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ADOPTED BY RESOLUTION E131-06/2018 OF THE MUNICIPAL COUNCIL OF MOSSEL BAY, PROMULGATED IN PROVINCIAL GAZETTE DATED

The Municipality of Mossel Bay ("the municipality") hereby publishes the Mossel Bay Municipality Control of Undertakings That Sell Liquor to The Public By-Law set out below. It has been promulgated by the municipality in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996 and in accordance with section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

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MOSSEL BAY MUNICIPALITY
CONTROL OF UNDERTAKINGS THAT SELL LIQUOR TO THE PUBLIC BY-LAW,
2018

To provide for the control of undertakings selling liquor to the public including the control of trading times in order to ensure a safe and healthy environment in the Mossel Bay Municipal area; and to provide for matters related thereto.

PREAMBLE

WHEREAS a Municipality may, in terms of section 156(1)(a) and (2) read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996, make and administer by-laws for the effective administration of matters which it has the right to administer; and

WHEREAS it is the intention of the Municipality to set trading times and enforcement mechanisms for the control of licensed undertakings that sell liquor to the public and which are situated within the jurisdiction of the Mossel Bay Municipality;

AND NOW THEREFORE, BE IT ENACTED by the Council of the Mossel Bay Municipality, as follows: –

1. DEFINITIONS

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

“authorised official” means a delegated employee of the Mossel Bay Municipality’s Directorate: Community Services and includes any other authorised official delegated to enforce the provisions of this by-law;

“casino” means a casino as defined in the National Gambling Act, 2004 (Act No. 7 of 2004) and includes a hotel, business premises, venue for hosting of events, place of entertainment or other recreation facility or tourist attraction as part of the complex;

“compliance notice” means written instruction of an authorised official as contemplated in section 7;

“Council” means the Municipal Council of Mossel Bay Municipality as referred to in Section 157(1) of the Constitution of the Republic of South Africa, 1996 and **“Municipal Council”** shall have a corresponding meaning;

“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 guests, 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 forming part of the hotel;
- (b) a conference and entertainment facility that is subservient and ancillary to the dominant use of the premises as a hotel; and
- (c) premises licensed to sell liquor for consumption on the property, but excludes an off-consumption facility, guest accommodation establishment, dwelling house or dwelling unit;

“licensee” means a person who is licensed to sell liquor in terms of the Act and includes the manager who is responsible for the management of the business and is subject to the same duties, obligations and liabilities as the licensee;

“liquor” means liquor as defined in the Liquor Products Act, No. 60 of 1989 as amended;

“Liquor By-Law Committee” means a committee which has been delegated by Council to make recommendations regarding liquor licence applications and to approve, amend or refuse applications for extension of liquor trading days and hours for both on- and off consumption premises; and to reduce the trading hours as set out in the Schedule to this By-Law in respect of certain on- and off-consumption premises.

“Municipality” means:

- (a) the Mossel Bay Municipality, a local municipality established in terms of section 12 of the Structures Act and its successors-in-title; or
- (b) subject to the provisions of any other law and only if expressly or impliedly required or permitted by this By-Law the Municipal Manager or his/her delegate in respect of the performance of any function, or the exercise of any duty, obligation, or right in terms of this by-law or any other law; or
- (c) an authorised agent of the Mossel Bay Municipality;

“municipal manager” means the person appointed by the municipal council as the municipal manager of the municipality in terms of section 82 of the Local Government Municipal Structures Act, 1998 (Act No 117 of 1998) and includes any person to whom the municipal manager has delegated a power, function or duty but only in respect of that delegated power, function or duty

“off-consumption premises” means the place of business from which a licensee sells liquor to be consumed at a location removed from the place of business;

“on-consumption premises” means the place of business and location in which liquor is sold and consumed;

“person” means a natural person or a juristic person;

“population certificate” means an occupancy certificate aimed at the prevention and control of overcrowding;

“revocation notice” means a written notice to revoke extended liquor trading days and hours as contemplated in section 8;

“schedule” means the schedule for trading days and hours for licensed businesses which forms part of this By-Law;

“sell” includes –

- (a) to supply, exchange, offer for sale, display for the purpose of sale; or
- (b) to authorise, direct or allow a sale, supply, exchange, offer for sale or display for sale;

for the exchange of money or any other type of consideration and **“sale”** and **“sold”** have corresponding meanings;

“standard trading” means trading days and trading hours as contemplated in sections 4 and 5 of this By-Law, and excludes extended or reduced trading days and hours that may be approved by the Liquor By-Law Committee in terms of sections 6 and 7 of this By-Law;

“the Act” means the Western Cape Liquor Act, 2008 (Act No. 4 of 2008) as amended;

“zoned” means zoned as the case may be in terms of the Mossel Bay Municipality Zoning Scheme By-Law; and “zoning” has a corresponding meaning.

2. APPLICATION

This By-Law is applicable to the sale of liquor by any person to the public within the jurisdiction of the Municipality.

3. GENERAL PROHIBITION

No person may sell liquor to the public for on consumption or off consumption –

- (a) outside of the days and hours that have been determined by the Municipality; and
- (b) without a valid liquor license that has been issued as contemplated in the Act.

4. STANDARD TRADING TIMES: ON-CONSUMPTION PREMISES

- (1) A licensee may sell liquor for consumption on the licensed premises on the following days and hours:
 - (a) on any day of the week from Monday to Sunday;
 - (b) during the hours of trade as set out in the Schedule; and
 - (c) any such days or hours as the Council may determine, as set out in the Schedule.
- (2) A licensee may allow a patron to complete the consumption of liquor on the premises at a time when the sale of liquor is not permitted by this By-Law, but may not allow such consumption on the premises for more than 30 minutes after the time permitted by this By-Law.
- (3) A hotel or guest accommodation establishment licensed to sell liquor for on consumption, may provide access to a bar facility inside each private suite or room for the enjoyment of a guest occupying such private suite or room, and may offer a room service facility.

5. STANDARD TRADING TIMES: OFF-CONSUMPTION PREMISES

A licensee may sell liquor for consumption off the licensed premises on the following days and hours –

- (a) on any day of the week from Monday to Sunday;
- (b) during the hours of trade as set out in the Schedule; and
- (c) on any such days or hours as the Council may determine, as set out in the Schedule.

6. EXTENDED TRADING TIMES: APPLICATION FOR EXTENDED TRADING DAYS AND HOURS

- (1) Subject to subsection (5), (6) and (7) a licensee may upon payment of the required fee as determined during the annual budget, submit a written application to the Municipality to extend the liquor trading days and hours of licensed premises for a maximum period of one year.
- (2) The Liquor By-Law Committee may approve, amend or refuse an application for an extension of liquor trading days and hours for both on and off-consumption premises.
- (3) An application for extension of trading days and hours is not automatically renewable and –
 - (a) must be submitted to the Liquor By-Law Committee for consideration on an annual basis;
 - (b) may be approved by the Liquor By-Law Committee, subject to the imposition of conditions for extended liquor trading days and hours.
- (4) Applications and yearly renewals will only be considered or processed for approval by the Liquor By-Law Committee during the period starting 1 January and ending 31 October of the same year.

- (5) The Liquor By-Law Committee may approve, amend or refuse an application for the extension of liquor trading hours –
- (a) up to 03:00 the next day for on-consumption premises from Monday to Sunday; and
 - (b) up to 23:00 for off-consumption premises from Monday to Saturday.
- (6) No rights accrue to any licensee who has submitted an application for extension of trading days and hours before the proof of written approval is received from the Liquor By-Law Committee by such licensee.
- (7) The Liquor By-Law Committee must, before approving an application for the extension of trading days and hours, reasonably and fairly consider further factors which may include, inter alia –
- (a) the validity of the liquor licence;
 - (b) where applicable, the validity of a business licence issued in terms of the Businesses Act of 1991 (Act no. 71 of 1991);
 - (c) location of the establishment of the licensee;
 - (d) previous suspension, amendment or revocation of extended trading days and hours including previous records of complaints investigated and confirmed in respect of the last twelve months preceding a current application for extension;
 - (e) the proximity of the licensed premises to surrounding residential zoned area, cultural, religious and educational facilities;
 - (f) outcome of community consultation and the recommendation of the relevant ward;
 - (g) the potential impact on the surrounding environment;
 - (h) whether it is in the public interest to approve and grant an extension of trading days or hours;
 - (i) the period for which application is made; and
 - (j) a motivation from the applicant dealing with the impact of –
 - the risks to and nuisances on the surrounding community;
 - mitigation measures to assist the control of risks and nuisances; and
 - possible benefits of extended liquor trading days and hours on the surrounding community.

7. REDUCED TRADING HOURS

The Liquor By-Law Committee may on application/recommendation and in its discretion, reduce the trading hours as set out in the schedule for certain on- and off-consumption premises after taking into consideration the zoning and location of the premises, as well as any other factors it may deem relevant.

8. COMPLIANCE NOTICE

- (1) An authorised official may serve a compliance notice on a licensee thereby instructing such licensee to comply with the provisions of this By-Law.
- (2) The compliance notice must specify –
 - (a) the contravention and the expected remedy of the contravention;
 - (b) the time frame in which the licensee must remedy the contravention and comply with any lawful instruction contained in the compliance notice; and
 - (c) the consequences of failure to comply with paragraphs (a) and (b).
- (3) A licensee commits an offence if such licensee fails to adhere to the instructions contained in a compliance notice.

9. REVOCATION OF EXTENDED LIQUOR TRADING DAYS AND HOURS

- (1) An authorised official may –
 - (a) after the time frame specified in the compliance notice has lapsed; and
 - (b) upon delivery of a revocation notice to the licensee immediately revoke the licensee's extended trading days and hours.
- (2) No person may continue selling liquor to the public during the extended days and hours of liquor trading which have been revoked.
- (3) The Municipality may not be held responsible for any loss of income suffered by a licensee due to the revocation of extended trading days and hours.

10. PREVENTION OF SALE OF LIQUOR AND SEIZURE OF LIQUOR

- (1) The Municipality may, in the instance that the licensee has contravened this By-Law and failed to adhere to a compliance or revocation notice that was served –
 - (a) cause the prevention of sale of liquor; and
 - (b) seize any liquor on the premises in accordance with the procedures as contemplated in the Criminal Procedure Act, 1977 (Act no. 51 of 1977).
- (2) Where the sale of liquor is prevented and liquor is seized as contemplated in subsection (1), the Municipality may recover any costs incurred by the Municipality from the licensee.

11. DISPLAY OF SIGNAGE, POPULATION CERTIFICATE AND OTHER OBLIGATIONS OF LICENSEE

- (1) The licensee must ensure that the relevant approval relating to hours of trade together with the population certificate, for on consumption premises, are always present and displayed on the premises.
- (2) Licensees must ensure that the licensed premises meets and complies with all environmental-, health-, planning- and safety laws; business licenses and conditions imposed by the Liquor By-Law Committee.

12. SAFETY AND SECURITY

The licensee must ensure that reasonable safety and security measures are in place for the protection of patrons of the licensed premises by ensuring that, inter alia –

- (a) the storage of goods and equipment and the condition of the premises and any structure thereon do not cause a danger to the safety of patrons inside the premises;
- (b) the premises adheres to the requirements of the National Building Regulations and Building Standards Act, 1977, (Act 103 of 1977); the Mossel Bay Municipality By-Law Relating to Community Fire and Safety 2009 and any other permission granted by the Municipality; and
- (c) there is adequate lighting on the outside of the premises where patrons and staff access and exit the licensed premises.

13. NUISANCES

A licensee selling liquor to the public must take reasonable steps to ensure that the residents of the surrounding community are not unreasonably affected and inconvenienced by noise or other nuisances emanating from the premises.

14. OFFENCES AND PENALTIES

Any person or licensee who –

- (a) contravenes or fails to comply with any provision of this By-Law;
- (b) fails to comply with the terms of a notice served upon him in terms of this by-law;
- (c) interferes, obstructs, hampers or handicaps or furnishes false or misleading information to any authorised official in the execution of any power or the performance of any duty or function in terms of any provision of this By-Law;

is guilty of an offence and liable on conviction:

- to a fine or imprisonment, or to both such fine and such imprisonment; and
- in the case of a continuing offence, to an additional fine or an additional period of imprisonment, 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;

15. ADMINISTRATION AND ENFORCEMENT

- (a) The Council may, with exclusion of Sections 4 and 5, delegate the responsibility for the administration and enforcement of this By-Law to any Director.
- (b) The Director may delegate in writing any power or duty granted to him/her in terms of this By-Law to an official in his/her Directorate.

16. RIGHT OF APPEAL

Any licensee or objector whose rights have been affected by a final decision taken with regards to –

- (a) an application for extended trading days and hours;
- (b) the amendment or revocation of extended trading days and hours, or
- (c) the reduction of trading hours

may appeal against that final decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

17. REPEAL OF EXISTING MUNICIPAL LIQUOR BY-LAW

The provisions of the Mossel Bay Municipality By-Law on Trading Days and Hours for Liquor Licensed Premises 2011 (as amended in 2015) is hereby repealed.

18. TITLE AND COMMENCEMENT

- (1) This By-Law is called the Mossel Bay Municipality: Control of Undertakings that Sell Liquor to the Public By-Law, 2018.
- (2) In the event of an inconsistency between the English, Afrikaans or Xhosa text, the English text shall prevail.
- (3) This By-Law shall come into operation on the date of publication thereof in the Provincial Gazette.

SCHEDULE

TRADING DAYS AND HOURS FOR LICENSED BUSINESSES

Trading days and hours of liquor for licensed businesses selling liquor for consumption on and off the licensed premises. Licenses granted in terms of section 33 of the Act.

- (a) Licensed for the micro-manufacture and sale of liquor for consumption both **on** and **off** the premises where sold: Section 33(a):

Consumption on: Monday to Sunday: 09:00 to 02:00 (next day)

Consumption off: Monday to Saturday: 09:00 to 20:00

Sunday: 09:00 to 17:00

- (b) (i) Retail sale of liquor for consumption **on** the premises where the liquor is being sold: Section 33(b):

Monday to Sunday: 09:00 to 02:00 (next day)

- (ii) A licensed undertaking for consumption **on** the premises, operating as a Casino that has been granted a valid Casino Operator Licence: Section 33(b):

Monday to Sunday: 24 hours per day

- (c) Retail sale of liquor for consumption **off** the premises where the liquor is being sold: Section 33(c):

Monday to Saturday: 09:00 to 20:00

Sunday: 09:00 to 17:00

- (d) Exceptional circumstances: sale of liquor for consumption both **on** and **off** the premises on which the liquor is being sold: Section 33(d):

Consumption on: Monday to Sunday: 09:00 to 02:00 (next day)

Consumption off: Monday to Saturday: 09:00 to 20:00

Sunday including Public Holidays: 09:00 to 17:00

- (e) Retail sale of liquor:– Section 33(2):

- (i) Temporary liquor licence for the consumption of liquor **on** or **off** the premises where the liquor is sold; and
- (ii) An event liquor licence for the consumption **on** or **off** the premises where the liquor is sold at an event:

for the duration of the event stipulated in the temporary or event licence, or as determined by the Liquor Licensing Tribunal subject to the prescribed hours determined in terms of this Schedule.

