



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

TOWN COUNCIL OF OSHAKATI

No. 296 2006

REGULATIONS ON INFORMAL TRADING: LOCAL AUTHORITIES ACT, 1992

The Town Council of Oshakati makes, under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992), and after consultation with the Minister of Regional and Local Government, Housing and Rural Development, the regulations set out in the Schedule.

BY ORDER OF THE COUNCIL

E. ATSHIPARA
CHAIRPERSON OF THE COUNCIL

Oshakati, 6 September 2006

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, a word or expression defined in the Act has that meaning, and -

“authorised staff member” means a staff member authorised in writing by Council to implement the provisions of these regulations;

“Council” means the Town Council of Oshakati;

“food” means any consumable substance, whether in its natural or processed state, used in the composition or preparation of a product, or on its own, which is ordinarily meant for, or offered to, the general public for consumption, but does not include -

- (a) any form of drug or medication or substance of a pernicious effect;
- (b) substances meant to be consumed by animals; or
- (c) alcohol;

“food premises” includes any land, site, building, structure or any portion of the land, site, building or structure and any appurtenances of such building or structure used or intended to be used for purposes of conducting informal trading;

“goods” includes any living thing and any transferable objects;

“health officer” means a staff member appointed in that capacity, and includes a health practitioner appointed by the Council to act in that capacity;

“informal trader” means a person registered as an informal trader in terms of regulation 3;

“informal trading” means the selling of goods or services in a street, a public place or outside or inside any building in terms of a registration certificate issued under regulation 3, but excludes the conducting of a business registered and approved in terms of Government Notice No. 121 of 14 October 1969;

“litter” means any inanimate thing discarded in an open or public place;

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

“prohibited area” means any place prohibited by Council for conducting informal trading;

“property”, includes any article, receptacle, vehicle or structure used in the conducting of informal trading;

“public building” means a building occupied by the State or the Council;

“registration certificate” means a certificate of registration issued in terms of regulation 5;

“sell” includes -

- (a) supply;
- (b) exchange, barter, lease or hire;
- (c) store, exhibit, offer or prepare for sale,

and “sale” has the same meaning;

“services” includes any work performed for advantage, gain, consideration or reward;

“sidewalk” means a portion of a street intended mainly for use by pedestrians, including the area between a street and a building line, provided such area is normally used by the public as a footway;

“street” includes -

- (a) a public road as defined in the Traffic Ordinance;
- (b) the shoulder of a street;
- (c) a bridge, ferry, ford or drift traversed by a street; and
- (d) any other object or thing forming part of or connected with or belonging to a street.

Informal traders and assistant informal traders to be registered

2. A person who intends to conduct informal trading or assist in conducting informal trading, within the area of jurisdiction of the Council, must register as such in terms of regulation 3.

Application for registration

3. (1) A person who wishes to be registered as an informal trader or as assistant informal trader must, upon payment of the application fee referred to in regulation 4, apply to the Council for registration as an informal trader or assistant informal trader in the form and manner determined by the Council.

(2) The Council may, after consideration of the application referred to in subregulation (1),-

- (a) refuse the application;
- (b) grant the application and register the applicant; or
- (c) grant the application and register the applicant subject to such conditions as the Council may consider appropriate.

(3) The Council must, within 30 days of receipt of the application, give written notice to the applicant of its decision.

(4) The applicant may, where an application for registration is refused, within 60 days of receipt of the written notice -

- (a) appear before the Council, either in person or through a legal practitioner registered under the Legal Practitioners Act, 1995 (Act No. 15 of 1995), to make representations; or
- (b) make written representations to the Council,

to show cause why his or her application should not be refused.

(5) After hearing or receiving representations made under subregulation (4), the Council must, -

- (a) reconsider the application and make a decision in accordance with subregulation (2); and
- (b) inform the applicant in writing of its decision within 30 days.

Application and registration fees

4. (1) An application for registration or renewal of such registration, must be accompanied by a non-refundable application fee determined by the Council.

(2) The fees payable for the issue of a duplicate registration certificate in terms of regulation 7(2) must be determined by the Council.

Display or renewal of registration certificate

5. (1) Upon registering the applicant as an informal trader or assistant informal trader under regulation 3, the Council must issue the applicant with a registration certificate in the form determined by the Council.

(2) A registration certificate must -

(a) specify -

- (i) the premises at which the informal trading concerned may be conducted;
- (ii) the type of goods which may be sold at such premises;
- (iii) the period of validity;
- (iv) the conditions under which the holder of such registration certificate may conduct informal trading; and
- (v) such other particulars which the Council may consider necessary.

(b) at all times when conducting the business of informal trading keep the registration certificate referred to in regulation 3 on his or her person or in his or her immediate proximity.

(3) A registration certificate is valid for a period of 12 months from the date of issue thereof, or for such shorter period as the Council may determine at the time of issue.

(4) A registered informal trader may, not less than 14 days and not more than 30 days prior to the date of expiry of a certificate issued under regulation 3, apply to the council for a renewal of such registration certificate.

(5) An application for a renewal certificate referred to in subregulation (4) must be accompanied by a fee determined by the Council for that purpose.

Change of address

6. A holder of a registration certificate must, within a period of 14 days from the date of changing his or her residential address or any other particulars contained in a certificate of registration, in writing, notify the Council of such change and must furnish the Council with such new particulars.

Duplicate registration certificate or transfer of registration certificate

7. (1) If a registration certificate issued to the holder thereof is lost or damaged, the holder of the registration certificate must, within 14 days from the date on which he or she becomes aware of such loss or damage -

- (a) notify the Council, in writing, of such loss or damage; and
- (b) apply to the Council for the issue of a duplicate registration certificate.

(2) Upon receipt of an application referred to in subregulation (1), the Council must issue to the applicant concerned a duplicate registration certificate.

- (3) A registration certificate is not transferable into the name of another person.

Control over registered business

8. (1) An informal trader must, when requested by a member of the Namibian Police, a health officer or any authorised staff member, or any person with whom business is transacted, to produce his or her registration certificate, present such certificate and any identification document for inspection.

(2) An informal trader or assistant informal trader may not sell goods which he or she is not authorised to sell by virtue of his or her registration certificate.

Conditions of Trading

9. (1) An informal trader or assistant informal trader who conducts informal trading in any kind of food must ensure that all food intended to be sold must, prior to such sale, remain in or on a vehicle, cart, handcart, barrow, display-stand or receptacle, and may not allow any food to come in direct contact with the ground or the surface of any sidewalk or street.

(2) An informal trader or assistant informal trader dealing in foodstuffs or second hand clothing may not store any food or clothing forming part of his or her stock-in-trade in any place other than in a container approved in writing by a health officer.

(3) An informal trader or assistant informal trader may not convey any goods for the purpose of his or her trade in or on any vehicle, wagon, cart, handcart, barrow or other conveyance, unless the vehicle, wagon, cart, handcart, barrow or other conveyance has been approved in writing by a health officer to be fit for the purpose of conveying such goods.

(4) Food may not be prepared, made available or served for human consumption, if such food contains any of the components in excess of the following bacteriological standards:

Standard plate count	100 000 / gm
Coliforms organisms	10 / gm
Escherichia coli	0 / gm
Staphylococcus aureus	0 / gm
Salmonella	0 / gm
Clostridium	0 / gm
Vibrio parahacmolyticus	0 / gm
Vibrio cholera	0 / gm
Pathogenic organisms	0 / gm

Requirements relating to home-made food products

10. (1) An informal trader or assistant informal trader may not in any building, including a private dwelling, handle, prepare, serve or pre-pack any food for human consumption, except for own domestic use, unless he or she is a holder of a certificate of fitness issued by the Council in respect of such building or dwelling.

(2) A person conducting informal trading must apply for a certificate of fitness referred to in subregulation (1).

Temporary registration certificate and exemptions relating to registration

11. (1) A person in charge of a food stall, or of a vehicle which is used for the transport of food, if such food is sold on behalf of or for the benefit of a church, or of a political, cultural, educational, charity, amateur sport or agricultural organisation, may make an application to the Council for a temporary registration certificate if such applicant is in charge of a food stall.

(2) An application for a temporary registration certificate referred to in subregulation (1), must be made in the form and manner determined by the Council.

(3) The Council must, where an application referred to in subregulation (1) is approved, issue such temporary registration in the form determined by the Council and the Council must indicate the period for which such a certificate is valid.

(4) A person to whom a temporary registration certificate is issued under this regulation is exempted from the requirements of regulation 2 and 4.

General rules of conduct for informal traders

12. (1) An informal trader may not -

- (a) place or stack his or her property in such a manner as to constitute danger to or likely to injure any person;
- (b) obstruct access to a fire hydrant;
- (c) attach any object by any means to any building, structure, pavement, tree, parking meter, lamppost, power standard, telegraph-pole, telephone booth, mail-box, traffic sign, bench or any other similar object in or on a street or public place; or

- (d) light a fire in any area where it may reasonably cause a public nuisance.
- (2) An informal trader must -
 - (a) on concluding business of informal trading for the day, remove his or her property from the area from which he or she trades to a place which does not form part of a street or public place; and
 - (b) at the request of an authorised staff member or of a person acting on behalf of the Council or of any supplier of telecommunication or electricity or other services move his or her property or any property under his or her control or in his or her care, so as to permit the carrying out of any work in relation to a street, public place or any such service.

Cleanliness

- 13.** An informal trader must, to the satisfaction of the Council -
 - (a) keep the area or site allocated to him or her for the purpose of his or her business in a clean and sanitary condition;
 - (b) keep his or her property in a clean and sanitary condition;
 - (c) properly dispose of waste generated by his or her business in a manhole intended for the disposal of waste;
 - (d) ensure that on completion of trading for the day the area or site allocated to him or her for the purpose of trade is free of litter;
 - (f) in the case of an informal trader dealing in foodstuffs, take such precautions as may be necessary to prevent the spilling of any fat, oil or grease in the course of conducting his or her business and to prevent any smoke, fumes or odour emanating from his or her activities which may constitute a public nuisance; or
 - (g) at the request of an authorised staff member or person acting on behalf of the Council, move his or her property, or any property in his or her care or under his or her control so as to permit the cleansing of the area or site where he or she conducts business.

Obstruction of pedestrians

- 14.** A person may not conduct informal trading at a place or in a manner so as to cause obstruction of, or interference with -
 - (a) access to a street or other facility intended for use by the general public;
 - (b) the visibility of a display- window on any business premises, if the person conducting informal trading in the premises concerned objects thereto;
 - (c) access to an entrance to, or an exit from, a building or automatic bank teller machine;
 - (d) access to or from a pedestrian crossing;

- (e) access to or from a legally parked vehicle; or
- (f) a pedestrian using a sidewalk.

Obstruction of traffic

15. (1) A person may not conduct the business of informal trading at a place or in a manner so as to -

- (a) cause an obstruction in or on a street;
- (b) obstruct access to any parking or loading bay or other facility relating to traffic;
- (c) obscure a road traffic sign or marking, notice or sign erected or displayed or made in terms of traffic regulations applicable in the area of jurisdiction of the Council; or
- (d) in any way interfere with a vehicle legally parked alongside the place where the informal trading is being conducted.

(2) The provisions of this regulation are in addition to, and not in substitution of, any existing regulations relating to the control of traffic in the area of jurisdiction of the Council.

Trading restricted to approved trading areas

16. A person may not conduct the business of informal trading or place, pack or store goods, including perishable goods, outside the area or place of informal trading specified in his or her registration certificate.

No trading on or in stand or areas not leased

17. Despite anything to the contrary in these regulations contained, a person may not -

- (a) conduct the business of informal trading on a stand;
- (b) conduct the business of informal trading in any premises not allocated to him or her unless he or she has leased such premises.

Informal trading near place of worship, national monument or public building not allowed

18. A person may not conduct the business of informal trading within a distance of 10 metres from a place of worship, national monument or public building.

Areas indicated for the conducting of a business of informal trading

19. The Council may -

- (a) determine areas for and hours for conducting informal trading and other restrictions relating to trading;
- (b) cause signs, markings or other devices to be made indicating -

- (i) specified hours, places, goods or services in respect of which trading shall be restricted or shall be allowed; or
- (ii) the boundaries of a stand or area set aside for the purpose of trading, and
- (c) impose such other restrictions as the Council may consider reasonably necessary.

Trading near residential buildings

20. A person may not, for the purpose of conducting informal trading, display his or her goods or other property near residential premises.

Trading near certain business premises

21. A person may not conduct the business of informal trading in or on a place adjacent to or forming part of a building in which a business registered in terms of Government Notice No. 121 of 14 October 1969 is being conducted and where goods of the same nature as or of a nature similar to goods offered for sale by such person are on sale, unless such informal trader conducts such business of informal trading with the written consent of the owner of such registered business.

Removal and impounding

22. (1) A staff member authorised by the Council may remove and impound goods -

- (a) which he or she reasonably suspects are being used or are intended to be used or have been used in or in connection with the conducting of informal trading where such person is not authorised by the Council to conduct informal trading at such premises; and
- (b) which he or she finds at any place where -
 - (i) the conducting of the trade concerned is prohibited; or
 - (ii) in his or her opinion such goods are placed in such a manner to -
 - (aa) obstruct pedestrians from passing on the sidewalk;
 - (bb) cause an obstruction to traffic; or
 - (cc) obstruct a fire hydrant or an entrance to or exit from a building,

and which the person conducting informal trading failed to remove such goods from such place, or which goods have been left at such place or which goods have been abandoned.

- (2) An authorised staff member acting in terms of subregulation (1) must -
 - (a) issue, to the person conducting the business of informal trading, a receipt in respect of any goods which the authorised staff member removed and impounded, which receipt must specify such goods in detail and be signed by such authorised staff member;

- (b) take proper care of the goods so removed and impounded; and
- (c) forthwith deliver the goods so removed and impounded to the Council at a place determined by the Council for that purpose.

(3) The owner of goods removed and impounded under subregulation (1), is, subject to regulation 23, liable for any reasonable expenses incurred by the Council in respect of such removal and impounding, and the Council may keep such goods in its possession until all such expenses have been paid, or may deal with such goods as contemplated in that regulation.

(4) A certificate issued by the treasurer of the Council or any person authorised thereto by the Council is *prima facie* proof of any expenses incurred by the Council in respect of the removal and impounding of any goods under this regulation.

(5) The Council, a member or employee of the Council is not liable for any loss of or damage to goods removed and impounded in good faith under this regulation.

Disposal of impounded goods

23. (1) The owner of perishable goods that have been impounded in terms of regulation 22(1) may, within 24 hours from the time such goods were impounded, apply in writing to the Council for the return of such goods and present the relevant receipt issued to him or her in terms of regulation 22(2)(a).

(2) The Council may, after 24 hours from the time at which perishable goods have been impounded, destroy such goods, or may by public auction sell such goods.

(3) The owner of any goods impounded under regulation 22(1), excluding perishable goods, may within 30 days from the date of the impoundment, apply in writing to the Council for the return of such goods and must attach to the application the receipt or a certified copy of such receipt issued in terms of regulation 22(2)(a), failing which the Council may sell such goods by public auction.

(4) If the owner of any goods impounded under regulation 22(1) claims the return of such goods from the Council under subregulation (1) or (3), and such owner refuses or fails to refund in full the expenses incurred by the Council in respect of the removal and impounding of such goods, the Council may decline to return such goods or part thereof to the owner and may sell such goods or part thereof by public auction.

(5) In the event of the sale of any impounded goods by the Council in terms of this regulation, the proceeds of such goods so sold, less the expenses incurred by the Council in respect of the removal and impounding of such goods, must, upon presentation of the receipt issued in terms of regulation 22(2)(a) to the owner of such goods, be paid to the person who was the owner of such goods when such goods were impounded.

(6) In the event of the proceeds of any sale of goods under this regulation not being sufficient to defray the expenses incurred by the Council in respect of the removal and impounding of such goods, the owner of such goods must in terms of regulation 22(3) remain liable to the Council for payment of so much of such expenses as is not defrayed by such proceeds.

(7) If the owner of any goods impounded under this regulation fails to claim the proceeds of the goods sold in accordance with this regulation within a period of three months after the date on which such goods were sold, the Council must, within a period

of three months after the date of sale of such impounded goods, pay such proceeds, less the expenses incurred by the Council in respect of the removal, impoundment and sale of such goods, to the Master of the High Court, Windhoek.

(8) When making any payment in terms of subregulation (7), the Council must furnish to the Master of the High Court all the particulars relating to the owner of the goods sold under this regulation.

Offences and penalties

24. A person who -

- (a) contravenes or fails to comply with a provision of these regulations or a condition imposed in respect of any registration certificate;
- (b) threatens, resists, hinders, interferes with or obstructs any staff member authorised by Council in the exercise of his or her powers or the performance of his or her duties or functions in terms of or under these regulations;
- (c) in an application for registration as an informal trader or assistant informal trader, furnishes any false or misleading information, or makes any false statement;
- (d) not being a staff member authorised by Council in accordance with the provisions of these regulations, holds himself or herself out to be, or presents himself or herself as, a staff member authorised by Council;
- (e) willfully damages any registration certificate, or without the prior written approval of the Council, makes any alteration to, or destroys, such certificate,

commits an offence and is liable to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
