



## STELLENBOSCH MUNICIPALITY

### LIQUOR TRADING HOURS BY-LAW

#### PREAMBLE

Stellenbosch Municipality, by virtue of the powers vested in it by **section 156 (2)** of the **Constitution of the Republic of South Africa** as amended, read with **section 13** of the **Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)**, has made the By-law set out below.

In this by-law, words used in the masculine gender include the feminine.

All singular meanings shall include the plural interpretation and vice versa.

The English text shall prevail in the event of an inconsistency between the different texts, unless the context otherwise indicates.

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## 1. DEFINITIONS

In this by-law unless the context otherwise indicates –

**“Act”** means the **Western Cape Liquor Act, 2008 (Act No 4 of 2008)**

**“agricultural area”** means an area predominantly zoned for agriculture or any other equivalent, zoning with the purpose of promoting and protecting agricultural activity on a farm as an important economic, environmental and cultural resources, 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 resources;

**“authorized official”** means a member of the South African Police Service, and / or a Liquor Inspector of the Western Cape Liquor Authority appointed as Peace Officer in a notice issued under Section 334(1) of the Criminal Procedure Act.

**“business premises”** (besigheidsperseel) means a place from which business is conducted and includes a wide range of commercial and professional services and retail uses such as, but not limited to shops, offices, financial institutions, postal agencies, wellness centers, restaurants, supermarkets, shopping centers, medical consulting rooms which are not in a clinic or hospital, but excludes any other land use which is categorized under another land use category or for which Council's consent must be obtained, such as for example a place of entertainment.

**“Council”** means the Municipal Council of Stellenbosch Municipality.

**“general business area”** means an area predominantly zoned for general business or any other equivalent zoning, with the purpose of promoting activity in a business district and development corridor;

**“guest accommodation establishment”** means premises used as temporary residential accommodation, and includes but not limited to the provision of meals for transient guests for compensation, also including backpackers' lodges, a bed-and-

breakfast establishment, guest farm or lodge(s), as well as facilities for business meetings, conferences, events or training sessions of resident guests, but excludes a hotel;

**“guesthouse”** (gastehuis) means a commercial residential establishment of 15 or less bedrooms , accommodating no more than 30 guests at a time, for compensation, which:-

- (a) Primary source of business and purpose is the supply of tourist accommodation, meals and beverages (which may include liquor) for transient guests;
- (b) May include facilities for business meetings or training sessions of guests on the property;
- (c) A wellness centre and conference facility for transient guests with necessary consent of Council limited to service of guests only; and
- (d) May consists of one or a group of buildings which are designed as a harmonious architectural entity.

**“hotel”** (hotel) is a commercial residential establishment of 16 or more bedrooms , accommodating more than 30 guests at a time, for compensation, and may include:-

- (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;
- (c) Premises which are licensed to sell liquor for consumption on or off the property together with or without meals to guests and/or the public;
- (d) May consists of one or a group of buildings which are designed as a harmonious architectural entity;

But excludes a backpacker’s lodge, a bed-and-breakfast establishment, guesthouse, guest farm or lodge(s), as well as facilities for business meetings, conferences, events or training sessions of resident guests of on-consumption facilities.

**“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 the person who has a valid liquor licence<sup>1</sup> issued in terms of the Act;

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<sup>1</sup> Section 33 of the Act provides for the following categories of licences –

- (a) a licence for the micro-manufactured and sale of liquor for consumption both on and off the premises where the liquor is sold ;
- (b) a licence for the sale of liquor for consumption on the premises where the liquor is sold;
- (c) a licence for the sale of liquor for consumption off the premises where the liquor is sold;
- (d) in exceptional circumstances , a licence for the sale of liquor for consumption both on and off the premises where the liquor is sold;

**“licensed premises”** means the premises specified in the liquor licence or certificate issued in terms the Act;

**“liquor”** means any liquid or substance which contains or is intended to contain more than 1% of alcohol by volume or mass, but excluding—

- (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;

**“liquor authority”** means the Western Cape Liquor Authority established by **section 2(1)** of the Act;

**“mixed use development”** means any urban, suburban or village development, or even housing a single building, that blends a combination of residential, commercial, cultural, institutional or industrial uses, where those functions are physically and functionally integrated, and that provides pedestrian connections.

**“municipality”** means Stellenbosch Municipality established in terms of **section 12** of the **Local Government : Municipal Structures Act, 1998 (Act 117 of 1998)**, published in **Provincial Notice 5643** dated **4 December 2000** and includes any political office-bearer, councillor, or any employee therefore acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political office-bearer, councillor, or employees;

**“place of entertainment”** (vermaaklikheidsplek) is a place used predominantly for commercial entertainment where patrons participate in the activities or observe performances, which may on a regular basis attract large numbers of people, and may generate noise from music or revelry, and where alcohol may be consumed, such as a night club, pub, cinema, theatre, amusement arcade;

**“place of sport and recreation”** (buitemuurse ontspanningsplek) means land which may be public or privately owned and which is set aside for outdoor sport and recreation such as sports grounds and fields, sports stadiums, putt-putt, miniature golf, golf courses, and where the following buildings are permitted only with Council’s additional consent, ablution facilities, clubhouse, stores, gatehouses and related administrative buildings;

**“residential area”** means an area, predominantly zoned informal, single or general residential or any equivalent zoning, with the purpose to predominantly house 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;

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- (e) a licence for the sale of liquor for consumption on or off the premises upon which liquor is sold at special events ; and
  - (f) a temporary liquor licence for the sale for consumption on or off the premises upon which liquor is sold .

**“sparkling wine”** means an effervescent wine resulting from the fermentation of grapes, whether by natural or artificial process, and includes Champagne;

**“specific business”** (spesifieke besigheid) means a business use of a particular nature, but within the compass of **section 10(7)** that is prescribed for a specific site by the Council<sup>2</sup>;

**“sports and community club”** means premises or a facility used for the gathering of community and civic organizations 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 amenity facilities, but excludes a night club;

**“the Act”** means the **Western Cape Liquor Act 4 of 2008**, as amended ;

**“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;

**“wine”** means wine as defined in Section 1 of the Liquor Products Act 60 of 1989;

**“winery”** means 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 and accessible by the public, which may include:-

- (a) A restaurant and other food services; or
- (b) A subsidiary retail facility to tours or visitors selling wines of the specific winery excluding any other form of liquor.

**“wine industry”**(wynbedryf) means a site or building, or portion of a site or building utilized or intended to be utilized for the manufacture of liquor in the form of wine or spirits from grapes;

## 2. APPLICATION OF THIS BY-LAW

This by-law applies to all-

Licensees, their managers, their employees and any other person selling Liquor within the geographical area of the Municipality, limited to those falling within the jurisdiction of the Magistrates' Court of Stellenbosch..

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<sup>2</sup> Definitions of Stellenbosch Zoning scheme regulations

### 3. INTERPRETATION

Any authorising in terms of this by-law, should not be interpreted as the sanctioning of any trade, which had not been approved in terms of relevant legislation.

### 4. 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 all days,
- (b) during the hours of trade as set out in the Schedule.

(2) Despite the provisions of this by-law, a licensee as contemplated in **subsection (1)**, may serve sparkling wine,

- (a) from 8h00 to 10h00;
- (b) as part of a meal; and
- (c) to guests who are part of an organized function where admittance is controlled.

### 5. 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 all days ;
- (b) from 9h00 to 20h00.

### 6. EXTENSION OF TRADING TIMES

#### (1) Application for extended trading days and hours

- (a) A licensee may, upon payment of the required fee and at least 3 months prior to the desired extension, submit a written application to the Municipality to extend the trading days and/or hours in respect of a licensed premises.

- (b) The Municipality may refuse or approve such application with or without terms and conditions.
- (c) No rights accrue to any person who has applied for an extension of trading days and hours before the receipt of approval of the Municipality.
- (d) The Municipality must, when considering an application for the extension of trading days and hours, consider factors which may include:-
  - (i) Outcome of community consultation;
  - (ii) Public interest;
  - (iii) Proximity of the licensed premises to a residential area, cultural, religious or educational facility;
  - (iv) The planning and zoning requirements of the Municipality;
  - (v) The validity of a business license issues in terms of the Business Act 71 of 1991 where applicable;
  - (vi) The potential impact on the tranquility and well-being of the community;
  - (vii) Previous suspension, amendment or revocation of extended trading days and hours;
  - (viii) Validity of liquor license;
  - (ix) Record of and/or report of any offence and/or contraventions relating to the liquor license of applicant, whether in terms of this bylaw or otherwise;
  - (x) Applicant's comments in respect of paragraphs (i) – (x) and the steps proposed to mitigate:-
    - (a) The risks to the surrounding community;
    - (b) Nuisance on the surrounding community;
    - (c) The possible benefits of extended liquor trading hours and days on the surrounding community.

## **6. OBLIGATIONS ON THE LICENSEE**

### **(1) Display of signage and certificates**

- (a) A licensee must, to the satisfaction of the authorized official, ensure that following certificates are prominently displayed inside the licensed premises:

- (i) The certificate issued by the Municipality stating the zoning or land use in respect of the premises for purposes of this by-law; and
  - (ii) The population certificate in respect of the premises issued in terms of the Fire Safety by-law of the Municipality.
  - (iii) Business license and/or certificate issued by the Municipality.
- (b) A licensee must, to the satisfaction of the authorized official, ensure that the following information are prominently displayed on the front door or window of the premises in characters not less than five centimeters in height:
- (i) The liquor license number under which liquor may be sold; and
  - (ii) The hours during which liquor may be sold.

## **(2) Safety and Security**

- (a) A licensee must ensure compliance with all applicable legislation.
- (b) A licensee must ensure that reasonable and adequate safety and security measures are in place for the protection of patrons by ensuring, amongst others but not limited to, that:-
  - (i) the storage of goods and equipment and the condition of the premises and any structure thereon do not endanger the lives of patrons inside the premises; and
  - (ii) there is adequate lighting on the outside of the premises where patrons and staff access and exit the licensed premises.

## **(3) Liquor premises must be weapon free**

- (a) A licensee must ensure that no weapons or sharp objects are permitted inside on consumption liquor premises.
- (b) A licensee may not allow any person to bring a weapon or sharp object onto the licensed premises.

## **7. COMPLIANCE AND ENFORCEMENT**

- (1) An Authorized Official may, in the performance of his or her functions in terms of this by-law or the Act, at all reasonable times enter-
  - (a) any licensed premises;



(b) any premises in respect of which a liquor license application is pending;

(c) any premises on which he or she on reasonable grounds suspects that liquor is being sold contrary to the provisions of this by-law of the Act;

and make such investigation, enquiries or inspections as he or she may deem necessary.

(2) When entering premises in terms of this section, the authorized official must on request identify himself or herself to the person in charge of the premises.

(3) An authorized official may issue and serve a notice of non-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, a condition of the license or the Act within a specified but reasonable time.

(4) A compliance notice must stipulate-

(a) the provisions of the by-law, license condition or the Act 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.

(5) An authorized official may issue the licensee or any person in control of licensed premises with a fine as provided in the fines list of this by-law or the Act.

## **8. PREVENTION OF ILLEGAL SALE OF LIQUOR AND SEIZURE OF LIQUOR**

(1) An authorized official may temporarily close a licensed premises if found that it is trading at any other hours than provided for in the Schedule, or trading without an extension permit as provided for in clause 5. The licensed premises will be closed until the next hour of which it is authorized to trade.

(2) An authorized official may temporarily close a licensed premises in order to conduct an enforcement operation, in conjunction with the South African Police Service or the Western Cape Liquor Authority and seize and/or impound any liquor offered for sale or drug related substances on the licensed premises.

## **9. APPEAL**

A person or judicial entity whose rights are affected by a decision of the Municipality in terms of delegated authority may appeal 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 notification of the decision.

## **10. OFFENCE AND PENALTIES**

A licensee who contravenes or fails to comply with a-

- (1) Provision of this by-law;
- (2) Condition or instruction in connection with this by-law; or
- (3) Notice from an authorized official,

shall be guilty of an offence and is liable to a fine as set out in the applicable fine list authorized by the Magistrate in the area, **or** the fine list in terms of the Act , whichever is applicable at the time concerned, or to imprisonment as determined by a Court, or both, or any other punishment which the Court may find appropriate in the circumstances.

## **11. TRANSITIONAL PROVISIONS**

The trading hours in respect of any license for premises upon which liquor may be sold for consumption either on or off the licensed premises, or both on and off licensed premises, issued prior to the commencement of this by-law will be replaced by the provisions of this by-law from the date of publication of this by-law.

## **12. SHORT TITLE**

This by-law is called the “Stellenbosch Liquor Trading Hours By-Law” and shall come into operation after it is published in the Provincial Gazette.

**SCHEDULE**

Trading hours for selling liquor on licensed premises is according to the certificate provided for in 6(1)(a)(i) and are:

<b>LOCATION CATEGORY &amp; LICENSED PREMISES TYPE</b>	<b>MAXIMUM PERMITTED TRADING HOURS</b>
<b>1. RESIDENTIAL AREA</b>	
(a) Guest accommodation establishment / Guest house	11h00 to 24h00
(b) Business premises/Specific business	
(c) Place of entertainment/Place of recreation/Gathering place	
(d) Sports and community club excluding special events requiring temporary licences	
(e) Hotel	
<b>2. LOCAL OR NEIGHBOURHOOD BUSINESS</b>	
(a) Guest house / Guest accommodation establishment / Guest house	11h00 to 24h00
(b) Business premises/Specific business, /Gathering place,	
(c) Place of entertainment/Place of recreation	
(d) Sports and community club excluding special events requiring temporary licences	
(e) Hotel	
<b>3. GENERAL BUSINESS AREA</b>	
(a) General business area including mixed use areas	10h00 to 2h00 the following day
(b) Guest house / Guest accommodation establishment	
(c) Business premises / Specific business	
(d) Place of entertainment/Place of recreation/Gathering places	
(e) Sports and community club excluding special events requiring temporary licences	
(f) Hotel	
<b>4. INDUSTRIAL AREA</b>	
(a) Industrial area including mixed use area	10h00 to 2h00 the following day
(b) Business premises/ Specific business	

(c) Place of entertainment/Place of recreation/Gathering places	
(d) Sports and community club excluding special events requiring temporary licences	
<b>5. AGRICULTURE AREA/ RURAL AREA</b>	
(a) Guest house accommodation establishment	10h00 to 24h00 the following day
(b) Business premises/Specific business/Gathering places	
(c) Place of entertainment/Place of recreation	
(d) Sports and community club excluding special events requiring temporary licences	
(e) Winery/Wine industry	
(f) Hotel	
<b>6. OTHER AD HOC LOCATIONS</b>	
(a) Special events or temporary licensed premises	As determined by special applications

**Note : Determine of application 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 homogenously (eg. a business zoned premises in the middle of a residential area) then the actual zoning, consent use or departure rights of the subject licensed premises will take precedence in order to determine the category, and in terms of Section 6(1)(a)(i) above.