



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

ONIIPA TOWN COUNCIL

No. 357

2020

ONIIPA BUSINESS REGISTRATION REGULATIONS: LOCAL AUTHORITIES ACT, 1992

Under section 94(1)(aj) of the Local Authorities Act, 1992 (Act No. 23 of 1992), the Town Council of Oniipa, after consultation with the Minister of Urban and Rural Development, has made the regulations set out in the Schedule.

M.U. KAMBONDE
CHAIRPERSON
BY ORDER OF THE COUNCIL

Oniipa, 13 August 2020

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Definitions

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

“business” means any profession, occupation, trade, undertaking, service or activity conducted for gain;

“business premises” means a premises used or intended to be used for purposes of conducting a business;

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

“certificate of registration” means a certificate of registration issued in terms of regulation 7;

“conducting” in relation to a business means operating, carrying on, engaging in, doing or pursuing a business within the local authority area and conduct, conducted or conducts has a corresponding meaning;

“Council” means the Town Council of Oniipa;

“environmental health practitioner” means a professional registered as an environmental health practitioner with the Allied Health Professions Council of Namibia in terms of section 21 of the Allied Health Professions Act, 2004 (Act No. 7 of 2004) and appointed by the Council as environmental health practitioner;

“fee” means the fee determined by the Council in terms of section 30(1)(u) of the Act;

“holder of certificate of fitness” means the person issued with a certificate of fitness in terms of regulation 5 or the person in who’s name that certificate is transferred in terms of regulation 11;

“holder of a certificate of registration” means the person issued with a certificate of registration in terms of regulation 7 or the person in who’s name that certificate is transferred in terms of regulation 11;

“inspector” means a staff member of the Council authorised by the Council to conduct inspections;

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

“noxious business” means a business of a nature which may reasonably be considered to be offensive to the general public, or which is pernicious in effect to the environment, or to the health of the general public, and means further a business determined by the Council to be a noxious business in terms of regulation 2(4)(b);

“premises” means a building, structure or land, or part of a building structure or land, or a motor vehicle, vessel or aircraft;

“registration officer” means a staff member of the Council authorised by the Council to consider applications for business registration and to issue certificates of registration; and

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

Conducting of business

2. (1) A person may not conduct business within the local authority area, unless
a -

(a) certificate of fitness; and

(b) certificate of registration has been issued by the Council to that person.

(2) The Council may, for the purpose of these regulations, determine -

(a) certain areas in the local authority area to be areas on which the conducting of business is prohibited; and

(b) certain businesses to be a noxious businesses.

(3) The Council must give notice to the public by -

(a) publishing a notice in a daily newspaper circulating widely in Namibia regarding the areas in respect of which conducting a business is prohibited in terms of subregulation (2)(a) and what business constitutes a noxious business in terms of subregulation (2)(b); and

(b) placing a copy of the notice referred to in paragraph (a) on the notice board at the Council office.

(4) A person may not conduct business in an area declared as a prohibited area in terms of subregulation (2)(a).

(5) A person who contravenes subregulation (1) or (4) commits an offence and is liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months.

Application for certificate of fitness

3. (1) A person who intends to conduct a business within the local authority area must apply to the environmental health practitioner for a certificate of fitness in respect of each business premises on which that business is to be conducted.

(2) An application for a certificate of fitness must -

(a) be made on the form determined by the Council;

(b) be submitted to the environmental health practitioner;

(c) be accompanied by the applicable fee;

- (d) be accompanied by any other information the environmental health practitioner considers necessary for purposes of making a decision in terms of regulation 5; and
- (e) where an application is made for the conducting of a noxious business, be accompanied by -
 - (i) a statement stating the nature of the noxious business to be conducted;
 - (ii) particulars relating to the nature of materials to be used for the conducting of the business;
 - (iii) particulars relating to goods or materials which are to be processed on the business premises;
 - (iv) particulars relating to the equipment to be installed or used on the business premises;
 - (v) particulars relating to the measures to be taken for purposes of minimising public nuisance and for the disposal of waste;
 - (vi) an environmental impact assessment undertaken in respect to the noxious business to be conducted on the business premises; and
 - (vii) proof of publication of the notice referred to in regulation 4.

Publication of notice in respect of noxious business

4. (1) A person who intends to conduct a noxious business within the local authority area must, in addition to the application for a certificate of fitness referred to in regulation 3, publish a notice in a daily newspaper circulating widely in Namibia -

- (a) stating that the application in terms of regulation 3 has been made to the environmental health practitioner;
- (b) stating the particulars of the noxious business indicated in regulation 3(2)(e);
- (c) indicating the place at which and the times and dates during which the application and supporting documentation may be inspected; and
- (d) calling on persons to lodge written objections or make representations to the environmental health practitioner within 14 days from the date of publication of the notice.

(2) If an objection is lodged in terms of subregulation (1), the environmental health practitioner must -

- (a) within seven days from the date referred to in subregulation (1)(d) give notice to the applicant of the objections lodged; and
- (b) call on the applicant or his or her representative to make written submissions regarding objections within seven days from the date of the notice referred to in paragraph (a).

Issuing and validity of certificate of fitness

5. (1) The environmental health practitioner must consider the application made in terms of regulation 3 and any objections made in terms of regulation 4 and may -

- (a) grant the application, with or without conditions, and issue the certificate of fitness to the applicant; or
- (b) refuse the application and within seven days provide the applicant with the decision and written reasons for the refusal.

(2) When considering an application for a certificate of fitness, the environmental health practitioner must take into account -

- (a) applicable laws relating to public health and safety applicable to the premises;
- (b) the conditions of establishment applicable to the business premises;
- (c) objections made in terms of a notice published under regulation 4; and
- (d) representations made in support of the application.

(3) A certificate of fitness issued in terms of this regulation is valid for a period of 12 months from the date of issue.

(4) The holder of a certificate of fitness must, 30 days before the date of expiry of the certificate, apply to the environmental health practitioner for the renewal of the certificate and regulation 3 and 4 and this regulation applies with necessary changes to that application.

Application for certificate of registration

6. (1) The holder of a certificate of fitness may apply to the registration officer for a certificate of registration in accordance with this regulation.

(2) An application for a certificate of registration must -

- (a) be made on the form determined by the Council;
- (b) be submitted to the registration officer;
- (c) be accompanied by the applicable fee;
- (d) be accompanied by a certified copy of a valid certificate of fitness issued in terms of regulation 5; and
- (e) be accompanied by any other information the registration officer considers necessary for purposes of making a decision in terms of regulation 7.

Issuing and validity of certificate of registration

7. (1) When considering an application for a certificate of registration, the registration officer must satisfy himself or herself that the conditions imposed in respect of the certificate of fitness have been complied with.

(2) The registration officer must consider the application made in terms of regulation 6 and may -

- (a) grant the application and issue the certificate of registration to the applicant; or
 - (b) refuse the application and within seven days provide the applicant with the decision and written reasons for the refusal.
- (3) A certificate of registration issued in terms of this regulation is valid for a period of 12 months from the date of issue.
- (4) The holder of a certificate of registration must, 30 days before the date of expiry of the certificate, apply to the registration officer for the renewal of the certificate and regulation 6 and this regulation applies with necessary changes to that application.

Temporary certificate of fitness and certificate of registration

8. (1) A person who intends to conduct a business for a limited period may, on the form determined by the Council and on payment of the applicable fee, apply for a temporary certificate of fitness and certificate of registration.

(2) The provisions of regulations 3, 4, 5(1) and (2), 6 and 7(1) and (2) apply with the necessary changes to an application for a temporary certificate of fitness and certificate of registration.

(3) The environmental health practitioner or the registration officer must endorse on the temporary certificate of fitness and certificate of registration issued in terms of these regulations the period for which that certificate is valid.

Display of certificates

9. (1) The holder of a certificate of fitness, certificate of registration or temporary certificate of fitness and temporary certificate of registration issued in terms of these regulations must ensure that the certificate is prominently and conspicuously posted on the business premises at all times.

(2) If a certificate of fitness, certificate of registration, temporary certificate of fitness and temporary certificate of registration is issued to a person who goes from place to place or to a particular place for the purpose of conducting business, the holder of the certificate must keep the certificate with him or her at all times while carrying out his or her business and must on request produce the certificate to a registration officer, environmental health practitioner, an inspector or a member of the Namibia Police Force.

Report of lost or stolen certificates and duplicate certificates

10. (1) If a certificate issued in terms of these regulations is lost or stolen or is damaged beyond legibility, the holder of the certificate must as soon as is reasonably possible after becoming aware of the loss, theft or damage -

- (a) report such loss, theft or damage to the environmental health practitioner or the registration officer; and
- (b) apply to the environmental health practitioner or the registration officer for a duplicate of the certificate.

(2) An application referred to in subregulation (1) must be made on the form determined by the Council and be accompanied by the applicable fee.

(3) After considering an application referred to in subregulation (1), the environmental health practitioner or registration officer may -

- (a) grant the application, with or without conditions and issue to the applicant a duplicate certificate;
- (b) request the applicant to provide more information within a specified time; or
- (c) refuse the application and within seven days provide the applicant with the decision and written reasons for the refusal.

Prohibition on transfer of certificates

11. (1) Unless authorised in terms of subregulation (2), a certificate granted in terms of these regulations or rights granted under a certificate, may not be transferred to another business premises, another person or another business than what is detailed on the certificate.

(2) The holder of a certificate of registration may apply to the environmental health practitioner or the registration officer to have the -

- (a) certificate of fitness and certificate of registration transferred into the name of another person; or
- (b) name of the business indicated on the applicable certificate of fitness or certificate of registration changed.

(3) The application in terms of subregulation (2) must be made on the form determined by the Council and must be accompanied by the applicable fee.

(4) On receipt of an application in terms of subregulation (2) the environmental health practitioner or registration officer may -

- (a) grant the application, with or without conditions, and issue to the applicant the certificate of fitness or certificate of registration;
- (b) request the applicant to provide more information within a specified time; or
- (c) refuse the application and within seven days provide the applicant with the decision and written reasons for the refusal.

Application for approval to make structural alterations

12. (1) A holder of a certificate of fitness and certificate of registration may not effect structural alterations or cause structural alterations to be effected to the business premises for which a certificate of fitness and certificate of registration has been issued without prior written approval obtained from the environmental health practitioner.

(2) A holder of a certificate of fitness and certificate of registration who wishes to obtain the approval referred to in subregulation (1) must apply to the environmental health practitioner in the manner provided for in this regulation.

(3) An application referred to in subregulation (2) must be made on the form determined by the Council and must be accompanied by -

- (a) a detailed plan of the premises, showing the existing business premises and the intended structural alterations;
- (b) particulars relating to the construction, lay-out, furnishing, fixtures, fittings and floor coverings to be undertaken or used in the intended alterations;

- (c) a certified copy of the certificate of fitness and registration of the business premises;
- (d) written representations, if any, in support of the application; and
- (e) such further particulars as the environmental health practitioner may consider necessary for purpose of granting the approval.

(4) If the application referred to in subregulation (2) is approved, the environmental health practitioner must issue to the applicant written approval for the undertaking of the structural alterations applied for and must indicate such approval in the business register of the Council.

(5) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months.

Reconsideration of applications

13. (1) If an application for certificate of fitness or certificate of registration or temporary certificate of fitness or temporary certificate of registration is refused in terms of these regulations, the applicant may, within 60 days of receipt of the notice referred to in regulation 5(1) or 7(2) -

- (a) in writing request to appear before the Council on a date determined by the Council to present his or her case either in person or through a representative; or
- (b) make representations in writing to the Council,

to show cause why his or her application must be granted.

(2) After hearing the applicant or the applicant's representative or after receipt of the written representations made by the applicant in terms of subregulation (1)(b), the Council must -

- (a) reconsider the application and make a decision in accordance with regulation 5 or 7; and
- (b) within seven days, after the hearing or receipt of the written representations, in writing inform the applicant of the decision and reasons for the decision.

Change of ownership

14. Every holder of a certificate of registration must on change of ownership of the business in respect of which the certificate has been issued in terms of these regulations return the certificate of registration and certificate of fitness to the registration officer and environmental health practitioner.

Cessation of business

15. (1) If the holder of a certificate of registration issued in terms of these regulations ceases to conduct the business for which the certificate is issued, the holder must inform the registration officer or environmental health practitioner of such cessation and must return the certificate to the registration officer or environmental health practitioner for cancellation within 30 days from the date of ceasing to conduct such business.

(2) The registration officer or environmental health practitioner must, on receipt of information of the cessation in terms of subregulation (1), cancel the certificate.

Inspections

16. (1) An inspector may at any reasonable time in terms of section 91 of the Act enter the premises where business is conducted, for the purpose of inspecting the business premises or premises where business is conducted and any work or process carried out on the business premises or premises where business is conducted to ensure compliance with these regulations.

(2) For purposes of inspections in terms of these regulations, an inspector must -

(a) carry on his or her person an identification card or passport issued by the Council indicating authorisation to carry out inspections; and

(b) when requested to do so, give his or her identification card or passport to the holder of a certificate of registration or to the person found at or in charge of the business premises or premises contemplated in subregulation (1).

(3) For the purpose of ensuring compliance with these regulations an inspector may -

(a) require a person in possession or in custody of or who has control over documentation required for the purpose of these regulations, or which may serve as evidence of non-compliance with a provision of these regulations, to produce the documents;

(b) inspect and remove the documents from the premises, referred to in paragraph (a) for the purpose of making copies or extracts; and

(c) require a person referred to in paragraph (a) to furnish his or her full name and address and produce his or her identification document.

(4) If an inspector removes any document for the purpose of subregulation (3)(b), the inspector must issue a receipt for the removed document and must return the document within 14 days.

(5) If the inspector finds that a holder of a certificate of registration has contravened these regulations, the inspector must -

(a) give notice of the contravention to the holder of the certificate of registration or certificate of fitness of the contravention; and

(b) request the holder to correct the contravention within the time specified in the notice.

Duties of holders of certificates

17. The holder of a certificate of registration issued in terms of these regulations must -

(a) maintain the business premises in respect of which the certificate of registration is issued in a clean and sanitary condition; and

(b) comply with the applicable laws relating to buildings, public health and safety and conditions of establishment.

Notices

18. A notice required or permitted to be given in terms of these regulations must be given in accordance with section 93 of the Act.

Business register

19. The registration officer must keep a register in which he or she must enter particulars relating to every certificate issued in terms of these regulations.

Cancellation or suspension of certificate

20. (1) The Council may cancel or, for such a period of time as the Council may determine, suspend a certificate of fitness or certificate of registration if -

- (a) the holder of the certificate carries out or causes to carry out or permits to be carried out any unapproved alterations; or
- (b) does or cause anything to be done or permits anything to be done on the premises where business is conducted which is in contravention of any provision of these regulations.

(2) The Council may not cancel or suspend a certificate of fitness or certificate of registration unless the Council -

- (a) gives the holder of a certificate at least 21 days notice in writing of its proposed action and the reasons for its decision; and
- (b) in the notice referred to in paragraph (a), invites the holder of the certificate to lodge with the Council in writing any representation which he or she wishes to make in connection with the Council's proposed action.

(3) If a certificate of fitness or certificate of registration is cancelled or suspended, the Council must cause such cancellation or suspension to be indicated in the business register.

Offences and penalties

21. (1) A person commits an offence if that person -

- (a) contravenes or fails to comply with a condition imposed in respect of a certificate issued in terms of these regulations;
- (b) fails to comply with a notice issued by an inspector in terms of regulation 16(5);
- (c) threatens, interferes with or obstructs an environmental health practitioner, a registration officer, an inspector in the exercise of his or her powers or the performance of his or her functions in terms of these regulations;
- (d) furnishes false or misleading information in respect of an application in terms of these regulations to an environmental health practitioner or registration officer or an inspector;
- (e) holds or presents himself or herself as a registration officer, environmental health practitioner or an inspector while not being a registration officer, environmental health practitioner or inspector; or
- (f) wilfully makes an alteration, damages or destroys any certificate issued in terms of these regulations.

(2) A person convicted of an offence under subregulation (1) is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months.