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OF THE

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General Notice

TOWN OF OSHIKUKU

No. 167

2012

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

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

BY ORDER OF THE COUNCIL

V. MWENYO
CHAIRPERSON OF THE COUNCIL

SCHEDULE

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 -

“authorised officer” or “authorised official” means an employee of the Council authorised by it to administer and enforce these regulations;

- “business” means any profession, occupation, trade, undertaking, service, industry or activity conducted for gain;
- “certificate of fitness” means a certificate of fitness issued in terms of regulation 5;
- “chief health officer” means the head of the Environmental Health Officers of the Local Authority or the person acting as such, and failing any such person then any environmental health officer employed by the Local Authority and identified by name or post description in terms of section 13 of the Allied Health Services Professions Act, 1993 (Act No. 20 of 1993);
- “Council” means the Town Council of Oshikuku 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 the regulations;
- “Council area” means the area of jurisdiction of the Council;
- “environmental health officer” means an environmental health officer employed by the Local Authority and identified by name or post description in terms of section 13 of the Allied Health Services Professions Act, 1993 (Act No. 20 of 1993);
- “fee” means the fee determined by the Council by notice in the *Gazette* in terms of section 30(1)(u) of the Act;
- “inspecting officer” means a staff member authorised in writing by the Council to conduct inspections in respect of a business premises;
- “noxious business” means a business of a nature which may reasonably be considered to be offensive to the general public or which is harmful to the environment, or to the health of the general public, and any business determined by the Council under regulation 2(2)(b) to be a noxious business;
- “place of business” means the premises, whether it be a personal residence, main business location or an outlet, branch or other location, temporary or otherwise to which the public is expressly or by implication invited for the purpose of doing business;
- “premises” means land or any portion, any building, caravan or tent together with the land on which it is situated and adjoining land used in connection and includes any vehicle, conveyance, ship or boat;
- “prohibited area” means any place declared by resolution of the Council to be an area, inclusive of any premises, in or on which trading is prohibited;
- “public nuisance” includes any action or omission which is likely to injure the safety, health, peace or convenience of residents in the Council area and the carrying on of any activity which causes a stench or which is otherwise objectionable;
- “registration certificate” means a certificate issued as a prerequisite to the carrying on of a business in the area of the Council;
- “registration officer” means a staff member empowered by the Council to consider applications for registration certificates and to issue registration certificates;
- “temporary registration certificate” means a registration certificate issued for a limited number of days and is subject to conditions determined by the registration officer.
- “the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992).

Prohibition on conducting a business

2. (1) A person may not conduct a business within the Council area unless a -
- (a) a certificate of fitness; and
 - (b) a certificate of registration,

has been issued to him or her in terms of these regulations.

- (2) The Council may, for the purpose of these regulations, determine -
- (a) certain areas to be areas within which the conducting of a business is prohibited; and
 - (b) certain businesses to be noxious business.
- (3) A person may not conduct business in a prohibited area.
- (4) A person who fails to comply with sub-regulations (1) or (3) commits an offence.

(5) Where a business is operated on, or conducted from more than one premises in the Council's area a certificate of fitness and a registration certificate is required in respect of every such premises.

Application for certificate of fitness

3. (1) An application for a certificate of fitness must be made on the form provided by the Council, and -

- (a) be submitted to the environmental health officer for consideration;
- (b) be accompanied by the appropriate fee;
- (c) be accompanied by such other information as the environmental health officer may consider necessary for purposes of making a decision in terms of regulation 5; and
- (d) where an application for a certificate of fitness is made for the conducting of a noxious business, be accompanied by -
 - (i) particulars relating to the nature of the noxious business to be conducted;
 - (ii) particulars relating to the nature of materials or goods to be sold, if any;
 - (iii) particulars relating to any processing of goods or materials;
 - (iv) particulars relating to the equipment to be installed or used on the business premises, including the number, type and capacity of each piece of equipment used in the conducting of the noxious business;
 - (v) particulars relating to the measures to be taken for purposes of minimizing public nuisance and for the disposal of waste;
 - (vi) an environmental impact assessment undertaken in relation to the noxious business to be conducted on the business premises; and
 - (vii) proof of publication of the notice referred to in regulation 4.

(2) A certificate of fitness must be obtained in respect of each business premises on which business is to be conducted.

(3) A person who wilfully furnishes incorrect or false information or particulars in terms of this regulation commits an offence.

Publication of notice in respect of noxious business

4. (1) A person who intends to conduct a noxious business within the Council area must, in addition to the application for a certificate of fitness referred to in regulation 3, cause a notice to be published in a newspaper circulating in the Council area -

- (a) stating that an application has been made to the environmental health officer;
- (b) stating the nature of the noxious business to be conducted;
- (c) indicating the business premises from which the noxious business is to be conducted;
- (d) stating whether any environmental impact assessment has been undertaken in relation to the noxious business to be conducted on the business premises and the outcome, if any, of the assessment;
- (e) indicating the place at which and the times and dates during which the application and any documentation in support of the application may be inspected; and
- (f) calling upon persons to lodge, with the environmental health officer, objections to the granting of the application, which objections must be lodged by a date being not less than 14 days from the date of publication of such notice.

(2) Where an objection is lodged in terms of subregulation (1) the environmental health officer must -

- (a) within 7 days from the date referred to in paragraph (f) of that subregulation give notice to the applicant of the objections lodged; and
- (b) call upon the applicant or his or her representative, to make, within 7 days from the date of the notice referred to in paragraph (a), written representation against the objections, in any, in support of the application.

Issuing of certificate of fitness and validity of certificate

5. (1) The environmental health officer must, when considering an application for certificate of fitness, take into account -

- (a) whether type of business applied for on the business premises is in conflict with any laws relating to public health and safety or is in conflict with any town planning scheme or township condition, applicable to that premises;
- (b) any objection raised or representation made in pursuance of a notice published under regulation 4;
- (c) any representation made in support of the application; and
- (d) whether the provisions of regulation 3 or regulation 4 have been complied with.

(2) The environmental health officer must consider the application for a certificate of fitness and may -

- (a) grant the application and issue the certificate of fitness; or
 - (b) refuse the application, and within 7 days, provide the applicant with written reasons for the refusal.
- (3) A certificate of fitness issued in terms of this regulation is valid for a period of one year from the date of issue or until such time that -
- (a) the premises, in respect of which the certificate of fitness is issued, undergoes any form of alteration, other than alterations approved in accordance with regulation 12 or which is necessary for the purpose of maintaining the business premises concerned; or
 - (b) the nature of the business, for which a certificate of fitness is issued, changes in any way, whichever occurs first.
- (4) The holder of a certificate of fitness must, before the date of expiry of the certificate, apply to the environmental health officer for a renewal of the certificate in the manner provided in regulation 10.

Application for certificate of registration

6. (1) A person may, if a certificate of fitness has been issued to him or her in terms of regulation 5, apply on the form provided by the Council for a certificate of registration.
- (2) An application for a certificate of registration must -
- (a) be submitted to the registration officer for consideration;
 - (b) be accompanied by the appropriate fee;
 - (c) be accompanied by a certified copy of a valid certificate of fitness issued in terms of regulations 5;
 - (d) be accompanied by such other information as the registration officer may consider necessary for purposes of making a decision in terms of regulation 7; and
 - (e) where applicable, provide particulars relating to the compliance or non compliance with any condition endorsed on the certificate.

Issuing of certificate of registration and validity of certificate

7. (1) The registration officer must consider the application for certificate of registration, and may -
- (a) grant the application and issue the certificate of registration; or
 - (b) refuse the application, within 7 days provide the applicant with written reasons for the refusal.
- (2) The registration officer must, when considering an application for a certificate of registration -
- (a) satisfy himself or herself that the conditions imposed by the environmental health officer and endorsed upon the certificate of fitness issued under regulation 5 have

been complied with and where such conditions have not been complied with he or she must take into consideration many particulars submitted in terms of regulation 6(2)(e) in support of such non-compliance; and

(b) take into consideration any objections lodged and any representations made in terms of regulation 4.

(3) A person to whom a certificate of registration has been issued may only conduct such business on such business premises for which the certificate of registration is issued.

(4) A certificate of registration issued in terms of this regulation is valid for a period of one year from the date of issue or until such time that -

(a) the certificate of fitness issued, in terms of this regulation 5, becomes invalid; or

(b) the nature of the business for which a certificate of registration is issued changes, whichever occurs first.

(5) The holder of a certificate of registration must before the date of expiry of that certificate, apply to the registration officer for a renewal of that certificate in the manner provided in regulation 10.

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 provided by the Council for that purpose and upon payment of an appropriate fee, apply for a temporary certificate of fitness and a temporary certificate of registration.

(2) Regulations 3, 4, 5, 6 and 7 apply with necessary change to an application referred to in subregulation (1).

(3) The environmental health officer or the registration officer must endorse on the certificate of fitness or the certificate of registration the period for which the certificate is valid.

Display of certificate of registration and certificate of fitness

9. (1) The certificate of fitness and certificate of registration issued in respect of a business must be displayed in a conspicuous place at the place of business.

(2) Where a certificate of registration is issued to a person who goes from place to place or who goes to a particular place with goods, wares or merchandise for sale, such person must keep the certificate of registration and certificate of registration with him at all times while carrying out business and must show the certificate to an inspecting officer if so requested.

Application for renewal of certificate of fitness or certificate of registration

10. (1) An application for the renewal of the certificate of fitness or certificate of registration must be made on the form provided by the Council to the registration officer or the environmental health officer within thirty days before the date of expiry of the certificate concerned, and be accompanied by the appropriate fee.

(2) Subject to subregulation (3) and (4), on receipt of an application for the renewal of the certificate of fitness or certificate of registration, the registration officer or the environmental officer must renew the certificate concerned, and issue to the applicant the certificate of fitness or certificate of registration.

(3) For the purposes of renewing the certificate of fitness or certificate of registration, the registration officer or the environmental health officer, as the case may be, may require additional information or documents, and may refuse to renew the certificate concerned, if the applicant does not provide the information and documents required.

(4) Where the registration officer or the environmental health officer receives an application for renewal of a certificate of fitness or certificate of registration and the appropriate fees have been paid, he or she must, before renewing any such certificate -

- (a) ensure that all inspections, fitness certificate, approvals and documents as may be required have been obtained;
- (b) make inquiries into all relevant matters in order to ascertain if the applicant is entitled to obtain a renewed certificate under the provisions of this regulation;
- (c) inquire into any and all relevant changes in circumstances since the previous certificate was issued to the applicant; and
- (d) make any inquiries to any staff member who has carried out inspections or investigations relative to the business under application.

Transferability of certificates

11. (1) A certificate of fitness or a certificate of registration or any right granted under such certificate may not be transferred from one business premises to another business premises or from one person to another person or from one business to another business, except in accordance with subregulation (2).

(2) Notwithstanding subregulation (1), the holder of a certificate of fitness or a certificate of registration may, on the form provided by the Council and upon payment of the appropriate fee, apply to the environmental health officer or the registration officer to have -

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

(3) Where an application referred to in subregulation (2) is approved the environmental health officer or the registration officer must cause changes to be made on the certificate of fitness or the certificate of registration and must indicate changes in the business register of the Council.

Application for approval to make structural alterations

12. (1) A holder of a certificate of fitness or a certificate of registration may not make structural alterations or cause structural alterations to be made to the business premises for which a certificate of fitness or a certificate of registration has been issued, except with the prior written approval obtained from the environmental health officer.

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

(3) An application referred to in subregulation (2) must be made on the form provided 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 or the certificate of registration of the business premises;
- (d) written representations, if any, in support of the application; and
- (e) such further particulars as the environmental health officer may consider necessary for purposes of granting the approval.

(4) If the application referred to in subregulation (2) is approved, the environmental health officer must issue to that 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) An approval under this regulation is for purposes of ensuring compliance of the business premises with public health requirement, and does not exempt the owner of the premises from obtaining other authorization required by law.

Cancellation or suspension of certificate of fitness or certificate of registration

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

- (a) carries out or causes to be carried out any unapproved alterations or does anything or causes anything to be done on such business in contravention of these regulations;
- (b) contravenes or omits to comply, or allows another person to contravene or omit to comply, with any law or any condition imposed in terms of the registration certificate;

(2) The Council may not cancel or suspend a certificate of fitness or a 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 of the reasons for the action; and
- (b) in such notice, invites such person 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) The Council must, where a certificate of fitness or certificate of registration is cancelled or suspended, cause such cancellation or suspension to be indicated in the business register.

Record of registration certificates

14. (1) The Council must keep and maintain a record of every certificate issued and a record containing the information as required with every application for every certificate in respect of every business conducted in its area.

(2) Unless the Council so instructs, no person other than authorised official must have access to or be entitled to inspect any records or documents.

Cessation of business

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

(2) The registration officer must, upon being informed of the cessation referred to in subregulation (1) and upon receipt of the certificate of registration and certificate of fitness, cancel that certificate of registration and must indicate such cancellation in the business register of the Council.

Inspections

16. (1) An inspecting officer may, in terms of section 91 of the Act, at a reasonable time, enter business premises for the purpose of inspecting such premises and any work or process carried out for purposes of ensuring compliance with these regulations.

(2) An inspecting officer must carry upon his or her person an identification card issued by the Council indicating that such person is authorised to carry out inspections for the purpose of these regulations and must, when requested to do so, present for inspection that identification card to the holder of the certificate of fitness or the certificate of registration or to the person in charge of the premises.

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

- (a) require a person in possession or in custody of or who has control over any 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 those documents;
- (b) inspect and remove, for the purpose of making copies or extracts, the documents, referred to in paragraph (a); and
- (c) require a person, referred to in paragraph (a), to furnish his or her full name and address and to produce his or her identification document.

(4) Where an inspecting officer removes any document for the purpose set out in subregulation (3)(b), he or she must issue out a receipt for the removed documents and must return the documents within a reasonable period.

(5) Where in the opinion of the inspecting officer a contravention of these regulations is being committed, he or she must report such contravention to the Council.

(6) If, by reason of the fact that a business premises is locked or the entrance to it is blocked or obstructed in any manner, it is not reasonably possible for the inspecting officer to enter upon the business premises concerned, the Council may by written notice to the holder of the certificate of fitness or the certificate of registration require -

- (a) the unlocking of such entrance; or
- (b) the removal of such obstruction,

for the purpose of restoring access to the business premises within a specified period in the notice.

Appeals

17. (1) A person who is aggrieved by a decision made under these regulations may lodge an appeal with the management committee against that decision in the manner provided for in this regulation.

- (2) An appeal referred to in subregulation (1) must -
- (a) be lodged with the management committee within 30 days from the date of such decision;
 - (b) be in writing;
 - (c) be in the form approved by the management committee of the Council;
 - (d) indicate the grounds for appeal; and
 - (e) indicate the redress sought.

(3) Where an appeal is lodged with the management committee by way of electronic transmission the applicant must, within a period of 7 days from the date of the transmission, deliver or send a hard copy of the appeal together with any representations made in support of the application to that committee.

(4) The management committee must, within 30 days from the date of receipt of the appeal, consider the appeal and after hearing oral representations, if any, from the appellant, or the appellant's legal representative, either -

- (a) confirm the appeal;
- (b) refuse the appeal; or
- (c) confirm the appeal subject to such conditions as the management committee may consider appropriate.

(5) The management committee must provide the appellant with written reasons for the decision made under subregulation (4), and must inform the Council of its decision.

(6) A person aggrieved by a decision made by the management committee under subregulation (4) may lodge an appeal with the Minister against such decision and such appeal must, with the necessary changes, be in accordance with this regulation.

Offences and penalties

- 18.** (1) A person commits an offence, if that person -
- (a) contravenes or fails to comply with any provisions of these regulations or any condition imposed under it;
 - (b) threatens, resist, hinders or obstructs any inspector in the execution of his or her duties or functions in terms of these regulations;
 - (c) in an application of a registration certificate or temporary registration certificate makes any false statement or any statement which is calculated to mislead;

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- (d) intentionally give false or misleading information to an inspector, environmental health officer or registration officer;
 - (e) alters or falsifies a registration certificate or temporary registration certificate; or
 - (f) fails to renew his or her certificate of fitness and certificate of registration.
- (2) A person convicted of an offence in terms of subregulation (I) is liable to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
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