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OF THE

REPUBLIC OF NAMIBIA

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General Notice

MUNICIPALITY OF TSUMEB

No. 271 2004

REGULATIONS RELATING TO REGISTRATION OF BUSINESS: LOCAL AUTHORITIES ACT, 1992

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

V. KASIRINGUA
CHAIRPERSON OF THE COUNCIL
BY ORDER OF THE COUNCIL

Tsumeb, 4 November 2004

SCHEDULE

PART 1 DEFINITIONS

Definitions

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

“authorised official” means an official authorised by the Council to implement any of these regulations, and “inspector” has the same meaning.

“business” means any activity conducted for profit or gain, and includes any profession, occupation, trade or industry;

“certificate of fitness” means a certificate of fitness in respect of premises issued in terms of regulation 3;

“certificate of registration” means a certificate of registration of a business issued in terms of regulation 4;

“conducting of business” means operating, carrying on, engage in, doing, or pursuing any business, profession, occupation, trade or activity;

“Council” means the Council of the Municipality of Tsumeb;

“Environmental Health Officer” means a person appointed as Environmental Health Officer by the Council;

“municipal area” means the area of jurisdiction of the Council;

“noxious industry” means any noxious or offensive trade or occupation, and includes chemical works, paint works, breweries and distilleries, sugar mills and sugar refineries, manure, super phosphate or fertilizer works or premises used for storing, drying preserving or other treatment of bones, horns or hoofs, premises used for the storing, sorting or treatment of hides and skins, other than in dry and inoffensive condition, abattoirs, glue or size factories, entrails scraping and tripe boiling works; soap or candle works, fat and dripping works and any other similar work; where meat, bones, blood, offal lobster or fish processing works, fish pickling or rock-lobster and fish canning trades, whaling stations, premises or trades used for the storing or handling and processing of material originating from fish, whales and seals, paper-mills or paper factories, wattle-bark grinding or extract factories, destructors, depositing sites or other sites for the disposal or processing of domestic refuse, trade refuse, street refuse, sewerage or night soil, lead melting works, oil refineries and other trade in connection with the processing of by-products or petroleum refining, paint and varnish works, quarries, asbestos cement, bricks and lime works, metallurgical works, reduction and reprocessing works or any other works or trade which the Council may declare as such by notice in the *Gazette*;

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

“premises” means any site, building, structure or thing used for conducting a business, including the land or any portion thereof, including any appurtenances of such building, structure or thing;

“prohibited area” means an area or premises in or on which trading is prohibited;

“Registration Officer” means a person authorised by the Council to consider applications for certificates of registration and to issue such certificates;

“temporary registration certificate” means a temporary registration certificate of business issued in terms of regulation 4; and

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

PART II REGISTRATION OF BUSINESS AND PREMISES

Conducting a business

2. (1) A person conducting business within the municipal area must register such business with the Council in accordance with regulation 4.

(2) A person conducting a business within the municipal area must register with the Council the premises on which that person intends to conduct such business in accordance with regulation 3.

(3) A business may not be registered if the premises in or on which such business is to be conducted is not registered with the Council.

(4) If a person conducts a business from more than one premises in the municipal area he or she must register each premises with the Council.

(5) A person may not conduct business in a prohibited area.

Registration of premises

3. (1) A person who intends to conduct a business must apply to the Environmental Health Officer for a certificate of fitness in respect of the premises on a form determined by the Council, and must provide the Environmental Health Officer with information he or she may require in relation to such an application.

(2) If the application is for an offensive trade or noxious industry the applicant must include the following information in such application -

- (a) particulars relating to the nature of business, of the raw materials to be dealt with, the processes to be carried on and the products thereof;
- (b) particulars of the plant to be installed, including the number, capacity, and type or description of all boilers, digesters, fryers and other apparatus;
- (c) particulars, with any necessary explanatory drawings, of the means proposed to be adopted for the disposal in order to prevent a public nuisance arising from vapour, effluvia and fluids and liquid waste matter to be discharged from the premises or otherwise and if land treatment of such matters is proposed, the nature, slope and area of the land and its position in relation to dwellings, streams, water courses and wells, as well as particulars of solid waste matters; and
- (d) any further environmental impact assessment particulars, plans or drawings, which the Environmental Health Officer may require.

(3) If the application is for a noxious trade or offensive industry, the applicant must cause a notice substantially in the form of Form "A" to be published in a newspaper circulating in the municipal area, stating -

- (a) the nature of the business;
- (b) the premises from which the business is intended to be conducted from;
- (c) any possible environmental impact;
- (d) the hours and dates that the application and supporting documents can be inspected at the office of the Environmental Health Officer; and
- (e) the date, which date must be not less than 14 days after the publication of such notice, within which objections to the granting of the application may be lodged with the Environmental Health Officer.

(4) The Environmental Health Officer must give the applicant 14 days written notice to reply in writing to any objection received in response to an advertisement placed in terms of subregulation (3).

(5) The Environmental Health Officer may not consider an application made in terms of subregulation (1), if -

- (a) the premises do not comply with the requirements of any health legislation applicable in respect of the business to be conducted from such premises;
- (b) the proposed use of the premises will contravene the provisions of any other law; or
- (c) the application is incomplete.

(6) The Environmental Health Officer must, upon the payment of the fee prescribed under regulation 9, issue a certificate of fitness in respect of an application that complies with these regulations.

(7) If an application made in terms of subregulation (1) is granted or refused, the Environmental Health Officer must, within 14 days after the date on which the application is granted or refused in writing inform the applicant accordingly, and if the application is refused the Environmental Health Officer must give reasons for the refusal.

(8) An application for a certificate of fitness in respect of an offensive trade or noxious industry may only be considered if the Environmental Health Officer is satisfied that such business is not likely to cause public nuisance or danger to the environment, and that all objections lodged were considered.

(9) The Environmental Health Officer may issue a certificate of fitness subject to conditions which he or she may consider necessary to impose to for the protection of the environment and for the prevention of public nuisance.

(10) An applicant who feels aggrieved by the conditions imposed in terms of subregulation (9), or whose application for the issuing of a certificate of fitness has been refused, may appeal in writing to the Chief Executive Officer within 14 days after having received notice thereof, and in such appeal must briefly set out the grounds for appeal.

(11) An appeal contemplated in subregulation (10), must comply with the following -

- (a) it must be heard by the management committee of the Council within 14 days after the committee has received notice thereof;
- (b) at the hearing of an appeal the applicant may address the management committee either personally or through a legal representative; and
- (c) the management committee of the Council must give its decision on the appeal in writing to the applicant, or the representative as the case may be, within 14 days after making such decision.

Registration of business

4. (1) A person must apply for a certificate of registration of business or a temporary certificate of registration to the Registration Officer on a form determined by the Council.

(2) The completed application form must be submitted to the Registration Officer together with any information, plan or layout sketch as the Registration Officer may require in respect of the specific business.

(3) In considering the application referred to in subregulation (2), the Registration Officer may demand from the applicant or any other person information he or she may consider necessary in respect of such an application.

(4) If the application is for an offensive trade or noxious industry the applicant must include the following information in such application -

- (a) particulars relating to the nature of business, the raw materials to be dealt with, the processes to be carried on and the products thereof;
- (b) particulars of the plant to be installed, including the number, capacity, and type or description of all boilers, digesters, fryers and other apparatus;
- (c) particulars, with any necessary explanatory drawings, of the means proposed to be adopted for the disposal in order to prevent a public nuisance arising from vapour, effluvia and fluids and liquid waste matter to be discharged from the premises or otherwise and if land treatment of such matters is proposed, the nature, slope and area of the land and its position in relation to dwellings, streams, water courses and wells, as well as particulars of solid waste matters; and
- (d) any further environmental impact assessment particulars, plans or drawings, which the Registration Officer may require.

(5) The Registration Officer may not consider an application for a certificate of registration, if -

- (a) a certificate of fitness in respect of the premises is not submitted with the application;
- (b) the proposed use of the premises contravenes the provisions of any other law; or
- (c) the application is incomplete.

(6) If an application made in terms of subregulation (1) is granted or refused, the Registration Officer must, within 14 days after the date on which the application is granted or refused in writing inform the applicant accordingly, and if the application is refused the Registration Officer must give reasons for the refusal.

(7) If an application for a certificate of registration is granted the applicant is only entitled to the issue thereof upon payment of the fee prescribed under regulation 9.

(8) A certificate of registration must specify the conditions imposed in terms of regulation 3(9).

(9) A person may not conduct a business in conflict with the conditions imposed on the certificate of registration.

(10) A certificate of registration for informal trade must specify the area or place where such trade is to be conducted as well as the article or articles the trader is allowed to trade within such area, and for the purpose of this subregulation, "informal trade" means the selling of goods and services alongside a street, or other public place.

(11) An applicant who feels aggrieved by the conditions imposed under subregulation (9), or whose application for a certificate of fitness has been refused, may appeal in writing to the Chief Executive Officer within 14 days after having received notice thereof, and in such appeal must briefly set out the grounds for appeal.

(12) An appeal made in terms of subregulation (11), must comply with the following -

- (a) the appeal must be heard by the management committee of the Council within 14 days after committee has received notice thereof;

- (b) at the hearing of an appeal the applicant may address the management committee either personally or through a legal representative; and
- (c) the management committee of the Council must give its decision on the appeal in writing to the applicant, or the representative as the case may be, within 14 days after making such decision.

Validity, renewal, display and loss of certificate of fitness and certificate of registration

5. (1) a certificate of fitness is valid from date of issue until -

- (a) the premises in respect of which it is issued, is changed in any respect;
- (b) the business is relocated to other premises;
- (c) the nature of the business conducted on the premises is changed; or
- (d) the business is closed down,

on which date the certificate of fitness becomes invalid.

(2) A certificate of registration is valid from the date of issue until the date preceding the date of invalidity of such certificate as indicated on such certificate.

(3) A temporary registration certificate becomes invalid on the date indicated on such certificate.

(4) A certificate of fitness, certificate of registration or temporary registration may be renewed by application at any time but not later than five business days after it is considered to be invalid in terms of subregulation (1), (2) or (3).

(5) An application for the renewal of a certificate of fitness, a certificate of registration or temporary registration certificate must be addressed to the Environmental Health Officer and Registration Officer, respectively.

(6) Regulations 3 and 4 apply with necessary changes to applications for renewal of a certificate of fitness, certificate of registration and temporary registration certificate and to any decisions made in respect of such applications.

(7) A certificate of fitness and a certificate of registration, including any renewal thereof, must be displayed in a noticeable place on the premises in respect of which it is issued and must be shown to any authorised official when demanded.

(8) If a certificate of fitness or a certificate of registration is lost or stolen the owner or manager or any other person in charge of the conducting of the business, hereinafter referred to as the "nominee", in respect of such certificate must as soon as is reasonably possible report that the certificate of registration has been lost or stolen, in writing to the Environmental Health Officer or the Registration Officer, as the case may be, and the nominee is entitled to the issue of a duplicate certificate of fitness or certificate of registration, upon the payment of the fees prescribed under regulation 9.

(9) If a certificate of fitness or a certificate of registration is invalid and is not renewed, or has been suspended or withdrawn for any lawful reason in terms of these regulations, the nominee must ensure that the business immediately stops being conducted from such premises.

Transferability of certificate of fitness and certificate of registration

6. (1) A certificate of fitness and a certificate of registration may not be transferred from one premises to another, and if the holder of such certificates intends to

transfer a business from one premises to another, a new application for a certificate of fitness and a certificate of registration in respect of the new premises must be made in terms of regulations 3 and 4.

(2) Despite the provisions of subregulation (1), the name on a certificate of fitness and a registration certificate may be changed if the holder of such certificates applies for it, and upon payment of the fee prescribed under regulation 9.

(3) Subregulation (2) applies with necessary changes, to the change of the name of a business or a change of ownership of a business.

Alteration of premises or nature of business

7. (1) Any structural alterations or additions, or other alterations that is to be carried out on any premises in respect of which a certificate of fitness and a certificate of registration is issued, may be carried out with the prior written approval of the Environmental Health Officer and Registration Officer respectively, and regulations 3 and 4 apply with necessary changes to this subregulation.

(2) The nature of a business carried on or the plant or processes used in connection with it in terms of a certificate of registration may be changed by making an application to the Environmental Health Officer for such change, and regulations 3 and 4 apply with necessary changes to such an application.

(3) If the application under subregulation (2) is approved, the applicant is entitled to the issue of a revised certificate of fitness and a certificate of registration.

(4) The issue of a revised certificate of fitness and a certificate of registration in terms of subregulation (3) may only be effected against cancellation of the existing certificate of fitness and certificate of registration.

Suspension or cancellation of certificate of fitness and certificate of registration

8. (1) If a nominee contravenes, or allows another person to contravene any law or any condition imposed in terms of a certificate of registration, an authorised official must in writing order the nominee to stop such contravention.

(2) An order given in terms of subregulation (1) must state the time in which the nominee must comply with the order, which period must be reasonable having regard to the circumstances of each case.

(3) If the nominee fails or refuse to comply with an order given in terms of subregulation (1), the authorised official may cancel the certificate of fitness and the certificate of registration, and on such cancellation the nominee must stop the conducting of the business from such premises.

(4) A nominee may appeal against an order given in terms of subregulation (1), in which case regulation 4(11) applies with necessary changes.

(5) The nominee may continue conducting the business pending the decision on appeal.

(6) Subregulation (5) does not prohibit the Council from applying to the High Court of Namibia for an interdict summarily prohibiting the interim conducting or operation of any business.

Fees and charges payable

9. (1) The fees for the issue, renewal, transfer from one nominee to another, or the change of name of a business on a certificate of fitness and a certificate of registration, or the issue of a duplicate of any certificate, which fees may differentiate

between different categories and classes of business, are as determined by the Council by notice in the *Gazette* in terms of section 30(1)(u) of the Act.

(2) The fee for any inspection carried out in terms of these regulations is the actual cost plus 15% per inspection.

(3) The fee for the analysis of any sample required in terms of any law is the actual cost plus 15% per analysis.

(4) Any other fee or charge levied by the Council for any other work done or other service rendered in terms of these regulations is as determined by the Council by notice in the *Gazette* in terms of section 30(1)(u) of the Act.

Cessation of business

10. The holder of a certificate of registration must inform the Environmental Health Officer in writing of the cessation of the business in respect of which such certificate is issued, within one month after such cessation and must at the same time hand in the certificate of fitness and the certificate of registration issued in respect of such business for cancellation.

Record of certificate of registration

11. (1) The Registration Officer must keep and maintain a record of every registration certificate issued and a record containing the information as required with each application for each registration certificate in respect of each business conducted in the municipal area.

(2) No person, other than an authorised official, has access to or is entitled to inspect any records or documents, referred to in subregulation (1), unless he or she is authorised to do so by the Council.

PART III INSPECTIONS OF BUSINESS PREMISES

Appointment of inspectors

12. The Council may appoint an inspector or inspectors to carry out inspections for the control of registration of business.

Powers, duties and functions of inspectors

13. An inspector, in relation to any business that is to be registered in the municipal area -

- (a) has, at all reasonable times, access to any premises to make such investigations and inquiries as he or she may consider necessary;
- (b) may require from any nominee to produce for his or her inspection -
 - (i) a valid certificate of fitness, certificate of registration or temporary certificate of registration; and
 - (ii) such other documents or records which in the opinion of the inspector, may be necessary for the investigation he or she is conducting and may make copies or extracts of such documents;
- (c) may remove any document or the certificate of registration in possession of any person, if in his or her opinion such document or certificate of fitness may serve as evidence of a contravention of these regulations, and must issue to the person in control of the business a receipt in respect of such document or certificate of fitness removed by him or her;

- (d) may require the person referred to in paragraph (c) to furnish his or her full name and address and produce an identity document; and
- (e) must report to the Council on any matter contemplated in this regulation or as the Council may require.

**PART IV
OFFENCES AND PENALTIES**

Offences and penalties

- 14.** (1) A person who -
- (a) contravenes or fails to comply with any of these regulations or any condition imposed under it;
 - (b) threatens, resists, hinders or obstructs any Health Officer or an inspector in the execution of his or her duties or functions in terms of these regulations;
 - (c) in an application for a certificate of registration or a temporary certificate of registration makes any false statement or misleading statement;
 - (d) intentionally give false or misleading information to an authorised official, Environmental Health Officer, or Registration Officer; or
 - (e) alters or falsifies a certificate of registration or a temporary registration certificate,

commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period of not exceeding 6 months.

(2) A person who fails to renew his or her certificate of fitness, registration certificate or temporary registration certificate in accordance with regulation 5(4), is liable to a penalty which is equal to the renewal fee in respect of the business, and if on application for the renewal, he or she fails to pay the penalty his or her application for the renewal may not be considered.

FORM "A"

**FORM OF NOTICE TO BE PUBLISHED APPLICANT FOR PERMISSION TO
USE PREMISES FOR CONDUCTING NOXIOUS INDUSTRY OR
OFFENSIVE TRADE**

REGULATION 3(3)

Notice is hereby given that an application has been made in terms of regulation 3(3) to the ENVIRONMENTAL HEALTH OFFICER, for permission to use premises at the following address

(Insert site address)

for the following purposes

.....
(Description of purposes and nature of trade or business proposed to be carried on)

Any person desiring to object to the use of the above-mentioned premises for such purposes may do so by lodging on or before a written notice, in duplicate, setting out the grounds of his or her objection, with the Environmental Health Officer.

Name and address of applicant

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