

Statutory Instrument No. 115 of 1980

TOWNSHIPS ACT
(Cap. 40:02)

JWANENG TOWNSHIP REGULATIONS, 1979
(S.I. 52 of 1979)

**JWANENG TOWNSHIP AUTHORITY (CONTROL OF RETAIL SALES
OF TRADITIONAL BEER) BYE-LAWS, 1980**

(Published on 19th September, 1980)

BYE-LAW

1. Citation
2. Interpretation
3. General restriction on sale of traditional beer by retail
4. Application for issue, renewal or transfer of traditional beer licence
5. Issue or renewal of traditional beer licence
6. Transfer of traditional beer licence
7. Appeal to Minister against decision of Township Authority
8. Issue of duplicate of traditional beer licence
9. Fees in connexion with traditional beer licence
10. Period of validity of traditional beer licence
11. Restriction on consumption of traditional beer on licensed premises
12. Permitted hours on licensed premises
13. Penalties for breach of condition attached to traditional beer licence
14. Duties of licensee
15. Restriction on sale or supply of traditional beer on licensed premises to person under 18
16. Only licensee or his servant may sell traditional beer on licensed premises
17. Drunkenness or violent or disorderly conduct not to be permitted on licensed premises
18. Power of licensee to refuse admission to or to expel from licensed premises
19. Licensed premises not to be used as brothel
20. Prohibition of making structural alteration or addition to licensed premises
21. Copy of licence and of Bye-laws to be displayed inside licensed premises
22. Power to inspect licensed premises
23. Power to close licensed premises on serious breach of peace or threat to public health
24. Imputed criminal liability of licensee and of licensee's servant
25. Power of Township Authority to cancel traditional beer licence on conviction of licensee

SCHEDULE

IN EXERCISE of the powers conferred on the Jwaneng Township Authority by regulation 15 of the Jwaneng Township Regulations, 1979, the following Bye-laws have been made and subsequently approved by the Minister of Local Government and Lands —

1. These Bye-laws may be cited as the Jwaneng Township Authority (Control of Retail Sales of Traditional Beer) Bye-laws, 1980. Citation

2. In these Bye-laws — Inter-
"Executive Officer" means the Executive Officer of the Township pretation
Authority:

“licensed premises” means premises in respect of which a traditional beer licence is in force;

“licensee” means the holder of a traditional beer licence;

“Township” means the Jwaneng Township as the same is defined from time to time under the Townships Act;

“Township Authority” means the Jwaneng Township Authority;

“traditional beer” means —

- (a) 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 “*banyuna*”) 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
- (b) any other liquor which the President, by notice published in the Gazette, has declared to be traditional beer for the purposes of the Liquor Act.

Cap. 45:01
General
restriction
on sale of
traditional
beer by
retail

3. (1) No person shall sell or buy traditional beer by retail within the Township except —

- (a) in a beerhall conducted by the Township Authority;
- (b) on premises in respect of which a licence issued under the Liquor Act (other than a provisional licence) is in force; or
- (c) on premises in respect of which a licence issued under these Bye-laws (hereinafter referred to as a “traditional beer licence”) is in force.

(2) Any person who contravenes this bye-law shall be guilty of an offence and liable to a fine of P200 and to imprisonment for 6 months.

Application
for issue,
renewal
or transfer
of traditional
beer licence

4. (1) In order to make an application for the issue or renewal of a traditional beer licence or for the transfer of such a licence to another person the occupier of the premises in respect of which the licence is sought or is in force, as the case may be, shall lodge an application in writing, in such form as the Township Authority may require, with the Executive Officer.

(2) Every application for the issue of a traditional beer licence shall state whether a licence is sought authorizing the sale of traditional beer for consumption —

- (a) on the premises in question;
- (b) off the premises in question; or
- (c) both on and off the premises in question.

(3) No application for the issue or renewal of a traditional beer licence shall be made unless the applicant, not less than 21 days immediately before the application is made, has given notice of his intention to make the application and of the particulars thereof in a newspaper circulating within the Township and in writing served on the principal police officer and the Government Medical Officer of Health stationed within the Township.

(4) No application for the renewal of a traditional beer licence shall be made after the licence expires.

(5) Where an application is made in accordance with this bye-law, the Executive Officer shall place the application before the Township Authority at its meeting next after the date on which the application was made.

5. (1) Subject to the other provisions of this bye-law, the Township Authority shall –
- Issue or
renewal of
traditional
beer licence
- (a) grant every application for the issue of a traditional beer licence, whereupon the Executive Officer shall issue a licence authorizing the kind of sale for which authorization was sought; and
 - (b) grant every application for the renewal of a traditional beer licence, whereupon the Executive Officer shall endorse the licence to the effect that it has been renewed:

Provided that the Township Authority may –

 - (i) attach to the licence such conditions as it thinks appropriate, which conditions shall be clearly written in the licence by the Executive Officer; and
 - (ii) where an application is for the issue of a licence authorizing the sale of traditional beer for consumption both on and off the premises in question or for the renewal of a licence already authorizing both kinds of sale, direct the Executive Officer to issue a licence authorizing one kind of sale alone or to alter the existing licence to authorize one kind of sale alone.
- (2) The Township Authority shall not grant an application for the issue or renewal of a traditional beer licence unless it is satisfied –
- (a) that the person to whom the licence is to be issued or the holder of the existing licence, as the case may be, is or remains of good character and repute and otherwise a fit and proper person to sell traditional beer by retail;
 - (b) that, having regard to their situation, construction, state of repair, accommodation and equipment, the premises in question are or remain suitable for the kind of sale to be authorized by the licence;
 - (c) that the premises in question are not used or likely to be used for a purpose which is in any way improper or undesirable in connexion with the use of those premises for the sale of traditional beer; and
 - (d) that the application has been made in accordance with these Bye-laws.
- (3) The Township Authority may refuse to grant an application for the issue of a traditional beer licence if it is of the opinion that sufficient such licences are already or are likely to be in force in respect of the period for which such licence would otherwise have been in force unless renewed.
- (4) The Township Authority may approve in principle an application for the issue or renewal of a traditional beer licence but withhold granting the application until it is satisfied (by inspection or otherwise) that any condition in relation to the construction, state of repair, accommodation or equipment of the premises in question, which it proposes to attach or has already attached to the licence, is being observed.
- (5) No traditional beer licence shall be issued to any company, society, partnership or other association of persons; but this sub-bye-law shall not prohibit the issue of such a licence to the nominee of a company, society, partnership or other association of persons.
6. (1) Subject to the other provisions of this bye-law, the Township Authority shall grant every application for the transfer of a traditional beer licence to another person, whereupon the Executive Officer shall
- Transfer of
traditional
beer licence

endorse the licence to the effect that it has been transferred to the other person concerned.

(2) The Township Authority shall not grant an application for the transfer of a traditional beer licence to another person unless it is satisfied —

(a) that the person to whom the licence is to be transferred is of good character and repute and otherwise a fit and proper person to sell traditional beer by retail; and

(b) that the application has been made in accordance with these Bye-laws.

(3) No traditional beer licence shall be transferred to any company, society, partnership or other association of persons; but, where the person holding such a licence has been but ceases to be the nominee of a company, society, partnership or other association of persons, steps may be taken in accordance with these Bye-laws to have the licence transferred to a new nominee of that company, society, partnership or other association of persons.

(4) No traditional beer licence shall be transferrable in respect of the premises to which it relates.

Appeal to
Minister
against
decision of
Township
Authority

7. (1) Any applicant for the issue, renewal or transfer of a traditional beer licence who is aggrieved by the Township Authority's decision not to grant his application or as to any term of or condition attached to the licence may appeal against that decision to the Minister by written notice.

(2) Every notice of appeal under this bye-law shall be lodged in duplicate with the Executive Officer within 30 days immediately after the date on which the application was refused or the licence issued or endorsed to the effect that it had been renewed, as the case may be, and the Executive Officer shall forthwith transmit one copy of the notice of appeal to the Minister.

(3) Every notice of appeal under this bye-law shall clearly state —

(a) the appellant's full name, residential address and postal address (if any);

(b) the date on which the application was refused or the licence issued or endorsed to the effect that it had been renewed, as the case may be;

(c) where the appeal is against a decision as to any term of or condition attached to the licence, the full terms and conditions of the licence; and

(d) the grounds on which the appellant contends that his application was wrongly refused or the term or condition in question should be rescinded or altered.

(4) The Minister shall consider every appeal made to him under this bye-law and shall —

(a) in the case of an appeal against a decision of the Township Authority not to grant an application for the issue, renewal or transfer of a traditional beer licence, either dismiss the appeal or allow it, in which last case the Executive Officer shall forthwith issue a licence authorizing the kind of sale for which authorization was sought (unless the Minister otherwise directs under sub-

bye-law (5) (b)) or endorse the licence to the effect that it has been renewed or transferred to the other person concerned, as is appropriate; or

(b) in the case of an appeal against a decision of the Township Authority as to any term of or condition attached to a traditional beer licence, either dismiss the appeal or allow it, wholly or in part, and rescind or alter the term or condition, in which last case the Executive Officer shall forthwith ensure that the terms and conditions set out in the licence accord with the Minister's decision.

(5) Where the Minister allows an appeal under this bye-law against a decision of the Township Authority not to grant an application for the issue or renewal of a traditional beer licence, the Minister may –

(a) attach to the licence such conditions as he thinks appropriate, which conditions shall be clearly written in the licence by the Executive Officer; and

(b) where the application was for the issue of a licence authorizing the sale of traditional beer for consumption both on and off the premises in question or for the renewal of a licence already authorizing both kinds of sale, direct the Executive Officer to issue a licence authorizing one kind of sale alone or to alter the existing licence to authorize one kind of sale alone.

8. (1) In order to replace a traditional beer licence which has been lost or destroyed, the holder thereof shall apply in writing to the Executive Officer for a duplicate of the same.

Issue of duplicate of traditional beer licence

(2) Where the Executive Officer is satisfied that the original licence has been lost or destroyed, he shall grant every application under this bye-law and issue to the applicant a duplicate of the original traditional beer licence.

9. (1) For the issue, renewal or transfer of a traditional beer licence or for the issue of a duplicate thereof, a fee shall be payable to the Township Authority as provided in the Schedule and the fee shall be paid before the licence is issued, renewed or transferred or the duplicate thereof is issued, as the case may be.

Fees in connexion with traditional beer licence

(2) All fees paid in accordance with this bye-law shall be paid into the General Fund of the Township Authority.

10. Every traditional beer licence shall remain in force until and shall expire on 31st December next following the date specified in the licence by the Executive Officer from which it takes effect on issue or renewal unless earlier renewed in accordance with these Bye-laws.

Period of validity of traditional beer licence

11. (1) No person shall consume traditional beer or permit traditional beer to be consumed on licensed premises unless the traditional beer licence in respect of those premises authorizes the sale of traditional beer for consumption on those premises.

Restriction on consumption of traditional beer on licensed premises

(2) Any person who contravenes this bye-law shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.

12. (1) No person shall sell traditional beer on licensed premises except between 8 a.m. and 10.30 p.m. on any day other than Good Friday:

Permitted hours on licensed premises

Cap. 43:04

Provided that, where the traditional beer licence in question authorizes the sale of traditional beer for consumption off the premises and the Shop Hours Act applies to those premises, no person shall sell traditional beer on those premises except during the hours permitted by that Act.

(2) No person shall consume traditional beer or permit traditional beer to be consumed on licensed premises in respect of which the sale of traditional beer for consumption on those premises is authorized except between 8 a.m. and 10.30 p.m. on any day other than Good Friday.

(3) Every licensee shall ensure that the licensed premises are closed to the public except during the hours during which traditional beer may be sold on those premises.

(4) Every licensee shall ensure that the licensed premises are closed to the public on Good Friday.

(5) Any person who contravenes this bye-law shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.

Penalties
for breach
of
condition
attached
to
traditional
beer licence

13. Any licensee who contravenes a condition attached to his traditional beer licence by the Township Authority or by the Minister shall be guilty of an offence and liable to a fine of P100 and, in the case of a continuing offence, to an additional fine of P10 for each day during which the offence continues:

Provided that the court may fix a reasonable period from the date of conviction within which the licensee is to observe the condition in question and, where the court does so, the daily penalty shall not be recoverable in respect of any day before the expiry of that period.

Duties of
licensee

14. (1) Every licensee shall at all times ensure --

(a) that the licensed premises (including any latrines provided in accordance with this bye-law) and all utensils, containers, linen, towels, cloths, furnishings and all other articles used therein are in a clean and sanitary condition and in good repair;

(b) that no drink is sold on the licensed premises which is not wholesome;

(c) that effective means are available for protecting all foodstuffs and drink on the licensed premises from contamination by dust, dirt or flies or by any other agency whatsoever;

(d) that adequate latrines are provided for the staff of the licensed premises and, in the case of licensed premises in respect of which the sale of traditional beer for consumption on those premises is authorized, that adequate separate latrines are provided for men and women customers; and

(e) in the case of licensed premises in respect of which the sale of traditional beer for consumption on those premises is authorized, that the premises are used, in addition to the sale of traditional beer, for the sale only of non-alcoholic drinks and tobacco and of food to be consumed on the premises.

(2) Any licensee who contravenes this bye-law shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.

15. (1) No person shall sell or supply traditional beer on licensed premises to a person whom he knows or has reasonable cause to believe is under 18 years of age. Restriction on sale or supply of traditional beer on licensed premises to person under 18
- (2) No person shall permit traditional beer to be consumed on licensed premises by a person whom he knows or has reasonable cause to believe is under 18 years of age.
- (3) No person shall buy or otherwise obtain traditional beer on licensed premises for consumption on those premises by a person whom he knows or has reasonable cause to believe is under 18 years of age.
- (4) No person under 18 years of age shall buy or otherwise obtain or consume traditional beer on licensed premises.
- (5) No licensee shall employ on the licensed premises any person whom he knows or has reasonable cause to believe is under 18 years of age and no licensee shall permit such a person to enter or remain on the licensed premises except to the extent that his licence may authorize him to do so.
- (6) Any person who contravenes this bye-law shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.
16. (1) No person shall sell traditional beer on licensed premises unless he is the licensee of those premises or the servant of the licensee. Only licensee or his servant may sell traditional beer on licensed premises
- (2) No licensee shall permit another person to sell traditional beer on the licensed premises unless that other person is his servant.
- (3) Any person who contravenes this bye-law shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.
17. (1) A licensee shall not – Drunkenness or violent or disorderly conduct not to be permitted on licensed premises
- (a) permit drunkenness or violent or disorderly conduct on the licensed premises; or
- (b) sell traditional beer on the licensed premises to or for consumption on the licensed premises by any person who he has reasonable cause to believe is drunk or whose conduct is violent or disorderly.
- (2) Any licensee who contravenes this bye-law shall be guilty of an offence and liable –
- (a) in the case of a contravention of sub-bye-law (1) (a), to a fine of P200 and to imprisonment for 6 months; or
- (b) in the case of a contravention of sub-bye-law (1) (b), to a fine of P100 and to imprisonment to 3 months.
18. (1) Without prejudice to his rights under any other law, a licensee or his servant may refuse to admit to or expel from the licensed premises any person who appears to him to be drunk or whose conduct is violent or disorderly or whose presence or continued presence on the licensed premises might, in the opinion of the licensee or his servant, as the case may be, expose the licensee or his servant to a penalty under these Bye-laws or any other written law. Power of licensee to refuse admission to or to expel from licensed premises
- (2) Any person liable to be expelled from licensed premises under this bye-law shall, on being required to leave the premises by the licensee or his servant or by a police officer, immediately leave the licensed premises.
- (3) No person shall hinder or obstruct a licensee or his servant in the exercise of the powers conferred on him by this bye-law.

(4) Any person who contravenes this bye-law shall be guilty of an offence and liable –

- (a) in the case of a contravention of sub-bye-law (2), to a fine of P20; or
- (b) in the case of a contravention of sub-bye-law (3) to a fine of P100 and to imprisonment for 3 months.

Licensed premises not to be used as brothel

19. (1) Every licensee shall ensure that the licensed premises are not used as a brothel or as an habitual resort or place of meeting of reputed prostitutes.

(2) Any licensee who contravenes this bye-law shall be guilty of an offence and liable to a fine of P200 and to imprisonment for 6 months.

Prohibition of making structural alteration or addition to licensed premises

20. (1) No person shall make any structural alteration or addition to licensed premises or any material alteration to the internal arrangement of licensed premises unless the Township Authority has approved the alteration or addition in writing signed by the Executive Officer.

(2) Any person who contravenes this bye-law shall be guilty of an offence and liable to a fine of P200 and, in the case of a continuing offence, to an additional fine of P10 for every day the offence continues.

Copy of licence and of Bye-laws to be displayed inside licensed premises

21. (1) Every licensee shall ensure that a copy of his licence and a copy of these Bye-laws are displayed in a conspicuous place within the licensed premises, where the same may readily be read by members of the public, at all times when the licensed premises are open to the public.

(2) Any licensee who contravenes this bye-law shall be guilty of an offence and liable to a fine of P200 and, in the case of a continuing offence, to an additional fine of P10 for every day the offence continues.

Power to inspect licensed premises

22. (1) The Executive Officer, any person authorized by the Executive Officer in writing in that behalf or any police officer or Government Medical Officer of Health may, at any time, enter and inspect licensed premises for the purpose of ensuring that these Bye-laws and the terms of and any conditions attached to the traditional beer licence in question are being complied with and of observing the construction, state of repair, accommodation, equipment and sanitary condition of the premises.

(2) Any person who hinders or obstructs any person such as is referred to in this bye-law in the exercise of the powers conferred on him by this bye-law shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.

Power to close licensed premises on serious breach of peace or threat to public health

23. (1) Where any serious breach of the peace takes place or there are reasonable grounds to suppose that a serious breach of the peace is imminent in any place in or near which licensed premises are situated, a Senior District Officer, District Officer or the principal police officer stationed within the Township may order the licensee of those premises or, in his absence, any servant of the licensee immediately to close the premises to the public, if they are then open, or to refrain from opening the premises to the public, if they are then closed, and thereafter the licensee shall ensure that the premises are kept closed to the public for such period as the person giving the order may require.

(2) Where an order to close licensed premises is given under sub-bye-law (1), the licensee and his servant may use such force as is both necessary and reasonable to comply with the order and the person giving the order and any public officer (including a police officer) subordinate

to him and acting under his direction may use such force as is both necessary and reasonable to ensure compliance with the order.

(3) Where, in the opinion of a Government Medical Officer of Health, a danger to public health is likely to be caused by any licensed premises being open to the public, he may in writing order the licensee of those premises or, in his absence, any servant of the licensee immediately to close the premises to the public, if they are then open, or to refrain from opening the premises to the public, if they are then closed, and thereafter the licensee shall ensure that the premises are kept closed to the public for such period as the Government Medical Officer of Health may require.

(4) Any licensee or his servant who fails immediately to take every reasonable step to close the licensed premises to the public on being ordered to do so under this bye-law or opens the licensed premises to the public having been ordered to refrain from doing so under this bye-law and any licensee who fails to ensure that the licensed premises are kept closed for the period required under this bye-law and any person who hinders, obstructs or delays compliance with an order under this bye-law shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.

24. (1) Where the servant of a licensee does or omits to do anything which would constitute an offence under these Bye-laws if the licensee had done or omitted to do that thing, the servant shall be deemed, for the purposes of these Bye-laws, to commit that offence.

Imputed criminal liability of licensee and of licensee's servant

(2) Where the servant of a licensee commits or is deemed, by virtue of sub-bye-law (1), to commit an offence under these Bye-laws, the licensee shall be deemed, for the purposes of these Bye-laws, also to commit that offence unless he proves --

(a) that the servant acted without the licensee's knowledge, consent and connivance; and

(b) that the licensee has taken every reasonable step to prevent any commission, act or omission of the kind in question.

(3) A licensee shall be deemed, for the purposes of sub-bye-law (2), not to have taken every reasonable step to prevent any commission, act or omission of the kind in question if the only step he has taken is to issue instructions forbidding such commission, act or omission by his servant.

(4) Where a licensee is deemed, by virtue of sub-bye-law (2), to commit an offence under these Bye-laws, he and the servant in question may be prosecuted for that offence either separately or together.

25. (1) Where the Township Authority is satisfied that a licensee has been convicted of an offence under these Bye-laws, it may, notwithstanding bye-law 16, forthwith cancel the licensee's traditional beer licence and thereupon the Executive Officer shall serve notice in writing of the cancellation on the licensee.

Power of Township Authority to cancel traditional beer licence on conviction of licensee

(2) Where a court convicts a licensee of an offence under these Bye-laws, it shall forthwith inform the Township Authority in writing of the conviction.

(3) Where a traditional beer licence has been cancelled under this bye-law and the conviction in question is subsequently quashed, the Township Authority shall forthwith restore the licence unless it would otherwise have expired.

(4) Any person who has been served with notice under this bye-law of the cancellation of his traditional beer licence and who fails forthwith to return the licence form to the Executive Officer shall be guilty of an offence and liable to a fine of P100 and, in the case of a continuing offence, to an additional fine of P5 for each day during which the offence continues:

Provided that a person shall not be liable to be convicted under this sub-bye-law if he proves he was unable to return the licence form to the Executive Officer by reason of its having been lost or destroyed through no fault of his.

(5) Where a traditional beer licence is cancelled under this bye-law, no fee paid in respect of the licence shall be refunded.

SCHEDULE

(bye-law 9)

TRADITIONAL BEER LICENCE FEES

1. For the issue or renewal of a traditional beer licence authorizing the sale of traditional beer for consumption —

(a) on the premises, a fee of P50 shall be payable:

Provided that, where the licence is to take effect on issue after 30th June in any year, a fee of P25 shall be payable;

(b) off the premises, a fee of P20 shall be payable:

Provided that, where the licence is to take effect on issue after 30th June in any year, a fee of P10 shall be payable; or

(c) both on and off the premises, a fee of P70 shall be payable:

Provided that, where the licence is to take effect on issue after 30th June in any year, a fee of P35 shall be payable.

2. For the transfer of a traditional beer licence, a fee of P5 shall be payable.

3. For the issue of a duplicate of a traditional beer licence, a fee of 50t shall be payable.

MADE this 6th day of June, 1980.

H.A. NYIRENDA,
Executive Officer,
Jwaneng Township Authority.

APPROVED this 12th day of September, 1980.

L.M. SERETSE,
Vice-President and
Minister of Local Government and Lands.

L2/8/11 II