



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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N\$2.00

WINDHOEK - 20 November 2002

No.2859

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### CONTENTS

*Page*

#### GENERAL NOTICE

No. 354 Municipality of Swakopmund: Registration of businesses ..... 1

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## General Notice

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### MUNICIPALITY OF SWAKOPMUND

No. 354

2002

### REGISTRATION OF BUSINESSES

#### SCHEDULE A

#### DEFINITIONS

1. In these regulations, unless inconsistent with the context -

“**Act**” means the Local Authorities Act, 1992 (Act No. 23 of 1992);

“**authorised officer**” or “**authorised official**” means an employee of the Local Authority authorised by it to administer and enforce these regulations in terms of regulation 13 of these regulations and “**Inspector**” has a similar meaning.

“**business**” means any activity operated or conducted for the profit or gain by any person or organisation, or is operated or conducted by a non-profit organisation, and includes any profession, occupation, trade or industry and “**carrying on a business**” shall have the same meaning;

“**certificate of fitness**” means a certificate of fitness in respect of premises issued in terms of regulation 4;

**“Chief Executive Officer”** has the meaning assigned thereto in Section 1 of the Act;

**“Chief Health Officer”** means the head of the Environmental Health Officers of the Local Authority or the person acting as such, and failing any such person then any Environmental Health Officer employed by the Local Authority and identified by name or post description in terms of section 13 of the Allied Health Services Professions Act (Act 20 of 1993);

**“engaged in business”** means a person operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade, pursuit or activity;

**“Environmental Health Officer”** means an Environmental Health Officer employed by the Local Authority and identified by name or post description in terms of section 13 of the Allied Health Services Professions Act (Act 20 of 1993) and **“Health Officer”** has the same meaning;

**“hawker”** means any person carrying on the trade of hawker in any place and shall include a pedlar or vendor and any member of the informal sector accepted to be a hawker for purposes of any other regulation made in terms of the Act;

**“Local Authority”** means the Municipal Council of Swakopmund and **“Council”** has the same meaning;

**“nominee”** means the person who is the owner, manager or other person in charge of the operation or conducting of a business, who shall be the responsible person for purposes of these regulations;

**“noxious industry”** means any noxious or offensive trade or occupation and, without prejudice to the generality of the foregoing, includes the following:

Chemical works, paint works, breweries and distilleries, sugar mills and sugar refineries, manure-, super phosphate- or fertilizer works; or premises used for the storing or mixing of manure, super phosphates or fertilizers or premises for the storing, drying, preserving or other treatment of bones, horns or hoofs, premises used for the storing, sorting or treatment of hides and skins, other than in a dry and inoffensive condition, abattoirs, glue or size factories, entrails scraping and tripe boiling works; soap or candle works, fat and dripping works and any other similar works where meat, bones, blood, offal or other animal organic matter is handled, wool scouring or wool washing works, rock-lobster or fish processing works, fish pickling or rock-lobster and fish canning trades, whaling stations, premises or trades used for the storing or handling and processing of material originating from fish, whales and seals, paper-mills or paper factories, wattle-bark grinding or extract factories, destructors, depositing sites or other sites for the disposal or processing of domestic refuse, trade refuse, street refuse, sewage or night-soil, lead melting works, oil refineries and other trades in connection with the processing of by-products or petroleum refining, paint and varnish works, quarries, asbestos cement-, bricks- and lime-works, metallurgical works, reduction and reprocessing works or any other works or trade which the Council may declare as such by notice in the Gazette: Provided that upon production of a certificate by the Medical Officer of Health, in consultation with the Inspector of Factories, that the process to be used in the conduct of any of the said industries or factories listed above will eliminate nuisance or danger to health in neighbouring premises arising from -

- (a) vapour or effluvia;
- (b) liquid waste matters discharged from the premises, and if land treatment of such matters is proposed, the nature, slope and area of the land and its position in relation to buildings used for human habitation, streams or water courses; or
- (c) solid waste matters,

the Council may consent to the use of buildings for such industries;

**“offensive trade”** means any activity not falling within the definition of “noxious industry” but which constitutes a public nuisance;

**“person”** means any individual male or female, estate, trust, co-operative, association, partnership, club, corporation, firm, joint venture, syndicate, or other entity with or without legal personality, engaging in business;

**“place of business”** the premises, whether it be a personal residence, main business location or an outlet, branch or other location thereof, temporary or otherwise to which the public is expressly or by implication invited for the purpose of doing business. In the event that there is no such location, but the business is transacted at the location of the buyer, such location shall be deemed to be the “place of business”

**“premises”** means land or any portion thereof, any building, caravan or tent together with the land on which it is situated and adjoining land used in connection therewith, and includes any vehicle, conveyance, ship or boat;

**“prohibited area”** means any place declared by resolution of a Local Authority to be an area, inclusive of any premises, in or on which trading shall be prohibited;

**“property”**, in relation to a person carrying on a business, means any article, receptacle, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he or she trades;

**“public nuisance”** includes any action or omission which is likely to injure the safety, health, peace or convenience of residents in the Local Authority area and the carrying on of any activity which causes a stench or which is otherwise objectionable;

**“registration certificate”** means a certificate issued as a prerequisite to the carrying on of a business in the area of the Local Authority;

**“Registration Officer”** means a staff member empowered by the Local Authority Council to consider applications for registration certificates and to issue registration certificates;

**“sell”** means sell by wholesale or retail and in addition to its ordinary meaning includes offer, advertise, keep, expose, transmit, consign, convey or deliver for sale, or authorise direct or allow a sale or prepare or possess for purpose of sale, and further means barter or exchange or supply or disposal for any consideration direct or indirect and the word **“sale”** has a corresponding meaning;

**“services”** includes any advantage or gain for consideration or reward;

**“temporary registration certificate”** means a registration certificate issued for a limited number of days and shall be subject to reasonable conditions determined by the registration officer;

**“vehicle”** includes a push-cart, trolley, boat, ship, motorcar, bicycle or any other means of transport, and any other word or expression in these regulations, unless the context otherwise indicates, bears the same meaning as that assigned thereto in the Act.

## SCOPE OF REGULATIONS

2. (1) These regulations shall apply to any nominee of every business operating on or conducted from premises within the area of the Council.
- (2) These regulations lay down minimum requirements and standards and shall be deemed to be in addition to, but not in substitution for, any regulation in force within the area of the Council, except where such regulation is in conflict or inconsistent with these regulations, or lay down requirements and standards which are lower than those required by these regulations, in which case the provisions of these regulations shall prevail.

## REGISTRATION OF BUSINESSES AND PREMISES

### Operating a business

3. (1) No person may engage in business within the area of the Local Authority unless a registration certificate has been issued by the Registration Officer in respect of such business.
- (2) A registration certificate shall not be granted unless a certificate of fitness in respect of the premises has been issued.
- (3) Whenever a business is operated on, or conducted from more than one premises in the Council's area a certificate of fitness and a registration certificate shall be required in respect of every such premises.
- (4) The Council may by Notice in the Government Gazette declare any area to be a prohibited area and no registration certificate may be issued in respect of any such prohibited area.

### Certificate of fitness

4. (1) (a) Any person intending to operate or conduct a business must apply for a certificate of fitness in writing to the Environmental Health Officer and in such application furnish all information required by the Council on a form issued for that purpose.
- (b) In the case of an offensive trade or noxious industry the applicant must include the following information:
  - (i) particulars as to the nature of the trade or business to be conducted, of the raw materials to be dealt with, the processes to be carried on and the products thereof;
  - (ii) particulars of the plant to be installed including the number, capacity, and type or description of all boilers, digesters, dryers and other apparatus;
  - (iii) particulars, with any necessary explanatory drawings of the means proposed to be adopted for the disposal in order to prevent a public nuisance arising from vapour, effluvia and fluids and liquid waste matter to be discharged from the premises or otherwise and if land treatment of such matters is proposed, the nature, scope and area of the land and its position in relation to dwellings, streams, water courses and wells, as well as particulars of solid waste matters; and
  - (iv) any further environmental impact assessment particulars, plans or drawings which the Council may require
- (c) Any application for an offensive or noxious trade must be published once by the applicant in a newspaper circulating in the area of jurisdiction of the Council stating:
  - (i) the nature of the business;
  - (ii) the premises from which the business is intended to be operated from;
  - (iii) any possible environmental impacts;

- (iv) the hours and dates that the application and supporting documents can be inspected at the office of the Environmental Health Officer; and
  - (v) specifying the date, being not less than 14 days after the publication of such notice, within which objections to the granting of the application may be lodged with the Council.
- (d) An applicant must be given 14 days written notice by the Registration Officer to reply in writing to any objection received in response to an advertisement placed in terms of paragraph (a) or otherwise.
- (2) The Environmental Health Officer may not consider an application if:
- (a) the premises do not comply with the requirements of any health legislation applicable in respect of the business to be operated on or conducted from such premises;
  - (b) the proposed use of the premises will contravene the provisions of any other law; or ‘
  - (c) the application is incomplete, but an applicant may resubmit the application when it is properly completed and complies with these regulations.
- (3) (a) The Environmental Health Officer must grant a certificate of fitness in respect of an application that complies with these regulations.
- (b) Whenever an application for the granting of a certificate of fitness is granted or refused the applicant must be informed within 14 days therefrom by the Environmental Health Officer and, if refused, the reasons therefor.
- (c) An application for a certificate of fitness regarding an offensive trade or noxious industry may only be considered if the Council is convinced that such business shall not cause any public nuisance or danger to the environment, and that all objections lodged were considered.
- (4) On the granting of a certificate of fitness the Council may impose conditions which are deemed necessary for the protection of the peace, convenience, safety and health of the general public and the protection of the environment.
- (5) (a) An applicant who feels aggrieved at the imposition of conditions in terms of sub-regulation (4), or whose application for the granting of a certificate of fitness has been refused, shall have the right to appeal to the Chief Executive Officer in writing within 14 days after having received notice thereof.
- (b) A notice of appeal made in terms of paragraph (a) shall briefly set out the grounds for such appeal.
- (c) An appeal lodged in terms of paragraph (a) must be heard by the Management Committee of the Council within such reasonable time as determined by the Council.
- (d) At the hearing of an appeal the applicant shall have the right to address the Management Committee either personally or through his or her or its legal representative.
- (e) The Management Committee shall cause its decision on the appeal to be given in writing to the applicant, or the representative as the case may be, within a reasonable time.

- (6) Whenever an application for a certificate of fitness has been granted, the applicant shall only be entitled to the issue of the certificate of fitness at payment of the fees provided for in terms of regulation 10.

### Registration Certificate

5. (1) Any person intending to apply for a registration certificate in respect of a business, or a temporary registration certificate in the case of any temporary business, must apply in writing to the Registration Officer and in such application furnish all the information required by the Council on a form issued for such purpose.
- (2) Any application must be submitted to the Council together with any information, plan or layout sketch as the Local Authority may request in respect of the specific business or trade.
- (3) The Council may, in considering the application, demand from the applicant or any other person such further information, as it may deem necessary or expedient.
- (4) In the case of an offensive trade or noxious industry the applicant must include the following information:
- (a) Particulars as to the nature of the trade or business to be conducted, of the raw materials to be dealt with, the processes to be carried on and the products thereof.
- (b) Particulars of the plant to be installed including the number, capacity, and type or description of all boilers, digesters, dryers and other apparatus.
- (c) Particulars, with any necessary explanatory drawings of the means proposed to be adopted for the disposal and to prevent a public nuisance arising from vapour, effluvia and fluids and liquid waste matters to be discharged from the premises or otherwise and if land treatment of such matters is proposed, the nature, slope and area of the land and its position in relation to dwellings, streams, water courses and wells, as well as particulars of solid waste matters.
- (d) Any further particulars, plans or drawings, which the Local Authority may require.
- (5) The Registration Officer may not consider an application for a registration certificate if -
- (a) A certificate of fitness in respect of the premises has not been issued by the Environmental Health Officer;
- (b) the proposed use of the premises will contravene the provisions of any other law; or
- (c) the application is incomplete, but an applicant may resubmit the application when it is properly completed and complies with these regulations.
- (6)(a) Whenever an application for the granting of a registration certificate is granted or refused, the applicant must be informed thereof in writing within 14 days therefrom by the Registration Officer and, if refused, the reasons therefor.

- (b) Whenever an application for a registration certificate has been granted the applicant shall only be entitled to the issue thereof on payment of the fees provided for in terms of regulation 10.
- (c) The registration certificate must specify any conditions contained in the certificate of fitness imposed under sub-regulation (4) of regulation 4.
- (7) No person may operate or conduct any business in such a way that the operation or the conduct thereof is in conflict with the conditions of the registration certificate.
- (8) Every registration certificate for the purpose of informal trade must specify the area or place at and where such trade will be carried on as well as the article or articles the trader is allowed to trade with in the allocated area.
- (9) An application for a registration certificate regarding an offensive trade or noxious industry may only be considered if the Registration Officer is reasonably convinced that such business shall not cause any public nuisance or danger to the environment, and that all objections lodged were considered.
- (10)(a) An applicant who feels aggrieved at the imposition of conditions in terms of sub-regulation (4) of regulation 4, or whose application for the granting of a registration certificate has been refused, shall have the right to appeal to the Chief Executive Officer in writing within 14 days after having received notice thereof.
- (b) A notice of appeal made in terms of paragraph (a) must briefly set out the grounds for such appeal.
- (c) An appeal lodged in terms of paragraph (a) must be heard by the Management Committee of the Council within such reasonable time as determined by the Council.
- (d) At the hearing of an appeal the applicant shall have the right to address the Management Committee either personally or through his or her or its legal representative.
- (e) The Management Committee must cause its decision on the appeal to be given in writing to the applicant, or the representative as the case may be, within a reasonable time.

**Renewal, display and loss of certificate of fitness and registration certificate**

6. (1) (a) A certificate of fitness shall be valid from date of issue until -
- (i) such time that the premises in respect of which it had been issued is changed in any way;
  - (ii) the business is relocated to other premises;
  - (iii) the nature of the business conducted on the premises is changed in any way; or
  - (iv) the business is closed down,
- whereupon the certificate of fitness will lapse and become invalid.

- (b) A registration certificate shall be valid from the date issued until the preceding day of the following year whereafter the registration certificate will lapse and become invalid.
  - (c) A temporary registration certificate shall lapse and become invalid on the day indicated on the certificate.
- (2) Any certificate of fitness and any registration certificate may be renewed by application thereof at any time but not later than 5 business days after expiry of the validity thereof in terms of sub-regulation (1).
- (3)(a) An application for the renewal of a certificate of fitness and a registration certificate must be addressed to the Environmental Health officer and Registration Officer respectively.
- (b) The provisions of regulations 4 and 5 shall *mutatis mutandis* apply to applications for renewal of certificates of fitness and registration certificates and any decisions made in respect of such applications.
- (4)(a) Every certificate of fitness and every registration certificate, including any renewal thereof, must be displayed in a conspicuous place on the premises in respect of which it was issued and must be shown to any authorised officer upon demand.
- (b) Whenever a certificate of fitness or a registration certificate is lost or stolen the nominee in respect of such certificate must as soon as possible report such loss or theft to an authorised officer in writing whereupon such nominee shall be entitled to the issue of a duplicate certificate of fitness or registration certificate, as the case may be, against payment of the fees provided for in terms of regulation 10.
- (5) Whenever a certificate of fitness or registration certificate has expired and has not been renewed, or has been suspended or withdrawn for any lawful reason in terms of these regulations the nominee must ensure that the business immediately stops operating or immediately stops being conducted from such premises.

#### **Certificate of fitness and registration certificate not transferable**

- 7 (1) A certificate of fitness and a registration certificate shall not be transferable from one premises to another and whenever it is the intention to transfer a business from one premises to another, a new application for a certificate of fitness and for a registration certificate in respect of such new premises must be made in terms of regulations 4 and 5.
- (2) Notwithstanding the provisions of sub-regulation (1) the name of a nominee on a certificate of fitness and a registration certificate may be changed upon application and against payment of the fees provided for in terms of regulation 10.
- (3) The provisions of sub-regulation (2) shall *mutatis mutandis* apply in case of the change of the name of a business or a change in respect of the ownership of a business.

#### **Alteration of premises or nature of business**

- 8 (1) No structural alterations or additions, or other alterations may be carried out on any premises in respect of which a certificate of fitness and a registration certificate had been issued unless prior written approval of the Council had been obtained thereto, for which purpose the provisions of regulations 4 and 5 shall *mutatis mutandis* be applicable.



- (2) (a) The nature of a business carried on, or the plant or processes used therefor, in terms of a registration certificate may not be changed without making an application in respect of which regulations 4 and 5 shall *mutatis mutandis* apply.
- (b) The issue of a revised certificate of fitness and registration certificate in terms of paragraph (a) shall only be effected against cancellation of the existing registration certificate.

#### **Suspension or withdrawal of certificate of fitness and registration certificate**

9. (1) (a) Whenever a nominee contravenes or omits to comply, or allows another person to contravene or omit to comply, with any law or any condition imposed in terms of any registration certificate, an authorised officer must order the nominee in writing to stop the contravention or omission, as the case may be.
- (b) An order given in terms of paragraph (a) must state the time in which the nominee must comply therewith, which period shall be reasonable having regard to the circumstances of each case.
- (2) If a nominee fails or refuses to comply with an order given in terms of sub-regulation (1), the authorised officer shall have the right to cancel the certificate of fitness and registration certificate whereupon the nominee must cease conducting or operating the business from such premises
- (3)(a) A nominee shall have a right of appeal against an order given in terms of sub-regulation (1) in which case the provisions of sub-regulation (10) of regulation 5 shall *mutatis mutandis* apply.
- (b) Pending the giving of a decision on the appeal the nominee shall be entitled to continue conducting or operating the business.
- (c) The provisions of paragraph (b) shall not prohibit the Council from applying to the High Court of Namibia for an interdict summarily prohibiting the interim conducting or operation of any business.

#### **Fees and charges payable**

10. (1) The fees for the issue, renewal, transfer from one nominee to another, or the change of name of a business on, a certificate of fitness and registration certificate, or the issue of a duplicate of any certificate, which fees may differentiate between different categories and classes of business or trades, shall be determined by the Council by notice in terms of section 30 (1) (u) of the Act.
- (2) The fee for any inspection carried out in terms of these regulations shall be actual cost plus 15% per inspection.
- (3) The fee for the analysis of any sample required in terms of any law shall be actual cost plus 15%.
- (4) Any other fee or charge levied by the Council for any other work done or other service rendered in terms of these regulations shall be determined by the Council by notice in terms of section 30 (1) (u) of the Act.

**Cessation of business**

11. The holder of a registration certificate must inform the Council in writing of the cessation of such business within one month after this has happened and must at the same time hand in the certificate of fitness and the registration certificate issued in respect of the business for cancellation.

**Record of registration certificates**

12. (1) The Council must keep and maintain a record of every registration certificate issued and a record containing the information as required with every application for every registration certificate in respect of every business conducted in its area.
  - (2) Unless the Council so instructs, no person other than authorised official(s) shall have access to or be entitled to inspect any such records or documents.

**INSPECTORATE****Appointment of Inspectors**

13. The Council may at its discretion appoint an Inspector or Inspectors to carry out inspections for the control of business registrations.

**Powers, duties and functions of inspectors**

14. An inspector, in relation to any business that is to be registered in the area of jurisdiction of the Council -
  - (a) Shall at all reasonable times have access to any premises to make such investigations and inquiries as he/she considers necessary.
  - (b) May require from any person who is or appears to be in control of such business to produce for his/her inspection -
    - (i) a valid certificate of fitness, registration certificate or temporary registration certificatesuch other documents or records as, in the opinion of the inspector, may be necessary for the investigation which he is conducting and may make copies or extracts of these documents.
  - (c) May take possession of any document or registration certificate if, in his/her opinion, it could furnish evidence of contravention of these regulations, and must issue a receipt in respect of such documents removed.
  - (d) May require any person referred to in paragraph (c) to furnish his/her full name and address and produce an identity document and
  - (e) Must report to the Council any contravention of these regulations that has, or in his opinion could have a bearing on the grant, refusal, suspension or withdrawal of a registration certificate.

**Offences and penalties**

15. (1) Any person who -
  - (a) contravenes or fails to comply with any provisions of these regulations or any condition imposed in terms thereof or thereunder;

- (b) threatens, resist, hinders or obstructs any Health Officer or inspector in the execution of his duties or functions in terms of or under these regulations;
- (c) In an application of a registration certificate or temporary registration certificate makes any false statement or any statement which is calculated to mislead;
- (d) Intentionally give false or misleading information to an inspector, Health Officer, or any official of the Council, or
- (e) alters or falsifies a registration certificate or temporary registration certificate,

shall be guilty of an offence and on conviction liable to a fine not exceeding N\$2 000,00 or imprisonment for a period of not exceeding 6 months or both such fine and such imprisonment.

- (2) Any person who fails to renew his/her business registration in accordance with the conditions of sub-regulation (2) of regulation 6 shall pay a penalty equal to the registration/renewal fee of such a business on application of renewal. On refusal of such payment the renewal of a registration certificate shall not be considered.

#### **Effective date**

- 16. These regulations shall come into operation on the date published in the Official Gazette.

#### **SCHEDULE B**

- (a) Applications for renewal of business registrations shall be submitted to the Town Health Officer on or before 31 March of each year; the date on the official municipal receipt to be accepted as the date of application.
- (b) A late fee of 10% per month shall be charged in addition to the registration fee retrospective from 1 January of the relevant year for applications received after 31 March of that year.
- (c) The fee of **N\$450,00** shall be applicable to all businesses; provision to be made for application for exemption, in which case -
  - (i) the Town Health Officer be delegated the authority to grant such registration;
  - (ii) a fee of **N\$120,00** shall be payable by businesses, institutions and individuals who are granted such exceptions based on the fact that their annual turnover or expected annual turnover is less than **N\$50 000,00 /annum**.
  - (iii) a Certificate of Fitness be issued where the applicant certified that the turnover of the business will be less than **N\$50 000,00/annum**.
  - (iv) it be stated on the Certificate of Fitness that the annual turnover shall, according to the applicant, not be in excess of **N\$50 000,00/annum**.