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General Notice

KATIMA MULILO TOWN

No. 191

2014

KATIMA MULILO TOWN COUNCIL: ANIMAL POUND REGULATIONS: LOCAL AUTHORITIES ACT, 1992

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

C. M. MATENGU
CHAIRPERSON OF THE COUNCIL
BY ORDER OF THE COUNCIL

Katima Mulilo, 16 May 2014

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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 -

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

“Council” means the Council of the Town of Katima Mulilo;

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

“local authority area” means the local authority area of the Town of Katima Mulilo

“owner” in relation to any animal, means an owner who is known or whose identity can be ascertained including the representative of the owner or other person having the lawful custody or possession of the animal;

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

“poundmaster” means a person appointed by Council as a poundmaster or a person acting in such capacity;

“property” means an erf or premises situated in the local authority area;

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

Establishment of pounds

2. (1) The Council must establish and maintain pounds within the local authority area for the impounding of animals.

(2) The Council must appoint a poundmaster to manage and control a pound established under subregulation (1).

Impounding of trespassing and straying animals

3. (1) The owner of a property within the local authority area who finds an animal trespassing on the owner's property may seize such animal for impounding and must deliver the animal to the pound within 24 hours of seizing it or if the pound is closed on the next business day.

(2) An animal found straying on a public place or a street may be seized for impounding by -

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

who must deliver the seized animal to the pound within 24 hours of seizing it or if the pound is closed on the next business day.

Duties of a person who has impounded an animal

4. (1) A person who seized an animal in terms of regulation 3 may not use or abuse such animal.

(2) An animal seized, in terms of regulation 3(1) or (2), for impounding and which is kept for more than six hours must be provided with sufficient food and water.

(3) A person who contravenes subregulation (1) or (2) commits an offence.

Freeing of impounded animals

5. (1) A person who frees or attempts to free an impounded animal or an animal seized in terms of regulation 3 commits an offence.

(2) A person who causes an animal to be impounded contrary to the provisions of these regulations commits an offence.

Duties of poundmaster

6. (1) The poundmaster must receive all animals delivered at the pound and keep them impounded until they are released or sold in terms of these regulations.

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

(3) The poundmaster must keep a pound book, which must be made available for public inspection at all reasonable times, in which the poundmaster must record the following information in respect of every animal impounded:

- (a) the type animal and its estimated age;
- (b) the distinguishing colours and marks it bears;
- (c) the name and address, if known, of the person who has delivered the animal for impounding;
- (d) the address or description of the property on which the animal trespassed or has been found;

- (e) the name and address, if known, of the owner of the animal;
- (f) if the animal is sold, the name and address of the purchaser and the sum realised by the sale;
- (g) the dates on which the animal was impounded and released or sold;
- (h) all fees and expenses accumulated in respect of animals impounded in terms of these regulations; and
- (i) all claims for damages filed with the poundmaster and if paid, the date and amount of payment.

(4) The poundmaster must issue a certificate, to the person who delivers an animal for impounding, in the form similar to the form contained in the Annexure.

Dealing with injured, ill or vicious animals

7. (1) If the poundmaster is of the opinion that an impounded animal is ill or injured or is in a poor physical condition a veterinarian designated by the Council must examine and treat the animal.

(2) If the poundmaster finds that an impounded animal is wild or vicious and its impounding is likely to be dangerous to other animals in the pound, the poundmaster must immediately notify the Council and isolate the animal.

(3) If an impounded animal dies, is injured or is destroyed in terms of these regulations the poundmaster must -

- (a) dispose of the carcass in such manner as the Council directs;
- (b) record the injury or cause of death in the pound book kept in terms of regulation 6; and
- (c) notify the owner of the animal in writing of the injury, death or the fact the animals has been destroyed.

Care of impounded animals

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

(2) The poundmaster may not use, harness or ill-treat an impounded animal or allow any other person to use, harness or ill-treat such animal.

Separation of impounded animals

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

Recovery of costs

10. Costs incurred by the Council in respect of the services of a veterinarian or in connection with treatment given to an impounded animal must be recovered from the owner of that animal or if the animal is sold under these regulations from the proceeds of the sale.

Notice to the owner of animals

11. (1) The poundmaster must, if the name and address of the owner of an impounded animal is known to him or her, in accordance with section 93 of the Act, notify the owner of the impounding of the owner's animal.

(2) The poundmaster must, in the notification contemplated in subregulation (1), state the amount which is payable for the release of the animal as well as any fees that are payable in respect of the animal.

(3) If an animal is impounded and the name of the owner is not known the poundmaster must immediately cause an advertisement to be published in a newspaper circulating in the local authority area setting out the following information:

- (a) a short description of the animal;
- (b) the estimate the value of the animal;
- (c) the date on which the animal was impounded;
- (d) the name and address of the person by who delivered the live animal for impounding; and
- (e) that the animal will be sold if it is not reclaimed by its owner within 30 days from the date of publication of the advertisement.

(4) The costs incurred in respect of the publication of an advertisement in terms of subregulation (2) are recoverable from the owner of the animal concerned.

Right to claim damages

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

(2) The Council may claim compensation in terms of these regulations for damage to the Council's property caused by the animal.

(3) The owner of an animal which has caused the damage as contemplated in subregulation (1) or (2), must compensate the owner of the property concerned or the Council for the damages.

(4) If the owner of the animal contemplated in subregulation (1) or (2) is unknown or cannot be traced the damages must be paid from the net proceeds, in accordance with regulation 26, if the animal is sold.

Claiming of damages

13. (1) The owner of property who intends to claim damages in terms of regulation 12(1) must when delivering the animal to the pound or within 24 hours after the animal has been impounded, give the poundmaster a notice of intention to lodge a claim.

Duty of person claiming damages

14. (1) The person who intends to claim damages in terms of regulation 12(1) must together with the Council's staff member and one person with no interest in the matter, inspect the

property concerned and prepare a written memorandum, setting out the nature and extent of damage as well as the amount of compensation being claimed.

(2) If the owner of the animal which is claimed to have caused damage is known to the owner of the property contemplated in subregulation (I), the owner must give notice of the time and place of the inspection contemplated to in subregulation (1) to the owner and afford the owner the opportunity to be present at the inspection.

(3) If at the inspection contemplated in subregulation (I) the owner of the animal admits liability for the damage, and -

- (a) accepts the amount assessed in terms of that subregulation as correct;
- (b) reaches an agreement with the owner of the property with regard to the amount and pays it; or
- (c) arranges for the payment with the owner of the property

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

(4) If the damages contemplated in this regulation are paid directly to the owner of the property, the owner must issue a receipt in respect of that payment to the owner of the animal.

(5) If the owner of the animal has not attended inspection contemplated in subregulation (1) and if his or her name and address is known to the poundmaster, the poundmaster, must immediately on receipt of the written memorandum, contemplated in that subregulation give notice, in accordance with section 93 of the Act, to the owner of the animal of the findings of the persons who held the inspection and give full particulars of the damages as determined.

Council claiming damages

15. (1) The Council must, if it intends to claim damages in terms of regulation 12(2), first cause an inspection of the damaged property to be held by the poundmaster or staff member of the Council authorised by Council for that purpose and two persons with no interest in the matter and the provisions of regulation 14 applies with necessary changes.

If claim is denied

- 16.** If -
- (a) the claim for damages by the owner in terms of regulation 14 is disputed by the owner of the animal;
 - (b) the owner of the animal in respect of which a claim for damage is made, admits liability but disputes the amount claimed,

the poundmaster must immediately give notice, in accordance with section 93 of the Act, to the owner of the property concerned of the fact that the owner of the animal is denying liability or is disputing the amount claimed.

Conditions for release of animal

- 17.** The poundmaster may not release an impounded animal unless -
- (a) all fees due in terms of these regulations; and

- (b) the amount in respect of damages, if any,

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

Dispute of claim

18. (1) If a claim for damages in terms of regulation 12, whether instituted by the owner of the property or the Council is disputed by the owner of the animal concerned the poundmaster must -

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

release the animal.

(2) If the poundmaster is of the opinion that the value of the animal to which claim for damages relates is less than the amount of the claim, the poundmaster, subject to the direction from Council, may determine the amount of surety which equal to the value of the animal concerned.

Proof of ownership

19. The poundmaster may, before he or she releases an animal under subregulation 18, require that the person claiming the release of animal release prove by affidavit or otherwise to the satisfaction of the poundmaster, that he or she is the owner of the animal or has been authorised by the owner to claim its release.

When animals may be sold

20. If an animal is not released within 30 days from the date of publication of the advertisement in terms of regulation 11 and any other animal is not released within 7 days from the date of impounding, it must be sold in accordance with the provisions of regulation 22 or 23.

Notice of intention to sell

21. (1) The poundmaster must, after expiry of the relevant period referred to in regulation 20, by notice publish once in the Gazette and once a week for 2 consecutive weeks in newspapers circulating in the local authority area advertise that the animal concerned is to be sold by public auction.

- (2) The notice referred to in subregulation (1), must set out the following information:
- (a) the place where, the date and time when the sale is to be held;
- (b) a description of the animal to be sold; and
- (c) the date of the impounding and the name and address of the person by whom it was impounded.

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

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

Sale of impounded animal

22. (1) An animal may, after the expiry of the period of 7 days referred to in regulation (2) have been complied with, be sold at the first morning market or by public auction held at a public place which is centrally situated in the local authority area.

(2) The poundmaster must advertise the sale contemplated in subregulation (1) by affixing a notice not later than 4 days before the date of the sale containing all the information as required by regulation 21, on the notice board at the offices of the Council and at or as near as possible to the place where the sale is actually taking place.

(3) The poundmaster may, despite regulation (1), sell any animal on a public auction held in terms of regulation 23, on condition it has been advertised as such in the notice of sale referred to in subregulation (2).

Sale by auction

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

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

- (a) the offspring of any animal which is still dependent on that animal for its food, must be sold together with that animal; and
- (b) sheep or goats may be sold together in lots of not more than 10.

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

Apportionment of proceeds of sale

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

(2) The proceeds from the sale of any animal in terms of these regulations, must be applied -

- (a) for the payment of all fees owed to the Council; and
- (b) after the settlement of any claim for damages instituted in terms of these regulations and in respect of which no dispute is existing between the owner of the animal and the claimants concerned.

(3) If two or more competing claims are to be considered for settlement in terms of subregulation (2) any surplus that is available but which is insufficient to settle all the claims concerned in full must be distributed on a pro-rata amongst the claimants.

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

Sale of more than one animal

25. (1) If the notice of sale referred to in regulation 21 relates to more than one animal, the expenses incurred in connection with the publication of such notice must be recovered, subject to the provisions of subregulation (2), in equal parts from the proceeds of each animal sold.

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

Claim of proceeds

26. (1) If at any time within 6 months after the sale of an animal in terms of these regulations, person lays claim to the surplus, contemplated in regulation 4 and the Council is satisfied that -

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

the Council must pay the surplus to the person concerned.

(2) The right to claim payment of the surplus or any portion from the Council under subregulation (1) expires after a period of 6 months from the date of sale of the animal concerned but if the animal concerned at the time of the sale has been the subject of a claim for damages in terms of these regulations and such claim was at that stage still disputed such right expires after a period of 6 months from the date of the settlement of the claim or 3 years from the date of the sale of the animal, whichever is the earliest.

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

(4) The surplus contemplated in regulation 24 becomes the property of the Council upon expiry of the right to claim payment in terms of this regulation.

Ownership and branding of sold animals

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

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

Penalties

28. A person convicted of an offence in terms of these regulations is liable -

- (a) on a first conviction, to a fine not exceeding N\$100.00;
- (b) on a second or subsequent conviction for the same offence, to a fine not exceeding N\$200.00 or to imprisonment for a period not exceeding 3 months, or to both such fine and imprisonment;

- (c) in case of a continuing offence after the conviction if the commission of the crime continues after conviction referred to in paragraph (a) or (b), to a further fine not exceeding N\$4.00 a day, for each day the offence continues.

Savings

29. Any regulation which applied to the local authority area in respect of impounding of animals is repealed, except the regulation relating to fees payable to the Council.

ANNEXURE

CERTIFICATE WITH DETAILS OF IMPOUNDING ANIMALS

Description of animal:
.....
.....
.....

Number of animals:

Name and address of person who sent animals:
.....
.....
.....

Place where animals were found:
.....
.....
.....

Name and address of person who delivers animals:
.....
.....
.....

Signature of person who delivers animal:

.....
Poundmaster

.....
Date

Place:

