



GOVERNMENT GAZETTE

OF THE

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General Notice

OSHIKUKU TOWN

No. 94

2014

INFORMAL TRADING REGULATIONS: LOCAL AUTHORITIES ACT, 1992

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

M. MUNGANDJERA
CHAIRPERSON OF THE COUNCIL
BY ORDER OF THE COUNCIL

Oshikuku, 7 April 2014

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PART 1
PRELIMINARY PROVISIONS

Definitions

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

“authorised official” means a staff member of Council authorised by Council to administer and enforce these regulations;

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

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

“Council” means the Town Council of Oshikuku;

“local authority area” means the local authority area of the Town of Oshikuku;

“health officer” means a person appointed by the Council as a health officer or a person acting in such capacity;

“informal trader” means a person engaging in informal trading in the local authority area, and registered under regulation 4 as an informal trader or as an assistant informal trader;

“informal trading” means the selling of goods and services in or alongside a street or a public place;

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

“sell” includes -

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

“sidewalk” means a sidewalk as defined in the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);

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

“1969 Regulations” means the regulations published in Government Notice. 121 of 14 October 1969.

Application of regulations

2. (1) These regulations apply to informal trading in the local authority area, but do not apply to business premises registered in terms of the 1969 Regulations.

(2) As from the date of commencement of these regulations, regulations 95 to 99 of the 1969 Regulations, dealing with hawkers, do not apply in the local authority area.

PART 2 REGISTRATION OF INFORMAL TRADERS

Informal traders and assistant informal traders to be registered

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

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

(3) A person who contravenes this regulation commits an offence and is liable on conviction to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months or to both the fine and imprisonment.

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

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

(2) An application for registration as an informal trader or an assistant informal trader in terms of subregulation (1) must be accompanied by a non-refundable application fee determined by Council under section 30(1)(u) of the Act.

(3) If the person contemplated in subregulation (1) intends to sell foodstuffs, the application for registration must be accompanied by a certificate of fitness.

(4) On receipt of an application in terms of subregulation (1), the Council must consider the application and the Council may -

- (a) grant the application, with or without conditions and register the applicant as an informal trader or an assistant informal trader;
- (b) request the applicant to provide more information within a specified time; or
- (c) refuse the application and give written reason.

(5) The Council must, in accordance with section 93 of the Act, inform the person contemplated in subregulation (1) of its decision under subregulation (4) within a period of 30 days of receipt of the application.

Issue and display of registered certificate

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

(2) A registered certificate must -

- (a) specify the area or place at or where the trade concerned is conducted;
- (b) specify the goods or the class or kind of goods which the holder of the registration certificate is entitled to sell; and
- (c) at all times be kept by the person in whose name the certificate is issued on his or her person or his or her immediate proximity.

(3) A registration certificate issued under subsection (1) is valid for a period of 12 months and the date on which the certificate lapses must be endorsed on the certificate.

Renewal of registration certificates

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

(2) The fees payable for the renewal of a registration certificate are as determined by the Council under section 30(1)(u) of the Act.

Transfer of registration certificate

7. A registration certificate is not transferrable and only the person in whose name it was issued is entitled to conduct any business by means of the certificate.

Duplicate registration certificate

8. (1) If a registration certificate issued to a person is lost, such person must, within 14 days from the date on which the loss became known to him or her -

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

(2) The fees payable in respect of the issue of a duplicate registration certificate are as determined by the Council in terms of section 30(1)(u) of the Act.

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

Reconsideration of application

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

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

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

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

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

Temporary registration and exemptions relating to registration

10. (1) A person who intends to carry out an informal trading on a temporary basis must apply to the Council for the issue of a temporary registration certificate.

(2) A temporary registration certificate referred to in subregulation (1), must be applied for in a form approved by the Council and be accompanied by an application fee determined by the Council under section 30(1)(u) of the Act.

(3) A person who carries on temporary trade without a temporary registration certificate 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 or to both the fine and imprisonment.

Consideration of application

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

- (a) grant the application, with or without conditions and register the applicant as a temporary informal trader;
- (b) request the applicant to provide more information within a specified period;
or
- (c) refuse the application and give written instructions.

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

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

Change of address

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

PART 3 INFORMAL TRADING

Producing registration certificate

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

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

Conditions of informal trading

14. (1) An informal trader or an assistant informal trader conducting business must keep and store his or her goods in a container and in the area designated by the Council.

(2) An informal trader or an assistant informal trader who fails to comply with any 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 or to both the fine and imprisonment.

Limitation of trade

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

(2) An informal trader who fails to comply with 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 month or to both the fine and imprisonment.

Trading in food or home-made food products

16. (1) A person may not, in a building, including a private dwelling, handle, prepare, serve or pre-pack any food for human consumption, except for own domestic use, unless such person is a holder of a certificate of fitness issued by the health officer

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

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

(3) A health officer must carry out an inspection of the building, dwelling or vehicle contemplated in subregulation (2) and the informal trader or the assistant informal trader must pay an inspection fee and any mileage as determined by the Council in respect of the inspection, in terms of section 30(1)(u) of the Act.

(4) After the person contemplated in subregulation (1) has produced proof of payment of the inspection fee and any mileage fee referred to in subregulation (3) the health officer may issue a certificate of fitness.

General rules of conduct for informal traders

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

- (a) place or stack his or her goods and property in such a manner that it constitutes a danger to any person or is likely to injure any person;
- (b) obstruct access to a fire hydrant;
- (c) attach an object by any means to a building, structure, pavement, tree, parker meter, lamppost, power, standard, telegraph-pole, telephone, booth, mail-box, traffic sign, bench or any other similar object in or on a street or a public place; or
- (d) light a fire in any area where it may cause a public nuisance.

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

- (a) at the request of an authorised official or a person acting on behalf of the Council or of any supplier of telecommunication, electricity or other services, move his or her property or any property under his or her control or in his or her care, so as to permit the carrying out of any work in relation to a street or public place; and
- (b) on concluding business for the day, remove his or her goods and property from the trading area to a place which does not form part of a street or public place.

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

Cleanliness

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

- (a) keep the area or site occupied by him or her for the purpose of informal trading in a clean and sanitary conditions;
- (b) keep himself or herself at all times clean;
- (c) keep his property in a clean and sanitary condition;
- (d) properly dispose of litter generated during the conducting of informal trading by his or her business;
- (e) not dispose of litter in a manhole or other place not intended for the disposal of litter;
- (f) in case of an informal trader dealing in foodstuffs, take such precautions as may be necessary to prevent the spilling of any fat, oil or grease in the conducting his or her business and to prevent any smoke, fumes or odours emanating from his or her activities which may constitute public nuisance;
- (g) at the request of an authorised official or person acting on behalf of the Council, move his or her property or any property in his or her care or under his or her control so as to permit the cleaning of the surface of the area or site where he or she is trading; and
- (h) ensure that a completion of business for the day the area or site occupied by him or her for the purpose of trade is free of litter.

(2) A vehicle which is used by an informal trader or an assistant informal trader in connection with his or her business and in which food is offered for sale must be approved by the Council.

(3) An informal trader may not convey an animal, bird, poultry and hides and skins in the same compartment as foodstuffs in the vehicle contemplated in subregulation (2).

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

(5) An informal trader or an assistant informal trader who contravenes a provisions of this regulation commits an offence and is liable on conviction to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months or to both the fine and imprisonment.

Obstruction and traffic

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

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

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

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

(3) An informal trader or an assistant informal trader who contravenes subregulation (1) or (2) 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 or to both the fine and imprisonment.

Trading restricted to approved trading areas

20. (1) An informal trader or an assistant informal trader may not trade, place, pack or store any goods, outside the area or place of trading specified in his or her registration certificate.

(2) An informal trader or an assistant informal trader 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 or to both the fine and imprisonment.

Areas for trading and signs indicating such areas

21. The Council may by resolution -

- (a) determine areas for trading and hours for informal trading and other restrictions relating to informal trading; and
- (b) place erect, insert, draw or construct signs, markings or other devices indicating -

- (i) specified hours, places, goods or services in respect of which informal trading may be restricted or may be allowed; and
- (ii) the boundaries of a strand or area set aside for the purpose of informal trading.

PART 4 IMPOUNDING OF GOODS

Removal and impounding

22. (1) For the purpose of this regulation and regulation 20, the expression “goods” includes any receptacle, vehicle or movable structure sold or used in connection with the business of the informal trader.

- (2) An authorised official may remove and impound goods -
 - (a) which he or she reasonably suspects are being used or are intended to be used or have been used in or in connection with the conduction of any trade; and
 - (b) which goods -
 - (i) he or she finds at a place where the conducting of the trade concerned is prohibited by Council;
 - (ii) in his or her opinion are placed in such manner as to -
 - (aa) prevent pedestrians from passing on the sidewalk;
 - (bb) cause an obstruction to traffic; or
 - (cc) are in front of a fire hydrant or an entrance to or exit from a building.
- (3) An authorised official acting in terms of subregulation (2) must -
 - (a) issue to the person conducting a trade, a receipt in respect of any goods the authorised official removes and impound, which receipt must specify such goods in details and must be signed by the authorised official;
 - (b) take proper care of goods so removed and impounded in terms of this subregulation; and
 - (c) immediately deliver the goods contemplated in subregulation (2)(a) to a place determined by the Council.

(4) The owner of any goods which have been removed and impounded under subregulation (2) is, liable for any reasonable expenses incurred by the Council in respect of the removal and impounding of such goods and the Council may keep such goods in its possession until all such expenses have been paid or may deal with such goods as contemplated in that regulation.

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

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

Disposal of impounded perishable goods

23. (1) The owner of perishable goods impounded in terms of regulation 22(2), may, within a period of 24 hours from the time that such goods have been impounded, apply to the Council for the return of such goods and present the relevant receipt issued to him or her in terms of regulation 22(3)(a).

(2) If the owner of the perishable goods fails to claim his or her goods impounded under regulation 22 within two hours from the date of impounding, the Council may sell the goods in terms of regulation 25.

Disposal of non-perishable goods

24. (1) The owner of goods impounded under regulation 22(2), excluding perishable goods, may, within three months from the date of impounded, apply to the Council for the return of such goods and must attach to the application the relevant receipt issued in terms of regulation 22(3)(a).

(2) If the owner of goods impounded under regulation 23(2) fails to claim his or her goods within three months from the date of impoundment, the Council may sell such goods in terms of regulation 25.

Sale of impounded goods

25. (1) If goods in terms of regulation 22 impounded have not been claimed in terms of regulation 23 or 24, the Council may sell the impounded goods by public auction or by other means approved by the Council.

(2) If there is a sale of any goods impounded by the Council in terms of regulation 22(2), the proceeds of the goods sold, less the expenses incurred by the Council in respect of the removal and impounding of such goods, must, on presentation of the relevant receipt issued in terms of regulation 22(3)(a), be paid to the person who was the owner of the goods when such goods were impounded or if the owner is unknown to the person who had lawful possession of the goods when they were impounded.

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

Forfeiture of proceeds

26. If the owner of goods impounded in terms of regulation 22 fails to claim the proceeds of the sale of the goods sold in accordance with regulation 25 within a period of three months after the date that such goods were sold, such proceeds are forfeited to the Council.

PART 5
GENERAL PROVISIONS

Offences and penalties

27. A commits an offense, if that person -

(a) contravenes or fails to comply with any a condition imposed in respect of a registration certificate ;

- (b) threatens, resists, hinders, interferes with or obstructs an authorised official in the exercise of his or her powers or the performance of his or her duties or functions in terms of these regulations;
- (c) in an application for registration as an informal trader, furnishes any false or misleading information or makes any false statement;
- (d) furnishes false or misleading information to an authorised official;
- (e) not being an authorised official hold himself or herself out to be or presents himself or herself as an authorised official; or
- (f) makes any alteration to a registration certificate or a certificate of fitness,

and is liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both the fine and imprisonment.
