



Theewaterskloof
Municipality

**THEEWATERSKLOOF MUNICIPALITY
LIQUOR TRADING DAYS AND HOURS BY-LAW**

MAY 2022

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Municipal Council of the Theewaterskloof Municipality, hereby enacts as follows:

PREAMBLE

WHEREAS section 156 of the Constitution of the Republic of South Africa, 1996 authorize a municipality, to make and administer by-laws for the effective administration of the matters which a municipality has the right to administer;

AND WHEREAS it is the intention of the Theewaterskloof Municipality to determine trading days and hours for all licensed premises or undertakings, situated within the area of jurisdiction of the Theewaterskloof Municipality, that sells liquor to the public.

The objective of this by-law is –

- (i) to provide for the control of undertakings selling liquor to the public, in order to ensure a safe and healthy environment in the area of jurisdiction of the Theewaterskloof Municipality;
- (ii) to provide for pre-determined days and hours for trade in liquor, by licensed undertakings that sell liquor to the public; and
- (iii) to provide for matters related to the determination of days and hours for the sale of liquor to the public.

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CHAPTER 1 INTERPRETATION AND APPLICATION

1. INTERPRETATION

In this by-law, the English text prevail in the event of any conflict with the Afrikaans text, and unless the context indicates otherwise–

“Authorized official”, – means an employee of the Theewaterskloof Municipality who has been authorized by the Theewaterskloof Municipality to enforce the Liquor Trading Days and Hours By-Law of the Theewaterskloof Municipality, a designated liquor officer of the South African Police Service or an inspector who is appointed in terms of subsection 73(4) of the Western Cape Liquor Act, 2008 (Act No 4 of 2008), as amended;

"Business premises ", means a property from which business is conducted and may include a restaurant, inn, 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 purposely built and developed tourism facility, which is a licensed gambling facility, and may include hotels, restaurants, bars, conference facilities, entertainment facilities and other associated and / or subsidiary facilities for tourists;

"Guest accommodation establishment", means premises used as temporary residential accommodation, and includes the provision of lodging, meals and other guest services, properly licensed to prepare and sell food, to transient guests for compensation, and includes a backpacker's lodge, a bed- and- breakfast establishment, guest house or guest farm or guest lodge, as well as facilities for business meetings, conferences, events or training sessions of transient guests, but excludes a hotel;

“Hotel”, means a purposely built and developed premises, used as a temporary residential accommodation for transient guests, where lodging, meals and other guest services are provided for compensation, and include:

- (a) a restaurant or restaurants properly licensed to prepare and sell food, forming part of the hotel;
- (b) conference and entertainment facilities that is subservient and ancillary to the dominant use of the premises as a hotel; and
- (c) premises which are licensed to sell alcoholic beverages for consumption on the property, but **excludes** an off-site consumption facility, liquor outlet, guest accommodation establishment, dwelling house or dwelling unit;

“Licensed premises”, means the premises upon which liquor may be micro-manufactured, sold, consumed or stored, as contemplated in terms of the Western Cape Liquor Act, 2008 (Act No. 4 of 2008), as amended;

"Licensee", means any person or business enterprise or institution, to whom a liquor license has been issued and who is licensed to sell liquor in terms of the Western Cape Liquor Act, 2008 (Act No. 4 of 2008), as amended, and includes any licensed premises, business, liquor outlet or land use activity from which liquor may be sold, a person or an agent for or on behalf of the license holder or manager of the licence holder as contemplated in subsection 52(1) of the Western Cape Liquor Act, 2008 (Act No 4 of 2008), as amended, or any person employed in the service of such license holder or agent or manager;

"Liquor", means any liquid or substance, as defined in section 1 of the Western Cape Liquor Act, 2008 (Act No 4 of 2008), as amended;

“Liquor authority”, means the Western Cape Liquor Authority established in terms of subsection 2(1) of the Western Cape Liquor Act, 2008 (Act No 4 of 2008). as amended;

“Liquor license”, means a license to sell liquor as defined in section 33 of the Western Cape Liquor Act, 2008 (Act No 4 of 2008), as amended;

"Municipality", means the Theewaterskloof Municipality, and includes reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Theewaterskloof Municipality;

“Premises”, means any portion of land situated within the area of jurisdiction of the Theewaterskloof Municipality, of which the outer boundaries are demarcated on a general plan or diagram or sectional title plan, registered in accordance with applicable legislation, and includes a building or structure build or erected on such land;

“Restaurant”, means a properly licensed establishment, which prepares and serves food, and beverages to customers, which are generally prepared, served and consumed on the premises, but may also include take-out food and food delivery services;

“Room service”, means the provision of beverages and food in the rooms of transient guests, at facilities where temporary residential accommodation are provided;

“Tourism facility”, means amenities for tourists such as lecturer rooms, restaurants properly licensed to prepare and sell food, shops for the sale of local liquor products and produce, gift shops and rest rooms, but does not include overnight accommodation;

“The Act”, means the Western Cape Liquor Act, 2008 (Act No 4 of 2008), as amended, and the regulations promulgated in terms thereof;

“Winery, includes premises or facilities which are used in the production of wine or any other alcoholic beverage from fruit or other agricultural produce, and such

premises or facilities may include facilities for crushing grapes or similar agricultural product, fermentation and aging of wine or similar produce, 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 or alcoholic beverages, which may include –

- a) restaurants and other food services properly licensed to prepare and sell food;
- b) entertainment and conference facilities;
- c) wedding venues;
- d) outlets selling the products of the estate; or
- e) subsidiary retail facilities to tours or visitors.

"Zoning scheme", means the zoning scheme applicable to and in force for a specific area within the area of jurisdiction of the Theewaterskloof Municipality.

2. APPLICATION

This by-law is applicable to persons and premises that sell liquor to the public, within the area of jurisdiction of the Municipality.

3. GENERAL PROHIBITION

A licensee may not sell liquor for consumption on or off a licensed premises–

- (a) in any other way, than in accordance with this by-law;
- (b) outside the days and hours that have been determined by the Municipality; or
- (c) without a valid liquor licence that has been issued as contemplated in the Act.

CHAPTER 2 STANDARD TRADING HOURS

4. TRADING DAYS AND HOURS FOR THE SALE AND CONSUMPTION OF LIQUOR ON LICENSED PREMISES

- (1) A licensee of premises upon which liquor may be sold for consumption on the licensed premises may sell liquor between 10:00 on any day and 02:00 on the following day.
- (2) Notwithstanding the provisions of subsection 4(1) of this by-law, a hotel or guest accommodation establishment licensed to sell liquor, may offer a room service facility at any time of the day.
- (3) The trading days and hours for the sale and consumption of liquor at any special events or temporary licensed premises, shall be in accordance with the hours as determined by the temporary liquor license.
- (4) A licensed casino may sell liquor for 24 hours a day and 7 days a week.
- (5) A licensee who sells liquor for consumption on the licensed premises–

- (a) may not allow any consumption of liquor on the licensed premises, at any time when the sale of liquor is not permitted on the premises; and
 - (b) may not allow that any liquor is taken off the licensed premises.
- (6) A licensee in respect of a hotel or guest accommodation establishment:–
- (a) may provide access to a pre-stocked bar facility inside a private suite or room, for use by a guest occupying such private suite or room; and
 - (b) may not restock such bar facility, during the hours the licensee is not allowed to sell liquor.
- (7) A licensee in respect of a hotel or guest accommodation establishment, may not provide liquor to guests or visitors outside of the standard trading hours for such a type of licensed premises, unless such liquor is provided in accordance with the stipulations of subsection 4(2) and subsection 4(3) of this by-law.
- (8) A licensee may submit an application to the Municipality for permanent extended trading hours to sell liquor for consumption on a licensed premises, as long as the license holder has a valid liquor licence for the premises concerned.

5. TRADING DAYS AND HOURS FOR THE SALE OF LIQUOR FOR USE OFF LICENSED PREMISES

- (1) A licensee for consumption of liquor off a licensed premises, may sell liquor on any day of the week, except that no liquor may be sold on a Sunday.
- (2) A licensee operating a tourist facility may, despite the stipulations of subsection 5(1) of this bylaw, sell liquor for consumption off the licensed premises, on any day of the week from 09:00 to 18:00.
- (3) A licensee may sell liquor for consumption off the licensed premises on the following days and hours –
- a. Monday to Saturday 09:00 until 18:00; and
 - b. No trading is allowed on Sundays and Christmas Day, provided that this restriction shall not apply to a winery and a tourism facility, which may trade on such days, from 09:00 to 18:00.
- (4) A licensee may submit an application to the Municipality for permanent extended trading hours to sell liquor from a licensed premises until 20:00, as long as the license holder has a valid liquor license for the premises concerned.

CHAPTER 3 EXTENDED TRADING HOURS

6. APPLICATION FOR EXTENDED TRADING HOURS

- (1) A licensee may, submit a written application to the Municipality to extend the trading hours, for a specific type of licence, subject to the following conditions—
 - (a) extended trading hours may on application be granted to an applicant—
 - (i) as permanent consent, as long as the license holder has a valid liquor license for the premises concerned;
 - (ii) for a period of one (1) calendar year;
 - (iii) for any period shorter than one (1) calendar month; and
 - (iv) for a special event.
- (2) The Municipality may approve or in part approve or refuse an application for an extension of trading hours, and any applicant shall have the right of appeal in terms of the provisions of section 8 of this by-law.
- (3) No rights shall accrue for an applicant for extended trading hours, until the written approval has been received from the Municipality.
- (4) The Municipality may, by written notice to an applicant, impose conditions for trading during extended hours, on condition that such conditions imposed shall be consistent, equitable and fair for all applications, and that no precedents shall be created.
- (5) Before the Municipality considers an application for the extension of trading hours, an applicant has to submit the following information and supporting documentation to the Municipality—
 - (a) the outcome of consultations with owners and occupants of premises adjacent to the licensed premises, who shall be affected by the application;
 - (b) the potential impact on the surrounding environment;
 - (c) the proximity of the licensed premises, with regard to surrounding residential areas, and cultural, religious and educational facilities;
 - (d) the particular period for which the application is submitted, or whether the application is for the permanent extended trading hours;
 - (e) previous licence suspensions, licence amendments or revocations of applications for extended trading hours, for the same licensed premises;
 - (f) the reasons why it is in the public's interest to approve and / or grant an extension of trading hours;
 - (g) motivations dealing with—

- (i) the impact of the risks to and nuisances for the surrounding land owners, residents and occupants of premises; and
 - (ii) mitigation measures to assist with the control and prevention of risks and / or nuisances;
- (h) the municipal zoning requirements and conditions of the licensed premises;
- (i) the proof of the validity of the current liquor licence, and that the municipal account for the premises concerned is paid-up;
 - (j) the comments and recommendations on the application, of the Western Cape Liquor Authority, the Liquor Officer of the South African Police Services and the Law Enforcement Department of the Municipality; and
 - (k) where applicable, the validity of any other business licence.
- (6) The municipality may withdraw any approval of the extension of liquor trading hours, when a licensee does not abide to the conditions of the extension or whenever proof are provided to the Municipality that the extended trading hours are no longer appropriate.

CHAPTER 4 GENERAL PROVISIONS

8. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended, by giving written notice of the appeal against the decision and the reasons for the appeal to the Municipal Manager, within twenty-one (21) days of the date of the notification of the decision.

9. SUSPENSION, AMENDMENT AND REVOCATION OF EXTENDED LIQUOR TRADING HOURS

- (1) An authorized official may, upon delivery of a written notice to the licensee or person in charge of a licensed premises, immediately suspend the extended trading hours of a license holder for non-compliance to the stipulations of the Act, or the stipulations of this by-law, or any condition of the liquor license or the extended trading hour's approval not complied with.
- (2) The written notice as contemplated in subsection 9(1) of this by-law, shall specify the reasons for the suspension and the timeframes in terms of which such suspension of extended trading hours shall be applicable.
- (3) The written notice as contemplated in subsection 9(1) of this by-law, shall instruct the licensee to supply written reasons, within seventy-two (72) hours to the Municipality, on why the extended trading hours should not be revoked in total.

- (4) The authorized official shall, in writing, report any suspension of extended liquor trading hours to the delegating authority or authorities.
- (5) The Municipality shall, upon consideration of the suspension report of the authorized official, and the representations made by the licensee—
 - (a) reconfirm, amend or revoke the trading hours in respect of the involved business premises, as applicable, and may impose such additional conditions as the Municipality may deem fit; and
 - (b) report any decision to confirm, amend or revoke the extended hours of trading to the Western Cape Liquor Authority.
- (6) No licensee shall continue selling liquor to the public during such period in which the extended hours of trading in liquor has been suspended.
- (7) The Municipality may not be held liable for any loss of income suffered by a licensee, during any period of suspension of trading hours.

10. OFFENCES AND PENALTIES

- (1) Any person who contravenes or fails to comply with the provisions of this by- law, or fails to comply with a notice served in terms of this by-law, or fails to comply to an instruction of an authorized official or posted on a notice board, is guilty of an offence and is liable on conviction, for—
 - (a) a fine or imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment;
 - (b) in the case of a successive or continuing offence, to an additional fine or additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment, for every day such offence continues; and
 - (c) any further amount as an order of court for costs, equal to any costs and expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

11. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by- law, is deemed to be duly issued when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively served—
 - (a) when it has been delivered to that person personally;

- (b) when it has been left at that person's place of residence or business in the Republic of South Africa, with a person apparently older than sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic of South Africa, and proof of the posting thereof is provided;
 - (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 11(2)(a), 11(2)(b) or 11(2)(c) of this by-law;
 - (e) if that person's address and agent or representative in the Republic of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of the body corporate.
- (3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purposes of the serving of the notice, instruction, letter of demand, or other document, to describe the person in the notice, instruction, letter of demand or other document, as the owner, occupier, or holder of the property or rights in question, and it is not a requirement to name that person.
- (4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

12. CONFLICT BETWEEN LEGISLATION

When any stipulation of this by-law, is in conflict with national and provincial Legislation or regulations, the national and provincial legislation, or regulations shall prevail.

13. REPEAL OF BY-LAWS

- (1) The provisions of any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed as far as they relate to matters provided for in this by-law.
- (2) The following by-law of the Theewaterskloof Municipality is hereby specifically repealed—

Name of by-law	Date published	As a whole or partially
Theewaterskloof Municipality Liquor Trading Days and Hous Bylaw	14 May 2015	As a whole

14. SHORT TITLE

This by-law is called the Liquor Trading Days and Hours By-law of the Theewaterskloof Municipality.

15. OPERATIVE DATE

This by-law shall take effect on the date of publication in the Provincial Gazette.