

## SWARTLAND MUNICIPALITY: DRAFT BY-LAW ON LIQUOR TRADING DAYS AND HOURS, 2011

**To provide for the control of undertakings selling liquor to the public in order to ensure a safe and healthy environment in the Swartland; to provide for days and hours of trade in liquor by licensed undertakings that sell liquor to the public; and to provide for matters related thereto.**

### Preamble

**WHEREAS** a municipality may, in terms of section 156 of the Constitution, make and administer by-laws for the effective administration of the matters which it has the right to administer;

**WHEREAS** it is the intention of the municipality to set trading days and hours for all licensed premises, business or outlets situated within the Swartland municipal area that sell liquor to the public;

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

### Definitions

1. (1) In this By-law, unless the context indicates otherwise –

**“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;

**“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 a property used as a 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;
- (c) premises which are licensed to sell alcoholic beverages 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;

“**local business or neighbourhood 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 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, totalisator or facility for betting, gambling hall, karaoke bar and nightclub;

“**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 neighbourhoods, 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 organisations or associations, sports clubs or other social or recreation clubs run mostly not for profit and may include community service clubs and community centres or similar amenity facilities, but excludes a night club;

“**Swartland Municipality**” means the Swartland Municipality established by the Establish Notice published in Provincial Notice No. 5589 of 2000, as amended, and “**Municipality**” has a corresponding meaning;

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

“**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 applicable to the area and in force within the area of jurisdiction of the Swartland 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.

### **Trading days and hours for sale and consumption of liquor on licensed premises**

2. (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; and
  - (b) during the hours of trade as set out in the Schedule
- (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) Despite the provisions of this By-law, a licensee as contemplated in subsection (1), may serve sparkling wine –
- (a) from 08:00 to 11:00 for seven days a week;
  - (b) as part of a meal; and
  - (c) to guests who are part of an organised function where admittance is controlled.

### **Trading days and hours for consumption of liquor off licensed premises**

3. A licensee may sell liquor for consumption off the licensed premises on the following days and hours:
- (a) on any day of the week with the exception of Sundays, provided such exception does not apply to a winery; and
  - (b) from 0900 to 1800.

### **Transitional provisions**

4. (1) Subject to the provisions of the Act, trading hours applicable to a liquor license issued before the commencement of this By-law shall continue to apply until such license is renewed in terms of the Act.
- (2) The trading hours referred to in subsection (1) shall be valid until the license has lapsed as contemplated in section 62(2) of the Act.

## **Offences and penalties**

5. (1) A licensee who contravenes sections 2 and 3 of this By-law commits an offence.
- (2) A licensee who commits an offence referred to in subsection (1) is, on conviction, liable for a fine not exceeding R30 000,00 or to a term of imprisonment not exceeding three years, 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.

## **Short title**

6. This By-law is called the Swartland Municipality By-law on Liquor Trading Days and Hours and comes into operation on \_\_\_\_\_.

## SCHEDULE

### Trading hours for consumption of liquor on licensed premises

Location category & licensed premises type	Maximum permitted trading hours
<b>1. Residential area</b>	
Guest accommodation establishment	11:00 – 23:00
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
Hotel	
<b>2. Local or neighbourhood business area including mixed use areas</b>	
Guest accommodation establishment	11:00 – 23:00
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	11:00 – 24:00
Hotel	11:00 – 02:00 following day
<b>3. General business area</b>	
Guest accommodation establishment	11:00 – 02:00 following day
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
Hotel	
<b>4. Industrial area</b>	
Business premises	11:00 – 02:00 following day
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
<b>5. Agricultural area</b>	
Guest accommodation establishment	11:00 – 02:00 following day
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
Winery	
Hotel	

<b>6. Small holding or rural area</b>	
Guest accommodation establishment	11:00 – 24:00
Business premises	
Place of entertainment	
Sports and community club excluding special events requiring temporary licences	
Winery	
<b>7. Other ad-hoc locations</b>	
Vehicles or mobile undertakings used for tourist or entertainment or recreational purposes as per definition of 'premises' in section 1 of the Act, except where any other Swartland Municipality By-law determines otherwise	11:00 – 24:00
Special events or temporary licensed premises	As determined by permit

**Note: Determination of applicable location in category**

Where the location category as set out above is unclear or in dispute or difficult to determine or areas are not zoned homogenously (e.g. a business zoned premises in the middle of a residential zoned area), the actual zoning, consent or departure use rights of the subject licensed premises will take precedence in order to determine the category.