



GOVERNMENT GAZETTE

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CONTENTS

Page

GENERAL NOTICE

No. 207	Town of Outapi: Regulations on informal trading: Local Authorities Act, 1992	1
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General Notice

TOWN OF OUTAPI

No. 207	2010
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REGULATIONS ON INFORMAL TRADING: LOCAL AUTHORITIES ACT, 1992

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

M. NDESHITILA
CHAIRPERSON OF THE COUNCIL

Outapi, 15 July 2010

BY ORDER OF THE COUNCIL

SCHEDULE

ARRANGEMENT OF REGULATIONS

PART 1 PRELIMINARY PROVISIONS

1. Definitions

PART 2
REGISTRATION OF INFORMAL TRADERS

2. Application of regulations
3. Informal traders and assistant informal traders to be registered
4. Application for registration as an informal trader or an assistant informal trader
5. Issue and display of registration certificate
6. Renewal of registration certificates
7. Transfer of certificate
8. Duplicate registration certificate
9. Reconsideration of application
10. Temporary registration and exemptions relating to registration
11. Consideration of application
12. Change of address

PART 3
INFORMAL TRADING

13. Production of registration certificate
14. Conditions of informal trading
15. Limitation of trade
16. Special trade in food or home-made food products
17. General rules of conduct for informal traders
18. Cleanliness
19. Obstruction of pedestrians
20. Obstruction of traffic
21. Trading restricted to approved trading areas
22. Areas for trading and signs indicating such areas
23. Trading near certain business premises

PART 4
IMPOUNDING OF GOODS

24. Removal and impounding of goods
25. Disposal of impounded perishable goods
26. Disposal of non-perishable goods
27. Sale of impounded goods
28. Forfeiture of proceeds

PART 5
GENERAL

29. Offences and penalties
30. Vicarious responsibility of persons conducting business

PART 1
PRELIMINARY PROVISIONS

Definitions

1. In these regulations a word or phrase defined in the Local Authorities Act, 1992 (Act No. 23 of 1992) has that meaning, and unless the context otherwise indicates -

“authorised official” means a staff member of Council authorised to implement the provisions of these regulations, and includes a member of the Namibian Police;

“business premises” means business premises registered in terms of regulations published in Government Notice No. 121 of 14 October 1969;

“certificate” means a registration certificate issued by the Council under regulation 5;

“container” means any cart, handcart, barrow, display stand, receptacle, vehicle or movable structure used or intended to be used in informal trading business for the handling of goods;

“Council” means the Town Council of Outapi, or any committee of the Council or any official to whom the Council has lawfully delegated the powers, duties or functions vested in the Council in terms of the Act or of these regulations;

“Council area” means the area of jurisdiction of the Town Council of Outapi;

“goods” includes any movable property, foodstuff, clothing, or any merchandise for sale;

“health officer” means a staff member of Council appointed by the Council to act in such capacity or identified by name or post or description in terms of section 17 of the Allied Health Profession Act, 2004 (Act No. 7 of 2004);

“informal trader” means a person engaging in informal trading in the Council area, registered under regulation 4 and includes an assistant informal trader;

“informal trading” means the selling of goods in a street, a public place or outside or inside any building in terms of a registration certificate issued under these regulations;

“litter” includes any container or other object which has been discarded, abandoned or left behind by an informal trader or by any of his or her customers;

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

“sell” includes -

- (a) supply, exhibit, offer or prepare for sell;
- (b) exchange, barter, lease or hire out; and
- (c) store, with a view to sell.

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

“sidewalk” means the 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;

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

“1969 Regulations” means the regulations published in Government Notice No. 121 of 14 October 1969.

PART 2

REGISTRATION OF INFORMAL TRADERS

Application of regulations

2. (1) Subject to subregulation (2), these regulations apply and are valid in the Council area, but they do not apply in relation to business premises.

(2) As from the date of commencement of these regulations, regulations 95 to 99 of the 1969 Regulations, dealing with hawkers, cease to apply in the Council area, and these regulations apply in their place.

Informal traders and assistant informal traders to be registered

3. (1) A person may not, within the Council area, conduct an informal trade or assist another person in conducting an informal trade, unless such person is registered as an informal trader, under regulation 4, and is in possession of a registration certificate issued under regulation 5(1).

(2) An informal trader or an assistant informal trader may not, for the purposes of his or her trade, employ any person as an assistant informal trader, unless such person is registered as an assistant under regulation 4, and is in possession of a certificate obtained in terms of regulation 5(1).

(3) A person who contravenes this regulation commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Application for registration as an informal trader or an assistant informal trader

4. (1) A person wishing to be registered as an informal trader or an assistant informal trader must apply to the Council for registration as an informal trader on an application form approved by the Council.

(2) An application for registration as an informal trader or an assistant informal trader in terms of subregulation (1) must be accompanied by a non-refundable application fee of N\$20.

(3) Where the applicant intends to sell foodstuffs, the application for registration must be accompanied by a certificate of fitness issued in terms of regulation 16.

(4) On receipt of an application, the Council must consider the application and the Council may -

- (a) grant the application, with or without conditions and register the applicant as an informal trader or an assistant informal trader;
- (b) request the applicant to provide more information within a specified time;
- (c) conduct a hearing before the granting of that application; or
- (d) refuse the application and give written reasons.

(5) The Council must, by prepaid registered mail or other means the Council considers appropriate, inform the applicant of its decision under subregulation (4) within a period of 30 days of receipt of the application.

Issue and display of registration certificate

5. (1) On registering the applicant as an informal trader or an assistant informal trader under regulation 4, the Council must issue to the applicant a certificate in a form determined by the Council.

- (2) A registration certificate must -

- (a) specify the area or place at or where the trade concerned is conducted;
 - (b) specify the goods, or the class or kind of goods, which the holder of the registration certificate is entitled to sell; and
 - (c) at all times be kept by the person in whose name the certificate is issued on his or her person or in his or her immediate proximity.
- (3) A registration certificate issued under subsection (1) is valid for a period as applied for and as determined by Council but not exceeding 12 months, and the date on which the certificate lapses must be endorsed on the certificate.

(4) An informal trader or his or her assistant who contravenes subregulation (2) commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Renewal of registration certificates

6. (1) A registration certificate may be renewed on application by the holder in accordance with regulation 4.

(2) The fees payable for the renewal of a certificate is per gazetted tariff per certificate.

Transfer of certificate

7. A registration certificate is not transferable, and no person other than the person in whose name it was issued is entitled to conduct any business by virtue of such certificate.

Duplicate registration certificate

8. (1) If a registration certificate issued to any person is lost, such person must, within three days from the date on which such loss became known to him or her -

- (a) notify the Council in writing of such loss; and
- (b) in the form determined by the Council, apply to the Council for the issue of a duplicate registration certificate, if he or she so requires.

(2) The fees payable in respect of the issue of a duplicate registration certificate is per the gazetted tariff per certificate.

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

Reconsideration of application

9. (1) If an application for registration as an informal trader or an assistant informal trader is refused, the applicant may, within 60 days of receipt of the notice referred to in regulation 4(5) -

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

to show cause why his or her application should not be granted by the Council.

(2) After hearing the applicant or the applicant's legal practitioner or after receipt of the written representations made by the applicant under subregulation (1), the Council must -

- (a) reconsider the application and make a decision in accordance with regulation 4(4); and
- (b) within a period of 30 days, after the hearing, or receipt of the written representations, in writing inform the applicant of its decision.

Temporary registration and exemptions relating to registration

10. (1) A person who wishes to carry out informal trading on a temporary basis for the benefit of -

- (a) a church;
- (b) a political, cultural or educational organisation; or
- (c) a charity, amateur sport or agricultural organisation,

may apply to the Council for the issue of a temporary registration certificate.

(2) A temporary registration certificate referred to in subregulation (1), must be applied for in a form approved by the Council.

(3) A person who carries on temporary trade without a temporary registration certificate commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Consideration of application

11. (1) On receipt of an application in terms of regulation 10, the Council must consider the application and the Council may -

- (a) grant the application, with or without conditions and register the applicant as a temporary informal trader;
- (b) request the applicant to provide more information within a specified period;
- (c) conduct a hearing before the granting of that application; or
- (d) refuse the application and give written reasons.

(2) The registration certificate must specify the period of validity as determined by the Council but the period may not exceed two days.

(3) A person to whom a temporary registration certificate is issued under this regulation is exempted from the requirements of registering as an informal trader or an assistant informal trader in terms of regulation 3, and the payment of registration fees payable in terms of regulation 4.

Change of address

12. If a holder of a registration certificate changes his or her residential address the holder must furnish the Council with full particulars of his or her new address within 14 days after the change failing which the registration certificate becomes invalid.

PART 3
INFORMAL TRADING**Production of registration certificate**

13. (1) An informal trader or an assistant informal trader must identify himself or herself and produce his or her registration certificate for inspection when required to do so by a member of the Namibian Police, a health officer or any authorised official, or any person with whom business is transacted or sought to be transacted.

(2) An informal trader or an assistant informal trader who fails to produce his or her registration certificate as provided for in subregulation (1) commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Conditions of informal trading

14. (1) An informal trader or an assistant informal trader conducting business must keep his or her goods in a container, and may not allow these goods to come in direct contact with the ground or the surface of any sidewalk, street or public place.

(2) A person may not carry on informal trade unless he or she has at his or her disposal the use of a container approved in writing by a health officer for keeping his or her goods.

(3) A person carrying on informal trading may not store any goods forming part of his or her stock-in-trade in any place other than in a container approved in writing in terms of subregulation (2).

(4) An informal trader or an assistant informal trader may not convey any goods for the purpose of his or her trade in or on any vehicle or container, unless the vehicle or container has been approved in writing by a health officer for the purpose of conveying such goods.

(5) An informal trader or an assistant informal trader who fails to comply with any provision of this regulation commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Limitation of trade

15. (1) An informal trader or an assistant informal trader may not sell anything which he or she is not authorized to sell by virtue of his or her registration certificate.

(2) An informal trader who fails to comply with subregulation (1) commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Special trade in food or home-made food products

16. (1) A person 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 such person is a holder of a certificate of fitness issued by the Council.

(2) For an informal trader or an assistant informal trader to be issued with a certificate of fitness referred to in subregulation (1) he or she must -

- (a) apply in writing to the Council for the certificate of fitness;
- (b) furnish the Council with the description of the premises where he or she stores his or her goods;
- (c) where he or she is using a vehicle, give a full description of such vehicle; and
- (d) produce the vehicle referred to in subregulation (2)(c) for inspection.

(3) The Council may carry out an inspection in loco of the premises and the informal trader or the assistant informal trader must pay an inspection fee and any mileage as determined by the Council in respect of the inspection.

(4) After the applicant has produced proof of payment of the inspection fee and any mileage fee the health officer may issue a certificate of fitness, if in light of the particulars at his or her disposal, he or she is satisfied that the vehicle and the premises are suitable for the intended purpose.

General rules of conduct for informal traders

17. (1) An informal trader or an assistant informal trader may not during the course of his or her trading -

- (a) place or stack his or her property in such a manner that it constitutes a danger to any person or is likely to injure any person;
- (b) obstruct access to a fire hydrant;
- (c) attach any object by any means on 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 cause a public nuisance.

(2) An informal trader or an assistant informal trader must -

- (a) at the request of an authorised staff member or of a person acting on behalf of the Council or of any supplier of telecommunications 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; and
- (b) on concluding business for the day, remove his or her property from the trading area to a place which does not form part of a street or public place.

(3) An informal trader who contravenes subregulations (1) or (2) commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Cleanliness

18. (1) An informal trader or an assistant informal trader must -

- (a) keep the area or site occupied by him or her for the purpose of carrying out his or her business in a clean and sanitary condition;
- (b) keep himself or herself at all times clean and wear clean clothes;
- (c) keep his or her property in a clean and sanitary condition;
- (d) properly dispose of litter generated by his or her business;
- (e) not dispose of litter in a manhole or other place not intended for the disposal of litter;
- (f) in the case of a 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 odours emanating from his or her activities which may constitute a public nuisance;
- (g) at the request of an authorised official 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 surface of the area or site where he or she is trading; and
- (h) ensure that on completion of business for the day the area or site occupied by him or her for the purpose of trade is free of litter.

(3) Any vehicle which is used by an informal trader or an assistant informal trader in connection with his or her business and in which food is transported or offered for sale must meet the approval of the Council.

(4) When an informal trader or an assistant informal trader is transporting his or her goods in connection with his or her business, or causing such goods to be carried by any other person, such goods must be transported in a vehicle approved in terms of subregulation (3).

(5) No animal, bird, poultry and hides and skins may be conveyed in the same compartment as foodstuffs in the vehicle.

(6) Every informal trader or an assistant informal trader must ensure he or she is free of any contagious disease, and any open wound or suppurating sore on his or her body must be covered to prevent any contamination or infection of his or her goods.

(7) An informal trader or an assistant informal trader who contravenes any provision of this regulation commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Obstruction of pedestrians

19. (1) An informal trader or an assistant informal trader may not trade at such a place or in such a manner so as to cause any obstruction of, or any interference with -

- (a) access to any street fixture or any other facility intended for the use of the general public;
- (b) the visibility of a display window on any business premises, if the person conducting business in the business premises concerned objects;
- (c) access to any entrance to or any exit from a building or any automated teller machine;

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

(2) An informal trader or an assistant informal trader who contravenes subregulation (1) commits an offence and is liable to a fine not exceeding N\$ 2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Obstruction of traffic

20. (1) An informal trader or assistant informal trader may not trade at such a place or in such a manner so as to -

- (a) cause an obstruction in or on any street;
- (b) limit access to parking or loading bays or other facilities relating to traffic;
- (c) obscure any road traffic sign erected in terms of any traffic regulations applicable in the Council area, or any marking, notice or sign displayed or made in terms of these regulations; or
- (d) in any way interfere with any vehicle which may be parked alongside such place where the trading is conducted.

(2) This regulation applies together with any existing regulations relating to the control of traffic in the Council area, and the penalties applicable in relation to the law on the control of traffic apply.

Trading restricted to approved trading areas

21. (1) An informal trader or an assistant informal trader may not trade or place, pack or store any goods, including goods referred to in regulation 24(1), outside the area or place of trading specified in his or her certificate.

(2) An informal trader or an assistant informal trader who contravenes subregulation (1) is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Areas for trading, and signs indicating such areas

22. (1) The Council may -

- (a) determine areas for, and hours of trading, and other restrictions relating to trading;
- (b) place, erect, insert, draw or construct signs, markings or other devices indicating -
 - (i) specified hours, places, goods or services in respect of which trading may be restricted or may be allowed; and
 - (ii) the boundaries of a stand or area set aside for the purpose of trading.

(2) The Council may publish a determination made in terms of subregulation (1) in the *Gazette*.

Trading near certain business premises

23. An informal trader may not conduct any business in or on any place adjacent to or forming part of a building of a business premise in which any business registered in terms of the 1969 Regulations is being conducted and where goods of the same nature as or of a nature similar to goods offered for sale by such trader are on sale, unless such trader conducts such business with the written consent of the owner of such business premises.

PART 4
IMPOUNDING OF GOODS

Removal and impounding

24. (1) For the purpose of this regulation and of regulations 18 and 25, the expression "goods" includes any receptacle, vehicle or movable structure sold or used in connection with the business of the informal trader.

- (2) An authorised official may remove and impound any 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 any trade; and
 - (b) which goods he or she finds at any place where -
 - (i) the conducting of the trade concerned is prohibited;
 - (ii) in his or her opinion such goods are placed in such a manner as to prevent pedestrians from passing on the sidewalk;
 - (iii) they may cause an obstruction to traffic; or
 - (iv) they are in front of a fire hydrant or an entrance to or exit from a building,

and which the person conducting the informal trade has failed to remove from such place after having been requested to do so by the authorized official, or which have been left at such place or have been abandoned.

- (3) An authorised official acting in terms of subregulation (2) must -
- (a) issue to the person conducting a trade, a receipt in respect of any goods the authorised official removes and impounds, which receipt must specify such goods in detail and must be signed by the authorized official;
 - (b) take proper care of goods so removed and impounded; and
 - (c) forthwith deliver any goods referred to in subregulation (3)(a) to a place determined by the Council.

(4) The owner of any goods which have been removed and impounded under subregulation (2) is, subject to regulation 25, liable for any reasonable expenses incurred by the Council in respect of the removal and impounding of such goods, 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 regulation 25.

(5) A certificate issued by the treasurer of the Council or any person authorised by him or her constitutes sufficient proof of any expenses incurred by the Council in respect of the removal and impounding of any goods under this regulation.

(6) The Council or an authorised official is not liable for any loss of, or damage to any goods removed and impounded in good faith under this regulation.

Disposal of impounded perishable goods

25. (1) The owner of perishable goods impounded in terms of regulation 24(2), may, within a period of 24 hours from the time such goods being impounded, apply in writing or in person to the Council for the return of such goods and present the relevant receipt issued to him or her in terms of regulation 24(3)(a).

(2) Where the owner of the perishable goods has failed to claim his or her goods within 24 hours from the date of impoundment, the Council may sell such goods in terms of regulation 27.

Disposal of non-perishable goods

26. (1) The owner of any goods impounded under regulation 24(2), excluding perishables goods, may, within 30 days from the date of impoundment, apply in writing or in person to the Council for the return of such goods and must attach to the application the relevant receipt issued in terms of regulation 24(3)(a).

(2) Where the owner of such goods has failed to claim his or her goods within 30 days from the date of impoundment the Council may sell such goods in terms of regulation 27.

Sale of impounded goods

27. (1) If impounded goods have not been claimed in terms of regulation 25 or 26, the Council may sell such impounded goods by public auction or other means approved by the Council.

(2) If there is a sale of any impounded goods by the Council in terms of regulation 24(2) and 26(2), 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 relevant receipt issued in terms of regulation 24(3)(a), be paid to the person who was the owner of such goods when such goods were impounded or if the owner is unknown to the person who had lawful possession of the goods when they were impounded.

(3) If the proceeds of any sale of goods contemplated by this regulation are not sufficient to defray the expenses incurred by the Council in respect of the removal and impoundment of such goods, the owner of such goods remains liable to the Council for payment of so much of such expenses as are not defrayed by such proceeds.

Forfeiture of proceeds

28. If the owner of any goods impounded in terms of regulation 24 fails to claim the proceeds of the goods sold in accordance with regulation 27 within a period of three months after the date that such goods were sold, such proceeds are forfeited to the Council.

PART 5
GENERAL

Offences and penalties

- 29.** (1) A person who-
- (a) contravenes or fails to comply with any conditions imposed in respect of any registration certificate;
 - (b) threatens, resists, hinders, interferes with or obstructs any authorised official 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, furnishes any false or misleading information, or makes any false statement;
 - (d) furnishes false or misleading information to any authorised official;
 - (e) not being an authorised official, holds himself or herself out to be, or presents himself or herself as, an authorised official; or
 - (f) willfully damages any registration certificate, or without the prior written approval of the Council, makes any alteration to, or damages or destroys, any registration certificate,

commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Vicarious responsibility of persons conducting business

- 30.** (1) If an employee of an informal trader or an assistant informal trader is charged with an offence under regulation 29, and he or she alleges that he or she committed the offence -
- (a) in the normal course of his or her employment; and
 - (b) on the instructions of or with the connivance of such an informal trader,

such an informal trader must also be charged with the same offence and be liable to the same penalties.
