

MAKANA MUNICIPALITY LIQUOR TRADING HOURS BY-LAWS

Under the provisions of section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and sections 22(2)(d)(i) and 42(b) of the Eastern Cape Liquor Act, 2003 (Act 10 of 2003), the Makana Municipality, enacts as follows:-

TABLE OF CONTENTS

1. Definitions
 2. Purpose of By-law
 3. Application of By-law
 4. Ward committee consultative meetings
 5. Trading hours
 6. Selling of liquor at other times
 7. Enforcement
 8. Offences relating to official
 9. Appeal
 10. Penalties
 11. Repeal
 12. Short title and commencement
- Schedules

1. Definitions

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

"**Act**" means the Eastern Cape Liquor Act, 2003 (Act 10 of 2003);

"**casino**" means a casino operated in terms of the National Gambling Act, 2004 (Act 7 of 2004);

"**Council**" means the Makana Municipal Council or any other committee or official acting by virtue of any powers delegated by Council;

"**hotel**" means premises wherein or whereon the business of supplying lodging and meals is conducted or is intended to be conducted, and includes a motel, inn, bed and breakfast concern, caravan and camping park, guest-house, a lodge and a house boat;

"**Liquor Board**" means the Eastern Cape Liquor Board established in terms of section 4 of the Act;

"**official**" means any person authorised by Council 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;

"**registered premises**" means premises on or from which a trader conducts his or her business;

"**Regulations**" means the regulations, published as Notice No. 1143 of 8 April, 2004, made under the Act;

"**selling hours**" means the time during which a trader is allowed to sell liquor in terms of Schedule 1;

"**trader**" means a person who is registered in terms of section 19 of the Act, and any other word or expression to which a meaning has been assigned in the Act and the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), carries that meaning;

"**trading**" means the selling of liquor; and

"**ward committee**" means a committee as contemplated in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998).

2. Purpose of By-law

The Council, 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.

3. Application of By-law

This By-law applies to all premises, situated within the area of jurisdiction of the Council, on which liquor is traded or intended to be traded.

4. Ward Committee consultative meetings

(1) A Ward Committee must within 30 days of receipt of a notice of application for registration, in terms of section 22(2)(d)(i) of the Act hold a consultative meeting with the community of the area where the premises that are sought to be registered are situated to discuss and solicit their views with regard to the application that the applicant intends to lodge with the Liquor Board.

(2) The Ward Committee must compile and submit a report to the Council and the Liquor Board, stipulating the date of the consultative meeting referred to in subsection (1), the time of the meeting, the names and the addresses of the people who attended, indicate whether it objects to or recommends the application and what additional conditions it proposes, if any.

(3) The Council may consider a report submitted to it by a ward committee in terms of subsection 22(2)(d)(i)¹ of the Act and item 3(2)² of the Regulations.

¹ Section 22(2)(d) of the Act reads as follows:

"An application for registration contemplated in subsection (1) must be made by submitting to the board –

(d) proof of service of the notice contemplated in the prescribed manner on the –

5. Trading hours

- (1) The trading hours, as listed in Column 2 of Schedule 1 to this By-law of the different kinds of registrations, as contemplated in section 20 of the Act, as listed in Column 1 of the Schedule, have been determined by the Council and may be reviewed by the Council from time to time.
- (2) Subject to section 6, no trader may sell liquor to a person at a time other than those hours stipulated as trading hours under subsection (1).
- (3) A trader who contravenes subsection (2) commits an offence.

6. Selling of liquor at other times

- (1) The Council may grant written consent to a trader to sell liquor at hours other than those hours stipulated as trading hours in section 5(1), and a trader who wishes to sell liquor at such hours must, before he or she sells such liquor, obtain such written consent of the Council.
- (2) A trader who wishes to obtain the consent of the Council must complete a form similar to the form entitled "Application For Departure With Respect To Trading Hours" as contained in Schedule 2 and submit the form and other particulars as the Council may request, to the office of the municipal manager.
- (3) For the purpose of considering whether to grant consent as contemplated in subsection (1), Council may require an official to undertake an investigation or request information as he or she may deem necessary for consideration by the Council, and such official must submit his or her findings to the Council.
- (4) The Council may, after consideration of the application and the report contemplated in subsection (3), refuse to grant consent or grant consent, and should the Council grant consent, it may do so subject to any condition or restriction it may deem necessary, which consent and condition or restriction, if imposed, shall be entered in Part C of the form contained in Schedule 2.
- (5) A trader who has been granted consent in terms of subsection (4), must display, in a conspicuous place on the premises regarding which the

(i) ward committee which must on receipt of the notice consult the community of the area where the premises are situated and simultaneously submit a report to the board and the relevant municipal council; and

(ii) governing body of every education institution or place of worship within a radius prescribed by the MEC from the premises in respect of which the application is made."

² Item 3 of the Regulations reads as follows:

"(1) An applicant must within seven days of lodgment, serve a notice substantially in the form of Form 2 of Annexure 2 on the ward committee of the area where the premises are situated, every governing body of every educational institution and place of worship within a radius of 100 metres from the premises in respect of which the application for registration is made.

(2) A ward committee contemplated in sub-regulation (1) must, within thirty days of receipt of the notice, submit a report on the consultation with the community to the board and to the relevant municipal council."

consent has been granted and during those times for which the consent has been granted, a copy of the form on which the consent of the Council has been entered.

(6) A trader who contravenes subsection (1) or (5), or who sells liquor in contravention of a condition or restriction imposed in terms of subsection (3), or who displays a forged form, commits an offence.

7. Enforcement

(1) Members of the South African Police Service and liquor inspectors appointed in terms of the Act may enforce this By-law.

(2) An official, acting within the powers vested in him or her by subsection 6(3) of this By-law must, upon request by a member of the public, produce proof of identity and the capacity in which he or she purports to conduct his or her business.

(3) An official, acting in terms of the mandate contemplated in subsection (2) may –

- (a) enter upon premises and conduct an inspection; and
- (b) request any person to provide such information as deemed necessary by the official.

8. Offences relating to official

(1) A person commits an offence if he or she –

- (a) hinders or interferes with an official in the execution of his or her duties;
- (b) falsely professes to be an official;
- (c) furnishes false or misleading information when requested by an official; or
- (d) fails to comply with a request of an official.

(2) A person who contravenes subsection (1) commits an offence.

9. Appeal

A person whose rights are affected by a decision of the Council 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, 2000 (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

10. Penalties

A person who has committed an offence in terms of these by-laws is guilty of an offence and, on conviction, liable to the penalties prescribed in section 61(1)(b) and section 61(2) and (3) of the Act.

11. Repeal

The By-law set out in Schedule 3 is hereby repealed to the extent set out in the third column of that Schedule.

12. Short title and commencement

This By-law may be cited as Makana Municipality Liquor Trading Hours By-law, and come into force upon publication in the Provincial Gazette.

SCHEDULE 1
(Section 5(1))

TYPE OF REGISTRATION ¹	TRADING HOURS
Registration in terms of Section 20(a) of the Act for the retail sale of liquor for consumption off the premises where liquor is sold. <i>(Bottle store, retail shop, wholesaler)</i>	09:00-21:00 Mon-Sat 09:00-13:00 Sun/Pub Holidays
Registration in terms of Section 20(b) of the Act for the retail sale of liquor for consumption on the premises where liquor is sold. <i>(Restaurant, sports club, pool bar, pub)</i> <i>(Night club)</i> <i>(Hotels)</i>	11:00-24:00 Mon- Thurs 10:00-02:00 Fri – Sat 11:00-22:00 Sun/Pub Holidays 24 hours
Registration in terms of Section 20(c) of the Act for the retail sale of liquor for consumption on and off the premises where liquor is sold. <i>(Taverns, shebeens)</i>	11:00-24:00 Mon-Thurs 10:00-02:00 Fri-Sat 11:00-22:00 Sun/Pub Holidays
Registration in terms of Section 20(d) of the Act for the retail sale and consumption of liquor at a special event	Council and SAPS will determine
Registration in terms of Section 20(d) of the Act for micro manufacturing.	Council and SAPS will determine

¹ The following serve as examples of outlets or establishments:

- (a) Section 20(a): Retail warehouse, retail liquor or bottle store, shop, off-sales, house shop.
- (b) Section 20(b): Nightclub, sports bar, sports club, poolbar, discotheque, jazz club, escort agency, pub and grub, pub, bar, casino, licensed restaurant, guest house, hotel, motel.
- (c) Section 20(c): Tavern, shebeen.
- (d) Section 20(d): Concert, festival, sporting event, and entertainment event.
- (e) Section 20(e): Wholesale warehouse and micro manufacturing.

SCHEDULE 2

PART A

APPLICATION FOR DEPARTURE WITH RESPECT TO TRADING HOURS

(In terms of section 6(2) of the Liquor Trading Hours By-law)

Name of applicant:

Allotment Area: Erf No. of Premises:

Address of premises where liquor will be sold:

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Postal address of applicant:

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Contact telephone no (.....) Fax no (.....)

Dates and hours on which liquor will be sold or supplied (Be specific, e.g. 14:00 to 23:00 on 3 June, 2005):

Reason why this application is made:

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.....

Anticipated volume of liquor that will be consumed:.....

Nature of liquor that will be sold or supplied:

Other particulars (as requested by the Council):

Do the premises have Special Land Use Consent? (provide proof) YES NO

Do premises have a business licence? (provide proof) YES NO

Do premises have noise attenuation equipment installed? (provide details) YES NO

Does applicant possess a Liquor Licence? (provide copy) YES NO

Distance to nearest residence metres

Signed Date

(Applicant)

PART B

Official use

Does The Business Meet The Following Requirements?:

- | | | |
|---|-----|----|
| 1. Land use permission | YES | NO |
| 2. Valid business license (if applicable) | YES | NO |
| 3. Compliance with noise regulations | YES | NO |
| 4. Possession of a valid liquor licence | YES | NO |
| 5. Premises suitably located | YES | NO |

INSPECTION REPORT:

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Name of official :

Date of inspection :

PART C

RECOMMENDATION BY ENVIRONMENTAL HEALTH DEPARTMENT:

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Name of Official:

DATE:

Designation:

CONDITIONS:

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SIGNATURE

DATE

SCHEDULE 3

Number and year of bylaw	Title	Extent of repeal
P.N		The whole