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As 'n nuusblad by die Poskantoor Geregistreer

INHOUD

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HESSEQUA MUNICIPALITY**LIQUOR TRADING HOURS AND DAYS BY-LAW**

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and section 59(1) of the Western Cape Liquor Act, 4 of 2008, as amended, the Hessequa Municipality, enacts as follows:

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Schedule**Annexure A****1. Definitions**

In this By-law, unless the context otherwise indicates:

“Act” means the Western Cape Liquor Act,(Act 4 of 2008) as amended;

“hotel” means premises wherein or whereon 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, guest-house, a lodge, a backpackers and a house boat;

“licensee” means the person to whom a licence has been issued in terms of section 46 or transferred in terms of section 65 of the Act;

“Liquor Authority” means the Western Cape Liquor Authority established in terms of section 2 of the Act;

“municipality” means the Hessequa Municipality and includes any political structure, political office-bearer, duly authorised agent thereof, or a service provider fulfilling a responsibility under this by-law assigned to it in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other law, as the case may be, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated, to such political structure, political office-bearer, agent or employee;

“official” means any person authorised by the Municipality to perform the function of an officer under this By-law and includes any member of the South African Police Services and 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 licensee conducts his or her business;

“sell” includes supply, exchange, offer for sale, display for the purposes of sale or authorise to sell, direct to sell, or to allow a sale;

“selling hours” means the time during which a licensee is allowed to sell liquor in terms of Schedule 1;

“ward committee” means a committee as contemplated in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998).

2. Purpose of By-law

The municipality, acting in terms of the powers granted to it in the Act, adopts this By-law with the aim of regulating the hours during which liquor may be sold and matters related thereto.

3. Application of By-law

This By-law applies to all premises, situated within the area of jurisdiction of the municipality, on which a business in the trading of liquor is carried on or intended to be carried on.

4. Hours and days of trading

- (1) The trading hours and days, of the different kinds of licences, as listed in column 1 of the Schedule, have been determined by the municipality as listed in column 2 of the Schedule and may, subject to section 4, be reviewed by the municipality from time to time.
- (2) No licensee may sell liquor from any of the premises listed in column 1 of the Schedule at a time other than those hours listed in column 2 of the Schedule.
- (3) No licensee, who sells liquor for consumption off the premises, in accordance with a license obtained in terms of Sec 33(1)(c) of the Act, may sell liquor on Sundays, except those licensees whose applications, as envisaged in section 5(1) below, were successful.
- (4) A licensee who contravenes subsection (2) and/or (3) commits an offence.

5. Application for extended trading days and hours

- (1) A licensee may, upon payment of the required fee and on the prescribed form, submit a written application to the Municipal Manager or his/her delegated official to extend the trading days and hours in respect of a licensed premises.
- (2) The Municipality may refuse or approve such application with or without terms and conditions.
- (3) No rights accrue to any person who has applied for an extension of trading days and hours before the receipt of approval from the Municipality.
- (4) The application must be submitted to the Municipal Manager or his/her delegated official, **30 days** before the proposed effective date of the extended trading hours or days, on the prescribed form, together with all the required documents.
- (5) The Municipality may, when considering an application for the extension of trading days and hours, consider the following factors:
 - (i) Comments from the owners/person in charge of the neighbouring properties
 - (ii) Comments from the Planning Department within the Municipality
 - (iii) Validity of the applicant's liquor license
 - (iv) Comments from the Western Cape Liquor Authority
 - (v) Comments from the local liquor officer
 - (vi) previous suspension, amendment or revocation of extended trading days or hours
 - (vii) Comments from the ward councillor
 - (viii) any other relevant factor
- (6) The Municipality will not approve an application referred to in sub section 1, unless it is satisfied, on a balance of probabilities, that the granting thereof
 - (a) is in the public interest;
 - (b) does not prejudice-
 - (i) the residents of a residential area;
 - (ii) the residents of an institution for the aged or frail;
 - (iii) the learners of an educational institution who are under the age of eighteen (18) years;
 - (iv) the patients of an institution for drug or alcohol related dependencies; or
 - (v) the congregants of a religious institution located in the vicinity of the licensed premises concerned

6. Revocation, suspension and amendment of approved extended liquor trading days and hours

- (1) An authorised official may with immediate effect, by written notice revoke consent for extended trading days and hours, upon failure by the licensee to comply with any condition of the consent for the extended trading hours and days.
- (2) An authorised official must, within 48 hours of revoking the consent for extended trading days and hours, deliver copies of such revocation to the Western Cape Liquor Authority, the designated liquor officer for that area and the Municipal Manager of the Municipality.
- (3) The Municipality is not liable for any loss of income suffered by a licensee as a result of a revocation of consent.

7. Public participation and duties of municipality

- (1) Upon receipt of a copy of the application to sell liquor from the designated liquor officer as contemplated in section 37(4) of the Act, and in order to comply with the requirements of section 40 of the Act, the municipality must:
 - (a) allow the public to have access to the application by posting a copy of the application on all municipal notice boards; and the Municipality's website.
 - (b) make available copies of such application when requested by a member of the public against payment of a prescribed fee as determined by the municipality from time to time; and
 - (c) obtain the comments from the ward councillor;
 - (d) submit its comments on the application to the Liquor Authority; and
 - (e) allow for the consideration of the planning application in relation to the application for a liquor licence.

8. Penalties

A person who has committed an offence in terms of this by-law is, on conviction, liable to a fine, or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

9. Repeal of by laws

This by-law repeals all previous versions of the Hessequa Municipality Liquor Trading Hours By-Law.

10. Short title and commencement

This By-law may be cited as Hessequa Liquor Trading Days and Hours By-law, and come into operation on 1 July 2015 in the Gazette.

SCHEDULE 1 (SECTION 5(1))

COLUMN 1	COLUMN 2
TYPE OF LICENCE	TRADING HOURS
Licence in terms of Section 33(1)(a) of the Act for micro-manufacturing and sale of liquor for consumption both on and off the premises. (cellars, wine makers, home distillers)	For consumption on the premises 11:00 – 18:00 Monday – Sunday For consumption off the premises: 09:00 – 18:00 Monday - Sunday
Licence in terms of Section 33(1) (b) of the Act for the sale of liquor for consumption on the premises where liquor is sold. (restaurant,sports club, pool bar, pub, sports bar, discotique,jazz club, escort agence, pub and grub, tavern) Nightclub (Hotel, casino)	11:00 – 02:00 Monday – Saturday 11:00 – 23:00 Sunday 24 hours everyday

COLUMN 1	COLUMN 2
TYPE OF LICENCE	TRADING HOURS
Licence in terms of Section 33(1) (c) of the Act for the retail sale of liquor for consumption off the premises where liquor is sold. (bottle store, retail food store, wholesaler, off-sales, boutiques)	09:00 -18:00 Monday – Saturday Sundays (if application for extended trading days has been approved, as per section 5(1): 09:00 – 16:00 Trading is prohibited on the following public holidays: Good Friday Christmas Day (25 December)
Licence in terms of Section 33(1)(d) of the Act for the sale of liquor for sonsumption on and off the premises where liquor is sold. (exceptional circumstances)	For consumption on the premises: 11:00 – 24:00 Monday – Thursday 11:00 – 02:00 Friday – Saturday 11:00 – 22:00 Sunday For consumption off the premises: 09:00 – 18:00 Monday – Saturday 09:00 – 16:00 Sunday
Licence in terms of Section 33(2)(a) of the Act for the sale and consumption of liquor on and off the premises at a special event (concert, festival, sporting event, and entertainment event)	As per trading hours in the schedule applicable to the sale of liquor for consumption on and off the premises . Subject to terms and conditions imposed by the liquor Authority in terms of Section 48 of the Act
A Temporary licence in terms of Section 33(2)(b) of the Act for the sale and consumption of liquor on or off the premises. (Temporary pending of approval of application – See Section 48(1) of the Act)	As per trading hours in the schedule applicable to the sale of liquor for consumption on and off the premises . Subject to terms and conditions imposed by the liquor Authority in terms of Section 48 of the Act.

HESSEQUA-MUNISIPALITEIT

VERORDENING VIR DRANK-HANDELSURE EN -DAE

Kragtens die bepalings van artikel 156 van die Grondwet van die Republiek van Suid-Afrika, 1996, artikel 11(3)(m) van die Plaaslike Regering: Munisipale Stelselwet, 2000 (Wet 32 van 2000) en artikel 59(1) van die Wes-Kaapse Drankwet, 4 van 2008, soos gewysig, verorden die Hessequa-munisipaliteit as volg:

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3. Toepassing van die verordening
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Skedule

Aanhangsel A

1. Definisies

In hierdie verordening, tensy dit anders blyk uit die konteks:

“amptenaar” beteken enige persoon wat deur die munisipaliteit gemagtig is om die funksies van ‘n amptenaar ingevolge hierdie verordening te verrig en dit sluit enige lid van die Suid-Afrikaanse Polisiediens en enige persoon wat ingevolge die Wet aangestel is in;

“Drankraad” beteken die Wes-Kaapse Drankraad ingestel kragtens artikel 2 van die Wet;

“geregistreerde perseel” beteken die perseel waarop vanwaar ‘n lisensiehouer sy of haar besigheid bedryf;

“hotel” beteken persele waarbinne of waarop besigheid bedryf word of bedoel word om bedryf te word ingevolge waarvan huisvesting en maaltye voorsien word en dit sluit ‘n motel, herberg, bed-en-ontbytplek, karavaan- en kampeerpark, gastehuis, ‘n lodge, rugsakstappersverblyf en huisboot in;

“lisensiehouer” beteken die persoon aan wie die lisensie toegeken is ingevolge artikel 46 of oorgedra is ingevolge artikel 65 van die Wet;

“munisipaliteit” beteken die Hessequa-munisipaliteit en sluit enige politieke struktuur, politieke ampsbekleer, behoorlik gemagtigde agent daarvan, of ‘n diensverskaffer wat ‘n verantwoordelikheid ingevolge hierdie verordening uitvoer, opgedra ingevolge die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) of enige ander wet, na gelang van die geval, of ‘n werknemer daarvan handelende ingevolge hierdie verordening uit hoofde van ‘n bevoegdheid wat in die munisipaliteit berus en gedelegeer aan sodanige politieke struktuur, politieke ampsbekleer, agent of werknemer;

“perseel” sluit enige plek, grond, gebou of vervoermiddel of enige deel daarvan in wat geregistreer is om met drank handel te dryf of wat in die proses van registrasie is;

“verkoop” sluit in verskaffing, ruil, te koop-aanbieding, vertoon vir die doel of magtiging om te verkoop, opdrag om te verkoop of toelaat om te verkoop;

“verkoopsure” beteken die tye waartydens lisensiehouer toegelaat word om drank te verkoop ingevolge Skedule 1;

“Wet” beteken die Wes-Kaapse Drankwet, (Wet 4 van 2008) soos gewysig;

“wykskomitee” beteken ‘n komitee soos bedoel in die Plaaslike Regering: Munisipale Strukturewet, 1998 (Wet 117 van 1998).

2. Doel van die verordening

Ingevolge die magte wat in die Wet aan die munisipaliteit toegeken is, aanvaar die munisipaliteit hierdie verordening met die doel om die ure waartydens drank verkoop mag word en aangeleenthede wat daarmee verband hou te reguleer.

3. Toepassing van die verordening

Hierdie verordening is van toepassing op alle persele binne die jurisdiksiegebied van die munisipaliteit waarop die besigheid van handel in drank bedryf word of beoog word om bedryf te word.

4. Handelsure en dae waarop handel gedryf mag word

- (1) Die handelsure en -dae waarop handel gedryf mag word van die verskillende tipes lisensies, soos gelys in kolom 1 van die skedule, is deur die munisipaliteit bepaal soos aangedui in kolom 2 van die skedule en mag, onderworpe aan artikel 4, van tyd tot tyd deur die munisipaliteit hersien word.
- (2) Geen lisensiehouer mag drank verkoop van enige perseel soos gelys in kolom 1 van die skedule op enige tyd en dag anders as dit wat in kolom 2 van die skedule aangedui word nie.
- (3) Geen lisensiehouers, wat drank verkoop vir die gebruik weg van die perseel, in ooreenstemming met 'n lisensie verkry ingevolge artikel 33(1)(c) van die Wet, mag op Sondae drank verkoop nie, behalwe sodanige lisensiehouers wie se aansoeke, soos oorweeg in artikel 5(1) hieronder, suksesvol was.
- (4) 'n Lisensiehouer wat subartikel (2) en/of (3) oortree, pleeg 'n misdryf.

5. Aansoek vir verlengde handelsdae en -ure

- (1) 'n Lisensiehouer mag, by betaling van die vereiste tarief en op die voorgeskrewe vorm, 'n skriftelike aansoek indien by die Munisipale Bestuurder of sy/haar aangewese amptenaar om die handelsdae en -ure ten opsigte van 'n gelisensieerde perseel te verleng.
- (2) Die Munisipaliteit mag sodanige aansoek weier of goedkeur met of sonder bepalings en voorwaarde.
- (3) Geen regte val enige persoon toe wat aansoek om verlenging van handelsdae en -ure ingedien het alvorens bewys van goedkeuring van die Munisipaliteit ontvang word nie.
- (4) Die aansoek moet ingedien word by die Munisipale Bestuurder of sy/haar aangewese amptenaar, **30 dae** voor die voorgestelde intreedatum van die verlengde handelsdae of -ure, op die voorgeskrewe vorm, tesame met al die vereiste dokumente.
- (5) Die Munisipaliteit mag, by die oorweging van 'n aansoek om die verlenging van handelsdae en -ure, die volgende faktore in ag neem:
 - (i) Insette van die eienaars/persoon in beheer van die naburige eiendomme
 - (ii) Insette van die Beplanningsafdeling van die Munisipaliteit
 - (iii) Geldigheid van die applikant se dranklisensie
 - (iv) Insette van die Wes-Kaapse Drankraad
 - (v) Insette van die plaaslike drankamptenaar
 - (vi) Vorige opskorting, wysiging of herroeping van verlengde handelsdae of -ure
 - (vii) Insette van die wyksraadslid
 - (viii) Enige ander relevante faktor
- (6) Die Munisipaliteit sal nie 'n aansoek ingevolge artikel 1 goedkeur tensy hy, op 'n oorwig van waarskynlikhede, tevrede is dat die toekenning daarvan
 - (a) in die openbare belang is;
 - (b) nie die volgende benadeel nie-
 - (i) die inwoners van 'n woongebied;
 - (ii) die inwoners van 'n instansie vir bejaardes of verswaktes;
 - (iii) die leerders van 'n opvoedkundige instansie wat onder die ouderdom van agtien (18) jaar is;
 - (iv) die pasiënte van 'n instansie vir dwelm- en alkoholverwante verslaving; of
 - (v) die gemeentelede van 'n godsdiensinstansie geleë in die omgewing van die gelisensieerde perseel wat ter sprake is

6. Herroeping, opskorting en wysiging van goedgekeurde verlengde drank-handelsdae en -ure

- (1) 'n Gemagtigde amptenaar mag, met onmiddellike inwerkingtreding, deur skriftelike kennisgewing die toestemming vir verlengde handelsdae en -ure herroep waar die lisensiehouer versuim om enige voorwaarde vir die toestemming van verlengde handelsdae en -ure na te kom.
- (2) 'n Gemagtigde amptenaar moet, binne 48 uur nadat die toestemming vir verlengde handelsdae en -ure opgeskort is, afskrifte van hierdie opskorting lewer aan die Wes-Kaapse Drankraad, die aangewese drankamptenaar vir daardie gebied en die Munisipale Bestuurder van die Munisipaliteit.
- (3) Die Munisipaliteit is nie aanspreeklik vir enige verlies van inkomste deur 'n lisensiehouer wat verband hou met die opskorting van toestemming nie.

7. Openbare deelname en die verpligtinge van die munisipaliteit

- (1) By ontvangs van 'n afskrif van 'n aansoek om drank te verkoop van die aangewese drankamptenaar soos bedoel in artikel 37(4) van die Wet, en ten einde te voldoen aan die bepalings van artikel 40 van die Wet, moet die munisipaliteit:
 - (a) aan die publiek toegang tot die aansoek verleen deur 'n kopie van die aansoek op alle munisipale kennisgewingborde aan te bring; en die munisipaliteit se webtuiste.
 - (b) afskrifte van sodanige aansoek beskikbaar stel op versoek van 'n lid van die publiek teen betaling van 'n tarief soos van tyd tot tyd deur die munisipaliteit vasgestel; en
 - (c) kommentaar verkry van die wyksraadslid;
 - (d) die kommentaar indien wanneer aansoek by die Drankraad gedoen word; en
 - (e) toelaat vir die oorweging van die beplanningsaansoek ten opsigte van die aansoek om 'n dranklisensie.

8. Strawwe

Iemand wat 'n misdryf ingevolge hierdie verordening begaan het, is by skuldigbevinding aanspreeklik vir 'n boete of, indien die boete nie betaal word nie, gevangersstraf of sodanige gevangersstraf sonder die opsie van 'n boete, of sowel die boete as sodanige gevangersstraf en, in die geval van 'n opeenvolgende of volgehoue misdryf, vir 'n boete vir elke dag waarop sodanige misdryf voortduur, of indien die boete nie betaal word nie, tot bykomende gevangersstraf.

9. Herroeping van verordeninge

Hierdie verordening herroep alle vorige weergawes van die Hessequa-munisipaliteit se verordeninge vir die handeldryf in drank.

10. Kort titel en inwerkingtreding

Hierdie verordening word die Hessequa-verordening vir Drankhandelsdae en -ure genoem en tree in werking op 1 Julie 2015 in die Proviniale Koerant.

SKEDULE 1

(SEKSIE 5(1))

KOLOM 1	KOLOM 2
TIPE LISENSIE	HANDELSURE
Licensie ingevolge Artikel 33(1) (a) van die Wet vir mikro-vervaardiging en verkoop van drank vir verbruik beide op en van die perseel. (kelders, wynmakers, tuisdistillering)	Vir verbruik op die perseel: 11:00 – 18:00 Maandag – Sondag Vir verbruik van die perseel af: 09:00 – 18:00 Maandag - Sondag
Licensie ingevolge Artikel 33(1) (b) van die Wet vir die verkoop van drank vir verbruik op die perseel waar drank verkoop word. (restaurant, sportklub, pool-kroeg, kroeg, sportkroeg, diskoteek, jazz-klub, geselskapsagentskap, pub en grub, taverne) (Nagklub) (Hotel, casino)	11:00 – 02:00 Maandag – Saterdag 11:00 – 23:00 Sondag 24 uur elke dag

KOLOM 1	KOLOM 2
TIPE LISENSIE	HANDELSURE
Licensie ingevolge Artikel 33(1) (c) van die Wet vir die kleinhandelverkoop van drank vir verbruik weg die perseel af waar drank verkoop word. (drankwinkel, kleinhandel-voedselwinkel, groothandelaar, buiteverkope, boetiek)	09:00 - 18:00 Maandag – Saterdag Sondae (indien aansoek om verlengde handelsdae goedgekeur is ingevolge artikel 5(1)): 09:00 – 16:00 Handeldryf is verbode op die volgende openbare vakansiedae: Goeie Vrydag Kersdag (25 Desember)
Licensie ingevolge Artikel 33(1) (d) van die Wet vir die verkoop van drank vir verbruik op en weg van die perseel waar drank verkoop word. (buitengewone omstandighede)	Vir verbruik op die perseel: 11:00 – 24:00 Maandag – Donderdag 11:00 – 02:00 Vrydag – Saterdag 11:00 – 22:00 Sondag Vir verbruik van die perseel af: 09:00 – 18:00 Maandag – Saterdag 09:00 – 16:00 Sondag
Licensie ingevolge Artikel 33(2) (a) van die Wet vir die verkoop van drank vir verbruik op en van die perseel waar drank verkoop word by 'n spesiale geleentheid. (koncert, fees, sport- en vermaakgeleentheid)	Soos per handelsure in die skedule toepaslik op die verkoop van drank vir verbruik op of van die perseel af. Onderhewig aan bepalings en voorwaardes soos opgelê deur die Drankraad ingevolge Artikel 48 van die Wet.
'n Tydelike licensie ingevolge Artikel 33(2) (b) van die Wet vir die verkoop en verbruik van drank op of weg van die perseel. (Tydelik hangende goedkeuring van die aansoek – sien artikel 48(1) van die Wet)	Soos per handelsure in die skedule toepaslik op die verkoop van drank vir verbruik op of van die perseel af. Onderhewig aan bepalings en voorwaardes soos opgelê deur die Drankraad ingevolge Artikel 48 van die Wet.

