



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

ONDANGWA TOWN COUNCIL

No. 405

2023

BUSINESS REGISTRATION REGULATIONS: LOCAL AUTHORITIES ACT, 1992

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

P. AMWELE
CHAIRPERSON
BY ORDER OF THE COUNCIL

Ondangwa, 4 July 2023

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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 indicates otherwise –

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

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

“business premises” means a premises used or intended to be used for purposes of conducting a business;

“business registration certificate” means a business registration certificate issued in terms of regulation 8;

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

“Council” means the Town Council of Ondangwa;

“environmental health practitioner” means a staff member of the Council appointed as such by the Council and acting as environmental health practitioner;

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

“inspector” means a staff member of the Council authorised by the Council to conduct inspections;

“local authority area” means the local authority area of Ondangwa;

“harmful business” means –

- (a) a trade or business determined to be a harmful trade or offensive trade or business in terms of the applicable town planning scheme; or
- (b) a business determined by the Council to be a harmful business in terms of regulation 2(2)(b);

“premises” means a building, structure or land, or part of a building structure or land, or a motor vehicle, vessel, aircraft or conveyance;

“registration officer” means a staff member of the Council authorized to consider applications of registration and issue certificates of registration;

“temporary certificate of fitness and business registration” means a temporary certificate of fitness and business registration certificate issued in terms of regulation 9;

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

“waste” means 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.

Prohibition on conducting of business without authorisation

2. (1) A person may not conduct a business within the local authority area, unless a –

- (a) certificate of fitness has been issued to that person; and
 - (b) business registration certificate has been issued to that person.
- (2) The Council may, for the purpose of these regulations, by resolution determine –
- (a) certain areas to be areas upon which the conducting of a business is prohibited; and
 - (b) certain businesses to be harmful businesses.
- (3) The Council must give a notice to the public regarding –
- (a) the areas in respect of which conducting a business is prohibited in terms of subregulation (2)(a); and
 - (b) what business constitutes a harmful business in terms of subregulation (2)(b).

(4) A person may not conduct business in an area declared as a prohibited area in terms of subregulation (2)(a).

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

Application for certificate of fitness

3. (1) A person who intends to conduct a business within the local authority area must apply to the environmental health practitioner for a certificate of fitness in respect of the business premises upon which that business is to be conducted.

(2) An application for a certificate of fitness must –

- (a) be made on the form determined by the Council;
- (b) be submitted to the environmental health practitioner;
- (c) be accompanied by the applicable fee;
- (d) be accompanied by any other information that the environmental health practitioner considers necessary for purposes of deciding in terms of regulation 5; and
- (e) where an application for a certificate of fitness is made for the conducting of a harmful business, be accompanied by –
 - (i) a statement stating the nature of the harmful business to be conducted;
 - (ii) particulars relating to the nature of materials to be used for the conducting of the business;
 - (iii) particulars relating to goods or materials which are to be processed on the business premises;
 - (iv) particulars relating to the equipment to be installed or used on the business premises;
 - (v) particulars relating to the measures to be taken for purposes of minimising public nuisance and for the disposal of waste;
 - (vi) an environmental impact assessment undertaken in respect to the harmful 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 intentionally furnishes incorrect or false information or particulars in terms of this regulation commits an offence and is liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such period.

Publication of notice in respect of harmful business

4. (1) A person who intends to conduct a harmful business within the local authority area must, in addition to the application for a certificate of fitness referred to in regulation 3, publish a notice in a daily newspaper circulating in Namibia –

- (a) stating that an application has been made to the environmental health practitioner in terms of regulation 3;
- (b) stating the particulars of the harmful business indicated in subregulation 3(2)(e);
- (c) indicating the place at which and the times and dates during which the application and supporting documentation may be inspected;
- (d) stating whether any environmental impact assessment has been made in respect of harmful business to be conducted on the business premises and the outcome of the assessment;
- (e) indicating the place, date and times during which the application and any documentation in support of the application may be inspected; and
- (f) calling upon persons to lodge written objections or make representations to the environmental health practitioner not less than 14 days from the date of publication of the 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 sub regulation (1) 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 submissions regarding the objections.

Issuing and validity of certificate of fitness

5. (1) The environmental health practitioner must consider the application made in terms of regulation 3 and any objections made in terms of regulation 4 and may –

- (a) grant the application and issue the certificate of fitness to the applicant; or
- (b) refuse the application and within seven days provide the applicant with the decision and written reasons for the refusal.

(2) When considering an application for a certificate of fitness, the environmental health practitioner must consider –

- (a) applicable laws relating to public health and safety applicable to the premises;
- (b) the applicable town planning scheme or conditions of establishment applicable to the business premises;
- (c) objections made in terms of a notice published under regulation 4; and
- (d) representations made in support of the application.

(3) A certificate of fitness issued in terms of this regulation is valid for a period of 12 months from the date of issue.

(4) The holder of a certificate of fitness may, 30 days before the date of expiry of the certificate, apply to the environmental health practitioner for the renewal of the certificate and regulation 3 and 4 and this regulation applies with necessary changes to that application.

(5) A certificate of fitness issued in terms of these regulations is valid and is effective from the date of issue up to and including the next succeeding 31st day of March, until when it lapses or until such time that –

- (a) the premises, in respect of which the certificate of fitness is issued is altered, other than alterations approved in accordance with regulation 10 or which is necessary for the purpose of maintaining the business premises; or
- (b) the nature of the business, for which a certificate of fitness is issued, changes in any way.

Application for renewal of certificate of fitness

6. (1) A person who intends to renew a certificate of fitness must apply to the environmental health practitioner for renewal of the certificate of fitness.

(2) An application for renewal of a certificate of fitness must –

- (a) be made on the form determined by the Council;
- (b) be submitted to the environmental health practitioner;
- (c) be accompanied by all inspections, approvals and documentation necessary for the environmental health practitioner to make a decision; and
- (d) be accompanied by the applicable fee.

(3) The environmental health practitioner must after the application for renewal of a fitness certificate is received –

- (a) inquire into all relevant matters in order to ascertain if the applicant is entitled to a renewed certificate under these regulations;
- (d) inquire into any changes in circumstances since the previous certificate was issued to the applicant; and
- (e) inquire from any staff member of the Council on who has carried out inspections or investigations relative to the application of renewal being made.

(4) There must be a separate application for each premise to be used or business to be conducted.

(5) The environmental health practitioner must consider the application for renewal of a certificate of fitness and may –

- (a) grant the application and issue the certificate of fitness to the applicant; or

- (b) refuse the application for renewal and within seven days provide the applicant with the decision and written reasons for the refusal of the renewal of the certificate of fitness.

Application for business registration certificate

7. (1) The holder of a certificate of fitness may apply to the authorised official for a business registration certificate in accordance with this regulation.

(2) An application for a business registration certificate must –

- (a) be made on the form provided by the Council;
- (b) be submitted to the authorised official;
- (c) be accompanied by the applicable fee;
- (d) be accompanied by a certified copy of a valid certificate of fitness issued in terms of regulations 5; and
- (e) be accompanied by any other information the authorised official considers necessary for purposes of making a decision in terms of regulation 8.

(3) A person who intentionally furnishes incorrect or false information or particulars when making an application as contemplated in subregulation (2) commits an offence and is on conviction liable to a fine not exceeding N\$2000.00 or to sentence not exceeding six months, or to such both fine and sentence.

Issuing and validity of business registration certificate

8. (1) When considering an application for a business registration certificate, the authorised official must –

- (a) satisfy himself or herself that the conditions imposed in respect of the certificate of fitness have been complied with; and
- (b) ensure that the business premises comply with the applicable building regulations and conditions.

(2) The authorised official must consider the application made in terms of regulation 7 and may –

- (a) grant the application and issue the business registration certificate to the applicant; or
- (b) refuse the application and within seven days provide the applicant with the decision and written reasons for the refusal.

(3) A business registration certificate issued in terms of this regulation is valid for a period of 12 months from the date of issue.

(4) The holder of a business registration certificate may, 30 days before the date of expiry of the certificate, apply to the authorised official for the renewal of the certificate and regulation 7 and this regulation applies with necessary changes to that application.

Temporary certificate of fitness and business registration certificate

9. (1) A person who intends to conduct a business for a limited period may –
- (a) on the form determined by the Council; and
 - (b) on payment of the applicable fee,

apply for a temporary certificate of fitness and business registration certificate.

(2) The provisions of regulations 3, 4, 5(1) and (2), 7 and 8(1) and (2) apply with the necessary changes to an application for a temporary certificate of fitness and business registration certificate.

(3) The environmental health practitioner or the authorised official must indicate on the temporary certificate of fitness and business registration certificate issued in terms of these regulations the period for which that certificate is valid.

Display of certificates

10. (1) The holder of a certificate of fitness, business registration certificate or temporary certificate of fitness and business registration certificate issued in terms of these regulations must display the certificate or certified copies of those certificates in a prominent and conspicuous manner on the business premises at all times.

(2) Where a certificate of fitness, business registration certificate or temporary certificate of fitness and business registration certificate is issued to a person who goes from place to place or to a particular place for the purpose of conducting business, the holder of the certificate must keep the certificate with him or her at all times while carrying out his or her business and must on request exhibit the certificate to an authorised official, an environmental health practitioner, an inspector or a member of the Namibia Police Force.

Report of lost or stolen certificates and duplicate certificates

11. (1) Where a certificate issued in terms of these regulations is lost, stolen or damaged beyond legibility, the holder of the certificate must as soon as is reasonably possible after becoming aware of the loss, theft or damage –

- (a) report such loss, theft or damage to the environmental health practitioner or the authorised official; and
- (b) apply to the environmental health practitioner or the authorised official for a duplicate of the certificate.

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

(3) After considering an application referred to in subregulation (1), the environmental health practitioner or authorised official may –

- (a) grant the application with or without conditions and issue to the applicant a duplicate certificate;
- (b) request the applicant to provide more information within a specified time; or

- (c) refuse the application and provide the applicant with the decision and written reasons for the refusal.

Prohibition on transfer of certificates

12. (1) Unless authorised in terms of subregulation (2), a certificate granted in terms of these regulations or rights granted under a certificate, may not be transferred to another business premises, another person or another business than what is detailed on the certificate.

(2) The holder of a certificate of fitness or a business registration certificate may apply to the environmental health practitioner or the authorised official to have the –

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

(3) The application made in terms of subregulation (2) must be made on the form determined by the Council and must be accompanied by the applicable fees.

(4) On receipt of an application in terms of subregulation (2) the environmental health practitioner or authorised official may –

- (a) grant the application, with or without conditions, and issue to the applicant the certificate of fitness or business registration certificate;
- (b) request the applicant to provide more information within a specified time; or
- (c) refuse the application and provide the applicant with the decision and written reasons for the refusal.

Change of name of business

13. (1) The holder of the certificate of fitness or the business registration certificate must, where ownership of a business has not changed or is affected, notify the registration officer and the environmental health practitioner of the change of the name of the business.

(2) The notification made in subregulation (1) must be accompanied by the payment of a fee and the holder must satisfy that there are no other changes in the circumstances of the licensed business.

(3) The registration officer or the environmental health practitioner may issue a replacement of the original certificate of fitness or business registration certificate once they determine that subregulation (2) has been complied with.

(4) The business owner must return and surrender the original certificate in order to affect such a change.

Change in ownership of business

14. A holder of a business registration certificate must, upon change of ownership of the business in respect of which the certificate has been issued in terms of these regulations, return the certificate of registration and certificate of fitness to the authorised official or to the environmental health practitioner.

Termination of business

15. (1) If the holder of a business registration certificate issued in terms of these regulations ceases to conduct the business for which the certificate is issued, the holder must –

- (a) inform the authorised official or environmental health practitioner of such termination; and
- (b) return the certificate to the authorised official or environmental health practitioner,

for cancellation within 30 days from the date of ceasing to conduct such business.

(2) The authorised official or environmental health practitioner must, on receipt of information of the termination in terms of subregulation (1), cancel the certificate.

Application for approval to make structural alterations

16. (1) Structural alterations to business premises in respect of which a business registration certificate is issued may only be made with the prior written approval obtained from the authorised official.

(2) An application referred to in subregulation (1) must be made on the form determined by the Council and must be accompanied by –

- (a) a detailed plan of the business premises, showing the existing business premises and the intended structural alterations;
- (b) particulars relating to the construction, lay-out, furnishing, fixtures, fittings and floor coverings to be undertaken or used in the intended structural alterations;
- (c) a certified copy of the certificate of fitness and the business registration certificate issued in respect of the business premises;
- (d) written representations in support of the application; and
- (e) any further particulars as the authorised official may consider necessary.

(3) After considering an application referred to in subregulation (1), the authorised official may –

- (a) grant the application, with or without conditions and in writing inform the applicant accordingly;
- (b) request the applicant to provide more information within a specified time; or
- (c) refuse the application and give written reasons.

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

Appeals

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

- (2) An appeal contemplated 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 made in writing;
 - (c) be made on the form approved by the management committee of the Council;
 - (d) indicate the grounds for appeal; and
 - (e) indicate the redress sought.
- (3) The applicant must, where an appeal is lodged with the management committee by way of electronic transmission, deliver or send a hard copy of the appeal together with any representations made in support thereof to that management committee.
- (4) The hard copy of the appeal lodged in subregulation (3) must be submitted to the management committee within seven days from the date of the electronic transmission.
- (5) The management committee must, within 30 days from the date of receipt of the appeal, consider the appeal and after hearing oral or written representations, if any, from the appellant, or the appellant's legal representative.
 - (6) The management committee may –
 - (a) confirm the appeal;
 - (b) refuse the appeal; or
 - (c) confirm the appeal subject to such conditions as the management committee may consider appropriate.
- (7) The management committee must furnish the appellant with written reasons for the decision made under subregulation (6), and must inform the Council of its decision.
- (8) A person aggrieved by a decision made by the management committee under subregulation (6) may lodge an appeal with the Minister against such decision and such appeal must, with the necessary changes, be in accordance with this regulation.

Inspections

- 18.** (1) An inspector may at any time or in the instance of an emergency, enter business premises for the purpose of inspecting such premises and any work or process carried out in the place for purposes of ensuring compliance with these regulations or any other law.
 - (2) An inspector must –
 - (a) carry on himself or herself an identification card issued by the Council indicating that the inspector is authorised to carry out inspections for the purpose of these regulations; and
 - (b) when requested to do so, present for inspection the identification card to the holder of the certificate of fitness or the certificate of registration or to the person in charge of the premises.

- (3) An inspector 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 the 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,

to ensure compliance with the regulations.

(4) Where an inspector removes any document for the purpose of subregulation (3)(b), the inspector must issue a receipt for the removed documents and must return the documents within 14 days.

(5) The inspector must report any contravention of these regulations being committed to the Council for the purposes of regulation 20.

(6) If the business premises where the inspection is to be conducted is locked or the entrance is blocked or obstructed in any manner, and the inspector is unable to enter and inspect the business premises, the Council may by written notice to the holder of the certificate of fitness or the certificate of registration require –

- (a) the unlocking of such entrance to premises; 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 inspector, in the instance contemplated in subregulation (6), –
- (a) is of the opinion that the gaining of access to the business premises concerned is a matter of urgency; or
 - (b) reasonably suspects that a contravention 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 inspector may take necessary steps to gain access to the business premises.

(8) The Council may recover from the holder of a certificate of fitness or a certificate of registration the costs incurred for the purpose of gaining access to the business premises contemplated in subregulation (7).

(9) An inspector may, where he or she considers it reasonably necessary, take steps to rectify a contravention of a law relating to public health and safety or relating to a town planning scheme or township condition applicable to that business premises concerned or the conducting of the business concerned.

(10) The Council is not liable for any damage resulting from any action taken under subregulation (8) or (9), but must restore such premises to its former condition if no contravention of any provision referred to in that subregulation has been found.

(11) A person who fails to comply with a notice referred to in subregulation (6), commits an offence and is on conviction liable to a fine not exceeding N\$2000 or to imprisonment not exceeding 6 months.

Fees and facilities for inspection

19. (1) The holder of a certificate of fitness or a certificate of registration must give reasonable opportunity and assistance, where applicable, to an inspector to inspect and carry out any process on the business premises.

(2) The Council may in terms of regulation 23 determine the amounts or fees to be paid in respect of inspections carried out under these regulations.

Withdrawal or suspension of certificate of fitness or business registration certificate

20. (1) The environmental health officer or authorised official may cancel or suspend a certificate issued in terms of these regulations for a period as he or she determines, if the holder of the certificate –

- (a) contravenes the conditions imposed in respect of the certificate; or
- (b) does or causes anything to be done which is in contravention of a provision of these regulations.

(2) Before cancelling or suspending a certificate in terms of this regulation the environmental health officer or authorised official must –

- (a) give the holder of the certificate 21 days written notice of the proposed action and reasons; and
- (b) invite the holder of the certificate to appearing person or to make written representations to the authorised official or environmental health officer in respect of the proposed action.

(3) Where a certificate of fitness or business registration certificate is cancelled or suspended in terms of this regulation, the authorised official or environmental health officer must indicate the cancellation or suspension in the business register.

Notices

21. A notice required or permitted to be given in terms of these regulations is in accordance with section 93 of the Act.

Determination of fees

22. The fees and charges payable in terms of these regulations are as determined by the Council under section 30(1) (u) of the Act.

Business register

23. The authorised official must keep a register in which particulars relating to every certificate issued in terms of these regulations must be entered.

Exemptions

24. The Council may authorise –
- (a) departure or exemption from any provision of these regulations, subject to such conditions as it may impose; and
 - (b) departure or exemption if such departure or exemption is not in conflict with the Act.

Duties of holders of certificates

25. (1) The holder of a business registration certificate issued in terms of these regulations –

- (a) must maintain the business permission respect of which the business registration certificate is issued in a clean and sanitary condition;
- (b) must comply with the applicable laws relating to buildings, public health and safety, as well as the provisions of the applicable town planning scheme and conditions of establishment;
- (c) may not cause, suffer or commit any nuisance to arise in, on, or in connection with the object, equipment, amusement, vehicle, place or premises for which the certificate was issued; and
- (d) may not cause or permit any offensive or abusive language or disorderly conduct in, on, or in connection with any place or premises for which the certificate was issued.

(2) A holder of a certificate of fitness or of a certificate of registration who fails to comply subregulation (1) commits an offence and is liable on conviction to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months.

Offences and penalties

26. (1) A person who –
- (a) contravenes or fails to comply with a condition imposed in respect of a certificate issued in terms of these regulations;
 - (b) threatens, interferes with or obstructs an environmental health practitioner, an authorised official, an inspector in the exercise of his or her powers or the performance of his or her functions in terms of these regulations;
 - (c) furnishes false or misleading information in respect of an application in terms of these regulations to an environmental health practitioner or an authorised official;
 - (d) holds or presents himself or herself as an authorised official, environmental health practitioner or an inspector while not being an authorised official, environmental health practitioner or inspector; or
 - (e) intentionally makes an alteration, damages or destroys any certificate issued in terms of these regulations,

commits an offence.

(2) A person convicted of an offence in terms of subregulation (1) is liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months and in the case of a continuing offence, an additional fine not exceeding N\$500 for every day upon which the contravention or failure continues.
