

Mbizana, South Africa

## Liquor

Legislation as at 21 October 2019

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# Mbizana South Africa

## Liquor By-law, 2019

Published in Eastern Cape Provincial Gazette 4329 on 21 October 2019

**Commenced on 21 October 2019**

*[This is the version of this document from 21 October 2019 and includes any amendments published up to 15 March 2024.]*

### **To provide for measures for the control of undertakings that sell liquor to the public**

WHEREAS the Municipality has the competence in terms of Part B of Schedule 5 of the [Constitution of the Republic of South Africa](#) to control undertakings that sell liquor to the public;

WHEREAS FURTHER in terms of Sections 22(2)(d)(i) and 42(b) of the Eastern Cape Liquor [Act 10 of 2003](#) ward committees of local municipalities have a duty to submit a report to the Eastern Cape Liquor Board and the relevant Municipal Council regarding all applications for registrations in terms of the said Act, and local municipalities have a duty to determine the hours within which liquor may be sold within its area of jurisdiction;

AND WHEREAS in terms of Section 11(3)(m) of the Local Government: Municipal Systems [Act 32 of 2000](#), read with Section 162 of the [Constitution of the Republic of South Africa Act 108 of 1996](#), municipalities have the legislative power to promulgate By-laws regarding any matter which falls within its functional competence;

NOW THEREFORE the Council of the Mbizana Local Municipality, acting in terms of Section 156 read with Schedule 5 (Part B) of the [Constitution of the Republic of South Africa Act 108 of 1996](#), and read with Section 1 of the Local Government: Municipal Systems [Act 32 of 2000](#), hereby makes the following By-law:

### **1. Definitions**

"**Act**" means the Eastern Cape Liquor Act, 2003 ([Act 10 of 2003](#));

"**casino**" means a casino operated in terms of the National Gambling Act, 2004 ([Act 7 of 2004](#));

"**Council**" means the Mbizana Municipal Council or any other committee or official acting by virtue of any powers delegated by Council;

"**hotel**" means premises wherein or whereupon the business of supplying lodging and meals is conducted or is intended to be conducted, and includes a motel, inn, bed and breakfast concern, caravan and camping park, guesthouse, a lodge and a house boat;

"**Board**" means the Eastern Cape Liquor Board established in terms of Section 4 of the Act;

"**official**" means any person authorised by Council to perform the function of an officer under this By-law and includes any member of the South African Police Service or any person appointed in terms of the Act;

"**premises**" includes any place, land, building or conveyance or any part thereof which is registered or which is seeking to be registered to trade in liquor;

"**registered premises**" means premises on or from which a trader conducts his or her business;

"**Regulations**" means the Regulations published as Notice No. 1143 of 8 April 2004 made under the Act;

"**selling hours**" means the time during which a trader is allowed to sell liquor in terms of Schedule 1 and "trading hours" shall have the same meaning;

"**trader**" means a person who is registered in terms of Section 19 of the Act;

"**trading**" means the selling, display for sale or supply of liquor; and

"ward committee" means a committee as contemplated in the Local Government: Municipal Structures Act, 1998 ([Act 117 of 1998](#)).

## 2. Interpretation

- (1) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.
- (2) If there is a conflict of interpretation between any provision of this By-law and any provision of the Act, the provision in the Act shall prevail.

## 3. Nondiscrimination

- (1) Subject to the provision of subsection (2) hereof, no provision of these By-laws shall be applied so as to discriminate between persons on the grounds of race, religion or gender nor shall it be so construed as to have the effect of authorising such discrimination.

## 4. Objects of By-law

- (1) The objects of this By-law are to-
  - (a) provide a mechanism to fulfill the legislative duties imposed on the Council as highlighted in the Preamble; and to
  - (b) provide for related matters.

## 5. Application

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

## 6. Trading hours

- (1) 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, have been determined by the Council and may be reviewable by the Council from time to time.
- (2) The Council reserves the right, by notice in the press in any two official languages as the Council may determine, to deviate from the stipulated trading hours in the interests of the community.
- (3) Subject to [Section 7](#), no trader shall sell liquor to a person at a time other than those hours stipulated as trading hours under subsection 1 herein.
- (4) Any trader who contravenes subsection 3 herein shall be guilty of an offence.

## 7. Selling of liquor at other times

- (1) The Council 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 Council.
- (2) A trader who wishes to obtain the consent of the Council must complete a form similar to the form entitled "Application for Departure with Respect to Trading Hours" as contained in Schedule 2 and submit the form and other particulars as Council may request, to the office of the municipal manager.

- (3) For the purpose of considering whether to grant consent as contemplated in subsection (1), Council may require an official to undertake an investigation or request information as he or she may deem necessary for consideration by the Council, and such official must submit his or her findings to the Council.
- (4) The Council may, after consideration of the application and the report contemplated in subsection (3), refuse to grant or grant consent, and should the Council grant consent, it may do so subject to any condition or restriction it may deem appropriate, which consent and condition or restriction, if imposed, shall be entered in Part C of the form contained in Schedule 2.
- (5) A trader who has been granted consent in terms of subsection (4), 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 Council has been entered.
- (6) A trader who contravenes subsections (1) or (5) or who sells liquor in contravention of a condition or restriction imposed in terms of subsection (3) or who displays a forged form, shall be guilty of an offence.

## **8. Ward committee report**

- (1) A ward committee must, upon receipt of a notice of application for registration contemplated in Section 22(2)(d)(i) of the Act read with regulation 3 of the Regulations, consult the community with regards to such application.
- (2) The ward committee must submit a report to the Council within seven days from date of the consultation referred to in subsection (1) and such report must contain-
  - (a) the details of the consultative process with the community;
  - (b) comments on the application;
  - (c) details of objections received in respect of such application, if any;
  - (d) a recommendation with regards to the application.
- (3) The municipal manager shall submit such application and the ward committee report to the first sitting of Council after receipt of the ward committee report. Thereafter the municipal manager shall expeditiously inform the board of the resolution of both the Council and the ward committee regarding the application, provided that such report to the Board shall not occur more than thirty days after receipt of the notice referred to in subsection (1) by the ward committee.

## **9. Enforcement**

- (1) Members of the South African Police Service and liquor inspectors appointed in terms of the Act may enforce this By-law.
- (2) Notwithstanding subsection (1) Council may appoint, authorise and mandate such officials as it may deem necessary to implement and enforce these By-laws.
- (3) Each official appointed in terms of subsection (2) shall be issued with an identity card containing a photograph of himself, the date of the Council resolution authorising his appointment, his designation and a brief reference to his duties and obligations in terms of these By-laws.
- (4) An official acting within the powers vested in him in terms of these By-laws must, on demand by a member of the public produce proof of identity and the capacity in which he purports to carry out his duties.
- (5) An official, acting in terms of the authorisation or mandate contemplated in subsection (2) 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 information as he may deem necessary.
- (6) For the purposes of these By-laws an official appointed in terms of this Section shall be regarded as an authorised official.

## 10. Offences

- (1) A person commits an offence if he or she-
  - (a) hinders or interferes with an authorised official in the execution of his official duties;
  - (b) falsely professes to be an authorised official;
  - (c) furnishes false or misleading information when complying with a request of an authorised official; or
  - (d) fails to comply with a request of an authorised official; or
  - (e) fails, refuses or neglects to comply with the trading hours stipulated in Schedule 1.

## 11. Penalties

- (1) Any person who commits an offence in terms of these By-laws shall be liable, upon conviction to-
  - (a) a fine or imprisonment for a period of not exceeding six months or to such imprisonment without the option of a fine or to both such fine and imprisonment; and
  - (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment of ten 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
  - (c) a further amount equal to any costs and or expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.

## 12. Appeal

- (1) A person whose rights are affected by a decision of the Council may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of Section 62 of the Local Government: Municipal Systems [Act 32 of 2000](#) to the municipal manager within twenty one days of the date of the notification of the decision.

## 13. Repeal

- (1) The By-law set out in Schedule 3 is hereby repealed to the extent set out in the third column of that Schedule.

## 14. Short title and commencement

- (1) This By-law may be called the "Mbizana Liquor By-law" and shall come into force upon publication in the *Provincial Gazette*.

**Schedule 1 (Section 6(1))**

Column 1	Column 2
Type of registration	Trading hours
Registration in terms of Section 20(a) of the Act for the retail sale of liquor for consumption off the premises where liquor is sold (Bottle store, retail shop)	
Registration in terms of Section 20(b) of the Act for the retail sale of liquor for consumption on the premises where liquor is sold (Restaurant, sports club, pool bar, pub, night club, hotel, casino)	
Registration in terms of Section 20(c) of the Act for the retail sale of liquor for consumption on and off the premises where liquor is sold (taverns)	
Registration in terms of Section 20(d) of the Act for the retail sale and consumption of liquor at a special event	
Registration in terms of Section 20(e) of the Act for micro-manufacturing	

*[Column 2 of the table is empty in the gazetted by-law]*

**Schedule 2**

**Part A – Application for departure with respect to trading hours (In terms of section 7 (2) of the Mbizana Lquor By-laws)**

Name of Applicant .....

Allotment Area ..... Erf No. of Premises .....

Address of premises where liquor will be sold .....

.....

Postal address of Applicant .....

.....

Contact telephone no. (.....)..... Fax no. (.....).....

Dates and hours on which liquor will be sold or supplied (Be specific, e.g. 14:00 to 23:00 on 3 June 2016):

.....

Reason why this application is made .....

.....

.....

Anticipated volume of liquor that will be sold .....

Nature of liquor that will be sold or supplied .....

.....

Other particulars (as requested by the Council): .....

Do the premises have Special Land Use Consent? (provide proof)	Yes	No
Do premises have a business licence? (provide proof)	Yes	No
Do premises have noise attenuation equipment installed? (provide details)	Yes	No
Does Applicant possess a Liquor Licence? (provide copy)	Yes	No

Distance to nearest residence.....meters

Distance to nearest educational institution.....meters

Distance to nearest place of worship.....meters

Signed..... Date.....

(Applicant)

### Part B – Official use

Does the business meet the following requirement?:



1. Land use permission	YES	NO
2. Valid business licence (if applicable)	YES	NO
3. Compliance with noise regulation	YES	NO
4. Possession of valid liquor licence	YES	NO
5. Premises suitably located	YES	NO

Inspection report:

.....  
 .....  
 .....  
 .....

Name of Official..... Date of inspection.....

### Part C – Recommendation by Environmental Health Department

.....  
 .....  
 .....  
 .....

Name of Official..... Date.....

Designation.....

Conditions:

.....  
 .....  
 .....  
 .....

Signature..... Date.....

**Schedule 3**

<b>Number and year of By-law</b>	<b>Title</b>	<b>Extent of repeal</b>

*[Table is empty in the gazetted by-law]*