

TOWNSHIPS (LOBATSE TOWN COUNCIL)
(RETAIL SALES OF TRADITIONAL BEER) BYE-LAWS, 1971
ARRANGEMENT OF BYE-LAWS

Bye-Law

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Statutory Instrument No. 41 of 1971

TOWNSHIPS PROCLAMATION (CHAPTER 120)

TOWN COUNCIL REGULATIONS

(L.N. 37 OF 1966)

TOWNSHIPS (LOBATSE TOWN COUNCIL)
(RETAIL SALES OF TRADITIONAL BEER) BYE-LAWS, 1971

In the exercise of the powers vested in it by regulation 31 of the Town Council Regulations, 1966 the Lobatse Town Council has made the following bye-laws —

Inter-
pretation

Citation:

69 of 1960

Traditional
beer to be
sold or
bought only
on licensed
premises

Traditional
beer to be
consumed on
licensed
premises
only if
licensed for
on-consump-
tion

Applications
for licences
and renewals

1. These bye-laws may be cited as the Townships (Lobatse Town Council) (Retail Sales of Traditional Beer) Bye-Laws, 1971.

2. In these bye-laws, unless the context otherwise requires –

“Council” means the Lobatse Town Council;

“licensed” means licensed in terms of these bye-laws;

“licensee” means the occupier of licensed premises;

“*lotwapa*” means a customary residential precinct;

“township” means the area of jurisdiction of Lobatse Town Council;

“traditional beer” means (i) beer brewed from sorghum-meal or a mixture of sorghum-meal and mealie-meal by the fermentation of malted sorghum, but excluding the liquors commonly known as “*ila*”, “*kabidikama*” or “*banyana*”, or any beer brewed as described to which sugar, honey or syrup has been added or which is mixed with or fortified or adulterated by any other liquor or substance, or any other of the liquors commonly known as “*khadi*”; or (ii) any other liquor which the President has, by notice in the Gazette, declared to be traditional beer for the purposes of the Liquor Proclamation, 1960.

3. (1) No person shall sell or buy any traditional beer by retail within the township except in a beerhall conducted by the Council, or on premises on which the sale of intoxicating liquor is permitted under the Liquor Proclamation, 1960, or on premises licensed in terms of these bye-laws:

Provided that within the boundaries of a *lotwapa* traditional beer may be sold by and bought from any person engaging, for the purpose of subsistence or the maintenance and education of children, in the sale of traditional beer.

(2) A licence shall be in the form in the Schedule hereto.

4. No person shall consume traditional beer, or permit traditional beer to be consumed, on licensed premises unless such premises are licensed for the sale of traditional beer for consumption on the premises.

5. (1) An application for the licensing of premises for the sale of traditional beer by retail shall be made by the occupier of such premises to the Council and shall specify whether the applicant seeks a licence for –

(a) sale for consumption on the licensed premises;

(b) sale for consumption off the licensed premises; or

(c) sale for consumption both on and off the licensed premises.

(2) An application for the renewal of a licence of premises for the sale of traditional beer by retail shall be made to the Council by the occupier of such premises.

(3) No application shall be made unless the applicant has given not less than 21 days' notice of his intention to apply in a newspaper circulating in the township and in writing to the principal police officer of the township and the Medical Officer of Health.

6. (1) Subject as herein, the Council on consideration of an application made in terms of the last preceding bye-law shall grant such application in respect of a type of sale covered thereby, and may attach such conditions to the issue or renewal of a licence as it may determine, which shall be endorsed on the licence at the time of its issue or renewal. Grant and renewal of licences

(2) Subject as herein, an application for the grant or renewal of a licence in respect of sale both for consumption on the premises and for consumption off the premises may be granted in respect of either or both.

(3) The Council shall refuse to grant or renew a licence unless, after giving the applicant an opportunity of being heard, it is satisfied –

- (a) that the applicant (or in the case of an applicant company the person responsible for its management and the management of the premises) is of good character and repute and otherwise fit and proper to carry on the sale of traditional beer by retail;
- (b) that having regard to situation, construction, state of repair, accommodation and equipment, the premises are suitable for the type of sale for which the licence is sought;
- (c) that the premises are not used or proposed to be used for purposes which are in any way improper or undesirable in relation to their use for the sale of traditional beer; and
- (d) that the applicant has complied with these bye-laws with respect to applications for licences.

(4) The Council may refuse to grant a licence if it is of the opinion that sufficient licences under these regulations have been issued in respect of the year for which the application is made.

(5) Premises may be licensed for the sale of traditional beer for consumption on the premises only if they are used exclusively for the sale of such traditional beer, non-alcoholic liquids and tobacco and of foodstuffs served for consumption on the premises.

(6) No person shall sell goods other than those provided for in sub-bye-law (5) on premises licensed for the sale of traditional beer for consumption on the premises.

(7) The Council may approve an application in principle but withhold the granting of a licence or renewal until it is satisfied from an inspection of the premises or otherwise that any condition affecting the structure or equipment of the premises which it is proposed to attach, or which has been attached, to the licence has been fulfilled.

(8) There shall be charged on every licence granted under these bye-laws and on the renewal of every such licence –

- (a) in the case of a licence for sale for consumption on the premises, a fee of R50, or, if the licence be granted after the 30th June in any year, a fee of R25 for such grant;
- (b) in the case of a licence for sale for consumption off the premises, a fee of R20, or, if the licence be granted after the 30th June in any year, a fee of R10 for such grant;
- (c) in the case of a licence for both the said purposes, a fee of R70, or, if the licence be granted after the 30th June in any year, a fee of R35 for such grant.

Period and renewal of licences

7. Subject to bye-laws 8 and 11, a licence shall remain in force until the 31st December following the date upon which it takes effect and be capable of being renewed on application made before its expiration.

Lapse on change of occupier

8. (1) If any change of occupier of any licensed premises occurs, the licence shall thereupon lapse:

Provided that in the event of the death of a licensee the Council shall, if the right to occupy the premises vests in the estate of the deceased, endorse the licence, on application by the representative of the estate, with his name, but unless so endorsed a licence shall lapse at the expiration of one month after the death of a licensee.

(2) There shall be charged on every such endorsement a fee of R5.

Duplicate licences

9. The Council, if satisfied that a licence has been lost or destroyed, shall on payment of a fee of 50 cents authorise the issue of a duplicate to the licensee.

Breach of conditions of licence

10. No licensee shall contravene any condition attached to the licence granted in respect of the premises occupied by him.

Revocation of licence

11. Upon the conviction of any licensee of any offence under these bye-laws the Council may revoke his licence.

Fees to be paid into General Fund

12. All fees collected in terms of these bye-laws shall be paid into the General Fund of the Council.

Appeal and review

13. (1) Any person aggrieved by any decision of the Council under these bye-laws may within 30 days thereof give notice of appeal therefrom

in writing to the Council, and in such notice shall set forth his grounds of appeal.

(2) On receiving any notice of appeal under the preceding subbye-law, the Council shall refer the appeal to the Minister who shall have power to confirm or vary the decision.

14. (1) Subject to subbye-law (4) on premises licensed for the sale of traditional beer for consumption on the premises no traditional beer shall be consumed except between 8 a.m. and 10.30 p.m. on any day other than Good Friday. Permitted hours

(2) Subject to subbye-law (4) no traditional beer shall be sold on licensed premises except between 8 a.m. and 10.30 p.m.:

Provided that on licensed premises to which the Shop Hours Proclamation applies and which are licensed for consumption off the premises, traditional beer may be sold for consumption off the licensed premises only during such hours as may be applicable under that Proclamation. Cap. 158

(3) No licensed premises shall be open to the public except during the hours when traditional beer may be sold thereon.

(4) On Good Friday no licensed premises shall be open.

15. Every licensee shall –

- (a) maintain the licensed premises at all times in a clean and sanitary condition and in good repair;
 - (b) keep all utensils, vessels, containers, linen, towels, cloth, furnishings and other articles used in the conduct of his business in a clean and sanitary condition and in good repair;
 - (c) sell or cause to be sold no drink which is not sound and wholesome;
 - (d) provide and maintain suitable means for protecting all foodstuffs and drinks on the premises from contamination by dust, dirt, flies and other causes of contamination; and
 - (e) provide latrines for the staff of the licensed premises and in addition, in the case of premises licensed for the sale of traditional beer for consumption on the premises, adequate separate latrines for male and female customers.
- Sanitary conditions to be maintained

16. (1) No licensee shall sell or supply traditional beer to any person whom he knows or has reason to believe is under 18 years old. Restrictions on sale of traditional beer to young persons etc.

(2) A person under 18 years old shall not consume or buy or attempt to buy traditional beer on licensed premises.

(3) No licensee shall sell to or permit any traditional beer to be consumed on the licensed premises by a person whom he knows or has reason to believe is under 18 years old.

(4) No person shall buy or attempt to buy traditional beer on licensed premises for consumption on those premises by a person whom he knows or has reason to believe is under 18 years old.

(5) No licensee shall employ on licensed premises any person whom he knows or has reason to believe to be under 18 years old, nor, except in such circumstances as the Council may specify in the licence, shall he allow any such person to enter the licensed premises.

Only licensees and employees to sell on licensed premises

17. No person shall sell, and no licensee shall permit any person to sell, traditional beer by retail on licensed premises unless such person is an employee of the licensee of those premises or is himself licensed in respect thereof.

Drunkenness etc. not to be permitted on licensed premises

18. (1) No licensee shall permit drunkenness, violent or riotous conduct to take place on the licensed premises.

(2) No licensee shall sell traditional beer to, or for consumption on the licensed premises by, any person who appears to be drunk or who is violent or riotous.

Rights of licensee to refuse admission etc.

19. (1) Without prejudice to any other rights to refuse a person admission to any premises or to expel a person from premises, a licensee or his manager, agent or servant, may refuse to admit to, or may expel from, the licensed premises any person who is drunk, violent or disorderly, or whose presence on his premises would subject the licensee to a penalty under these bye-laws or any other written law.

(2) If a person liable to be expelled from licensed premises under these bye-laws is requested by the licensee, his manager, agent or servant, or by any member of the Botswana Police, to leave the premises, that person shall leave the licensed premises forthwith.

Licensed premises not to be a brothel etc.

20. No licensee shall permit the licensed premises to be a brothel or to be an habitual resort or place of meeting of reputed prostitutes.

Prohibition of making structural alterations to licensed premises

21. No structural alteration or addition to any licensed premises and no material alteration in the internal arrangement of such premises shall be made except with the written approval of the Council.

Inspection of premises by police etc.

22. (1) Any member of the Botswana Police and any person duly authorised in writing for the purpose by the Council or the Medical Officer of Health may at any time enter and inspect any licensed premises for the purpose of detecting an offence or of observing the state of repair and sanitary condition of such premises or of ensuring that a licensee is complying with any conditions of his licence.

(2) No licensee shall refuse or fail to admit any person referred to in sub-by-law (1) to such premises.

23. (1) If any serious breach of the peace occurs or is expected to occur, any District Officer or Senior District Officer or member of the Botswana Police of or above the rank of Superintendent may order any licensed premises in or near the place concerned to be closed for such period as he may think fit and any person carrying out such order may use such force as may be reasonably necessary to close such premises.

Closing of licensed premises on serious breach of peace or danger to public health

(2) Where in the opinion of the Minister a danger to public health would be likely to be created thereon, the Minister may order any licensed premises to be closed for such period as he may think fit.

(3) No person shall resist or obstruct an order given under this bye-law.

24. (1) Whenever the manager, agent or servant of a licensee does or omits to do anything which if done or omitted to be done by the licensee would be in contravention of these bye-laws, then except in the circumstances set out in subby-law (2) that licensee shall be deemed to have contravened the bye-laws.

Criminal responsibility of employer and employee

(2) Subbye-law (1) shall not apply where –

- (a) in doing or omitting to do that thing, the manager, agent or servant, was acting without the licensee's knowledge, consent or connivance; and
- (b) all reasonable steps were taken by the licensee to prevent any act or omission of the kind in question:

Provided that the fact that the licensee issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(3) A manager, agent or servant of a licensee who does or omits to do anything which if done or omitted to be done by the licensee would be in contravention of these bye-laws shall be deemed himself to have contravened the bye-laws.

25. Every licensee shall display in a conspicuous place inside the premises a copy of his licence and of these bye-laws.

Licence and bye-laws to be displayed

26. (1) Any person who contravenes bye-laws 3, 6(5), 18(1) or 20 shall be guilty of an offence and liable to a fine of R200 and to imprisonment for 6 months.

Penalties

(2) Any person who contravenes bye-laws 4, 14, 15, 16, 17, 18(2), 22(2) or 23(3) shall be guilty of an offence and liable to a fine of R100 and to imprisonment for 3 months.

(3) Any licensee who contravenes bye-law 10 shall be guilty of an offence and liable to a fine of R100 and in the case of a continuing offence to an additional fine of R10 for every day during which the offence continues:

Provided that the Court, if it thinks fit, may fix a reasonable period from the date of conviction for compliance with the condition in question; and where the Court has fixed such a period the daily penalty shall not be recoverable in respect of any day before the expiration thereof.

(4) Any person who contravenes bye-law 19 (2) shall be guilty of an offence and liable to a fine of R20.

(5) A licensee of any premises which are altered contrary to bye-law 21, or a licensee who contravenes bye-law 25, shall be guilty of an offence and liable to a fine of R20, and, in the case of a continuing offence, to a further fine of R10 for every day during which the offence continues.

SCHEDULE

Lobatse Town Council

Licence to use premises for the Retail sale of Traditional Beer

(Name) is hereby licensed, in accordance with the Townships (Lobatse Town Council) (Retail Sales of Traditional Beer) Bye-laws, 1971 to use the premises specified below until 31st December, 19 .., for sale by retail of traditional beer for consumption on the premises*/for consumption off the premises.*

This licence is subject to the following conditions –

.....
.....

Premises

Date of issue

Fee paid

*Delete if inapplicable. Town Council Clerk.

Date of Renewal Date of Renewal

Fee paid Fee paid

Date of Renewal Date of Renewal

Fee paid Fee paid

Date of Renewal Date of of Renewal

Fee paid Fee paid

Made the 11th day of November, 1970.

T. MAYHEW,
Town Clerk

Approved by the Minister of Local Government and Lands on the 19th day of March, 1971.

R.N. MANNATHOKO,
Permanent Secretary,

Ministry of Local Government and Lands, GABORONE.
L2/8/11.