

LOCAL GOVERNMENT NOTICE

EMALAHLENI LOCAL MUNICIPALITY

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act, 1996 [Act No. 108 of 1996], the Liquor Trading Hours By-law that comes into operation on the date of publication thereof in the Provincial Gazette.

LIQUOR TRADING HOURS BY-LAWS

PREAMBLE

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996];

AND WHEREAS the Council of the Municipality in the exercise of its functions has an obligation in terms of section 42 of the Eastern Cape Liquor Act, 2003 [Act No. 10 of 2003] to regulate the hours during which liquor may be sold and regulate the operating hours of premises where on-site consumption of liquor takes place in the demarcated municipal area and to provide for incidental matters;

AND WHEREAS it is the intention of Emalahleni Municipality to set trading days and hours for all licenced premises, businesses or outlet situated within the area of jurisdiction of Emalahleni Municipality that sell liquor to the public.

NOW THEREFORE be it enacted by the Council as follows:

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SCHEDULES

[1] DEFINITIONS

In these by-laws, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and, unless the context otherwise indicates:-

"**Act**" means the Eastern Cape Liquor Act, 2003 [Act No. 10 of 2003];

"**authorized official**" means –

[a] an official who has been authorized by the Council to administer, implement and enforce the provisions of these by-laws;

- [b] a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996;
- [c] a member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995; or
- [d] a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977.;

"Board" means the Eastern Cape Liquor Board established by section [4] of the Act;

"Council" means the Council of the Emalahleni Municipality or any other political structure or officer bearer as defined in the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998] or official including the authorized official acting by virtue of powers delegated to it or him by the Council with regard to the application and enforcement of these by-laws;

"community" means those residents, governing body of schools or places of worship occupying premises within a 100m radius from the premises in respect of which an application for registration and/or a license or authorization in terms of the Act is made;

"guest accommodation establishment" means premises used as temporary residential accommodation, and includes the provision of meals for, 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 guest, but excludes a hotel;

"hotel" means premises used as 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; and
- [c] premises which are licensed to sell liquor for consumption on the property but excludes an off-consumption facility, guest accommodation establishment, dwelling house or dwelling unit;

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

"liquor trading establishment" means any fixed property from which liquor is sold or supplied to the public for consumption;

"Municipal Manager" means the Municipal Manager of the Municipality appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 and includes any person acting in this position;

"official" means an official of the Municipality;

"premises" includes any place, land, building or conveyance or any part thereof which is registered or seeking to be registered in order to permit and allow trading in liquor;

"Regulations" means the regulations made under the Act and published in Provincial Notice No. 17 of 2004, dated 28 May 2004 as may be amended from time to time;

"trading hours" means the time when a liquor trading establishment opens to the time that such establishment ceases to trade and, in the case of on-site consumption establishments, the time when they cease to operate and must close in accordance with **SCHEDULE 1** of these by-laws;

"trader" 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;

"ward committee" means a committee as contemplated in the Local Government: Municipal Structures Act, 1998.

[2] APPLICATION OF BY-LAWS

These by-laws are applicable in respect of all premises situated within the area of jurisdiction of the Municipality where trading in liquor is conducted or is intended or permitted to be conducted in terms of any Town Planning Zoning Scheme of the Municipality or made applicable to the Municipality and/or consent usage granted by the Municipality and/or any title deed conditions applicable to such premises.

[3] REPORT BY WARD COMMITTEE

- [1]** A ward committee must, upon 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 owners of immovable property and businesses and with residents in the immediate vicinity of the premises in respect of which the application applies and record in writing all comments [if any] with regard to such application;
- [2]** The councillor responsible for the ward in respect of which an application contemplated in subsection [1] has been made must submit a report to the Municipality within 30 days of referral of such application to the ward committee concerned and such report must contain:
 - [a]** the details of the consultative process with the community, including the –
 - [i]** dates when the consultation took place; and
 - [ii]** names and addresses of persons who were consulted.
 - [b]** comments on the application;
 - [c]** details of objections received in respect of such application, if any;
 - [d]** comments on such application; and
 - [e]** a recommendation with regard to such application.
- [3]** The Municipal Manager must report the application and the comments of the ward committee concerned to the Council at its first meeting after receipt of the comments of such Committee and thereafter expeditiously inform the Board of the resolution of the ward committee and the Council on such application; provided that the Municipal Manager must provide the applicant with reasons within seven days of such referral to the Council if the application and comments of the ward committee could not, for any reason whatsoever, be considered by the Council.

- [4] The Council may, when considering an application, appoint an official to conduct further investigation and obtain any further information that it deems necessary from any person deemed necessary by the Council; provided that the Municipal Manager must notify the applicant within seven days of such referral by the Council.
- [5] An official appointed in terms of subsection [4] must complete the investigation within such period as Council may have deemed necessary and report his findings to the Council at its next meeting.
- [6] The Council must consider the findings contemplated in subsection [5] and thereafter take the steps contemplated in subsection [3].

[4] **HOURS OF TRADING**

- [1] A trader may:-
 - [a] despite any other law, sell liquor on any day of the week; and
 - [b] sell liquor only during the hours determined by the municipality, as listed in **SCHEDULE 1** to this by-law.
- [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] 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 1**, have been determined by the Municipality and may be reviewed by the Municipality from time to time.
- [4] 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]; provided that nothing contained in this by-law:-
 - [a] prevents liquor trading premises from remaining open outside liquor trading hours exclusively for the sale of goods other than liquor; and
 - [b] permits a trader to sell liquor to a person who is under the age of eighteen years, or to allow a person under the age of eighteen years to consume liquor on liquor trading premises.
- [5] A trader who contravenes subsection [4] commits an offence.

[5] **SALE OF LIQUOR AT SPECIAL EVENTS**

- [1] A person who is registered to sell liquor at a special event may:-
 - [a] sell liquor only at that event; and
 - [b] sell liquor only at the place where and during the times when that event is held as set out in the application for registration.

[6] **EXEMPTIONS**

- [1] The Municipality 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 sells such liquor, obtain such written consent of the Municipality.

- [2] A trader who wishes to obtain the consent of the Municipality must complete a form similar to the APPLICATION FOR CONSENT TO SELL LIQUOR OUTSIDE TRADING HOURS FORM as contained in **SCHEDULE 2** and submit the form and other particulars as the Municipality may request, to the Office of the Municipal Manager.

- [3] The Municipality may, after consideration of the application, refuse to grant consent or grant consent and should the Municipality grant consent, it may do so subject to any condition or restriction it may deem necessary, which consent and condition or restriction, if imposed, must be entered in item C of the form contained in **SCHEDULE 2**.

- [4] A trader who has been granted consent in terms of subsection [3] must display, in a conspicuous place on the premises regarding which the 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 Municipality has been entered.

- [5] A trader who contravenes subsection [1] or [4], 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] The Municipality may appoint, authorize and mandate such officials as it may deem necessary to implement and enforce these by-laws.

- [2] Each official appointed in terms of subsection [1] must be issued with an identity card containing –

[a] a photograph of that official;

[b] the date of the Council resolution authorizing his appointment;

[c] his designation; and

[d] a brief reference to his duties and obligations in terms of these by-laws;

- [3] An official, acting within the powers vested by these by-laws must, on demand by a member of the public, produce proof of identity and the capacity in which such official purports to carry out his duties;

- [4] An official, acting in terms of the authorization or mandate contemplated in subsection [1] may –

[a] at all reasonable times, enter upon premises on which a business is being or is intended to be carried on; and

[b] request any person to provide such reasonable information as the official deems necessary.

- [5] For purposes of this by-law, an official appointed in terms of this section will be regarded as the authorized official.

[8] APPEAL

- [1]** A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- [2]** The Municipal Manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- [3]** When the appeal is against a decision taken by –
 - [a]** the authorised official, the Municipal Manager is the appeal authority;
 - [b]** the Municipal Manager, the Mayor is the appeal authority; or
 - [c]** a political structure or political officer bearer, or a Council of the Municipality is the appeal authority.
- [4]** The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

[9] OFFENCES

- [1]** Anyone commits an offence if he –
 - [a]** hinders or interferes with an authorized official in the execution of his official duties in terms of the Act;
 - [b]** falsely professes to be an authorized official;
 - [c]** intentionally furnishes false or misleading information when complying with a request of an authorized official;
 - [d]** fails to comply with a reasonable request of an authorized official;
 - [e]** fails, refuses or neglects to comply with the trading hours referred to in **SCHEDULE 1**.
- [2]** No person may:-
 - [a]** sell liquor otherwise than in terms of a registration;
 - [b]** be violent or drunk and disorderly on premises in respect of which a certificate of registration has been issued;
 - [c]** if he, she or it is the owner or occupier of registered premises, allow violent or drunk and disorderly behaviour on
that premises;
 - [d]** be drunk and disorderly in or on-
 - [i]** any road, street, lane, thoroughfare, square, park or market;

- [iii]** any shop, warehouse or public parking garage;
- [iii]** any form of public transport; or
- [iv]** any place of entertainment, cafe, eating-house or racecourse or any other premises or place to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not;
- [e]** consume any liquor in any road, street, lane or thoroughfare, or on vacant land adjacent thereto, an urban area or other area subdivided into erven or plots with streets bounded by such erven or plots;
- [f]** introduce, possess or consume any liquor on a sports ground that is not a registered premises, to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not, except on any registered premises situated on the sports ground concerned;
- [g]** falsely represents himself or herself or any other person to be over the age of 18 years in order to persuade a registered person, or his or her agent or employee, to sell or supply liquor to him or her or to that other person;
- [h]** supply liquor to a person in his, her or its employment as wages or remuneration or as a supplement therefore; or
- [i]** allow prostitution and drug-trafficking on registered premises.

[10] PENALTIES

- [1]** Anyone who commits an offence contemplated in section 9(1) of this by-law is, upon conviction, liable to –
 - [a]** a fine or imprisonment for a period not exceeding six months; or
 - [b]** such imprisonment without the option of a fine; or
 - [c]** both such fine and such imprisonment.
- [2]** Any person who contravenes or fails to comply with a provision of-
 - [a]** section 9 or 9(2)(b) or (c) of this by-law must be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both such fine and imprisonment;
 - [b]** section 9(1)(a) of this by-law must be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both such fine and imprisonment; or
 - [c]** section 9(1)(h) must be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment.
- [3]** Any person who is found to be continuously contravening or failing to comply with a provision of this by-law, must in respect of each day on which that person contravenes or fails to comply with that provision, be guilty of an offence, including

the day of any conviction for an offence in terms of this subsection or any subsequent day, and liable on conviction to a fine or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

- [4] Any person who is convicted of an offence in terms of this by-law within a period of five years after he or she was convicted of any offence in any law governing the sale of liquor, must be liable to double the fine or imprisonment which may be imposed for that offence or to both that fine and that offence.
- [5] Despite any other law, a magistrate's court must have jurisdiction to impose any penalty prescribed by this by-law.

[11] REPEAL OF BY-LAWS

- [1] Any by-laws adopted by the Municipality relating to liquor trading or any matter regulated in this by-law are hereby repealed.
- [2] Anything done under the provisions of the by-laws repealed by subsection [1] is deemed to have been done under the corresponding provision of this by-law and such repeal will not affect the validity of any approval, authority, waiver or other act which at the commencement of these by-laws is valid under the by-laws so repealed.

[12] SHORT TITLE

This by-law shall be called the Liquor Trading Hours by-law.

SCHEDULE 1

[1] TYPE OF REGISTRATION	[2] TRADING HOURS
Section 20[a] - Registration in terms of the Liquor Act for the retail sale of liquor for consumption off the premises where the liquor is being sold. <i>[bottle store, retail shop, wholesaler, house shop or tavern]</i>	Monday to Saturday 08:00 to 21:00 Sunday 09:00 to 13:00
Section 20[b] - Registration in terms of the Liquor Act for the retail sale of liquor for consumption on the premises where liquor is sold. <i>[restaurant, night club, sports club, pool bar, hotel, pub]</i>	Sunday to Thursday 10:00 to 24:00 Friday-Saturday 10:00 to 02:00
Section 20[c] - Registration in terms of the Liquor Act for the retail sale of liquor on and off the premises on which the liquor is being sold. <i>[taverns, shebeens]</i>	<u>Off-consumption</u> Monday to Saturday 08:00 to 21:00 Sunday 09:00 to 13:00 <u>On-consumption</u> Sunday to Saturday 10h00 to 24:00
Section 20[d] - Registration in terms of the Liquor Act for the retail sale of liquor and consumption at special events. <i>[beer festival, fete, fundraising event]</i>	Trading hours to be determined by resolution of the Council in respect of each application
Section 20[e] - Registration in terms of the Liquor Act for licensed wholesale warehouse.	Monday to Saturday 08:00 to 17:00 Sunday 09:00 to 13:00
Section 20[e] - Registration in terms of the Liquor Act for licensed micro-manufacturing	Trading hours to be determined by resolution of the Council in respect of each application

SCHEDULE 2

[Section 6[2]]

APPLICATION TO SELL LIQUOR OUTSIDE TRADING HOURS

A. APPLICANT

Name:

Identity Number:

Address:

Telephone number:

B. PERSONAL PARTICULARS

Address [street name and number] of the premises on which the liquor will be sold or supplied:
.....

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:

Anticipated volume of liquor that will be consumed:

Nature of liquor that will be sold or supplied:

Other particulars [as requested by the Council]:

Signed Date
[Applicant]

C. CONSENT

Issuing Local Authority:

OFFICIAL
DATE
STAMP

CONDITIONS AND RESTRICTIONS IN TERMS OF SECTION 6[3]

Times and date on which liquor may be supplied or sold:

Other conditions or restrictions:
.....
.....
.....