

## **KOUGA LOCAL MUNICIPALITY**

### **BY-LAW ON THE SALE OF LIQUOR AND THE REGULATING OF TRADING HOURS FOR LICENCED UNDERTAKINGS AND MATTERS INCIDENTAL THERETO**

To provide for the control of undertakings for selling liquor to the public in order to ensure a safe and healthy environment in the Kouga Municipal Area; to provide for hours of trade in liquor by licensed undertakings that sell liquor to the public; and to provide for matters incidental thereto.

#### **Preamble**

**WHEREAS** a municipality has competence in terms of Section 156(1) (a) read with Part B of Schedule 5 to the Constitution of the Republic of South Africa, 1996, to control undertakings that sell liquor to the public;

**WHEREAS** a municipality may, in terms of Section 156(2) 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 only permit the sale of liquor from correctly zoned premises in terms of the applicable zoning schemes of the municipality;

**WHEREAS** it is the intention of the municipality to set trading hours for all licensed undertakings situated within the Kouga Municipal area that sell liquor to the public;

**AND NOW THEREFORE, BE IT INACTED** by the Kouga Local Municipality, as follows:

#### **1. Definitions**

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

**“affected person”** means a person whose existing rights will be affected, negatively or positively, by the granting of a liquor license;

**“backpackers lodge”** means a building where lodging is provided per bed or room and such lodging may incorporate cooking, dining and communal facilities or communal areas for the use by lodgers, together with such outbuildings which are normally associated therewith, but does not include a hotel, dwelling house, second dwelling house or group house;

**“bed and breakfast”** means a dwelling-house, or a second dwelling house attached to the main dwelling-house, in which the owner supplies lodging and meals for compensation by transient guests who have permanent residence elsewhere, provided that –

- a) in the case where the second dwelling house is attached to the main dwelling-house, the primary use of the main dwelling-house shall remain for the accommodation of a single family;
- b) no more than three (3) rooms per land unit may be used for the accommodation of paying guests or lodgers; and
- c) the property complies with the applicable zoning scheme for a bed and breakfast establishment.

**“Club”** includes a sports club, community or service club, or any other amenity or facility that sells liquor to its members or invited guests;

**“Council”** means the municipal council of Kouga Municipality;

**“Conducting business”** means the selling of liquor and associated items such as soft drinks, snacks, tobacco products etc. from licensed premises;

**“Designated official”** means a person who has been appointed by the municipality to implement any specific duty relative to this by-law;

**“Guest house”** means a dwelling house or second dwelling consisting of not more than 15 rooms or 30 guests and which –

- a) is in an establishment which exceeds the restrictions of a bed and breakfast establishment;
- b) is used for the purpose of supplying lodging and meals to transient guest for compensation; and
- c) may include facilities for business meetings or training sessions of guests on the property.

**“Hotel”** means a property used to provide accommodation and meals for transient guests and may include –

- a) a restaurant or restaurants which forms part of the hotel;
- b) conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel;
- c) premises which are licensed to sell liquor for consumption on the property;  
and
- d) a motel.

**“Licensed Undertaking”** means any licensed premises, business or outlet from which liquor is sold and includes the following:

- a) Guest house that sells liquor to its guests only;
- b) A bed and Breakfast establishment that sells liquor to its guests only; and
- c) A backpacker’s lodge that sells liquor to its guests.

**“liquor”** means any liquid or substance containing more than 1% of alcohol by volume or mass, but excludes –

- a) methylated spirits
- b) medicine which is subject to registration in terms of the Medicines and Related Substances Act, 1965 (Act 101 Of 1965); and
- c) any other liquid substances containing alcohol which are not intended for human consumption.

**“Liquor Authority”** means the Eastern Cape Liquor Authority established by Section 2 (1) of the Act;

**“municipality”** means the Municipality of Kouga established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, Provincial Notice 484 dated 22 September 2000 and includes any political structure, political office bearer, councillor, duly authorized agent or employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

**“Place of entertainment” mean** a place used predominantly for commercial entertainment which may attract relatively large numbers of people, operate outside normal business hours and generate noise from music or revelry on a

regular basis, and includes a cinema, theatre, amusement park, dance hall, gymnasium, pool or billiard-room or any other similar place.

**“Premises”** means any private or public land adjoining, or in close proximity to, a licensed undertaking;

**“Residential premises”** means an erf that is situated in an area the has been designated for residential purposes in term of the municipality’s zoning schemes;

**“Room service”** means a call-up service provided by a hotel, a bed and breakfast establishment or a guest house for registered paying guests and includes a mini bar or self-help facility situated in guest rooms.

**“Tavern”** means any premises from which liquor is sold and includes shebeens, pubs and night clubs.

**“The Act”** means the Eastern Cape Liquor Act, 2003 (Act no. 10 of 2003) and includes any regulation or notice made or issued under the act.

**“Zoning scheme”** means the zoning schemes applicable to the Kouga Municipality’s area of jurisdiction.

## 2. **Application of By-laws**

These By-laws apply to all premises on which liquor is sold within the municipality’s area of jurisdiction

## 3. **Ward Committee consultative meetings**

(1) A Ward Committee must, upon receipt of a notice of application for registration, hold a consultative meeting with the owners of immovable property in the immediate vicinity of premises for which an application has been received to discuss and solicit their views with regard to the application as is required in terms of Section 22(2)(d)(1) of the Act.

(2) The Ward Committee must compile a report and submit it to the municipality, stipulating the date, time, the names and the addresses of the people who attended the consultative meeting, indicate whether it objects to or supports the application and what additional conditions it proposes, if any.

(3) The Municipality must keep a record all reports submitted to it by a Ward Committee in a register, which register shall be controlled by the Director for Administration, Monitoring and Evaluation, who will be responsible for all administrative procedures to take the application to finality.

- (4) The Municipality must consider the report submitted to it by a Ward Committee in terms of regulation 3(2) of this by-law, and submit recommendations to the Board regarding the application for registration in terms of Section 20 of the Act.
- (5) For the purpose of considering a report as contemplated for in regulation 3 (2) a Ward Committee may request an official to undertake an investigation, or request any further information that could have a bearing on the outcome of the application.

#### **4. Recommendations by Ward Committee**

- (1) A Ward Committee may not make any recommendations in respect of any application received where the premises for which the application is made is situated within a radius of 100 meters of any school or church.
- (2) The Ward Committee may request the municipality to act on any complaints received from the community for any nuisance caused by any liquor undertaking.

#### **5. Rules in relation to selling liquor**

- (1) No liquor may be sold to persons under the age of 18.
- (2) No persons under the age of 18 may be allowed into any tavern.
- (3) No person may sell liquor from an RDP house.

#### **6. Trading hours for consumption of liquor on licensed premises**

- (1) Licensed undertakings may sell liquor for consumption on licensed premises situated within the area of jurisdiction of the Municipality on any day of the week from Monday to Sunday during the hours as set out in Schedule 1
- (2) A hotel or licensed guest house may provide a room service 24 hours per day for seven days per week.

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

- (1) Undertakings licensed to sell liquor by the Liquor Licensing Authority in terms of section 20(a) of the Act, may sell liquor for consumption from the licensed premises of such undertakings situated within the area of jurisdiction of the Municipality during the hours as set out in the Schedule 1

## **8. Selling of liquor at times other than provided for in this by-law**

- (1) The municipality may, on application, grant written consent to a licensed undertaking to sell liquor at hours other than those stipulated in Schedule 1 of this by-law. Such approval must be obtained prior to commencing any trading within the amended trading hours.
- (2) A licensed undertaking who wishes to deviate from the trading hours as provided for in Schedule 1 must apply to the municipality in writing by completing the application form contained in Schedule 2.
- (3) The municipality may, after consideration of the application, refuse or approve the application and should the application be approved the municipality may impose any conditions or restrictions it may deem necessary and record these in section C of the application form contained in Schedule 2.
- (4) A trader who has been granted consent in terms of subsection (3), must display, in a conspicuous place on the premises, a copy of the form on which the consent of the Municipality has been recorded.
- (5) A trader who contravenes subsection (1) or (4), 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.

## **9. Offences and penalties**

- (1) A person who contravenes any sections of this By-law shall be guilty of an offence.
- (2) A person who commits an offence referred to in subsection (1) shall on conviction be liable to a fine not exceeding R30 000,00 or to a term of imprisonment not exceeding three years, or both such fine and such imprisonment. In the case of a continuing breach of this by-law the Municipality has the right to withdraw its support for the license and request the Liquor Board to terminate the license.

## **10. Liaison Forum**

- (1) The municipality may establish one or more liaison forums in a community for the purposes of obtaining community participation with regard to the matters dealt with in this by-law.
- (2) A liaison forum may consist of –

- (a) a member of members of an interest group, or an affected person;
  - (b) a designated official or officials of the municipality; and
  - (c) a the Ward councilor.
- (3) The municipality may, when considering an application in terms of this By-law, request the input of a liaison forum.
- (a) A liaison forum may on its own initiative submit any relevant input to the municipality for consideration.
- (4) Notwithstanding the community participation process as provided for in this Section no Liaison forum shall have powers greater than those of a Ward Committee.

#### **11. Noise Pollution**

All complaints received relative to noise will be dealt with in terms of the by-laws on public nuisances.

#### **12. Cleanliness of premises**

All issues relative to the keeping of premises clean and free of bottles, cans, plastic containers etc. will be dealt with in terms of the Public Health By-law.

#### **13. Residential premises**

The municipality may designate different trading hours and may impose specific conditions on trade for licensed undertakings that are situated in a residential area.

#### **14. Appeal**

A person, or persons, whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice and stating the reasons therefore, in terms of Section 62 of the Local Government Municipal Systems Act, Act 32 of 2000, to the Municipal Manager within 21 days of the date of the notification of the Councils decision.

#### **15. Short title and commencement/review or repeal**

These By-laws may be cited as Kouga Municipality By-law on the sale of Liquor and the regulating of Trading Hours for licensed undertakings and matters incidental thereto and comes into force upon publication in the Provincial Gazette.

- a. This by-law will be reviewed as and when necessary and any amendments made will be effective from the date that it is published in the Provincial Gazette;
- b. This by-law will remain in force in its entirety until it is amended, replaced or repealed.



## SCHEDULE 1

<b>TYPES OF REGISTRATION</b>	<b>EXAMPLES OF OUTLETS OR ESTABLISHMENT</b>	<b>APPROVED TRADING HOURS</b>
Registration in terms of S20(a) of the Act for the retail sale of liquor for consumption off the premises where liquor is sold	Retail warehouse, retail liquor or bottle store, shop, off sales etc.	Monday – Saturday 09:00 – 20:00 Sunday 09:00 – 18:00
Registration in terms of S20 (b) of the Act for the retail sale of liquor for consumption on the premises where liquor is sold. <b>Category 1</b>	Clubs Nightclub, pool bars, pubs, place of entertainment.	Monday – Thursday 10:00 -24:00 Friday - Saturday 10:00 – 02:00 Sunday 10:00 – 24:00
Registration in terms of S20(b) of the Act for the sale of liquor for consumption on the premises where liquor is sold. <b>Category 2</b>	Hotels and restaurants	Monday – Friday 09:00 – 24:00 Saturday & Sunday 09:00 – 24:00
Registration in terms of S20(c) of the Act for the retail sale of liquor for consumption on and off the premises where liquor is sold	Taverns	Off consumption Monday - Saturday 09:00 – 20:00 Sunday 10:00 - 22:00 On consumption Monday - Thursday 10:00 - 24:00 Friday – Saturday 10:00 -02:00 Sunday 10:00 – 22:00
Registration in terms of S20 (d) of the Act for the retail sale of liquor for special event.	Concert, Festival, sporting and entertainment events	Trading hours to be determined by the Events Committee per event.

Registration in terms of S20 (e) of the Act for micro manufacturing	Wholesale, warehouse and micro manufacturing	Monday – Friday 09:00 – 18:00 Saturday 09:00 -15:00
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**SCHEDULE 2**

**APPLICATION TO SELL LIQUOR OUTSIDE TRADING HOURS**

**A. APPLICANT**

Name: .....

I.D. Number: .....

Address: .....

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Telephone no.: .....

**B. PARTICULARS**

Address (street name and number) of the premises on which the liquor will be sold or supplied: .....

Reason why this application is made: .....

Anticipated volume of liquor that will be consumed: .....

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

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

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Signed.....  
**(Applicant)**

Date.....

**C. CONDITIONS OF APPROVAL**

Dates and hours on which liquor will be sold or supplied (be specific e.g. 14:00 – 23:00

on 3 June, 2012): .....

Any other conditions.....

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Signed ..... Date .....  
*(Designated official of municipality)*

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**Approved by the Council : 12 July 2013**  
**Item No. : 13/07/AME1**  
**Gazette : 11 November 2013**