contain more than 1% of alcohol by volume or mass, but excludes-

(a) methylated spirits;

(b) medicine which is subject to registration in terms of the medicines and related Substances act, 1965 (Act 101 of 1965); and

(c) products which are not intended for human consumption;

"**local business zoned area**" means an area zoned to provide an intermediate zone which can act as a buffer or interface between general business zoned areas or other high intensity non-residential uses and residential zoned areas;

"**municipality**" means the Municipality of Drakenstein established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), Provincial Notice 488 dated 22 September 2000 and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub delegated to such political structure, political office bearer, councillor, agent or employee;

"**nightclub**" means an entertainment venue which provides entertainment mainly in the form of music, dance and exhibition but excludes a pub, bar or tavern;

"**place of entertainment**" means a place used predominantly for commercial entertainment which may attract relatively large numbers of people, or generate noise from music or revelry on a regular

basis, and includes, but is not limited to, a cinema, theatre, dance hall, gambling hall, karaoke bar and nightclub, but excludes a casino;

"**pub**" means a drinking establishment of which the primary function is the serving of alcoholic beverages for consumption on the premises, but may also serve food or have entertainment.

"**Regulations**" means the Western Cape Liquor Regulations, 2011 promulgated in terms of the Westm Cape Liquor Act, 2008;

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

"**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;

"**resort**" means a place or establishment used for relaxation or recreation, attracting visitors for holidays or vacations, which attempts to provide for most of a vacationer's needs while remaining on the premises, such as food, drink, lodging, sports, entertainment, and shopping;

"**restaurant**" means an establishment which prepares and serves food and drink to customers, which meals are generally served and eaten on premises, but may also offer take-out and food delivery services;

"**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;

"**shebeen**" means a drinking establishment of which the primary function is the serving of alcoholic beverages for consumption on the premises;

"**special event**" means a public activity with a scheduled time, location and duration which may include, but is not limited to: sporting events, concerts, festivals, parades and exhibitions, at fixed venues or temporary venues.

"**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;

"**tavern**" means a place of business where people gather to drink alcoholic beverages and be served food, but does not include a shebeen;

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

"**wine**" means wine as defined in section 1 of the Liquor Products act, 1989 (Act 60 of 1989);

"**winery**" means premises or facilities which are used in the production of liquor products which may include, but are not limited to-

(a) wine;

(b) an alcoholic fruit beverage;

(c) a spirit;

(d) a grape-based liquor;

(e) a spirit-based liquor;

(f) a specially authorised liquor;

and such premises or facilities may-

(i) be specifically designed to include facilities for the production of liquor; or

(ii) include tasting rooms, barrel and storage rooms, bottling rooms, tank rooms, laboratories or offices and other accessory or ancillary facilities incidental to the production of liquor, which may include-

(aa) restaurants and other food services; or

(bb) 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; and

"**zoning scheme**" means the zoning scheme or schemes applicable to the area and in force within the area of jurisdiction of the municipality.

2. Application of the By-law

This by-law applies to all licensed premises within the jurisdiction of the municipality.

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 house 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 08h00 to 11h00 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. Trading days and hours for sale of liquor off licensed premises

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 and religious public holidays, unless otherwise indicated in the Schedule; and

(b) during the hours of trade as set out in the Schedule.

5. Appointment of authorised officials

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

6. Determination of licensed premises type

Where the definition or category of any licensed premises type as reflected in items 1 to 7 of the schedule to this by-law is uncertain or difficult to determine, an authorised official as contemplated in section 5 may determine the definition thereof in order to determine the trading hours applicable thereto.

7. Enforcement

(1) An authorised official may, in the performance of his or her functions in terms of this by-law-

(a) at all reasonable times enter-

(i) any licensed premises;

(ii) any premises in terms of which an application in terms of the Western Cape Liquor Act, 2008 has been made; and

(iii) any premises on which he or she on reasonable grounds suspects that liquor is being sold contrary to the provisions of this by-law, and make such investigation, enquiries or inspections as he or she may deem necessary.

(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 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 must be complied with;

(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.

8. Application for extended trading hours

(1) Whenever a licensee makes an application to the Authority for extension of the trading hours in terms of section 59(4) of the Act, the municipality shall have the right to lodge an objection against such extension on the grounds that the granting thereof-

(a) is not in the public interest;

(b) that it will prejudice-

(i) the residents of a residential area;

(ii) the residents of an institution for the aged or frail;

(iii) the learners of an educational institution who are under the age of 18 (eighteen) years;

(iv) the patients of an institution for drug- or alcohol related dependencies;

(v) the congregants of a religious institution located in the vicinity of the licensed premises concerned: or

(vi) any other relevant factor that may justify such objection

(2) An objection in terms of this section must be dealt with by the municipal manager in terms of regulation 26 of the Regulations.

(3) (a) Notwithstanding the trading hours determined in sections 3 and 4, a licensee of premises may, upon payment of the required fee, submit an application to the municipality for an extension of the hours during which they may trade.

(b) The municipality, in considering the application referred to in paragraph (a) may request input from-

(i) the relevant ward committee;

(ii) adjacent residents which may be affected.;

(iii) the local Community Policing Forum;

(iv) the designated liquor officer of the S.A. Police Service; and

(v) any relevant community organisation such as church groups, ratepayers or business forums.

9. Annual renewal of licenses

(1) The municipality or any of the institutions or persons contemplated in section 8(3)(b) 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 October of the year preceding the year in respect of which the renewal will apply.

10. 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.

11. Offences and penalties

(1) A licensee who contravenes sections 3 and 4 of this by-law commits an offence.

(2) A person who hinders or obstructs an authorised official in the execution of his/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 found by the court to have been incurred by the municipality as result of such contravention or failure.

12. Short title

This by-law is called the Drakenstein Municipality By-law on Liquor Trading Days and Hours and shall come into operation on the date of publication thereof in the *Provincial Gazette*.

Schedule

Trading hours on licensed premises

Location category (with predominant land use character as indicated below) and licensed premises type	Permitted maximum trading hours	
1. Residential (including single, general and informal residential) area	**On-consumption**	**Off-consumption**
B&B's guest houses permitted as of right (i.e without need for any separate zoning approval)	11h00 - 12h00	
B&Bs/guest houses/backpackers lodges (whether conference facilities/events/function centres included or not)		
Pub/bar/tavern/restaurant		
Shebeen		
Night club/karaoke bar/place of entertainment/theatres		
Sports & community Clubs/ service clubs/amenity facilities/ community centres (excluding special events/temporary licenses)		
Hotel	11h00 - 02h00 following day	
2. Local or neighbourhood business areas (including mixed use areas consisting of single/general residential interspersed with business use - e.g. areas zoned local business or community use or any other equivalent zoning)		
B&Bs/guest houses/backpackers lodges (whether conference facilities/events/function centres included or not)	11h00 - 24h00	
Pub/bar/tavern/restaurant		

Location category (with predominant land use character as indicated below) and licensed premises type	Permitted maximum trading hours	
Shebeen		
Night club/karaoke bar/place of entertainment/theatres		
Sports & community clubs/ service clubs/amenity facilities/ community centres (excluding special events/temporary licenses)	11h00 - 24h00	
Hotels	11h00 - 02h00 following day	
Resort	11h00 - 02h00 following day	
Liqour/bottle stores/wine shops/ retails food stores		09h00 - 20h00
3. General business areas (e.g. areas zoned general business or any other equivalent zoning)		
B&Bs/guest houses/backpackers lodges (whether conference facilities/events/function centres included or not)	11h00 - 02h00 following day	
Pub/bar/tavern/restaurant		
Shebeen		
Night club/karaoke bar/place of entertainment/theatres		
Sports & community clubs/ service clubs/amenity facilities/ community centres (excluding special events/temporary licenses)		
Liqour/bottle stores/wine shops/ retails food stores		09h00 - 20h00
Resort	11h00 - 02h00 following day	

Location category (with predominant land use character as indicated below) and licensed premises type	Permitted maximum trading hours	
4. Industrial areas (e.g. areas zoned general industry use or any other equivalent zoning)		
Pub/bar/tavern/restaurant	11h00 - 02h00 following day	
Shebeen		
Night club/karaoke bar/place of entertainment/theatres		
Sports & community clubs/ service clubs/amenity facilities/ community centres (excluding special events/temporary licenses)		
Liqour/bottle stores/wine shops/ retails food stores		09h00 - 20h00
Resort	11h00 - 02h00 following day	
Winery	11h00 - 02h00 following day	09h00 - 20h00 (including Sundays)
5. Agricultural areas (e.g. areas zoned agriculture or any other equivalent zoning)		
Guest accommodation (whether conference facilities/events/ function centres included or not)	11h00 - 02h00 following day	
Pub/bar/tavern/restaurant		
Shebeen		
Night club/karaoke bar/place of entertainment/theatres		
Sports & community clubs/ service clubs/amenity facilities/ community centres (excluding special events/temporary licenses)		

Location category (with predominant land use character as indicated below) and licensed premises type	Permitted maximum trading hours	
Hotel	11h00 - 02h00 following day	
Resort	11h00 - 02h00 following day	
Winery	11h00 - 02h00 following day	09h00 - 20h00 (including Sundays)
6. Small holding or rural area		
Guest accommodation (whether conference facilities/events/ function centres included or not)	11h00 - 24h00	
Pub/bar/tavern/restaurant		
Shebeen		
Night club/karaoke bar/place of entertainment/theatres		
Sports & community clubs/ service clubs/amenity facilities/ community centres (excluding special events/temporary licenses)		
Resort	11h00 - 02h00 following day	
Winery	11h00 - 24h00 following day	09h00 - 18h00 (including Sundays)

7. Other locations	
Vehicles or mobile undertakings used for tourist or entertainment or recreational purposes as per definition of "licensed premises" in section 1, except where the municipality determines otherwise	11h00 - 24h00

7. Other locations	
8. Special events or temporary licensed premises	As determined by event permit and/or Liquor Authority not later than 02h00 following day.

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.