

MPOFANA LOCAL MUNICIPALITY



LIQUIOR TRADING

BY-LAW 2021

MPOFANA MUNICIPALITY: LIQUOR TRADING DAYS AND HOURS BY-LAW, 2021

To provide for the regulation of trading days and hours of liquor establishments and for matters incidental thereto.

PREAMBLE

WHEREAS there is a need for the Mpfana Municipality to control and regulate the operating days and hours for liquor establishments within its jurisdiction;

AND WHEREAS the Mpfana Municipality is authorised according to Section 78 of the Kwazulu-Natal Liquor Licensing Act No. 6 of 2010, to make by-laws for the control and regulation of trading hours and days for liquor establishments within its area of jurisdiction;

NOW THEREFORE the Municipal Council of the Mpfana Municipality, acting in terms of Section 78 (1)(b) of the KwaZulu-Natal Liquor Licensing Act No. 6 of 2010, and read with Section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

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Definitions

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

“**authorised official**” means a person authorised to implement the provisions of the By-laws, including but not limited to-

- (a) peace officers as contemplated in Section 334 of the Criminal Procedure Act of 1977;
- (b) Municipal or Metropolitan Police Officers as contemplated in the South African Police Services Act of 1995; and
- (c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard;

“drinking in public” includes

“**Establishment**” includes any premises, business, outlet or land use activity from which liquor is sold;

“**Liquor**” means-

- (a) a liquor product as defined in Section 1 of the Liquor Product Act No. 60 of 1989;
- (b) beer or traditional African beer, or
- (c) any other substance or drink declared to be liquor under the Liquor Act No. 59 of 2003, but does not include mentholated spirits;

“**Liquor establishment**” means any place where liquor is sold for on-site or off-site consumption;

“**off-site consumption**” means where liquor is consumed on a premises other than where it was purchased;

“**On-site consumption**” means where liquor is consumed on the premises on which it was purchased;

“**Municipality**” means the Mpofana Municipality, a category municipality as envisaged in terms of Section 115(1) of the Constitution of South Africa;

“**Special event**” means an event organised at a specific place for a specified duration;

“**Trader**” means any individual or business who has a business license and a liquor license and is authorised to sell liquor to the public in any quantity for consumption or retail; and

“**Tavern**” means any residentially zoned premises where liquor is sold for consumption on the premises and where food may be provided incidentally.

Objects of the By-law

- (1) The objects of this By-law are to—
 - (a) regulate and control the trading days and hours for—
 - (i) the on-site consumption of liquor;
 - (ii) the off-site consumption of liquor; and
 - (iii) the different categories of liquor establishments, and
 - (b) Impose penalties for the contravention of this By-law.

Application of the By-law

- (1) This By-law applies throughout the Municipality's area of jurisdiction in respect of liquor establishments.

Trading days and hours

(1) The council of Mpofana Municipality hereby resolves that the trading days and hours for each category of liquor establishments are as set out in Schedule A of this By-law.

(2) The Municipality may by resolution alter the trading days and hours contained in Schedule -All of this By-law.

(3) A departure from the days and times listed in Schedule A shall only occur upon an application being made to the Municipality in terms of section 5 of this By-law.

Extension of trading hours

3. MPOFANA MUNICIPALITY BY-LAW

(1) Where a trader desires to depart from the trading days and hours set out in Schedule A of this by-law, an application to the Municipality may be made, after paying a non-refundable prescribed fee, for an extension of the trading hours.

(2) The Municipality, when considering such application, shall take into account —

- (a) the area in which the premises is based;
- (b) the impact on the environment in that area; (c) the impact on the community in that area; (d) the impact on businesses in that area;
- (e) any nuisance that may be caused; and
- (f) Any other relevant factor.

(3) The Municipality must consider the application and subject to its discretion decide to grant or decline such application based on subsection (2) above.

(4) The Municipality reserves the right to determine the duration of the extended trading days and hours and to impose any other condition.

(5) Where an application is refused, the Municipality shall provide the applicant with written reasons for the refusal.

Powers of officials

(1) An authorised official may request a liquor trader to produce their liquor license upon demand.

(2) Where an authorised official suspects that an establishment is selling liquor outside of the designated time frame as set out in Schedule A, they may enter such premises to conduct an inspection.

Offences

(1) An offence is committed where a trader or an employee of a trader-

- (a) interferes with or hinders the inspection and the investigation of an official; (b) fails to comply with an instruction of an official;
- (c) fails to produce a liquor license;
- (d) is not in possession of an extended days and hours trading permit and trades outside of the trading days and hours prescribed within Schedule A; or
- (e) contravenes any other section of this by-law.

(2) It is an offence for a person to drink in public within the jurisdiction of the municipality.

Penalties

(1) A warning shall be issued against a trader or an employee of a trader who contravenes this by-law.

- (2) The warning shall include the following:
- a) the name of the trader or employee of the trader;
 - b) the offence;
 - c) the steps to be taken by the trader or the employee of a trader to rectify the offence;
 - d) the period within which the offence may be rectified by the trader or the employee of a trader; and
 - e) consequences where the offence remain unrectified after the expiry of the period contemplated in 8(2)(d).
- (3) Where a trader or an employee of a trader is found guilty of an offence in terms of this by-law, s/he shall be liable on conviction to—
- (a) a minimum fine of R2 000-00 and a maximum of R3 000 000-00; (b) imprisonment for a minimum period of 2 years; or
 - (c) both a fine and imprisonment.
- (4) Upon conviction all liquor products will be confiscated and destroyed
- (5) All fines and sentences imposed are subject to the discretion of the chief magistrate.

Appeals

- 9.(1) A person whose rights are affected by a decision taken by the Head of Health or any authorised official in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons thereof to the Municipal Manager within 21 days of the date of the notification of the decision.
- (2) The Municipal Manager must promptly submit the appeal to the appropriate appeal authority.
- (3) The appeal authority must commence with an appeal within 6 weeks and decide the appeal within a reasonable period.
- (4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.
- (5) The appeal authority must furnish written reasons for its decision on all appeal matters.
- (6) All appeals lodged are done so in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.
- (7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

Delegations

5. MPOFANA MUNICIPALITY BY-LAW

10.(1) Subject to the Constitution and applicable national and provincial laws, any – (a) power, excluding a power referred to in section 160(2) of the Constitution; (b) function; or (c) duty

conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the –

- (a) entity or person issuing the delegation or sub-delegation; (b) recipient of the delegation or sub-delegation;
- (c) conditions attached to the delegation or sub-delegation; and

Short title and commencement

11. This By-law is called the Mpofana Municipality: Liquor Trading Days and Hours By-law, 2021, and takes effect on the date of publication in the *Provincial Gazette*.

SCHEDULE A

CATEGORY A ONSITE CONSUMPTION	TRADING DAYS	TRADING HOURS
Accommodation Establishments	Daily	10h00-02h00
Restaurants	Daily	10h00-02h00
Clubs	Daily	10h00-02h00
Night Clubs	Daily	10h00-02h00
Casinos	Daily	24 hours
Sports Facilities	Daily or whenever in use	10h00- 23h00
Pub	Daily	10h00-02h00
Tavern	Daily	10h00-24h00
Theatres	Daily	10h00-24h00
Restaurants	Daily	10h00-02h00
CATEGORY B OFFSITE CONSUMPTION	TRADING DAYS	TRADING HOURS
Liquor Store	Monday -Friday	08h00-20h00
	Saturday	08h00-17h00
	Sunday	10h00-15h30
Grocers Wine and Liquor Store	Monday -Friday	08h00-20h00
	Saturday	08h00-17h00
	Sunday	10h00-15h30
CATEGORY C SPECIAL EVENTS	TRADING DAYS	TRADING HOURS
Event days	Any Day	Trading days and hours are subject to the permit issued by the council
CATEGORY D	TRADING DAYS	TRADING HOURS
Micro Manufacturers	Daily	07h00-22h00

