



GOVERNMENT GAZETTE

OF THE

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General Notice

MUNICIPALITY OF OMARURU

No. 137

2016

STREET TRADING REGULATIONS: LOCAL AUTHORITIES ACT, 1992

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

H.M. GEBHARDT
CHAIRPERSON OF COUNCIL
BY ORDER OF THE COUNCIL

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Definitions

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

“approval” means approval by the Council;

“business” means to conduct any trade, occupation or other activity for gain;

“Council” means the Municipal Council of Omaruru;

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

“goods” means any movable property including a living thing;

“hawker or pedlar” means a person selling goods moving from place to place;

“lease” means a lease agreement referred to in regulation 6(3);

“litter” includes any container or other waste matter that has been discarded, abandoned or left behind by a street trader or his or her customers;

“municipal area” means the local authority area of the Municipality of Omaruru;

“public road” means any road, street or thoroughfare or any other place which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes -

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, culvert, causeway, ferry, ford or drift traversed by any such road, street or thoroughfare;
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare

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

“sell” includes -

- (a) barter, exchange or hire out;
- (b) display, expose, offer or prepare for sale; or
- (c) store with a view to sell;

“sidewalk” means that portion of a verge intended for the exclusive use of pedestrians;

“stand” means a place on a public road or public place approved as a place at which street trading may be conducted;

“street trader” means a person selling goods for gain in a public road or public place and includes an assistant of that person;

“the Act” means the Local Authorities Act, 1992 (Act 23 of 1992);

“vendor” means a person selling goods from a stand;

“verge” means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or the shoulder.

Single act constitutes street trading

2. For the purpose of these regulations a single act of selling of goods in a public road or public place for gain constitutes street trading.

Prohibition on street trading

3. (1) A person may not, within the municipal area, carry on a business of a street trader, unless that person has been registered with the Council as a hawker or pedlar or as a vendor in terms of these regulations.

(2) A person who is registered as a hawker or pedlar or a vendor in terms of these regulations may not employ any person as an assistant unless the person so employed is registered as an assistant in terms of these regulations.

(3) A person who contravenes or fails to comply with subregulation (1) or (2) commits an offence and on conviction is liable 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.

Application for registration and issue of registration certificate

4. (1) A person who wishes to be registered as a hawker or pedlar or a vendor or as an assistant to a hawker or pedlar or a vendor must, on a form determined by the Council, apply to the Council to be registered as such.

(2) The completed application form, together with the documents and information as the Council may require, must be submitted to the Council.

(3) The Council must consider every application submitted to it in terms of subregulation (2) 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.

(4) If an application is granted under subregulation (3)(a) or (c), the Council must upon payment of the appropriate fee issue to the applicant the registration certificate in the form determined by the Council.

General provisions in respect of registered persons

5. (1) The holder of a registration certificate must notify the Council of any change of residential address within 14 days of such change having occurred.

(2) If a registration certificate is lost or damaged, the holder of the certificate must apply in writing to the Council for a duplicate of the certificate and the Council must upon payment of the appropriate fee issue to the holder a duplicate of the certificate.

(3) A registration certificate is not transferable and only the person to whom it was originally issued may carry on business in terms of the certificate.

(4) The holder of a registration certificate must, when required to do so by an authorised official, produce the registration certificate.

(5) Only those types of goods shown on the registration certificate may be offered for sale.

(6) The holder of a registration certification must, when carrying on business, display a notice showing the registration details, which notice must be clear and easy to read.

(7) A person who contravenes or fails to comply with subregulation (1),(3),(4),(5) or (6) commits an offence and on conviction is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both fine and imprisonment.

Application for allocation of stand

6. (1) Any person who wishes to carry on business as a vendor must, in addition to complying with regulation 4, on a form determined by the Council, apply to the Council for the allocation of a stand.

(2) The Council must consider every application submitted to it in terms of subregulation (1), 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.

(3) If an application is granted under subregulation (2)(a) or (c) -

- (a) the applicant must in respect of a stand, enter into a lease agreement with the Council, on a form determined by the Council, and a rental fee as determined by the Council from time to time is payable in respect of the lease; and
- (b) the Council must issue a token to the applicant, which serves as proof of the person's right to occupy the stand for the purpose of carrying on business on the stand.

(4) A vendor must at all times, when carrying on business on the stand contemplated in subregulation (3), retain the token issued to him or her in terms of that subregulation, and must on request by an authorised official produce the token.

(5) The Council may, at the written request of a vendor, issue a token to one assistant of the vendor, and subregulation (4) applies with necessary changes to the assistant.

(6) A person who contravenes or fails to comply with a request made under subregulation (4) commits an offence and on conviction is liable 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.

Prohibited conduct

7. (1) A person carrying on the business of a street trader may not -
- (a) in any way obstruct access to any services provided by the Council or on behalf of the Council, in terms of law;
 - (b) stay overnight at the place of business;
 - (c) erect any structure at the place of business, except a structure for which approval has been obtained from the Council;
 - (d) carry on such business in a manner as to -
 - (i) create a nuisance;
 - (ii) damages or deface the surface of any public road or public place or any property belonging to the Council; or
 - (iii) creates a traffic or health hazard.
 - (e) attach any of his or her property by any means to any building, structure, pavement, tree, parking meter, lamp pole, electricity pole, telephone booth, post box, traffic sign, bench or other street equipment in or on a public road or public place; or
 - (f) make a fire at a place or in circumstances where it could harm any person or damage a building or motor vehicle or any street equipment contemplated in subregulation (e).

(2) A person who contravenes or fails to comply with subregulation (1) commits an offence and on conviction is liable 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.

General prohibitions

8. (1) A person may not, within the town area, carry on the business of a street trader -
- (a) in a public place unless such area has been set apart and demarcated by the Council for that purpose;
 - (b) on a sidewalk or a verge contiguous to -
 - (i) a building belonging to, or occupied solely by, the Council or State unless the Council or State has granted its approval;
 - (ii) a church or other place of worship, or
 - (iii) a heritage place declared as such under section 35 of the National Heritage Act, 2004 (Act No. 27 of 2004);
 - (c) in an area which the Council has by resolution declared to be an area on which street trading is prohibited;
 - (d) in a manner that he or she in the conduct of the business -

- (i) obstructs access to a fire hydrant;
 - (ii) obstructs access to any entrance to or exists from a building;
 - (iii) prevents pedestrians from using, or substantially obstructs them in their use of, a sidewalk;
 - (iv) causes an obstruction on a roadway; or
 - (v) limits access to parking or loading bays or other facilities for vehicular traffic;
- (e) on a sidewalk or verge contiguous to a building used for residential purposes if the owner, occupier or person in control of the building objects to it;
- (f) in a manner that he or she, or at a place where conducting of the business -
- (i) obstructs access to street equipment contemplated in regulation 7(e), bus passenger benches or shelters, queuing lines, refuse disposal bins or other facilities intended for the use of the general public;
 - (ii) obstructs the visibility of a display window of a business premises, if the person carrying on business in the business premises concerned objects to it;
 - (iii) obstructs access to a pedestrian crossing;
 - (iv) obstructs access to any motor vehicle;
 - (v) obscures any road traffic sign or any marking, or a notice or sign displayed in terms of these regulations;
 - (vi) limits access to parking or loading bays or other facilities for vehicular traffic; or
 - (vii) obstructs access to or in a pedestrian arcade or mall; or
- (g) in contravention of the conditions of a registration certificate or a lease.

(2) A person who contravenes or fails to comply with subregulation (1) commits an offence and on conviction is liable 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.

General duties of street traders

9. (1) A street trader -
- (a) may not dispose of any litter by placing it in any manhole, storm water drain or on any public road or public place, but the trader may dispose of the litter in a refuse container approved by the Council;
 - (b) must keep the area or site occupied by him or her for the purpose of business in a clean and sanitary condition;
 - (c) must keep his or her goods in clean and sanitary condition;

- (d) must remove daily from any public road or public place at the conclusion of business all litter which is used in connection with the business;
- (e) may not carry on his or her business in such a manner as to be a danger or threat to public health or public safety;
- (f) may not spill any fat, oil or grease onto a public road or public place in the course of conducting his or her business; and
- (g) must at the request of an authorised official, move or remove anything so that the area or site is free from any litter, fat, oil or grease.

(2) A person who contravenes or fails to comply with subregulation (1) commits an offence and on conviction is liable 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.

Reconsideration of Council's decision

10. (1) A person who is aggrieved by a decision of the Council in terms of regulation 4(3) or 6(2) may, within 14 days of receiving that decision, apply to the Council for reconsideration of that 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 Council must reconsider its 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 Council must, within 30 days of receiving an application made under subregulation (1), notify the applicant in writing of the decision the Council has made under subregulation (3).

General offences and penalties

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

- (a) fails to comply with a notice issued under these regulations and served on him or her in accordance with section 93 of the Act;
- (b) intentionally makes a false statement when making an application under these regulations; or
- (c) threatens, resists, hinders or obstructs any authorised official in the performance of his or her functions under these regulations.

(2) A person convicted of an offence under subregulation (1), is liable 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.

Exemption

12. If, due to exceptional circumstances, the Council considers it desirable to authorise a departure or exemption from any provision of these regulations the Council may, subject to such conditions as it may impose, authorise such departure or exemption if the departure or exemption is not in conflict with the Act.
