



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 7168

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General Notice

ONGWEDIVA TOWN COUNCIL

No. 128

2020

INFORMAL TRADING REGULATIONS: LOCAL AUTHORITIES ACT, 1992

Under section 94(1) of the Local Authorities Act, 1992 (Act. No 23 of 1992), the Town Council of Ongwediva, after consultation with the Minister responsible for Urban and Rural Development, has made the Regulations set out in the Schedule.

A. ANGULA
CHAIRPERSON
BY ORDER OF THE COUNCIL

Ongwediva, 10 February 2020

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PART 1
INTRODUCTORY PROVISIONS

Definitions

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

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

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

“business visa” means a visa issued by the Ministry of Home Affairs and Immigration in terms of section 24(b)(i) of the Immigration Control Act, 1993 (Act No. 7 of 1993), allowing a foreigner to temporarily do business as an informal trader in the local authority area;

“Council” means the Town Council of Ongwediva;

“foreign trader” means a trader who is not a Namibian citizen and who trades as an informal trader;

“foodstuff” means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Ordinance, 1979 (Ordinance No. 18 of 1979);

“goods” includes any movable property, foodstuff, clothing, cosmetics, magazines, merchandise or living thing;

“informal trader” means a person registered under these regulations and includes an assistant of that person, to sell goods or services for gain in the local authority area;

“informal trading” means the selling of goods or supply of services for a reward -

(a) in or alongside a street, public road or a public place; or

(b) at special events.

“lease” means a lease agreement as contemplated in regulation 5(a);

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

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

“prohibited area” means a place declared by the Council in terms of regulation 8 as a prohibited area;

“public place” means a square, park, recreation, ground, garden or open space which is vested in the Council or to which the public has the right of use or which is shown on the general plan or diagram of a township and has been provided for the use of the public;

“public road” means a public road as defined in section 1 of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);

“registration certificate” means a registration certificate issued in terms of regulation 3(3);

“Road Traffic and Transport Act” means the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);

“sell” means -

(a) barter, exchange or hire out;

(b) display, expose, offer or prepare for sale;

(c) store on a public road or public place with a view to sell; or

(d) provide a service for reward;

“sidewalk” means a sidewalk as defined in section 1 of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);

“special events” means a public event such as a ballgame, parade, trade fair or festival;

“street” means a street as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992); and

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

PART 2 REGISTRATION OF INFORMAL TRADERS

Application for a registration certificate

2. (1) For purposes of this regulations a person who intends to conduct trading as informal trader must apply to the Council in the manner referred to in subregulation (2) for a registration certificate to conduct informal trading.

(2) An application for registration as an informal trader made in terms of subregulation (1) must be -

- (a) made on Form 1 of Annexure 1; and
- (b) accompanied by a non-refundable fee determined by Council under section 30(1)(u) of the Act.

Issuing and display of registration certificate

3. (1) On receipt of an application for a registration certificate referred to in regulation 2(1), the authorised official must consider such application and may -

- (a) approve the application;
- (b) approve the application subject to such conditions as the authorised official may consider appropriate; or
- (c) refuse to approve the application and within seven days provide the applicant with the written reasons for the refusal.

(2) The authorised official must after refusing to approve an application made in terms of regulation (2)(1) inform the applicant of his or her right to appeal in writing to the Council against such decision.

(3) If an application referred to in regulation 2(1) is approved the authorised official must issue the applicant with a registration certificate.

(4) In order to qualify for a registration certificate, an applicant may not hold more than one registration certificate in the local authority area.

(5) A registration certificate must specify -

- (a) the name and identity number of the informal trader;
- (b) the goods or services which the informal trader is entitled to sell;
- (c) the designated site where the informal trading is to be conducted; and

(d) the number of persons employed by the informal trader.

(6) An informal trader must provide the names of persons employed by him or her to the Council on Form 2 of Annexure 2.

(7) An informal trader must, when conducting informal trading, display a certified copy of the registration certificate which must at all times be in good and legible condition.

(8) The holder of a registration certificate must produce the registration certificate for inspection when required to do so by a member of the Namibian Police and the authorised official.

Transfer and loss of a registration certificate

4. (1) An informal trader must notify the authorised official of any change of his or her residential address within 14 days of such change.

(2) If an informal trader loses his or her registration certificate, he or she must give notice of such loss to the authorised official within 14 days from date on which such loss became known to him or her and obtain a duplicate registration certificate from the authorised official against the payment of a fee.

(3) The fees payable in respect of the issue of a duplicate registration certificate under subregulation (2) must be determined by Council under section 30(1)(u) of the Act.

(4) A registration certificate approved under regulation 3 is not transferable and only the person in whose name it was issued is entitled to conduct informal trading in terms of the certificate.

(5) An informal trader must return the registration certificate to the Council if the informal trader no longer intends to trade.

Renewal of registration certificate

5. (1) A registration certificate issued for a period of 12 months may be renewed by the registration certificate holder.

(2) The application for renewal must reach the authorised official on or before the date for renewal specified on the registration certificate.

(3) The authorised official may refuse to renew the registration certificate if the registration certificate holder was issued with warnings for non-compliance with these regulations or is found guilty of a transgression under these regulations.

(4) If an application for renewal is received by the authorised official after the date specified on the registration certificate, it will be regarded as a new application.

Registers

6. The Council must keep and maintain a register for each of the following:

- (a) the number of registration certificate issued, including any conditions imposed and whether any duplicate certificate has been issued;
- (b) the particulars of any allocation of a leased trading stand;
- (c) every offence committed by an informal trader in terms of these regulations and the penalty given for such offence; and

- (d) the goods impounded and such register must contain the information required under regulation 12(4).

PART 3 INFORMAL TRADING

Demarcation of areas for informal trading

7. (1) The Council may after resolution by the Council demarcate areas for informal trading and declare any area in its jurisdiction to be an area in which informal trading is allowed.

(2) The Council may change the areas contemplated in subregulation (1) if the needs and circumstances of residents, informal traders or the Council demand reconsideration.

Signs indicating restricted and prohibited areas

8. (1) The Council may by resolution declare any place in the local authority area to be an area in which informal trading is restricted or prohibited and must, to enable compliance, make signs, markings or other devices indicating -

- (a) specified places, goods or services in respect of which informal trading is restricted or prohibited;
- (b) the location of boundaries in respect of restricted or prohibited areas;
- (c) the boundaries of a stand or area set apart for the purposes of conducting informal trading;
- (d) the fact that any stand or area has been let or otherwise allocated; or
- (e) any other restriction or prohibition against informal trading in terms of this regulations.

(2) The Council must display any sign, marking or device in a position and manner that indicates a restriction or prohibition and the location or boundaries of the area or stand concerned.

(3) A sign marking or device erected in terms of these regulations will serve as sufficient notice to an informal trader of the prohibition or restriction in respect of the area concerned.

(4) A sign, marking or device may be amended from time to time and displayed by the Council for the purpose of these regulations and will have the same effect as a road sign in terms of the Road Traffic and Transport Act.

(5) Before the Council can act on a resolution contemplated in subregulation (1), the Council must first consider the effect its resolution will have on the existing informal traders in the designated area in question and alternative relocation areas.

Lease and allocation of stands

9. If an application in terms of regulation 2 is successful an informal trader must enter into a lease agreement with the Council in respect of a stand, which lease agreement must be produced at the request of an authorised official.

Environmental health and safety

- 10.** (1) An informal trader must -
- (a) keep the area or site occupied by him or her for the purposes of conducting informal trading in a clean and sanitary condition;
 - (b) keep his or her property in a clean, sanitary and well maintained condition;
 - (c) dispose of litter generated by his or her informal trading in a refuse container provided by the Council for the public or at a dumping site of the Council;
 - (d) not dispose, store, deposit or cause to be accumulated litter, refuse, scrap or waste material in a manhole, storm water drain, on a public road or public place or other place not intended for the disposal of litter;
 - (e) ensure that on completion of business for the day, the area or site occupied by him or her for the purposes of conducting informal trading is free of litter;
 - (f) take the necessary precautions while conducting his or her trading, to -
 - (i) prevent the spilling of any fat, oil or grease onto a public road, public place or into a storm water drain; and
 - (ii) ensure that no smoke, fumes or other substance, odors or noise causes a public nuisance of any kind;
 - (g) not conduct his or her trading in such a manner as cause a danger or threat to public health or public safety; and
 - (h) on request by an authorised official, move his or her property for the cleansing of the space, area or site where he or she is conducting informal trading.

Prohibited and restricted conduct

- 11.** (1) An informal trader may not conduct informal trading -
- (a) at a place or in an area declared by the Council in terms of regulation 8 as a prohibited area;
 - (b) in a garden to which the public has a right of access;
 - (c) directly alongside -
 - (i) a building belonging to the Namibian Police;
 - (ii) a church, mosque, synagogue or other place of worship;
 - (iii) a building declared to be a public monument; or
 - (iv) an auto teller bank machine;
 - (d) at a place where it causes an obstruction in respect of -
 - (i) a fire hydrant; or

- (ii) any entrance to or exit from a building;
 - (e) at a place where it is likely to obstruct vehicular traffic;
 - (f) next to a building used for residential purposes, if the owner or person in control or any occupier of that building objects and such objection is made known to the informal trader by an authorised official;
 - (h) within five metres of a traffic intersection; and
 - (i) a sidewalk next to a building in which business is being carried on, without the prior consent of the owner, lawful occupier or person in control of that building.
- (2) A person who has leased a stand from the Council in terms of regulation 9 may not trade in contravention of the terms and conditions of the lease agreement.
- (3) An informal trader -
- (a) may not sleep overnight at the place where he or she conducts an informal trading;
 - (b) may not erect any structure for the purpose of providing shelter, other than a structure approved by the Council;
 - (c) may not place his or her property on a public road or public place;
 - (d) may ensure that his or her property or area of activity -
 - (i) does not cover an area of a public road or a public place which is greater than six square metres in extent, unless otherwise approved by the Council; and
 - (ii) in respect of any sidewalk, leaves an unobstructed space for pedestrian traffic, being not less than one and a half metres wide when measured from any attached building to the property or area of activity and not less than one half metres wide when measured from the curb line to the property or area of activity;
 - (e) may not trade on a sidewalk where the width of that sidewalk is less than three metres;
 - (f) may not place or stack his or her property in a manner that constitutes a danger to any person or property;
 - (g) may not display his or her goods or property on or in a building, without the consent of the owner, lawful occupier or person in control of that building;
 - (h) must, on request by an authorised official or supplier of telecommunication or electricity or other municipal services, move his or her property for the carrying out of work in relation to a public road, public place or that service;
 - (i) may not attach any of his or her property to a building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street fixtures or on a public road or public place;
 - (j) may not conduct trading in such a manner so as to -

- (i) create a nuisance;
- (ii) damage or deface the surface of any public road, public place or any public or private property; or
- (iii) create a traffic or health hazard, or both;
- (k) may not make an open fire on a public road or public place;
- (i) may not interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window;
- (m) may not obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic;
- (n) may not obstruct access to, or the use of, a street fixture and any other facility designed for the use of the general public;
- (o) may not obscure any road traffic sign displayed in terms of the Road Traffic and Transport Act or any marking, notice or sign displayed or made in terms of these regulations;
- (p) may not conduct trading, take up a position or place his or her property on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the Council for the purposes of these regulations;
- (q) may not place on a public road or public place his or her property that is not capable of being easily removed to a storage place away from that public road or public place at the end of the business day;
- (r) must, at the end of the business day, move his or her property to a place which is not part of a public road or public place;
- (s) may not store his or her property in a manhole, storm water drain, public toilet, bus shelter or in a tree; and
- (t) may not conduct informal trading in a place or area in contravention of a prohibition or restriction approved by the Council in terms of subregulation (1).

PART 4 IMPOUNDING OF GOODS

Impounding of goods

- 12.** (1) An authorised official may impound the goods of an informal trader -
- (a) who is not in possession of a valid registration certificate;
 - (b) that is not reflected in the registration certificate;
 - (c) who is in contravention of regulation 11;
 - (d) that is left unattended for a period of 30 days or longer in a storage facility, a market stall, building or other premises owned by or under the control of the Council;

- (e) that he or she finds at any place where -
 - (i) informal trading is prohibited; or
 - (ii) in his or her opinion the goods are placed -
 - (aa) in a manner which prevents pedestrians from passing on the sidewalk;
 - (bb) in a manner which cause an obstruction to traffic; or
 - (cc) in front of a fire hydrant or an entrance to or exit from a building,

and which the informal trader has failed to remove from such place after having been requested to do so by the authorised official or which have been left at such place or have been abandoned.

(2) The authorised official must give the informal trader 24 hours to remove his or her goods before such goods are impounded.

(3) If the informal trader does not comply with the notice referred to in subregulation (2), the authorised official may impound the goods of the informal trader in the manner contemplated in subregulations (4)(5)(6) and (7).

(4) An authorised official impounding goods must enter into a register kept for that purpose -

- (a) the date the goods were impounded;
- (b) the place where the goods were impounded;
- (c) a description of the goods impounded;
- (d) the quantity of the goods impounded;
- (e) the condition of the goods impounded;
- (f) the names and address of the owner if known; and
- (g) confirm the entries by signing as to the correctness of it.

(5) If the name and address of the owner of impounded goods is known the authorised official impounding the goods must write, or cause to be written, at the impounding of the goods, a receipt to the owner informing him or her -

- (a) of the particulars entered in to a register in terms of subregulation (4);
- (b) that the goods may be claimed against payment of the actual cost of impounding, removing and storing of the goods plus an administrative levy of 15%; and
- (c) that failing to claim the goods as contemplated under sub-paragraph (b), the goods may be sold by public auction.

(6) The impounding of goods will not exempt a person from being charged with any offence under these regulations.

(7) The Council is not be liable for any loss of or damage to any goods removed and impounded under this regulation.

Disposal of impounded perishable goods

13. (1) The owner of perishable goods impounded in terms of regulation 12 may within a period of 24 hours from the time such goods have been impounded, apply in writing or in person to the authorised official for the return of such goods and attach or produce the relevant receipt issued to him or her in terms of regulations 12(5).

(2) Where the owner of the perishable goods fails to claim his or her goods within 24 hours from the time of impoundment, the council may sell such goods in terms of regulation 14.

(3) Perishable goods that are no longer fit for consumption may be destroyed pursuant to the laws governing public health.

Disposal of non-perishable goods or property

14. (1) The owner of goods or property impounded in terms of regulation 12, may within 30 days from the date of impoundment, apply in writing or in person to the authorised official for the return of such goods and must attach to the application or produce the relevant receipt issued in terms of regulation 12(5).

(2) Where the owner of the goods or property fails to claim his or her goods or property within 30 days from the date of impoundment the Council may sell such goods in terms of regulation 15.

Storage and sale of impounded goods

15. (1) If impounded goods have not been claimed in terms of regulation 13 or 14, the Council may sell such impounded goods or property by public auction or any other means approved by Council.

(2) If the owner of goods impounded claims the return of the goods in terms of regulation 13 or 14 from the Council and he or she is unable or refuses to refund in full the expenses incurred by the Council in respect of the removal and impounding of the goods, the Council may refuse to return the goods and sell the goods by public auction.

(3) Before any goods are sold by public auction, the auction must be advertised once in a daily newspaper and once in the *Gazette* for a period of 14 days.

(4) (a) An advertisement referred to in subregulation 4 must, subject to subregulation (2), state -

- (i) a short description of the goods to be sold;
- (ii) the date and place of impoundment;
- (iii) the name of the owner, if known; and
- (iv) the date, time and place where the auction will be held.

(b) The proceeds of the auction must be used to cover -

- (i) the cost of impounding, removing and storing the goods plus an administrative levy of 15%; and

- (ii) the costs pertaining to the auction, including the costs of advertising, auctioneer's commission and an administrative levy of 15%.

(5) If the proceeds of the sale of goods or property contemplated in subregulation (3) are not enough to cover the expenses incurred by the Council in respect of the removal and impoundment of such goods or property, the owner of the goods or property remains liable to the Council for payment of the expenses that are not covered by the proceeds.

(6) If the owner of the goods or property impounded in terms of regulation 12 fails to claim the proceeds of the goods or property sold in accordance with subregulation (2) within a period of 3 years after the date that the goods or property were sold, the proceeds are forfeited to the Council.

PART 5 FOREIGN TRADERS

Foreign traders

16. (1) The period of validity of the registration certificate of a foreign trader may not exceed that of his or her business visa issued in terms of terms of section 24(b)(i) of the Immigration Control Act, (Act 7 of 1993).

(2) An authorised official may place special restrictions in the registration certificate of a foreign trader restricting the hours during which, the places where and the goods which the foreign trader may sell.

(3) A foreign trader must at all times whilst trading have in their possession their identity documents.

PART 6 GENERAL PROVISIONS

Offences and penalties

- 17.** (1) A person, commits an offence if that person -
- (a) contravenes or fails to comply with any provision of these regulations;
 - (b) fails to comply with any notice issued in terms of these regulations;
 - (c) fails to comply with any lawful instruction given in terms of these regulations;
 - (d) in an application for the issue of a registration certificate, furnishes any false, misleading information or makes any false statement;
 - (e) provides false or misleading information to an authorised official;
 - (f) holds himself or herself out to be, or presents himself or herself as, an authorised official, whilst not being an authorised official;
 - (g) obstructs an authorised representative in the execution of his or her duties under these regulations;
 - (h) without the prior written approval of the Council, makes any alteration to, or damages or destroys, any registration certificate;

- (i) conducts informal trading in contravention of the registration certificate approved by the Council;
- (j) conducts informal trading on a stand or public place and is unable to produce a valid lease agreement; or
- (k) conducts informal trading on a stand or public place and fails to comply with the terms and conditions of the lease agreement referred to in regulation 8,

and on conviction is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding 6 months.

(2) The authorised official may revoke the registration certificate of an informal trader, if the informal trader -

- (a) is convicted of an offence more than once in terms of these regulations; or
- (b) commits an offence and is ordered to pay a fine or is sentenced to imprisonment without the option of a fine within a period of 12 calendar months.

(3) Despite subregulation (2) the authorised official must give the informal trader an opportunity to make representations as to why the registration certificate should not be revoked.

(4) An informal trader who commits an offence and is found guilty of three or more offences within a period of 18 calendar months under these regulations and sentenced to the payment of a fine may -

- (a) be prohibited from conducting an informal trade in the local authority area of the Council; and
- (b) not be issued with a registration certificate for a period of three years.

(5) An informal trader who commits an offence and is found guilty of five or more offences within a period of 30 calendar months under these regulations and sentenced to payment of a fine may -

- (a) be prohibited from conducting an informal trade in the local authority area of the Council; and
- (b) not be issued with a registration certificate for a period of five years.

Form 1 of Annexure 1

APPLICATION FOR SELLING POINT OR AREA

Surname:

First Name:

.....

Identity/ Passport Number:

Postal Address:

Residential Address:

Cell phone No:

Type of trading:

Location where informal trading will be carried on:

Suburb:

Street Name:

How many employees will be at the stand:

Goods to be offered for sale:

1

2

3

4

5

6

Signature:

Date:

Form 2 of Annexure 2

APPLICATION FORM FOR AN EMPLOYEE OF AN INFORMAL TRADER

FULL NAME AND SURNAME:

ID NO:

RESIDENTIAL ADDRESS:

POSTAL ADDRESS:

TEL. NO.: CELL:

EMPLOYER'S NAME:

ADDRESS:

TEL. NO.: CELL:

.....
SIGNATURE.....
DATE

Form 3 of Annexure 3

LEASE AGREEMENT

Memorandum of lease between:

ONGWEDIVA TOWN COUNCIL

Herein duly represented by

In his capacity as of the said Council (hereafter referred to/as the “Council”, on the one hand);

AND

Name:

ID No:

Address:

(Hereafter referred to as the “informal trader”), on the other hand.

WHEREAS the informal trader is desirous to lease stand no.

Situated at
(Hereinafter referred to as the “stand”) from the Council, for the purpose to carry on business as an informal trader;

AND WHEREAS the Council is willing to let the informal trader the stand subject to certain terms and conditions;

NOW THEREFORE the parties hereby agree as follows:

- 1 This agreement will commence from the date of signature and shall continue for a period of 12 (twelve) months from such date.
- 2 The rental in respect of the stand will be the sum of N\$
(.....)
per month or any such amount as the Council may from time to time determine under section 30(1)(u) of the Act.
- 3 The rental will be payable in advance on or before the 7th working day of each and every month.
- 4 Should the informal trader fail to comply with any of the terms and conditions of this agreement and fail to remedy such breach within 14 (fourteen) days after the date of written notification from the Council to do so, the Council is entitled to cancel this agreement with immediate effect.
- 5 All outstanding amounts owing to the council in respect of this agreement, shall immediately become payable upon such cancellation in terms of paragraph 4.
- 6 The informal trader will observe and adhere to the informal trading regulations of the Ongwediva Town and all other relevant statutory laws and common law relating to trading in force from time to time. Non-compliance will entitle the Council to invoke clause 4.

- 7 Either party may cancel this agreement by giving the other party one month's written notice to that effect.
- 8 The informal trader may under no circumstances sub-lease the stand, transfer, cede or assign any of his or her rights or obligations in terms of this agreement.
9. The informal trader may not employ more than 5 persons.
10. The parties chooses their respective domicilium citandi et executandi at the following address:

THE INFORMAL TRADER:

.....

THE COUNCIL:

The Office of the Economic Development and Tourism Officer
 Ongwediva Town Council
 Corner of Mandume Ndemufayo & Libertine Amathila Street
 Ongwediva

11. This agreement constitutes the whole agreement between the parties and no amendment, addition or omission hereto shall be binding upon the parties, unless reduced to writing and signed by both parties and no indulgence which either party may show to the other party, shall in any way be constructed as a waiver or novation of this agreement by that party.
12. The parties agree to the jurisdiction of the Magistrate's Court in respect of any action which may arise from this agreement, the cancellation thereof or any other related matter.
13. This agreement is subject to all laws applying to the activities and omissions of informal traders.

SIGNED AT ONGWEDIVA ON THE DAY OF 20.....

WITNESSES:

1

 FOR COUNCIL

2

SIGNED AT ONGWEDIVA ON THE DAY OF 20.....

WITNESSES:

1

 INFORMAL TRADER

2
