

PROVINCIAL NOTICE 37 OF 2016

UBUHLEBEZWE MUNICIPALITY



CONTROL OF UNDERTAKINGS THAT SELL LIQUOR
TO THE PUBLIC

1ST DRAFT DATE	30 th June 2014
ADOPTION BY COUNCIL	4 th December 2014
PROMULGATION DATE	9 th February 2016

UBUHLEBEZWE MUNICIPALITY**CONTROL OF UNDERTAKINGS THAT SELL LIQUOR TO THE PUBLIC**

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 Ubuhlebezwe Municipal area; 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 matters which it has the right to administer;

WHEREAS it is the intention of the Municipality to set trading times and enforcement mechanisms for the control of licensed premises, businesses or outlets that sell liquor to the public and which are situated within the jurisdiction of the Ubuhlebezwe Municipality;

AND NOW THEREFORE, BE IT ENACTED by the Council of the Ubuhlebezwe Municipality follows:-

INTERPRETATION**Definitions**

1. In this By – Law, unless the context indicates otherwise –

“agricultural area” means an area predominantly zoned for 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;

“authorised official” means an employee of the Ubuhlebezwe Municipality who has been delegated powers and functions or an inspector who is appointed in terms KZN Liquor Licensing Act , 2010 (Act No. 6 of 2010);

“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 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;

“Council” means the Municipal Council of Ubuhlebezwe Municipality;

“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, 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 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 licenced premises, business, outlet or land use activity from which liquor is sold;

“liquor” means any liquor product, liquid or substance as defined in 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 a convenience goods, personal service or small scale business nature;

“person” means an individual natural person and a juristic person which may include –

- (a) a licensee or any person in charge of managing the licensed premises for the purposes of the sale of liquor;
- (b) anybody of persons corporate or unincorporated, or
- (c) any company incorporated or registered as such under any law or any village management board, or like authority.

“place of entertainment” means a place used predominantly for commercial entertainment which may attract relatively large numbers of people, operate outside standard business hours or generate noise from amplified or live 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, but excludes a casino;

“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;

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

“sell” means, for current and future sale of liquor, to –

- (a) offer, advertise or expose;
 - (b) supply, transmit, transport, send, convey or deliver; or
 - (c) exchange for money or to dispose of liquor in any way for any type of consideration,
- and **“sale”** and **“sold”** have corresponding meanings;

“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;

“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;

“standard trading” means trading days and trading hours as contemplated in sections 4 and 5 of this By-law, and excludes extended trading days and hours that may be approved by the Ubuhlebezwe Municipality in terms of section 7 of this By-law;

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

“the Act” means the KZN Liquor Licensing Act, 2010 (Act No. 6 of 2010);

“undertaking” means a business licensed to sell liquor to the public; and

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

“zoned” means zoned as the case may be in terms of the Geographic Information Systems mapping.

“zoning scheme” means the Ubuhlebezwe Municipality Zoning Scheme.

1. APPLICATION

This By-law is applicable to persons that sell liquor to the public within the jurisdiction of the Ubuhlebezwe Municipality.

2. 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 Ubuhlebezwe Municipality; and
- (b) without a valid liquor licence that has been issued as contemplated in the Act.

3. STANDARD TRADING TIMES

3.1 Trading days and hours for sale and consumption of liquor on licenced premises:

- (1) A licensee may sell liquor for consumption on the licenced premise 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) A licensee who sells liquor for consumption on licenced premises must not allow any consumption of liquor on the licenced premises at a time when the sale of liquor is not permitted.
- (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.

3.3 Suspension, Amendment and Revocation of Standard Liquor Trading Times

- (1) An authorised official may immediately suspend standard liquor trading for a period of not more than 7 working days, upon delivery of a written notice to the licensee or person in charge of the licensed premises.
- (2) The written notice as contemplated in subsection (1), must specify the reasons and the timeframes in which such suspension of standard liquor trading days and hours will be in effect.
- (3) An authorised official must immediately, in writing, report such suspension of standard liquor trading days and hours to the Council.
- (4) Council must, upon consideration of the suspension report of the authorised official -
 - (a) confirm, amend or terminate the decision of the authorised official to suspend the standard liquor trading days and hours; and

- (b) report any decision to confirm, amend or revoke the standard trading days and hours to the KZN Liquor Authority.
- (5) The Ubuhlebezwe Municipality may not be held responsible for any loss of income suffered by a licensee during any period of suspension of trading days and hours.
- (6) No person may continue selling liquor to the public during the period in which the standard days and hours of trading in liquor have been suspended, amended or revoked.

4. EXTENDED LIQUOR TRADING DAYS AND HOURS

4.1 Application for extended liquor trading days and hours:

- (1) Subject to subsection (3), any licensee may upon payment of the required fee, submit a written application to the Ubuhlebezwe Municipality to extend the liquor trading days and hours of licenced premises.
- (2) The Ubuhlebezwe Municipality may approve or refuse an application for an extension of liquor trading days and hours.
- (3) The Ubuhlebezwe Municipality may, in writing forthwith refuse -
 - (a) to accept an application for the extension of liquor trading days and hours if such premises falls within location category 1 or 2, as contained in the schedule for on consumption trading;
 - (b) an application for an extension of liquor trading hours beyond –
 - (i) 04h00, the next day for on-consumption; and
 - (ii) 20h00 for off-consumption.
- (4) 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 Ubuhlebezwe Municipality by such licensee.
- (5) The Ubuhlebezwe Municipality may, upon written notice to the applicant, impose conditions for liquor trade during extended days and hours.
- (6) The Ubuhlebezwe Municipality must, before approving an application for the extension of trading days and hours, consider further factors which must include, *inter alia* –
 - (a) outcome of community consultation;
 - (b) the potential impact on the surrounding environment;
 - (c) the proximity of the licensed premises to surrounding residential zoned area, cultural, religious and educational facilities;
 - (d) previous suspension, amendment or revocation of extended trading days and hours;

- (e) whether it is in the public interest to approve and grant an extension of trading days or hours;
- (f) a motivation from the applicant dealing with the impact of –
 - (i) the risks to and nuisances on the surrounding community;
 - (ii) mitigation measures to assist the control of risks and nuisances; and
 - (iii) possible benefits of extended liquor trading hours and days on the surrounding community;
- (g) the validity of the Liquor License; and
- (h) where applicable, the validity of a business license issued in terms of the Businesses Act of 1991 (Act No. 71 of 1991).

5. SUSPENSION, AMENDMENT AND REVOCATION OF EXTENDED LIQUOR TRADING DAYS AND HOURS

- (1) An authorised official may, upon delivery of a written notice to the licensee or person in charge, immediately suspend extended trading hours, including Sunday liquor trading for a maximum of 7 working days.
- (2) The written notice as contemplated in subsection (1), must specify the reasons and the timeframes in which such suspension of extended liquor trading days and trading hours will be in effect.
- (3) The authorised official must immediately, in writing, report such suspension to Council.
- (4) Council, upon consideration of the suspension report of the authorised official -
 - (a) must confirm, amend or terminate the decision of the authorised official to suspend the extended hours of trade of the licensed premises;
 - (b) may immediately amend or revoke the extended days and hours of trade, and
 - (c) must report any decision to confirm, amend or revoke the extended hours of trade to the KZN Liquor Authority.
- (5) No person may continue selling liquor to the public during the period in which the extended days and hours of liquor trading have been suspended, amended or revoked.
- (6) The Ubuhlebezwe Municipality may not be held responsible for any loss of income suffered by a licensee during any period of suspension of trading days and hours.

6. PREVENTION OF SALE OF LIQUOR AND SEIZURE OF LIQUOR

6.1 Prevention of Sale of liquor and Seizure of Liquor

- (1) The Ubuhlebezwe Municipality may –

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- (a) cause the temporary closure of the premises; and
 - (b) seize any liquor on the premises in accordance with the Seizure provisions 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 Ubuhlebezwe Municipality may recover any costs incurred by the Ubuhlebezwe Municipality from the licensee.

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

- (1) The licensee or person in charge must ensure that the relevant approval relating to hours of trade and zoning together with the population certificate are always present and displayed on the premises.
- (2) Licensees must ensure that the licenced premises meets and complies with all environmental, planning, safety laws and with conditions imposed by the Ubuhlebezwe Municipality.

8. SAFETY AND SECURITY

The licensee or person in charge must ensure that reasonable safety and security measures are in place for the protection of patrons of the licenced premises by ensuring that –

- (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 Ubuhlebezwe Municipality Building Regulations and Nuisance By-law, and any other permission granted by the Ubuhlebezwe Municipality; and
- (c) there is adequate lighting on the outside of the premises where patrons and staff access and exit the licenced premises.

9. NUISANCES

Any person 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.

10. OFFENCES AND PENALTIES

Any person who contravenes or fails to comply with any –

- (a) provision of this By-law; or
- (b) conditions of a written instruction or written notice served in connection with this by-law,

is guilty of an offence and is liable to a fine, or upon conviction, to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

11. RIGHT OF APPEAL

- (1) Any licensee or objector to an application for extended trading hours whose rights have been affected by a final decision taken by Council or an authorised official of the Ubuhlebezwe Municipality may appeal against that final decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
- (2) An appellant may not continue selling liquor to the public when their appeal against the final decision is pending in relation to standard and extended trading times that have been suspended, amended or revoked, as the case may be.

12. SHORT TITLE

This by-law is called the Ubuhlebezwe Municipality: Control of undertakings that sell liquor to the public Bylaw.

SCHEDULE
Trading hours for selling liquor on licensed premises

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Extraordinary Provincial Gazette of KwaZulu-Natal

3 February 2011

SCHEDULE 3
Trading days and trading hours
(Section 78)

CATEGORY A: ON-CONSUMPTION	TRADING HOURS	TRADING DAYS
1. Accommodation	10h00 – 02h00	Every day
2. Restaurant	10h00 – 02h00	Every day
3. Club	10h00 – 02h00	Every day
4. Nightclub	10h00 – 04h00	Every day
5. Gaming premises	24h00	Every day
6. Sports ground	10h00 – 23h00	Any day
7. Pub	10h00 – 02h00	Every day
8. Tavern	10h00 – 24h00	Every day
9. Theatre	10h00 – 24h00	Every day
CATEGORY B: OFF-CONSUMPTION	TRADING HOURS	TRADING DAYS
1. Liquor store	08h00 – 20h00 08h00 – 17h00 10h00 – 15h30	Monday – Friday Saturday Sunday
2. Grocer's wine	08h00 – 20h00 08h00 – 17h00 10h00 – 15h30	Monday – Friday Saturday Sunday
CATEGORY C: SPECIAL EVENTS PERMIT	TRADING HOURS	TRADING DAYS
Special events permit	Starting of event – Closing of event	Any day
CATEGORY D: MICRO-MANUFACTURER	TRADING HOURS	TRADING DAYS
Micro-manufacturer	07h00 – 22h00	Every day