



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

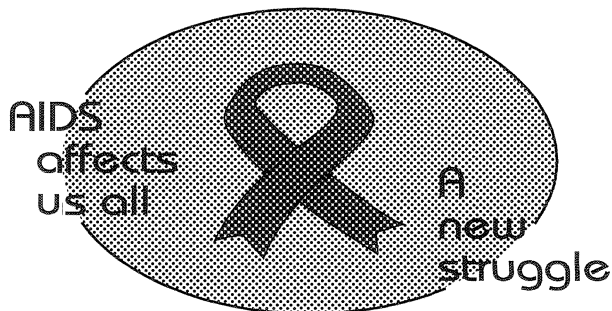
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No. 2901
(Extraordinary)

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PROVINCIAL NOTICE

No. 8

PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS

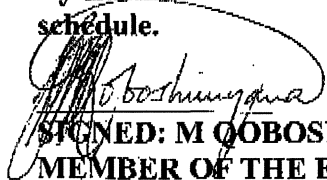
PUBLICATION FOR PUBLIC COMMENT

PROPOSED PUBLICATION OF STANDARD DRAFT LIQUOR TRADING BY-LAW IN TERMS OF SECTION 14 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 [ACT 32 OF 2000] READ WITH SECTION 162 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT, 1996 [ACT NO. 108 OF 1996].

In terms of section 14 (2)(a)(i) and 14(2)(b)(i) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as amended, the attached schedule is hereby published for public comment before its enactment.

1. Comments must please be submitted in writing to:
The Superintendent General
Attention: Mr. Ndinisa
Department of Local Government and Traditional Affairs
Private Bag X0035
Bhisho
5605
2. Comments must be faxed to facsimile number (040) 609 5959 at the above address.
3. Comments must be submitted within fourteen (14) days of the date of publication in the Provincial Gazette.

I, **MLIBO QOBOSHIYANE**, Member of the Executive Council responsible for Local Government in the Province of the Eastern Cape, after the consultation process prescribed in Section 14(2)(a)(i) and 14(2)(b)(i) of the Local Government: Municipal Systems Act (Act 32 of 2000) hereby propose to make a Standard Draft Liquor Trading By-Law for which municipal councils in the province may make by-laws as per attached schedule.


SIGNED: M QOBOSHIYANE
MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR LOCAL GOVERNMENT – PROVINCE OF THE EASTERN CAPE

DATE: 05/02/2013

No. 9**PROVINCIAL STANDARD DRAFT LIQUOR TRADING BY-LAW**

The Member of the Executive Committee (MEC) of Local Government and Traditional Affairs hereby publishes, in terms of section 14(2)(a) of the Local Government: Municipal Systems Act, 2000 [Act 32 of 2000] read with section 162(1) of the Constitution of the Republic of South Africa Act 1996 [Act No. 108 of 1996] the By-Laws Relating may be enforced only after it has been published in the official gazette of the relevant province.

LIQUOR TRADING HOURS BY-LAWS**PREAMBLE**

WHEREAS the Council of the Municipality is vested with legislative authority in terms of Part B of schedule 4 and 5 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;

Be it therefore enacted by the Council as follows:

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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 any person authorized by the Council to implement and enforce compliance with these by-laws;

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

"Council" means the Council of the _____ 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;

"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;

"liquor trading establishment" means any fixed property which has been registered to sell or supply liquor for public consumption;

"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 which must close in accordance with Schedule 1 of these by-laws;

"trader" means a person who has been registered to trade in liquor from a liquor trading establishment ;

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

"ward councillor" means a councillor 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. PURPOSE OF BY-LAW

The purpose of this by-law is:-

- To serve as guidance to the designated Councillor, officials of the municipality and the community regarding trading hours of liquor as requested by the Liquor Board;
- To further serve as guidance to the designated Ward Councillor, official of the municipality of his/her role in the consideration of the liquor license applications in their areas of jurisdiction.

4. LEGISLATIVE FRAMEWORK

These by-laws fall within the following legislative framework, including any other relevant legislation:-

- Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- Local Government; Municipal Systems Act, 2000 (Act No. 32 of 2000)
- Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)
- Eastern Cape Liquor Act, 2003 (Act No. 10 of 2003)

5. TRADING HOURS (See Schedule 1)

- [1]** The trading hours of the different types of registrations listed in the first column of Schedule 1 reflect the trading hours listed in the second column of the said Schedule.
- [2]** A departure from the hours stipulated in Schedule 1 is permissible only upon application to and with the prior written approval by the Municipality within whose jurisdiction the establishment falls.
- [3]** The Municipality itself reserves the right, by notice in the press, in such languages as the Municipality may determine to deviate from the stipulated trading hours in the interests of the community.

6. GENERAL LIQUOR TRADING CONDITIONS

- [1]** A drinking area shall be clearly demarcated and patrons shall drink only within such demarcated area within the premises;
- [2]** No persons under the age of 18 (eighteen) shall be sold liquor;
- [3]** Separate toilet facilities, catering for both genders shall be made available to patrons in exclusion of the dwelling facilities;
- [4]** No loud music shall be played at the outlet. Music played shall not be audible beyond the boundary perimeter of the premises;
- [5]** No drinking shall take place outside the registered premises;
- [6]** The business should not impact negatively on the surrounding neighbours and that cars parked by the patrons shall not obstruct entry into the neighbours driveways;
- [7]** No fire arms and/or any kind of weapon shall find their way into the registered outlet
- [8]** The registered person/owner shall apply with the Eastern Cape Liquor Board for someone to be appointed as a manager to be responsible in the absence of the owner/registered person;
- [9]** A registered outlet shall at all times comply with the municipal health and safety standards;
- [10]** A valid certificate of registration shall be visibly displayed at all times.

7. REPORT BY WARD COMMITTEES

- [1]** The Ward committee/councillor must, upon receipt of a notice of application for registration in terms of section 22[2][d][i] of the Liquor 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;(FORM 2).

- [2]** The Ward committees/councillors are therefore expected to acknowledge receipt of the notice by signing on the same form and returning the form to the applicant for submission to the Board.
- [3]** The ward committees/councillors are expected to call community meetings to advise community members of the pending application and that if anyone would like to support the application or object to the application that person may do so in terms of regulations of the Act by lodging written representation in support of, or a written objection to the application within 28 days after the lodgement of the application.
- [4]** 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.
- [5]** 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.

- [6]** 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.
- [7]** An official appointed in terms of subsection [4] must complete the investigation within such period as Council may have deemed necessary and report his or her findings to the Council at its next meeting.
- [8]** The Council must consider the findings contemplated in subsection [5] and thereafter take the steps contemplated in subsection [3]

8. ENFORCEMENT

- [1]** The Municipality may appoint, authorize and mandate such officials as it may deem necessary to implement and enforce the by-law.
- [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 or her appointment;
 - (c) his or her designation; and
 - (d) a brief reference to his or her 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 or her 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 these by-laws, an official appointed in terms of this section will be regarded as the authorized official.

9. OFFENCES

[1] Anyone commits an offence if he or she –

(a) hinders or interferes with an authorized official in the execution of his or her 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 and general trading conditions referred to in Schedule 1.

10. GENERAL OFFENCES

[1] No person may-

(a) sell liquor otherwise than in terms of the general trading conditions as outlined in schedule 1 of this by-law;

(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 and market;

- (ii) any shop, warehouse or public parking garage;
- (e) consume any liquor in any road, street, lane or thoroughfare, or on vacant land adjacent thereto, in an urban area or other are subdivided into erven or plots with streets bounded by such erven or plots;
- (f) introduce, possess or consume any liquor on the sports grounds that is not a registered premises, to which the public has or is granted access, irrespective of whether payment is granted against payment or is restricted to any category of persons or not, except on any registered premises situated on the sport 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 supply liquor to him or her or that person;
- (h) supply liquor to a person in his/her or its employment as wages or remuneration or as a supplement therefore.

11. PENALTIES SCHEDULE

[1] Anyone who commits an offence in terms of this by-laws shall be liable, upon conviction, 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] In the case of a continuing offence, to an additional fine or an additional period of imprisonment of 10 days 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; a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as a result of such contravention or failure.

[3] Anyone who commits an offence in terms of this by-law is liable for a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.

[4] Anyone who commits an offence in terms of this by-laws is liable upon conviction, to –

- (a) a fine or imprisonment for a period not exceeding three years; or
- (b) Imprisonment without the option of a fine; or
- (c) a fine and imprisonment.

[5] Anyone who is found to be continuously contravening or failing to comply with section 5[1]-[3] of this by-law is, in respect of each day on which that person contravenes or fails to comply, 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) a fine; or
- (b) imprisonment for a period not exceeding three months; or
- (c) both such fine and imprisonment.

[6] Anyone who is convicted of a contravention of section 5 of this by-law within a period of five years after he or she was convicted of contravening this by-law is liable to –

- (a) imprisonment for a period of six years; or
- (b) double the fine for contravening this by-law; or
- (c) to both such fine and imprisonment.

12. REPEAL OF BY-LAWS

[1] Any by-laws adopted by the Municipality or of a municipality now forming an administrative unit of the Municipality and relating to crèches or nursery schools or any facilities in respect to or with regard to any matter regulated in these by-laws 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 these by-laws 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.

13. 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 or she 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 clearly visible 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.

14. LIAISON FORA

[1] The Municipality may, in respect of this by-law, establish one or more liaison forums in a community for the purposes of –

(a) creating conditions for a local community to participate in the affairs of the Municipality; and

(b) encouraging a local community to participate in the affairs of the Municipality.

[2] A liaison forum may consist of –

(a) a member or members of an interest group, or an affected person, or affected persons;

(b) a member or members of a community in whose immediate area a liquor outlet exists;

(c) a designated official or officials of the municipality; and

(d) the councillor responsible for environmental health.

[3] The Municipality, when considering liquor trading hours in terms of these by-laws, may request the input of a liaison forum and a liaison forum or any person or persons contemplated in subsection [2] may, on own initiative, submit an input to the Municipality for consideration.

15. 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

(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.

16. SHORT TITLE AND COMMENCEMENT

This by-law may be cited as the **STANDARDISED PROVINCIAL Municipal Liquor Trading (Regulatory) By-Law** and come into effect upon publication in the Provincial Gazette.

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]</i>	Monday to Saturday 08:30 to 20:00 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 08:30 to 20:00 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 5(3)

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

Other conditions or restrictions:

.....

.....

.....

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