



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## General Notices

### MARIENTAL MUNICIPALITY

No. 104 2015

#### OUTDOORS ADVERTISING REGULATIONS: LOCAL AUTHORITIES ACT, 1992

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

**A. KAMBURUTE**  
**CHAIRPERSON OF THE COUNCIL**  
**BY ORDER OF THE COUNCIL**

Mariental, 16 February 2015

### SCHEDULE

#### Definitions

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

“advertising sign” means any written, graphic or pictorial representation of information which is displayed outdoors to advertise, announce or identify a person or to communicate information of any kind;

“Council” means the Municipality of Mariental constituted under section 6(1)(a) of the Act;

“display of a sign” means the display of an advertising sign and includes any structure that supports, has supported, or is capable of supporting the sign;

“erf” means an erf as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance No. 11 of 1963) and includes a farm portion;

“owner” in relation to an advertisement means the person who owns the advertising structure or will own the structure once it has been erected or any person who has a right to or share in the ownership of the advertising structure;

“road traffic sign” means a road traffic sign within the meaning of section 73 of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);

“scheme” means the Mariental Town Planning Scheme prepared in terms of the Town Planning Ordinance, 1954 (Ordinance No. 18 of 1954);

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

“council area” means the local authority area of the Municipal Council of Mariental.

### **Prohibition on erection or display of advertising signs**

2. (1) A person may not, in the council area, erect or display an advertising sign, unless that person has obtained the written authorisation of the Council to do so.

(2) Subregulation (1) does not apply to an advertising sign exempted in terms of regulation 9.

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

### **Provisions applicable to all advertisements**

3. Despite the other provisions of these regulations, an advertising sign may not -

- (a) constitute a danger to persons or property;
- (b) be so placed as to distract or contain an element which distracts the attention of drivers of vehicles in a manner likely to lead to unsafe driving conditions;
- (c) be illuminated to the extent that it causes discomfort to or inhibits the vision of approaching pedestrians or drivers of vehicles;
- (d) be attached to traffic signs or combined with traffic signs, unless specifically authorised by the Road Traffic and Transport Act, 1999 (Act No. 23 of 1999), obscure traffic signs, create confusion with traffic signs, interfere with the functioning of traffic signs or create road safety hazards;
- (e) obscure the view of pedestrians or drivers or obscure road or rail vehicles and road, railway or sidewalk features such as junctions, bends and changes in width;
- (f) be placed closer than the minimum clearance with regard to overhead power lines as prescribed by any law;

- (g) be erected in the vicinity of a signalised intersections which display the colours red, yellow or green if such colours will constitute a road safety hazard;
- (h) have light sources that are visible to vehicles travelling in either direction;
- (i) be erected without approval where such approval is required by the Act or these regulations or any other law.

#### **Application for authorisation to display an advertising sign**

**4.** (1) A person who wishes to erect or display an advertising sign must, on a form determined by the Council, apply to the Council for authorisation to do so.

(2) An application made under subregulation (1) must, unless the Council otherwise determines, be accompanied by -

- (a) a plan -
  - (i) showing the site where the advertising sign is to be erected or displayed drawn to a scale of not less than 1:500;
  - (ii) showing the position of each surrounding building on the site, if any, to which the advertising sign is to be attached and showing the position of installations of water, sewerage, storm water, drainage or electricity on the site;
  - (iii) showing the dimensions of the advertising sign in relation to the boundaries of the site;
- (b) a drawing of the advertising sign which must -
  - (i) show the information that will be displayed on the advertising sign including the colour of the proposed sign and whether the sign is to be illuminated; and
  - (ii) be drawn to a scale of not less than 1:10;
- (c) a photograph of the site where the advertising sign is to be erected or displayed which photograph must show the proposed position of the sign;
- d) in the case of an advertising sign which is to remain on the site for more than 60 days, a certificate from an engineer registered as such in terms of the Engineering Profession Act, 1986 (Act No. 18 of 1986) or from a person approved by the Council giving details to enable the Council to establish the ability of the proposed means of support of the sign to resist all loads and forces to which the sign may be exposed; and
- (e) the payment of an appropriate tariff as determined by the Council.

(3) The completed application form, together with the documents, information and the fee contemplated in subregulation (2) must be submitted to the Council.

(4) On receipt of a completed application form, documents, information and the fee contemplated in subregulation (2)(e), the Council may request the applicant to submit to the Council such further information as may be reasonable and necessary in respect of the application.

**Consideration of application for authorisation**

**5.** (1) The Council must consider every application submitted to it in terms of regulation 4 and may, having regard to all accompanying documents and information, -

- (a) grant the application without imposing any conditions;
- (b) refuse the application and in writing provide the applicant with reasons for the refusal; or
- (c) grant the application and impose conditions including conditions limiting the period within which the advertising sign may be erected or displayed.

(2) If an application is granted under subregulation (1)(a) or (c), the Council must issue to the applicant a written authorisation to erect or display the advertising sign concerned, subject to the conditions, if any, imposed by the Council and specified in that authorisation.

(3) An advertising sign or its support structure may not in any way be altered, moved or removed and any alteration may not be made to the electrical wiring system of a sign without the written authorisation of the Council, but the owner of the sign may alter, move or remove the sign for the purposes of maintaining or renovating it.

(4) An advertising sign, together with its supports, must be properly maintained.

(5) The Council may retain for its record a copy of an application, plan, drawing and other documents submitted to the Council in respect of an application which has been granted.

**Matters to be taken into consideration**

**6.** In considering an application in terms of regulation 5, the Council takes into account the following factors:

- (a) an advertising sign may not be so designed, erected or displayed that, it will -
  - (i) be detrimental to the environment or to the amenity of the residents in the council area by reason of either size, intensity, frequency, illumination, quality of design or materials or for any other reason;
  - (ii) constitute a danger to any person or property;
  - (iii) display any material which, whether in form, content or both, may reasonably be regarded to be offensive or shown to be offensive to the public or an identifiable class of person;
  - (iv) obscure any other signs authorised in terms of these regulations;
  - (v) impair the visibility of any road traffic sign;
  - (vi) contravene any law;
  - (vii) be detrimental or otherwise negatively impact on the area in which the proposed sign is to be erected or displayed or the type of landscape in the area; or
  - (viii) be detrimental or otherwise negatively impact on the environment whether artificial or natural or both; and

- (b) the number of signs erected or displayed or to be erected or displayed on the area or site concerned.

### **Non-compliance with conditions or instructions**

7. (1) If the person to whom the Council has granted authorisation under regulation 5, fails to properly maintain the advertising sign or fails to comply with a condition imposed by the Council in terms of that regulation, the Council may -

- (a) withdraw or amend the authorisation and in writing inform that person of the withdrawal or amendment; or
- (b) in writing, instruct that person or the owner of the advertising sign to repair or maintain the sign or to comply with any condition which the Council may determine, within a period specified by the Council in the instruction.

(2) Where the person or owner of the advertising sign contemplated in subregulation (1) (b), fails to comply with an instruction given or a condition determined by the Council in terms of that subregulation, the Council may remove the sign to ensure compliance by that person or owner with the instruction or condition and the Council may recover from the person or owner the tariff for the removal of the sign.

(3) Where an advertising sign has been removed under subregulation (2), the Council must return the sign to its owner, if the owner or the person contemplated in that subregulation -

- (a) gives the Council a written undertaking -
  - (i) not to erect or display the sign so returned; or
  - (ii) to comply with the conditions imposed under these regulations by the Council; and
- (b) pays to the Council the tariff for the removal contemplated in that subregulation.

### **Withdrawal of authorisation**

8. Despite regulation 6, the Council may, when it is reasonable and necessary -

- (a) withdraw an authorisation granted under regulation 5 after giving such written notice as may be reasonable under the circumstances to the person to whom such authorisation has been granted;
- (b) amend or withdraw a condition imposed under regulation 5(1)(c), after giving such written notice as may be reasonable under the circumstances to the person to whom such authorisation has been granted; or
- (c) impose new conditions on an authorisation granted under regulation 4, after giving such written notice as may be reasonable under the circumstances to the person to whom such authorisation has been granted

### **Advertising signs not requiring authorisation of Council**

9. (1) For the purpose of this regulation “subdivision” means subdivision as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance No. 11 of 1963).

- (2) The following signs may be erected or displayed without the authorisation of the Council on the condition that the signs satisfy the requirements set out in these regulations:
- (a) a sign displayed inside a building on the condition that the sign is not visible from a street;
  - (b) a road traffic sign;
  - (c) a street address sign or a sign showing the name and address of the owner or occupant of a place on the condition that the sign does not exceed half a square meter;
  - (d) a temporary sign on commercial properties which is painted directly on a window, affixed to the inside of a window, or hung within 12 meters of a window promoting any message, including but not limited to, grand openings and special events (commercial and non-commercial), on the condition that the sign does not exceed 50 percent of each window area;
  - (e) a sign affixed to a vehicle or trailer used in the normal transport of goods or persons where the sign is incidental and accessory to the primary use of the vehicle or trailer;
  - (f) a sign affixed to a vehicle displaying information on the terms of sale for the said vehicle;
  - (g) a temporary garage sale sign, on the condition that the sign does not exceed two square meters;
  - (h) an informational or directional sign of a public nature, on the condition that the sign does not exceed two square meters;
  - (i) a sign displayed in the air by any means, on the condition that the sign does not cause environmental pollution;
  - (j) a sign displayed during construction may be displayed for the duration of the construction and must:
    - (i) show the name and particulars of the person carrying out the construction;
    - (ii) show the name and particulars of the person on whose behalf the construction is being carried out; and
    - (iii) not exceed ten square meters;
  - (k) an estate agent's notice erected or displayed by an estate agent registered in terms of the Estate Agents Act, 1976 (Act No. 112 of 1976) and indicating that the property on which the sign is located is for sale, rent or lease, on the condition that the sign is erected or displayed in accordance with regulation 9;
  - (l) an auctioneer's notice erected or displayed by an auctioneer indicating that the property is for sale by way of auction on the condition that the sign is erected or displayed in accordance with regulation 9;
  - (m) a sign in an area zoned as "residential" in the scheme showing the name, logo, address and telephone number of -
    - (i) a resident occupation referred to the scheme;

- (ii) a person to whom the Council has given “consent to use” under the scheme;
- (iii) a person who is giving security services at the place; or
- (iv) a person who is carrying out an activity which has been authorised by the Council,

may be erected or displayed on the condition that sign erected or displayed on each erf, farm portion or subdivision does not exceed two square meters and unless the person concerned is to give security services at the place, only one sign is erected or displayed on each erf, farm portion or subdivision;

- (n) a sign in an area zoned general “residential” or “undetermined” and which is mainly used or is intended to be used for residential purposes under the scheme showing the name, logo, address and telephone number of -
  - (i) a resident occupation referred to the scheme;
  - (ii) a person to whom the Council has given “consent to use” under the scheme;
  - (iii) a person who is giving security services at the place; or
  - (iv) a person who is carrying out an activity which has been authorised by the Council,

may be erected or displayed on condition that the sign erected or displayed on each erf, farm portion or subdivision does not exceed two square meters and unless the person concerned is to give security services at the place, only one sign is erected or displayed on each erf, farm portion or subdivision;

- (o) a sign in an area zoned as “business”, “restricted business”, “garage”, “industrial” or “special” under the scheme and where business is the primary use as defined in the scheme, a sign may be erected or displayed on the condition that the height of that sign does not exceed five meters above the ground level and the sign does not go above the roof level of any building which is situated in that area;
- (p) in an area zoned as “office” or “special” under the scheme and where business is not primary in terms of the scheme, a sign may be erected or displayed, on the condition that the height of the sign does not go above the roof level of any building which is situated in that area and the area of that sign does not exceed two square meters;
- (q) a sign in an area reserved as “private open space” under the scheme, any sign can be erected or displayed subject to the condition that the height of the sign does not go above the roof level of any building which is situated in that area and the sign does not exceed ten square meters;
- (r) a sign in an area zoned “institutional”, “undetermined”, “municipal” or “reserved for government”, “cemetery,” “transportation” or “communication” under the scheme, on the condition that the sign complies with the requirements of the Council;
- (s) a sign erected or displayed by a candidate for presidential, local or regional authority elections, on the condition that the sign -
  - (i) is displayed at the residence or office of the candidate or at any other place authorised by the Council;

- (ii) is displayed for the duration of the election;
- (iii) does not exceed ten square meters;
- (t) a sign contained in a book, newspaper or pamphlet or similar items, on the condition that the distributor does not litter any place within the town area; or
- (u) a painted sign or decal affixed to a body of a vehicle or person, on the condition that the sign does not cause public nuisance.

### **Special requirements for certain signs**

**10.** (1) A notice of an estate agent and auctioneer must comply with the following requirements:

- (a) a notice of an -
  - (i) estate agent may only contain the words “for sale”, “to let”, “on show” or “show house” and the name, logo and contact details of the estate agent erecting or displaying the notice;
  - (ii) auctioneer may only contain the words “public auction” or in the case of a sale in execution by order of court the words “sale in execution”, the date, time and place of the auction and the name, logo and contact details of the auctioneer erecting or displaying the notice;
- (b) an estate agent or an auctioneer may not erect or display more than four notices in respect of an immovable property or an auction and the notice erected or displayed may not be further than a radius of 1 kilometer or more than 3 kilometers from the property so advertised or the place of auction;
- (c) a notice of an auctioneer or an “on show” or “show house” notice may not be erected or displayed more than 48 hours before the beginning of the showing or the auction, as the case may be;
- (d) a notice of an estate agent or an auctioneer must be removed not later than 48 hours after the letting, sale or showing of the immovable property or the auction to which they relate; and
- (e) a notice of an estate agent or an auctioneer may not -
  - (i) be more than one meter in height, measured from the ground level immediately below the length of the notice;
  - (ii) obscure motorists sight lines;
  - (iii) be displayed less than ten meters from the middle point of the outside curve of a corner measured from the middle point of such corner;
  - (iv) be made with a material which is not strong and durable;
  - (v) have one notice above the other;
  - (vi) be displayed against a transformer casing, illuminated advertising signs, traffic lights or signs, structure walls, pillars or fences, excluding a fence of



the immovable property advertised, shelters, trees, refuse bins, bus shelters or lamp posts;

- (vii) have supports which are driven through a tarred or paved surface;
- (viii) be displayed in such a way as to damage any service which the Council is providing in that area;
- (ix) be within 1,5 meters from the driving surface of an adjoining street;
- (x) obstruct vehicular or pedestrian traffic; or
- (xi) be displayed adjacent to any street determined by the Council from time to time.

(2) A notice of an estate agent or an auctioneer erected or displayed in contravention of this regulation may be removed by any person authorised by the Council.

(3) The cost of removal of a notice in terms of subregulation (2), may be recovered from the estate agent or the auctioneer who has erected or displayed or who has caused to be erected or displayed any such notice.

### **Conditions applicable advertising signs**

**11.** (1) A person who, under these regulations, erects or displays an advertising sign or causes such sign to be erected or displayed must -

- (a) ensure that the sign is securely erected or displayed so as not to cause damage to property, plant, animal or person;
- (b) take measures to prevent damage which may be caused to the sign or its supporting structure;
- (c) ensure that electrical cables or conduct pipes which are connected to that sign are safe and covered in such a manner that they do not cause danger to property, plant, animal or person;
- (d) comply with the law that governs the supply of electricity or electrical wiring of premises in the town area;
- (e) obtain the written authorisation of the Council before connecting an advertising sign to any electricity supply point of the Council; and
- (f) comply with any law that governs the construction of buildings in the town area.

(2) The owner of the property on which the advertising sign is erected or displayed and the owner of the advertising sign are both responsible for the installation, maintenance, controlling and removal of the advertising sign.

### **Other powers of Council**

**12.** (1) Where an advertising may be or is a danger to persons or property, the Council may, in accordance with section 93 of the Act, serve a written notice on the owner of the advertising sign, if known, or on the owner or occupier of the erf or property on or from which the advertising sign is erected or displayed.

- (2) A notice referred to in subregulation (1) must -
- (a) inform the recipient about the nature of the complaint;
  - (b) instruct the recipient to remove or maintain the outdoor advertising sign within a period specified in the notice; and
  - (c) inform the recipient that -
    - (i) if the recipient fails to remove or maintain the advertising within the period specified in the notice, the Council may remove the sign to ensure compliance with the instruction given under paragraph (b) and may recover from the recipient costs incurred by the Council in connection with any action so taken; and
    - (ii) where any sign is removed as contemplated in subparagraph (i) that the sign may be returned to the owner if the owner or the recipient -
      - (aa) gives the Council a written undertaking not to erect or display the advertising sign after the sign is so returned or to comply with the conditions imposed under these regulations by the Council; and
      - (bb) pays to the Council the costs, if any, contemplated in paragraph (c) (1).

(3) Subregulations (1) and (2) apply with the necessary changes where a person displays or erects an advertising sign in contravention of these regulations.

### **Reconsideration of Council's decision**

**13.** (1) A person who is aggrieved by a decision of the Council made under these regulations may, within 30 days of receiving that decision, apply to a committee constituted for this purpose, for the reconsideration of the decision.

(2) An application made under subregulation (1) must be in writing and must specify the grounds on which the decision is to be reconsidered.

(3) On receipt of an application made under subregulation (1), the committee must reconsider the Council's decision and may -

- (a) confirm the decision;
- (b) rescind the decision; or
- (c) rescind the decision and impose conditions which are necessary and reasonable in the circumstances.

(4) The chairman of the committee must, within 60 days of receiving an application made under subregulation (1), notify the applicant in writing of the decision the committee has made under subregulation (3).

### **Tariff**

**14.** Unless the Council otherwise determines under section 30(1)(u) of the Act, the tariffs payable for advertising signs are approved by the Council from time to time.

**Service of notices, instructions or documents**

**15.** Any notice, instruction or document to be served or given in terms of these regulations must be served or given in accordance with section 93 of the Act.

**Enforcement**

**16.** For the purpose of enforcing these regulations a staff member of the Council may perform the duties or exercise the powers given or conferred in terms of section 91 of the Act.

**Offences, penalties and presumptions**

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

- (a) in the town area, erects or displays or causes to be erected or displayed an advertising sign in contravention of these regulations;
- (b) contravenes or fails to comply with an instruction or requirement set out in a notice issued under these regulations and served on him or her in accordance with section 93 of the Act;
- (c) intentionally makes a false statement when making an application under these regulations;
- (d) contravenes or fails to comply with any provision of these regulations, other than a provision contemplated in paragraph (a), or a condition imposed under these regulations; or
- (e) threatens, resists, hinders or obstructs any staff member of the Council in the performance of his or her functions under these regulations.

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

(3) In a prosecution for an offence under these regulations, unless evidence to the contrary is adduced -

- (a) the owner of land or a premises from which the advertising sign was or is erected or displayed is considered to have erected or displayed that sign or to have caused it to be erected or displayed;
- (b) any person who alone or together with any other person was responsible for organising or was in control of any meeting, function or event to which a sign relates, is considered to have erected or displayed in connection with such meeting function or event or to have caused it to be so erected or displayed; or
- (c) any person whose name appears on an advertising sign is considered to have erected or displayed that advertising sign or to have caused it to be erected or displayed.

**Non-conforming signs**

**18.** An advertising sign which lawfully existed at the date of commencement of these regulations, but which does not conform to these regulations must be removed or be made to conform within 12 months from the date of commencement of these regulations.

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**MARIENTAL MUNICIPALITY**

No. 105

2015

**BUSINESS REGISTRATION REGULATIONS: LOCAL AUTHORITIES ACT, 1992**

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

**A. KAMBURUTE****CHAIRPERSON OF THE COUNCIL  
BY ORDER OF THE COUNCIL**

Mariental, 16 February 2015

**SCHEDULE****Definitions**

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

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

“business premises” includes any land, site, building, structure or any portion of land, site, building or structure and any appurtenances of such building or structure used or intended to be used for purpose of conducting a business;

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

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

“conducting” in relation to a business, means operating, carrying on, engaging in, doing or pursuing a business within the town area;

“Council” means the Municipal Council of Mariental;

“environmental health officer” means a person appointed in the capacity of an environmental health officer and a health practitioner appointed by the Council to act in that capacity;

“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 by the Council to conduct inspections in respect of a business premises;

“Management Committee” means the management committee of a Council established by section 21;

“Minister” means the Minister responsible for local government;

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

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

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

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

### **Prohibition on conducting business without authorisation**

**2.** (1) A person may not conduct a business within the town area unless a certificate of registration has been issued to him or her in terms of regulations 7.

(2) A person conducting a business must, throughout the validity of a certificate of registration, display that certificate, or a certified copy of that certificate, in a conspicuous place on the business premises in respect of which that certificate was issued.

(3) A person conducting a business must ensure that the business premises from which he or she conduct his or her business is at all times maintained in a state of good repair and ensures that such premises are kept clean and hygienic.

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

- (a) certain areas to be areas upon which the conducting of a business is prohibited; and
- (b) certain businesses to be a noxious business.

(5) A person who fails to comply with subregulations (1), (2) or (3) commits an offence.

### **Application for certificate of fitness**

**3.** (1) A person who intends to conduct a business within the town area must apply in the manner provided for in this regulation to the environmental health officer for a certificate of fitness in respect of each business premises upon which that business is to be conducted.

(2) 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.

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

(4) For the purpose of this Regulation “waste” means any undesirable or superfluous by-product, emission or residue, regardless of its form, and which results from any process or activity in the conducting of a business.

#### **Publication of notice in respect of noxious business**

**4.** (1) A person who intends to conduct a noxious business within the town 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 town area -

- (a) stating that such 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
- (d) 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 no 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 seven days from the date referred to in paragraph (f) of that subregulation give written notice to the applicant of the objections lodged; and
- (b) call upon the applicant, or his or her representative, to make, within seven days from the date of the notice referred to in paragraph (a), written representation against the objections, if any, in support of the application.

#### **Issuing of certificate of fitness and validity of certificate**

**5.** (1) The environmental health officer must after receiving an application referred to in regulation 3 and after considering any objections or representations made in terms of Regulation 4 -

- (a) grant the application with or without such conditions as the environmental health officer may consider appropriate; or

- (b) refuse the application and within seven days provide the applicant with written reasons for the refusal.
- (2) The environmental health officer must when considering an application, made under regulation 3, take into account -
  - (a) whether the conducting of the 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 condition, applicable to that premises;
  - (b) any objections raised or representation made in pursuance of a notice published under regulation 4;
  - (c) any representations made in support of the application; and
  - (d) whether the provisions of regulation 3 and where applicable regulation 4 have been complied with.
- (3) Where an application is granted under subregulation (2), the environmental health officer must issue to the applicant a certificate of fitness and must endorse upon that certificate such conditions, if any, as the environmental health officer considers necessary.
- (4) A certificate of fitness issued in terms of this Regulation is valid for a period of one (1) year from the date of issue 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 9 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.
- (5) The holder of a certificate of fitness may at any time during the validity of the certificate, or within five days from the date of expiry thereof, apply to the Environmental Health Officer for a renewal of that certificate.
- (6) 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 9.

#### **Application for certificate of registration**

- 6. (1) A person may not conduct a business within the town area except pursuant to and in terms of a certificate of registration issues by the registration officer in respect of each such business on each business premises, in terms of these regulations.
- (2) A person may, if a certificate of fitness has been issued to him or her in terms of regulation 5, apply to the registration officer for a certificate of registration in the manner provided for in this regulation.
- (3) An application for a certificate of registration must be made on the form provided by the Council, and be -
  - (a) submitted to the registration officer for consideration;

- (b) accompanied by the appropriate fee;
- (c) accompanied by a certified copy of a valid certificate of fitness issued in terms of regulations 5; and
- (d) accompanied by such other information as the registration officer may consider necessary for purposes of making a decision in terms of regulation 7.

(4) A person who wilfully furnishes incorrect or false information or particulars referred to in this regulation commits an offence.

### **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 and within seven 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
- (b) take into consideration any objections lodged and any representations made in terms of regulation 4.

(3) The registration officer must, where an application is granted under subregulation (1), issue to the applicant a certificate of registration, which certificate must have such conditions endorsed as the registration officer considers necessary.

(4) 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.

(5) 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 regulation 5 becomes invalid; or
- (b) the nature of the business for which a certificate of registration is issued changes in any way,

whichever comes first.

(6) The holder of a certificate of registration may, at any time during the validity of that certificate or within five days from the date of expiry of that certificate, apply to the registration officer for a renewal of that certificate.

(7) A holder of a certificate of registration who wishes to renew that certificate must apply to the registration officer in the manner provided for in regulation 9.



**Temporary certificates 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 the applicable fee, apply for a temporary certificate of fitness and a temporary certificate of registration in accordance with regulations 3, 4, 5, 6 and 7.

(2) Where an application referred to in subregulation (1) is granted, the environmental health officer must issue the applicant a temporary certificate of fitness and the Registration Officer must issue to that applicant a temporary certificate of registration.

(3) The environmental health officer or the registration officer, whichever is applicable, must endorse upon the certificate of fitness or certificate of registration, as the case may be, the period for which that certificate is valid.

**Application for renewal of certificate of fitness or certificate of registration**

9. (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, as the case may be, 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 a certificate of fitness or a certificate of registration, the registration officer or the environmental officer, as the case may be, must renew the certificate concerned and issue to the applicant a certificate of fitness or certificate of registration.

(3) For the purposes of renewing the certificate of fitness or the 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, as the case may be, receives an application for renewal of a certificate of fitness or a certificate of registration and the appropriate fees have been paid, he or she must, before renewing any such certificate -

- (a) ensure that all inspections, 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 or business premises concerned.

**Report of lost or stolen certificates and issue of duplicates**

10. (1) Where a certificate of fitness or a certificate of registration is lost or stolen or is damaged beyond legibility, the person to whom the certificate of fitness or certificate of registration had been issued must, as soon as is reasonably possible after becoming aware of such loss, theft or damage -

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

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

(3) The registration officer or the environmental health officer, as the case may be, must after considering the application referred to in subregulation (1) issue a duplicate certificate of fitness or a duplicate certificate of registration, whichever is applicable.

(4) A person who fails to report the loss or theft of or damage to a certificate of fitness or certificate of registration commits an offence.

### **Application for approval to make structural alterations**

**11.** (1) A holder of a certificate of fitness or a certificate of registration may not effect structural alterations or cause structural alterations to be effected to the business premises for which a certificate of fitness or a certificate of registration has been issued, but such alterations may be made 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 for that purpose 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, as the case may be, to be undertaken or used in the intended alterations;
- (c) a certified copy of the certificate of fitness or the certificate of registration, as the case may be, 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 subparagraph (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) A holder of a certificate of fitness or a certificate of registration, as the case may be, who undertakes or causes any structural alterations, other than alterations necessary for purposes of maintenance, to be made as contemplated in this regulation without having first obtained the written approval of the environmental health officer commits an offence.

**Transferability of certificates**

**12.** (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.

(2) Despite subregulation (1), the holder of a certificate of fitness or a certificate of registration may, on the form provided by the Council for that purpose and upon payment of the appropriate fee, apply to the Environmental Health Officer or the Registration Officer, as the case may be, to have -

- (a) the certificate of fitness or certificate of registration transferred into the name of another person; or
- (b) the name of 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 of the registration officer, as the case may be, must cause such changes to be made on the certificates of fitness or the certificate of registration, whichever is applicable, and must indicate such changes in the business register of the Council.

**Change of ownership of business**

**13.** (1) Where the ownership of business in respect of which certificate of registration or certificate of fitness has been issued changes, the owner of the business must return the certificate of fitness and certificate of registration to the registration officer or the environmental health officer, as the case may be.

(2) The new owner of the business contemplated in subregulation (1) must make an application for a certificate of registration or a certificate of fitness in terms of these regulations.

**Cessation of business**

**14.** (1) Where the holder of certificate of registration ceases to conduct the business for which such certificate is issued, he or she must, within one (1) month from the date of ceasing to conduct such business, inform the registration 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, cancel that certificate of registration and must indicate such cancellation in the business register of the Council.

**Inspections**

**15.** (1) An inspecting officer may, in terms of section 91 of the Act, at any reasonable time, enter business premises for the purpose of inspecting the premises and any work or process carried out on the 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 he or she 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, as the case may be.

(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, as the case may be, 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 period specified in that notice.

(7) If, the instance contemplated in subregulation (6), the inspecting officer -

- (a) is of the opinion that the gaining of access to the business premises concerned is a matter of urgency; or
- (b) if he or she reasonably suspect that a contravention of any provision of these regulations or any provision of a law relating to public health and safety or relating to a town planning scheme or township condition applicable to that business premises is being contravened,

the inspecting officer may take or cause such steps to be taken to gain access to the business premises concerned, and the Council may recover from the holder of a certificate of fitness or a certificate of registration over that business premises the cost incurred for the purpose of gaining access.

(8) An inspecting officer may, where he or she considers it reasonably necessary, take or cause to be taken such steps as to rectify a contravention of a law relating to public health and safety with regards to the business premises concerned or the conducting of the business concerned.

(9) The Council is not liable for any damage resulting from any action taken under subregulation (7), but must restore such premises to its former condition should no breach of the provisions referred to in that subregulation be discovered.

(10) A person who fails to comply with a notice referred to in subregulation (6), is guilty of an offence.

### **Failure to pass inspection or to comply with conditions imposed**

**16.** (1) If, after inspecting the premises or any work or process undertaken on such premises, the inspecting officer finds that the premises or the work or processes undertaken on such premises fails to comply with any provision of these regulations or is in conflict with any provision relating to public health and safety or relating to any town planning scheme or township condition applicable to that premises, the inspecting officer must -

- (a) give notice to the holder of the certificate of fitness or the certificate of registration, as the case may be, of such failure; and
- (b) call upon such holder of the certificate of fitness or certificate of registration to comply with the requirements of the notice within the period specified in such notice.

(2) After the expiry of the period of time stipulated in the notice referred to in subregulation (1), the Council may cause a further inspection to be carried out on the premises concerned.

(3) Failure by a holder of a certificate of fitness or of a certificate of registration to comply with the requirements stipulated in the notice referred to in subregulation (1) constitutes an offence.

### **Duties of holders of certificates**

**17.** The holder of a certificate of fitness or a certificate of registration must -

- (a) maintain the premises in respect of which a certificate of fitness or a certificate of registration has been issued in a clean and sanitary condition and in good repair;
- (b) observe and comply with, and ensure the observance and compliance with these regulations and laws relation to public health and safety and the provisions of the town planning scheme or township condition applicable to the premises in respect of which certificate of fitness or a certificate of registration has been issued; and
- (c) must give reasonable opportunity and assistance, where applicable, to an inspecting officer to inspect the premises and any work or process carried out.

### **Cancellation or suspension of certificate of fitness or certificate of registration**

**18.** (1) The Council may cancel or, for such period of time as it may determine, suspend a certificate of fitness or certificate of registration if the holder of that certificate carries out or causes to carry out or permits to be carried out any unapproved alterations or does or causes anything to be done or permits anything to be done on such business premises which is in contravention of any provision of these regulations.

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

- (a) give the holder of a certificate at least twenty-one (21) days notice in writing of its proposed action and of the reasons therefore; 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 a certificate of registration is cancelled or suspended, cause such cancellation or suspension to be indicated in the business register.

### **Business registers**

19. The Council must keep a register in which it must enter particulars relating to every certificate issued in terms of these regulations.

### **Notices**

20. A notice required or permitted to be given in terms of these regulations must be in accordance with the provisions of Section 93 of the Local Authorities Act.

### **Departure or exemption from regulations**

21. The Council may exempt certain businesses, persons and class of persons from the provisions of these regulations subject to such conditions as it may consider necessary, but only if the exemption is not in conflict with any provision of the Act.

### **Appeals**

22. (1) An application who is aggrieved by a decision made under regulations 5, 7, 8, 9, 11, 12 or 18 may lodge an appeal with the Management Committee of the Council against that decision in the manner provided for in this application.

(2) An appeal referred to in subregulation (1) must -

- (a) be lodged with the Management Committee of the Council 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 of Council by way of electronic transmission, the applicant must within a period of seven days from the date of the transmission, deliver or send a hard copy of the appeal together with any representations made in support thereof to that committee.

(4) The Management Committee of Council 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 of Council may consider appropriate.

(5) The Management Committee of Council must furnish 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 of Council 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**

**23.** (1) A person commits an offence, if that person -

- (a) contravenes or fails to comply with any of these regulations, notice or any condition imposed under it;
- (b) threatens, resists, hinders or obstructs a staff member of the Council in the execution of his or her duties or functions in terms of these regulations;
- (c) in an application for a certificate of fitness or a certificate of registration or a temporary certificate of fitness or a temporary certificate of registration provides incorrect or false information;
- (d) intentionally gives false or misleading information to a staff member carrying out his or her duties in terms of these regulations; or
- (e) alters or falsifies a certificate of fitness or a certificate of registration or a temporary certificate of fitness or a temporary certificate of registration.

(2) A person convicted of an offence in terms of these regulations 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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