



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 26 July 2006

No. 3669

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General Notice

MUNICIPALITY OF WINDHOEK

No. 202 2006

REGULATIONS RELATING TO THE REGISTRATION OF BUSINESSES: LOCAL AUTHORITIES ACT, 1992

The Council of the Municipality of Windhoek makes, under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992) and after consultation with the Minister of Regional and Local Government, Housing and Rural Development, the Regulations set out in the Schedule.

BY ORDER OF THE COUNCIL

M.K. SHIKONGO
CHAIRPERSON OF THE COUNCIL

Windhoek, 23 June 2006

SCHEDULE

Definitions

1. In these regulations a word or expression to which a meaning has been assigned in the Act bears 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 purposes of conducting a business;

“certificate of fitness” means a certificate of fitness issued in terms of regulation 5 by the Environmental Health Officer in respect of a business premises;

“certificate of registration” means a valid certificate of registration issued in terms of regulation 7 by the Registration Officer in respect of the conducting of a business on a business premises;

“conducting” in relation to a business, means operating, carrying on, engaging in, doing or pursuing a business within the municipal area and “conduct”, “conducted” or “conducts” has a corresponding meaning;

“Council” means the Municipal Council of Windhoek;

“Environmental Health Officer” means a staff member of the Council appointed in the capacity of an environmental health officer, and means further a health practitioner appointed by the Council to act in that capacity;

“fee” means the appropriate fee determined by the Council in terms of regulation 19;

“holder of a certificate of fitness” means the person issued with a certificate of fitness in terms of regulation 5, or the person in who’s name that certificate is transferred in terms of regulation 8;

“holder of a certificate of registration” means the person issued with a certificate of registration in terms of regulation 7, or the person in who’s name that certificate is transferred in terms of regulation 8;

“inspecting officer” means a staff member of the Council authorized in writing by the Council to conduct inspections in respect of a business premises and the conducting of any works or of a business thereon;

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

“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 further any business determined by the Council under regulation 2(4)(b) to be a noxious business;

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

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

Conducting of business

2. (1) A person may not conduct a business within the municipal area, unless a certificate of registration has been issued to him or her in terms of regulation 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 conducts his or her business is at all times maintained in a state of good repair and ensure that such premises is 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) Failure by a person to comply with the provisions of subregulations (1), (2) or (3) constitutes an offence.

Application for certificate of fitness

3. (1) A person who intends to conduct a business within the municipal 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 -

(a) be made on the form provided by the Council for that purpose;

(b) be submitted to the Environmental Health Officer for consideration;

(c) be accompanied by the appropriate fee;

(d) 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

(e) 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, which are to be conducted on the business premises;

(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 willfully furnishes incorrect or false information or particulars in terms of this regulation commits an offence.

(4) For the purposes 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.

Notice calling for objections

4. (1) A person who intends to conduct a noxious business within the municipal 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 municipal 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
- (f) 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 not 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 7 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 7 days from the date of the notice referred to in paragraph (a), written representation against the objections, if any, in support of the application.

Decision of the Environmental Health Officer

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.

(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 or township condition, applicable to that premises;
- (b) any objection 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 refused the Environmental Health Officer must, within 7 days from refusing the application, provide the applicant with written reasons for such refusal.

(4) 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.

(5) A certificate of fitness issued in terms of this regulation is valid for a period of 1 year from the date of issue or 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.

(6) The holder of a certificate of fitness may at any time during the validity of the certificate, or within 5 days from the date of expiry thereof, apply to the Environmental Health Officer for a renewal of that certificate.

(7) A holder of a certificate of fitness who wishes to renew that certificate must apply to the Environmental Health Officer, for such renewal, in the manner provided for in regulation 4.

Application for certificate of registration

6. (1) A person may not conduct a business within the municipal area except pursuant to and in terms of a certificate of registration issued 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 -

- (a) be made on the form provided by the Council for that purpose;
- (b) be submitted to the Registration Officer for consideration;
- (c) be accompanied by the appropriate fee;
- (d) be accompanied by a certified copy of a valid certificate of fitness issued in terms of regulation 5;
- (e) be accompanied by such other information as the Registration Officer may consider necessary for purposes of making a decision in terms of regulation 7; and
- (f) where applicable, provide particulars relating to the compliance or non-compliance with any condition endorsed upon the certificate of fitness issued by the Environmental Health Officer in terms of regulation 5.

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

Decision of the Registration Officer

7. (1) The Registration Officer must, after considering an application referred to in regulation 6 -

- (a) grant the application with or without such conditions as the Registration Officer may consider appropriate; or
- (b) refuse the application.

(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 where such conditions have not been complied with he or she must take into consideration any particulars submitted in terms of regulation 6(3)(f) in support of such non-compliance; and
- (b) take into consideration any objections lodged and any representations made in terms of regulation 4.

(3) Where an application is refused the Registration Officer must, within 7 days from the date of refusing the application, provide the applicant with written reasons for such refusal.

(4) 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 thereon as the Registration Officer considers necessary.

(5) A person to whom a certificate of registration has been issued may conduct such business on such business premises for which the certificate of registration is issued.

(6) A certificate of registration issued in terms of this regulation is valid for a period of 1 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 occurs first.

(7) The holder of a certificate of registration may at any time during the validity of that certificate, or within 5 days from the date of expiry of that certificate, apply to the Registration Officer for a renewal of that certificate.

(8) 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 6.

Transferability of certificates

8. (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) Notwithstanding 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 the 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 or the Registration Officer, as the case may be, must cause such changes to be made on the certificate of fitness or the certificate of registration, whichever is applicable, and must indicate such changes in the business register of the Council.

Application for approval to make structural alterations

9. (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 subregulation (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.

Appeals

10. (1) An applicant who is aggrieved by a decision made under regulations 5, 7, 8, 9 or 16 may lodge an appeal with the management committee against that decision in the manner provided for in this regulation.

- (2) An appeal referred to in subregulation (1) must -
 - (a) be lodged with the management committee 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 by way of electronic transmission the applicant must, within a period of 7 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 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 may consider appropriate.

(5) The management committee 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 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.

Report of lost or stolen certificates and issue of duplicates

11. (1) Where a certificate of fitness or a certificate of registration is lost or stolen or is damaged beyond legibility, the person to whom such 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 Environmental Health Officer or the Registration Officer, whichever is applicable; and
- (b) apply to the Environmental Health Officer or the Registration Officer, whichever is applicable, for a duplicate of such certificate of fitness or certificate of registration, as the case may be.

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

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

Cessation of business

12. (1) Where the holder of a certificate of registration ceases to conduct the business for which such certificate is issued he or she must, within 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

13. (1) An inspecting officer may at any reasonable time, or in the instance of an emergency at any time, enter a business premises for the purpose of inspecting such premises and any work or process carried out thereon for purposes of ensuring compliance with these regulations or any other law.

(2) An inspecting officer must carry upon his or her person an identification card issued by the Council indicating that such person 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 of 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 for the purpose of regulation 15.

(6) If, by reason of the fact that a business premises is locked or the entrance thereto 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 the unlocking of such entrance or the removal of such obstruction for the purpose of restoring access to the business premises within a period specified within that notice.

(7) If, in the instance contemplated in subregulation (6), the inspecting officer is of the opinion that the gaining of access to the business premises concerned is a matter of urgency or if he or she reasonably suspects 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 costs 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.

Fees and facilities for inspections

14. (1) The holder of a certificate of fitness or a certificate of registration must give reasonable opportunity and assistance, where applicable, to an inspecting officer to inspect the premises and any work or process carried out thereon.

(2) The Council may in terms of regulation 19 determine the amounts or tariff of fees chargeable for purposes of defraying the cost of any inspection carried out under these regulations.

Failure to pass inspection or to comply with conditions imposed

15. (1) If, after inspecting the premises or any process undertaken on such premises, the inspecting officer finds that the premises or the 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, such inspecting officer must give notice to the holder of the certificate of fitness or the certificate of registration, as the case may be, of such failure and call upon such holder of the certificate of fitness or certificate of registration to comply with the requirements of the notice within the time 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.

Withdrawal or suspension of certificate of fitness or certificate of registration

16. (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) gives the holder of a certificate at least 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 certificate of registration is cancelled or suspended, cause such cancellation or suspension to be indicated in the business register.

Notices

17. 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 Act.

Temporary certificates of fitness and registration

18. (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 to 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 the certificate of registration, as the case may be, the period for which that certificate is valid.

Determination of fees

19. 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 registers

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

Departure or exemption from regulations

21. 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 will not be in conflict with any provision of the Act.

Penalties

22. A person who contravenes any provision of these regulations commits an offence and is liable, upon conviction, to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.
