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BREED VALLEY MUNICIPALITY

BY-LAW RELATING TO LIQUOR TRADING DAYS AND HOURS

To provide the days on which and the hours during which a holder of a liquor license may sell liquor for consumption on and off the licenced premises.

PREAMBLE

WHEREAS a municipality has competence in terms of Section 156(1) (a) read with Part B of Schedule 5 to the Constitution of the Republic of South Africa, 1996, to control undertakings that sell liquor to the public;

WHEREAS as municipality may, in terms of Section 156(2) of the Constitution, make and administer by-laws for effective administration of the matters which it as the right to administer;

WHEREAS the Western Cape Liquor Act, 2008 (Act No. 4 of 2008) provides for a municipality to determine different trading days and hours for licensed businesses selling liquor;

WHEREAS it is the intention of the Breede Valley Municipality to only set trading days and hours for licensed premises enjoying correct zoning or land use rights, provided that this does not indicate support for establishing new undertakings or established;

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

1. Definitions

In this By-law, words shall bear the meaning assigned to them, unless the context indicates otherwise, and –

“Breede Valley Municipality” or “municipality” means the Breede Valley established by the Breede Valley Municipality Established Notice published notice No. 479 of 2000, as amended;

“Establishment” means the type of premises, business, outlet or land use activity as described and defined in the Act or relevant applicable local zoning scheme, and **“undertaking”** has a corresponding meaning;

“The Act” means the Western Cape Act, 2008 (Act No. 4 of 2008)

“Agricultural Area” means an area predominantly zoned agriculture or any other equivalent zoning, with the purpose to promote and protect agricultural activity on a farm as an important economic, environmental and cultural resource, 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 resource;

“Business Premises” means a property from which business is conducted and may include a restaurant, pub, 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 casino as defined by 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;

“General Business Area” means an area predominantly zoned general business or any other equivalent zoning, with the purpose to promote economic activity in a business district and development corridor, and includes a wide range of land uses such as business, residential and community uses;

“Guest accommodation establishment” means premises used as temporary residential accommodation for, and includes the provision of meals to, 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 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;

“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 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;

“Liquor” means liquor as defined in section 1 of the Act;

“Liquor officer” means a person appointed in terms of section 73(1) of the Act;

“Local business or neighborhood business area” means an area predominantly zoned local business or mixed use or any other equivalent zoning, with the purpose to accommodate low intensity commercial and mixed use development serving local needs of a

convenience goods, personal service or small scale business nature or serve as an interface between general business, industrial and adjacent residential area;

“Place of entertainment” means a place used predominantly for commercial entertainment which may attract relatively large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis, and includes a cinema, theatre, amusement park, dance hall, gymnasium, or facility for betting, gambling hall, karaoke bar and nightclub, but excludes a casino;

“Room service facility” means a mini bar or self-help facility for the consumption of liquor in guest rooms and a call-up service for resident guests;

“Residential area” means an area predominantly zoned informal, single or general residential or any other equivalent zoning, with the purpose to accommodate predominantly single-family dwelling houses in low to medium density neighborhoods, as well as higher density living accommodation and which includes controlled opportunities for home employment, additional dwellings and low intensity mixed use development;

“Small holding or rural area” means an area predominantly zoned rural or any other equivalent zoning, with the purpose to accommodate smaller rural properties that may be used for agricultural purposes, but may also be used primarily as places of residence in a more country or rural setting;

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

“Sports and Community club” means premises or a facility used for the gathering of community or civic organizations or associations, sports clubs or other social or recreation clubs run mostly not for profit and may include community service clubs and community centers or similar amenity facilities, but excludes a night club;

“Winery” includes 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, which may include—

- (a) restaurants and other food services; or
- (b) subsidiary retail facilities to tours or visitors.

“Zoned” means zoned and zoning as the case may be in terms of the applicable zoning scheme or any applicable law and **“zoning”** has a corresponding meaning; and

“Zoning scheme” means the zoning scheme or schemes applicable to the area and in force within the area of jurisdiction of the Breede Valley Municipality;

2. In this By-law, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has that meaning.

3. Administration and enforcement

- (a) The Council may, delegate the responsibility for the administration and enforcement of this By-law to the Municipal Manager.
- (b) The Municipal Manager may delegate in writing any power or duty granted to him in terms of this By-law to any competent official.

4. Application of the by-law

- (1) This By-law applies to all–
 - (a) licensees, licensed to sell liquor in terms of the Act or any other applicable legislation;
 - (b) licenses renewed in terms of the Liquor Act, 1989 (Act No. 27 of 1989), within the jurisdiction of the Breede Valley Municipality.

5. Trading days and hours for consumption on licensed premises

- (1) Businesses licensed to sell liquor by the Liquor Licensing Tribunal in terms of the Act may sell liquor for consumption on licensed premises of such business situated within the area of jurisdiction of the Breede Valley, on the following days and hours:
 - (a) On any day of the week from Monday to Sunday; and
 - (b) During the hours of trade as set out in Schedule A.
- (2) Notwithstanding the hours of trade as set out in Schedule A, a hotel or guest accommodation establishment licensed to sell liquor for consumption on the licenced premises, may offer a room service facility at any time of the day.
- (3) Notwithstanding the provisions of this By-law, a licensee as contemplated in subsection (1), may serve sparkling wine–
 - (a) from 0800 to 1100 for seven days a week;
 - (b) as part of a meal; and
 - (c) to guest who are part of an organized function where admittance is controlled.
- (4) Notwithstanding the hours of trade as set out in Schedule A, a licence undertaking for consumption on premises, operating as a Casino that has been granted a valid Casino Operating Licence as stipulated and provided for by section 45 of the Western Cape Gambling and Racing Act 1996(Act 4 of 1996); Section 33(b)), may sell liquor for consumption on the licenced premises from Monday to Sunday 24 hours per day.

6. Trading days and hours for consumption off licensed premises

- (1) Retail food stores licensed to sell liquor Licensing Tribunal in terms of the Act may sell liquor for consumption off the licensed premises of such business situated within the area of the jurisdiction of the Breede Valley Municipality, on the following days and hours:
 - (a) on any day of the week with the exception of Sunday or
 - (b) public holidays, provided such exception does not apply to a winery; and
 - (c) during the hours of trade as set out in Schedule A.

- (2) Liquor or bottle store undertakings licensed to sell liquor by the Liquor Licensing Tribunals in terms of the Act may sell liquor for consumption off the licensed premises of such business situated within the area of jurisdiction of the Breede Valley Municipality, on the following days and hours:
 - (a) on any day of the week with the exception of Sundays or public holidays; and
 - (b) during the hours of trade as set out in Schedule A.

- (3) Wine farms/restaurants/tourist facility undertakings licensed to sell liquor by the Liquor Licensing Tribunals in terms of the Act may sell liquor for consumption off the licensed premises of such business situated within the area of jurisdiction of the Breede Valley Municipality, on the following days and hours:
 - (a) on any day of the week; and
 - (b) during the hours of trade as set out in Schedule A.

7. Application for the extension of trading hours and amendments of days of trade

- (1) A licensee who intends to have his, her or its trading hours set out in Schedule A extended or his trading days set out in section 5(1) and section 6(1) and (2) amended must lodge an application, in the form of Form 1, with the municipality and the designated liquor officer in whose area of jurisdiction the licenced premises are located.
- (2) The application must be accompanied by—
 - (a) proof of payment to the municipality of the application fee to be determined by the municipality from time to time.
 - (b) written representations in support of the application.

- (3) The designated liquor officer must within seven days after the application has been lodged with the municipality, give notice in writing of the application to—
 - (a) the municipal manager of the municipality;
 - (b) the neighbouring residents and persons who in his or her judgement may be affected by, or have an interest in, the granting or refusal of the application; and
 - (c) the community policing forum, if any, of the area in which the premises are located.

(4) A person who has an interest in the granting or refusal of an application may, within 14 days after having been given notice thereof, lodge written representations for the granting or refusal of that application.

(5) A person making representations must set out the following—

- (a) his or her full name and address;
- (b) his or her identity number or, if a company or close corporation, its registration number;
- (c) if applicable, the name and address of his or her representative;
- (d) the nature of his or her interest in the granting or refusal of the application;
- and
- (e) grounds for the objection or support.

(6) The representations must be lodged with the municipality and the designated liquor officer concerned.

(7) The person making the representations must —

- (a) serve a copy of the representations on the applicant or the applicants representative; and
- (b) provide proof of such service when lodging the representations with the municipality

(8) A designated liquor officer must in respect of every application made in terms of this section 7(1), report to the municipality on such matters as may be prescribed or which should, in the opinion of the officer, be taken into account when considering the application;

(9) The designated liquor officer must within 21 days after the application has been lodged, serve a copy of his or her report referred to in section 8 on the applicant and lodge the report with the municipality together with proof that the report has been served on the applicant.

(10) The applicant must lodge his, her or its response, if any, to representations against the application and a report by the designated liquor officer referred to in section (8) within seven days after having been served with a copy of the report.

(11) The municipality must within 30 days after receipt of all documents referred to in this by-law, consider the application.

(12) The municipality must, within 14 days of a decision to grant or refuse the application, notify the —

- (a) applicant;
- (b) the Liquor Licensing Tribunal;
- (c) the neighbouring residents and persons who in its opinion may be affected by, or have an interest in, the granting or refusal of the application; and

(d) the community policing forum, if any, of the area in which the premises are located,
in writing of the decision.

(13) Any person whose rights have been affected by decision taken in terms of section 12 shall have the right to appeal against that decision in terms of section 62 of the Municipal Systems Act 32 of 2000.

8. OFFENCES AND PENALTIES:

- (1) Any person who contravenes the provisions of this By-law commits an offence.
- (2) A licensee who commits an offence referred to the subsection (1) is, on conviction, liable for a fine as the court may deem fit to impose or to a term of imprisonment, or both such fine or such imprisonment.
- (3) Any person who commits a continuing offence shall be guilty of an offence for each day during which that person fails to comply with this By-law.
- (4) A court convicting a person of an offence under this By-law may impose alternative sentencing in place of a fine or imprisonment.

9. SHORT TITLE

This By-Law is called the Breede Valley By-law relating to Liquor Trading Days and Hours, 2012.

Schedule A

Liquor Trading Hours

Location (with predominant land use character as indicated below and Undertaking type)	Permitted trading hours	
	On-consumption	Off-consumption
1. Residential (including informal and general residential) areas		
B&B/guest houses permitted as of right (i.e. without need for any separate zoning approval.)	None (No license supported)	
Guest houses/B&B's/hotels (whether conference facilities/events/function centres included or not)	11:00 am– 23:00 am	
Pub/tavern/restaurant		
Club/karaoke/place of entertainment theatres		
Liquor Bottle Store		08:00am– 20:00pm
2. Local/Neighbourhood Business Areas/Nodes (including mixed use areas consisting of single/general residential interspersed with business uses)		
Guest houses/B&B/ Hotels (whether conference facilities/ events/ functions centres included or not) permitted as of right (i.e. without need for any separate zoning approval.)	11:00 am– 02:00 am the following day	
Pub/tavern/restaurant	11:00 am– 02:00 am the following day	
Club/karaoke/place of entertainment theatres		
Supermarkets with retail food component/Retail food store (as per Section 1 & 49(4) of Act 4/08)		08:00 am 20:00 pm
Liquor bottle store		
3. General business nodes / central business district areas		
Guest houses/B&B's/hotels (whether conference facilities/events/function centres included or not)	11:00am 02:00am following day	
Pub/tavern/restaurant		
Club/karaoke/place of entertainment theatres		

Supermarkets with retail food component/Retail food store (as per Section 1 & 49(4) of Act 4/08)		08:00 am– 20:00 pm
Liquors bottle store		
4. Industrial areas		
Pub/tavern	11:00 am– 02:00 am following day	
Club/karaoke/place of entertainment/theatres		
Supermarkets with retail food component		08:00 am – 20:00 pm
Retail food store (as per Section 1 & 49 (4) of Act 4/08)		08:00 am– 20:00 pm
Liquor/ bottle store		
5. Agricultural/rural/small holding areas		
Wine farms/restaurants/tourist facilities		09:00 am 20:00 pm
Guest accommodation (whether conference facilities/events/function centres included or not)	11:00 am– 24:00 pm	
6. Other (ad-hoc) locations		
Sports clubs/amenity facilities/community centres (excluding special events/temporary licenses)		
Vehicles/ mobile undertakings used for tourist/entertainment/recreational purposes (as per definitions of premises in Section 1 of Act 4/08.	11:00 am– 22:00 pm	
Special events/temporary licensed premises	11:00 am– 24:00 pm Or as determined by event permit	

FORM 1

APPLICATION IN TERMS OF SECTION 7(1) FOR EXTENSION OF TRADING HOURS AND / OR AMENDMENT OF TRADING DAYS

ORIGINAL TO BE LODGED WITH THE MUNICIPALITY AND TWO COPIES WITH DESIGNATED LIQUOR OFFICER

Date stamp of designated liquor officer receiving the application

Date stamp of the municipality

For official use -
Application Fee

Receipt No

Payment Date

Representations in support of application

Application Prepared by

Postal Address

Physical Address

Telephone numbers: Office

Mobile

Home or other

Fax number

E-mail address

FORM 1

APPLICATION IN TERMS OF SECTION 7(1) FOR EXTENSION OF TRADING HOURS AND / OR
AMENDMENT OF TRADING DAYS

PART A

DETAILS OF LICENSEE

1. Licence number

2. Full name of licensee

3. If the licensee is not a natural person, state the name, identity number and address and extent of financial interest of each shareholder, member, partner or beneficiary (Use an annexure if necessary)

4. (a) Name and address of the licensed premises

(b) Describe the situation of the premises where the licensed business is conducted with reference to the number of the erf, street(s), apartment(s), shop(s) or farm, as the case may be

5. State reason(s) why licensee applies for extension of trading hours or amended days (Use an annexure if necessary)

I declare / truly affirm that the information furnished in this application and in the documents attached to it, is true.

Date

Name

Signature

(Written authorisation sign on behalf of licensee to be attached)

FORM 1

**APPLICATION IN TERMS OF SECTION 7(1) FOR EXTENSION OF TRADING HOURS AND / OR
AMENDMENT OF TRADING DAYS**

I certify that the applicant has acknowledged that he/she knows and understands the contents of this, which was signed and sworn to / affirmed before me at this day of 20

Commissioner of oaths

Full name

Business address

Designation

Area for which appointment is held

Office held if appointment is *ex officio*