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CONTENTS

Page

GENERAL NOTICE

No. 39 Animal Pound Regulations for Okahao Town Council: Local Authorities Act, 1992

General Notice

MINISTER OF REGIONAL AND LOCAL GOVERNMENT, HOUSING AND RURAL DEVELOPMENT

No. 39

2011

ANIMAL POUND REGULATIONS FOR OKAHAO TOWN COUNCIL: LOCAL AUTHORITIES ACT, 1992

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

CHAIRPERSON OF THE COUNCIL

BY ORDER OF THE COUNCIL

Okahao, 22 February 2011

SCHEDULE

PART I

1. Definitions
2. Establishments of pounds
3. Trespassing animals impounded
4. Fencing of area
5. Duties of a person who has impounded an animal

6. Guidelines for impounding animals
7. Responsibilities of the poundmaster or his or her representative
8. Keeping of pound book

PART 2

9. Care of impounded animals
10. Separation of impounded animals
11. Isolation of infected animals
12. Recovery of Costs incurred
13. Isolation of wild animals
14. Dealing with a dead or injured animal
15. Delivery Fees
16. Notice to the owner
17. Right to claim damages
18. Claiming of damages
19. Duty of the person claiming damages
20. Council claiming damages
21. Claim is denied
22. Conditions for release of an animal
23. Claim dispute
24. Proof of ownership
25. Time to sell impounded animal
26. Notice of intention to sell
27. Sale of impounded animal
28. Sale by auction
29. Apportionment of proceeds of sale
30. Sale of more than one animal
31. Claim of proceeds
32. Ownership and branding of sold animals

PART 3

33. Fees
34. Penalties
35. Savings

Definitions

1. In these regulations, a word or expression to which a meaning has been assigned in the Act, bears that meaning and unless the context otherwise indicates -

“animal” means horses, donkeys, mules, cattle, sheep, goats, ostrich or pigs;

“Council” means the Okahao Town Council;

“court” means the Magistrate’s Court of Okahao as established in terms of section 2(1) of the Magistrates Court Act, 1944 (Act No. 32 of 1944) or any court having jurisdiction in the area in which the pound is situated;

“local authority area” means the local authority area of Okahao;

“national broadcasting corporation” means the national radio as established in terms of the National Broadcasting Corporation Act, 1991 (Act No. 9 of 1991);

“owner” in relation to an animal, means a person who is known, or whose identity, with the exercise of reasonable diligence, can be ascertained, and includes the agent of the owner or other person having the lawful custody or possession of such animal;

“pound” means a pound established in terms of regulation 2;

“poundmaster” means a person appointed as poundmaster in terms of regulation 2 and includes a person acting in such capacity;

“property” means any erf or premises situated in the local authority area of Okahao; and

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

PART 1

Establishment of pounds

2. (1) The Council must erect pounds within the local authority area which are strong, secure and large enough to contain and safely keep the impounded animal for a specific period.

(2) The pound must be divided into enclosures as may be necessary for the isolation of an animal if such animal -

- (a) is sick; or
- (b) it is of a different species.

(3) The Council must appoint a poundmaster for each pound and such poundmaster is responsible for the management and maintenance of such pound in accordance with these regulations.

Trespassing or straying animals may be impounded

3. (1) An animal which is found on the property of a person, which is not the owner of that animal, may be impounded by such person on whose property such animal is found.

(2) An animal found straying untended upon any public road or public place may be seized for impounding by -

- (a) a member of the Namibian Police Force; or
- (b) a staff member of the Council authorised for that purpose.

(3) A person may not keep an animal, seized for purposes of impounding in terms of subsection (1) and (2), for a period longer than six hours without supplying such animal with adequate food and water.

Fencing of area

4. (1) Subject to regulation 3, the Council may determine that no person may not impound animal which has trespassed on his or her property if such property is not adequately fenced.

(2) For the purpose of this regulation, property is regarded as being adequately fenced if enclosed with a fence at least 1.25 metres high consisting of at least 5 horizontal strands wire with gates that can be closed properly.

- (3) Notice of the requirements in subregulation (2) must be given by:-
- (a) publishing once by notice in the Gazette;
 - (b) once a week for four consecutive weeks in a newspaper circulating in the local authority area; and
 - (c) announcing it at the national broadcasting corporation.

Duties of a person who has impounded an animal

5. (1) A person who catches an animal with the intention to have it impounded must deliver the animal to the pound within 24 hours after it was caught.

(2) A person may not confine any trespassing animal which has been caught on his or her property or any other property except for the purpose referred to in subregulation (1).

(3) A person who contravenes the provision of subregulation (2) uses, abuses, ill treats or overdrives any animal detained by him or her or allows any other person to do so commits an offence.

Guidelines for impounding animals

6. (1) A person who by threat of violence or otherwise frees or attempts to free an animal from the person who is in control whilst it is being taken to the pound in accordance with these regulations commits an offence.

(2) A person who causes an animal to be impounded contrary to the provisions of these regulations commits an offence and is in addition to the penalties prescribed in regulation 34, liable for all damages and compensates the owner of the animal for any loss and cost caused by the animal.

Responsibilities of the poundmaster or his or her representative

7. (1) The poundmaster must, subject to these regulations, receive all animals delivered at the pound during business hours and keep them impounded until they are released or sold.

(2) The daily hours of business of each pound is from 07:00 hours till 16:00 hours during week days, excluding Saturdays, Sundays and public holidays.

(3) Where the poundmaster is of the opinion that an impounded animal is dangerously vicious, permanently disabled, terminally ill, diseased, injured or is in a poor physical condition he or she must summon a staff member responsible for animals to examine that animal.

(4) Based on the results of the staff member the poundmaster may -

- (a) summon the owner to pay for the animal;
- (b) take the animal to a veterinary hospital;
- (c) the animal can then be destroyed in a humane manner; or
- (d) deal with it in terms of regulation 11.

Keeping of Pound book

8. (1) The poundmaster must keep a pound book, which must be available for public inspection at all reasonable times, in which he or she must record the following information in respect of every animal impounded -

- (a) the type of animal and its estimated age;
- (b) the distinguishing colours and marks it bears;
- (c) the name and address if known of the person who has requested the impoundment of the animal;
- (d) the address or description of the property on which the animal trespassed or was found;
- (e) the name and address if known of the owner of the animal;
- (f) if the animal was sold, the name and address of the purchaser and the sum realised by the sale;
- (g) the dates on which the animal was impounded and released or sold respectively;
- (h) all fees and expenses accumulated in respect of the animal in terms of these regulations; and
- (i) all claims for damages filed with him or her and if paid, the date and amount of such payment.

(2) The poundmaster or his or her representative must issue to the person delivering an animal for impoundage a certificate in the form contained in the Annexure.

- (3) A poundmaster who -
- (a) neglects or refuses to comply with any of the provisions of subsection (1);
 - (b) knowingly makes a false entry in the pound book;
 - (c) fraudulently destroys or erases any previous entry in the pound book; or
 - (d) wilfully delivers a false copy or extract from the pound book to any person,

commits an offence.

PART 2**Care of impounded animals**

9. (1) The poundmaster must take proper care of all impounded animals and ensure that they are at all times provided with sufficient food and water.

(2) The poundmaster may not use, harness or ill-treat any impounded animal or allow any other person to use, harness or ill-treat such animal but the poundmaster is entitled to milk any cow or she-goat.

(3) If an animal dies during its confinement in the pound the poundmaster must immediately notify the Council and record that fact in the pound book with proper description of the animal concerned.

(4) A poundmaster who fails to comply with any provision of this regulation commits an offence.

Separation of impounded animals

10. The poundmaster must keep all stallions and hinds above the age of 2 years and all he-goats and rams above the age of 6 months in a separate camp or kraal or keep them tied up or isolate them from other animals in the pound in any other way.

Isolation of infected animals and wild animals

11. (1) When an animal, is delivered to the pound or any impounded animal is visibly infected or becomes infected with a disease which is contagious or which is likely to be dangerous to human life or to other impounded animals or if the poundmaster has reasonable grounds to believe that it is so infected;

- (a) the poundmaster or his or her representative must immediately place that animal in a separate camp or kraal removed from the other impounded animals; or
- (b) in any other effective manner isolate such animal from the other animals in the pound.

(2) The poundmaster must immediately alter he or she has isolated an animal as required in subregulation (1), summons a veterinarian or responsible staff member to examine that animal or immediately notify the Council in writing.

(3) The Council must when it receives the notice in terms of subregulation (2) immediately cause an investigation to be conducted into the condition of that animal and give instructions to the poundmaster to its disposal as it deems fit.

(4) The poundmaster must strictly carry out all instructions that are given to him or her by such staff member or the Council with regard to such animal.

(5) When the animal is certified to have fully recovered it can be send back to the general pound.

Costs incurred

12. All costs incurred by the Council, in respect Of the services of a veterinarian or in connection with any treatment given to an impounded animal, must be recovered from the owner of that animal or if it is sold under these regulations from the proceeds of such sale.

Isolation of animals that is wild

13. Where the poundmaster finds that an impounded animal is so wild or vicious that its detention might be dangerous to other animals in the pound, he or she must immediately notify the Council and isolate the animal.

Dealing with a dead or injured animal

14. When an impounded animal dies, or it is recommended that it be destroyed in terms of these regulations the poundmaster must -

- (a) dispose of the carcasses in such a manner as the Council directs;
- (b) record the cause of death in the pound book; and
- (c) notify the owner of the animal in writing of the death.

Delivery Fees

15. (1) The poundmaster must pay to the person who delivers or causes to deliver an animal to the pound the delivery fees as prescribed by the Council, provided that if that person is a member of the Namibian Police or a staff member of the Council such fees must be paid to the Council.

(2) No driving fee is payable for the return journey of the person who has driven the animal to the pound.

(3) The driving fees that have been paid by the poundmaster in terms of subregulation (1) together with other moneys due under these regulations are recoverable from the owner of the animal concerned.

(4) The poundmaster must recover from the owner of an impounded animal or from the proceeds of the sale of the animal, the cost of any dipping, inoculation, medical care or other treatment done to the animal.

Notice to the owner

16. (1) Where the name and address of the owner of an impounded animal is known, the poundmaster must immediately by letter, delivered personally or sent registered post, notify the owner that his or her animal has been impounded.

(2) The poundmaster must state in the letter the amount which, as at the date of the notice is payable for the release of such animal, as well as any further fees that will be levied in respect of the animal.

(3) Whenever an animal is impounded and where the name of the owner is not known the poundmaster must immediately cause an advertisement, to be published in a newspaper circulating in the local authority area the following information -

- (a) a short description of the animal;
- (b) the estimated value of the animal;
- (c) the date on which the animal was impounded;
- (d) the name and address of the person by whom it was impounded; and
- (e) that the animal will be sold if it is not redeemed by its owner within 30 days from the date of publication of the advertisement or of the announcement.

(4) The costs incurred in respect of the publication of an advertisement and the announcement at the radio station in terms of subregulation (2) is recoverable from the owner of the animal concerned or, if it is sold, from the proceeds.

Right to claim damages

17. (1) The owner or occupier on whose property an animal has trespassed is entitled to claim compensation in terms of these regulations for any damage caused by the animal to the property concerned.

(2) The Council is entitled to claim compensation in accordance with the provisions of these regulations for any damage to the trespassed property caused by the animal.

(3) Where the owner of the animal concerned is unknown or cannot be traced the damages must be paid from the net proceeds in accordance with regulation 31 if the animal is sold.

Claiming of damages

18. (1) The owner or occupier of property who wishes to claim damages in terms of regulation 17 must, when delivering the animal to the pound, hand to the his or her intention to lodge a claim known.

(2) The poundmaster may not, after the receipt of a notice in terms of subregulation (1), release the animal to which such notice relates before the expiry of a period of 24 hours after the animal was impounded, but if the written notice referred to in subregulation (1) has been delivered to him or her, he or she may not release the animal concerned, except in accordance with the provisions of regulation 22.

Duty of the person claiming damages

19. (1) The owner or occupier of property who wishes to claim damages in terms of regulation 17, or her or his representative must in co-operation with the Council's staff member and one person with no interest in the matter, inspect the property concerned and prepare a written report, where the nature and extent of damage as well as the amount of compensation must be fully set out.

(2) Where the owner of the animal is known to the owner or occupier of the property the owner of the property must give notice of the time and place of the inspection to the owner and afford him or her, the opportunity to be present -

(a) if at such inspection the owner of the animals admits liability for the damage, and he or she -

- (i) accepts the amount assessed in terms of subregulation (1) as correct;
- (ii) reaches an agreement with the owner or occupier of the property with regard to the amount and pays it; or
- (iii) arranges for the payment with the owner or occupier of the property,

those facts with full particulars must be recorded in the written memorandum and signed by both parties.

(b) where the damages are paid directly to the owner or occupier of the property, he or she must issue a receipt in respect of that payment to the owner of the animal.

(3) The owner or occupier of the property must within 24 hours after the animal concerned has been impounded deliver to the poundmaster the written report referred to in subregulation (1).

(4) Where the written report referred to in subregulation (3) is delivered to the poundmaster after expiry of a period of 24 hours and the animal concerned has not been released, the poundmaster must accept the report and must release the animal in terms of regulation 22.

(5) Where the owner of the animal has not attended to the inspection referred to in subregulation (1) and the owner's name and address is known to the poundmaster he or she must immediately upon receipt of the written report, by letter delivered to him or her personally or sent by registered post, give notice to the owner of the animal of the findings of the persons who held the inspection and give full particulars of the damages as determined by them.

Council claiming damages

20. (1) The Council must, if it wishes to claim damages in terms of regulation 17, first cause an inspection of the damaged property to be held by the poundmaster or any other authorized staff member of the Council and two persons with no personal interest in the matter and the provisions of regulation 18 must apply with any necessary changes.

(2) The owner or occupier of the property or the Council must pay each of the persons assisting with the inspection and preparation of the written report in terms of regulation 18 or 19, except the poundmaster or an employee of the Council, a fee determined by the Council from time to time.

(3) The amount paid in terms of subregulation (1) may be recovered as part of the damages in terms of these regulations.

Claim is denied

21. Where a claim for damages by the owner or occupier of the property is -

- (a) disputed by the owner of the animal; or
- (b) admits liability but disputes the amount claimed,

the poundmaster must immediately by letter, delivered personally or sent by registered post, give notice to the owner or occupier of the property concerned of the fact that the owner of the animal is denying liability or is disputing the amount claimed.

Conditions for release of an animal

22. The pound master may not release an animal unless -

- (a) all fees due in terms of regulation 33(1) and all other expenses, in terms of these regulations, which accrued in respect of such animal; and
- (b) the amount in respect of damages if any;

have been paid or it is proved to the satisfaction of the poundmaster that the amount in respect of damages has been paid directly to the owner or occupier of the property, or that an acceptable arrangement for the payment has been made.

Claim dispute

23. Where a claim for damages, whether instituted by the owner or occupier of the property or the Council, is disputed by the owner of the animal concerned the poundmaster must -

- (a) notwithstanding the provisions of regulation 20(2), on condition that the fees referred to in that subregulation have been paid in full; or
- (b) where pending settlement of such dispute, the owner gives security to the satisfaction of the poundmaster for the payment of the amount claimed;

release the animal: Provided that if the poundmaster is of the opinion that the value of the animal to which such claim relates is less than the amount of the claim, he or she may fix the amount of surety which is in his or her opinion equal to the value of the animal concerned.

Proof of ownership

24. The poundmaster may, before he or she releases an animal, require that the person claiming such release prove by affidavit or otherwise to the satisfaction of the poundmaster, that he or she is the owner of the animal concerned or has been authorized by the owner to claim its release.

Time to sell impounded animal

25. Where an animal is not released within 30 days from the date of publication of the advertisement in terms of regulation 16, the animal must be sold in accordance with the provisions of regulation 27 or 28.

Notice of intention to sell

26. (1) The poundmaster must, after expiry of the relevant period referred to in regulation 25, by notice published once in the *Gazette* and once per week for 2 consecutive weeks in newspapers circulating in the local authority area give notice that the animal concerned is to be sold by public auction.

(2) The notice referred to in subregulation (1), must set out the following information -

- (a) the place, the date and time when the sale will be held;
- (b) a description of the animal to be sold; and
- (c) the date on which the animal was impounded and the name and address of the person by whom it was impounded.

(3) The poundmaster must not later than the date on which the notice referred to in subregulation (1) is published for the first time whether in the *Gazette* or newspaper or in an announcement cause a copy of such notice to be affixed in a conspicuous place at the pound and the offices of the Council.

(4) The date of the sale may not be less than 14 days after the date upon which the animal was impounded and not less than 7 days after the publication of the notice in the *Gazette* and the second publication in the newspaper in terms of subregulation (1).

Sale of impounded animal

27. (1) The poundmaster must advertise such sale by affixing a notice not later than 4 days before the date of the sale containing all the information as required by regulation 26, on the notice board at the offices of the Council and at or as near as possible to the place where the sale is actually taking place.

(2) An animal referred to in terms of subregulation (1) must be sold at the first morning market or by public auction held at a public place which is centrally situated in the local authority area.

(3) The poundmaster may, notwithstanding the provisions of regulation (1), sell any animal on a public auction held in terms of regulation 28, on condition it has been advertised as such in the notice of sale referred to in subregulation (2).

Sale by auction

28. (1) The poundmaster or any person designated by the Council for that purpose must act as an auctioneer at a sale taking place in terms of these regulations.

(2) At a sale in terms of these regulations, all animals must be sold individually, except that -

(a) the offspring of any animal which is still dependent on that animal for its food, must be sold together with that animal;

(b) sheep or goats may be sold together in lots of not more than 10.

(3) The poundmaster may not, whether personally or through an agent, purchase any animal which is being sold in terms of these regulations.

Apportionment of proceeds of sale

29. (1) The Council is entitled to a commission of 5% on the gross proceeds of every animal which is sold in terms of these regulations.

(2) The proceeds from the sale of any animal in terms of these regulations, must be used for the payment of all fees owed to the Council as provided for in regulation 33(1) and all other expenses actually incurred in respect of that animal recoverable by the Council in terms of these regulations.

(3) The balance after the settlement of any claim for damages instituted in terms of these regulations and in respect of which no dispute is existing between the owner of the animal and the claimants concerned is payable to the owner of the animal.

(4) Where two or more competing claims are to be considered for settlement in terms of subregulation (1) any surplus that is available under the said paragraph but which is insufficient to settle all the claims concerned in full must be distributed on a prorata basis amongst the claimants.

(5) Any surplus that remains after the settlements referred to in subregulation (2) must be deposited in to the Council's bank account.

Sale of more than one animal

30. (1) Where the notice of sale referred to in regulation 26 relates to more than one animal, the expenses incurred in connection with the publication of such notice must be recovered, subject to the provisions of subregulation (2), in equal parts from the proceeds of each animal sold.

(2) Where an animal to which a notice of sale relates is released in terms of these regulations at any time before it is sold, the poundmaster must recover from the person redeeming the animal an equal part of such costs which would have been recovered in respect of that animal had it been sold.

Claim of proceeds

31. (1) Where at any time within 6 months after the sale of an animal in terms of these regulations, any person lays claim to the surplus, which the Council has a right to in terms of regulation 29(3), and the Council is satisfied that -

- (a) the animal sold did belong to that person; or
- (b) that person is on any other ground entitled to it; and
- (c) no claim for damages of which notice has been given to the poundmaster in terms of these regulations, is pending,

the Council must pay the amount to the person concerned.

(2) The right to claim payment of the surplus or any portion from the Council under subregulation (I) prescribes subject to the provisions of this regulation after a period of 6 months from the date of sale of the animal concerned: Provided that if the animal concerned at the time of the sale has been the subject of a claim for damages in terms of these regulations and such claim was at that stage still disputed such right prescribes after a period of 6 months from the date of the settlement of the claim or 3 years from the date of the sale of the animal, whichever is the earliest.

(3) The Council may refuse to pay out any claim in terms of this regulation unless an agreement of settlement or a court order is submitted as proof that the person who claims the money is entitled to it.

(4) The surplus concerned becomes the property of the Council upon prescription of the right to claim payment in terms of this regulation.

Ownership and branding of sold animals

32. (1) Ownership in an animal sold in terms of these regulations passes on to the purchaser.

(2) Any animal sold in terms of these regulations must be branded with the Council's registered brand before delivery to the purchaser.

Fees

33. (1) Council must determine the fees to be levied from time to time in relation to impounding of animals.

(2) Council must recover the fees referred to in subregulation (1) and all other expenses incurred in terms of this regulation from the owner of the animal or from the proceeds of the sale of the animal.

(3) If the proceeds from the sale of a particular animal are insufficient to cover the expenses and fees referred to in subregulations (1) and (2), the Council must be entitled to recover the shortfall from the owner of such animal.

Penalties

34. (1) Any person, except the pound master, who is convicted of an offence under these regulations, is liable -

- (a) on a first conviction, to a fine not exceeding N\$100;
 - (b) on a second or subsequent conviction for the same offence, to a fine not exceeding N\$200 or to imprisonment for a period not exceeding 3 months, or to both such fine and imprisonment;
 - (c) in case of a continuing offence after the conviction referred to in paragraph (a) or (b), to a further fine not exceeding N\$4 per day, for each day the offence continues.
- (2) Where the pound master is convicted of an offence under these regulations, he or she is liable to a fine not exceeding N\$200.

Savings

35. All regulations made in terms of section 24 of Proclamation 160 of 1975 in relation to the impounding of animals, section 45(3) of Proclamation R. 11 7 of 1977 and the Peri-Urban Development Board Pound Regulations promulgated by Government Notice No. 70 of 1988, and all amendments thereto, are repealed in so far as it applied to the Council, but excluding any provision prescribing any fees payable to the Council.

ANNEXURE

CERTIFICATE WITH DETAILS OF IMPOUNDING ANIMALS

Description of animal: _____

Number of animals: _____

Name and address of person who sent animals: _____

Place where animals were found: _____

Name and address of person who delivers animals: _____

Signature of person who delivers animal:

Pound master

Date

Place