



GOVERNMENT GAZETTE

OF THE

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General Notice

ONDANGWA TOWN COUNCIL

No. 430

2023

NOISE CONTROL REGULATIONS: LOCAL AUTHORITIES ACT, 1992

Under section 94(1)(w) of the Local Authorities Act, 1992 (Act No. 23 of 1992), after consultation with the Minister of Urban and Rural Development, the Ondangwa Town Council 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 otherwise indicates –

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

“broadcast” means to emit or amplify, by means of broadcasting equipment or otherwise, music, speech, messages of any kind or any other sound which causes, or is likely to cause, a noise nuisance, and broadcasting has a corresponding meaning;

“broadcasting equipment” means any equipment or device which is used for any electrical, electronic, mechanical, or inanimate or animate means of broadcasting;

“Council” means the Town Council of Ondangwa;

“local authority area” means the area of jurisdiction of the Council;

“gathering” means an event including, but not limited to:

- (i) open-air music festivals and similar gatherings;
- (ii) a sporting, recreational or entertainment event, including live acts and music of any kind including but not limited to any events held at shebeens, bars and other recreational facilities;
- (iii) an educational, cultural, political event or religious event;
- (iv) a business event including marketing, public relations, promotional or exhibition events;
- (v) a charitable event, conference, organisational or community event, or any similar activity hosted at stadium, public or private open space or any venue or along a route or its precinct, which event is planned, has a clear programme, control and accountability”;

“noise nuisance” means any sound which disturbs or impairs, or is likely to disturb or impair, the convenience, peace, safety or health of any person residing in the municipal area;

“owner”, in relation to an erf, means an occupier of an erf or person in charge of the erf, and when used in relation to broadcasting equipment, means the person broadcasting with such equipment or the person in charge of the broadcasting equipment;

“plant” means a refrigeration machine, air conditioners, fan system, compressor, power generator or pump;

“Scheme” means the Ondangwa Town Zoning Scheme prepared in terms of the Urban and Regional Planning Act, 2018 (Act No. 5 of 2018); and

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

General prohibition of noise nuisance

2. A person may not, in the town area –
 - (a) broadcast or cause to be broadcasted music, speech, messages or any other sound which causes or is likely to cause a noise nuisance;
 - (b) make, produce or cause a noise nuisance, or allow it to be made, produced or caused by any person, machine, jukebox, device or apparatus or any combination, on or from –
 - (i) a street or public place;
 - (ii) any property belonging to the Council; or
 - (iii) any erf or building,without the prior written authorisation from Council;
 - (c) use any power tool or power equipment for construction, earth drilling or demolition works, or allow it to be used, in a residential area during the following periods of time –
 - (i) between 19:00 and 07:00 from Monday to Saturday; and
 - (ii) at any time on Sunday or any other day as may be determined by Council;
 - (d) cause a noise nuisance, or allow it to be caused, by operating or playing any radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound;
 - (e) offer any article for sale by shouting or ringing a bell, or by allowing shouting or the ringing of a bell in a manner which may cause a noise nuisance;
 - (f) build, repair, rebuild, modify, operate or test a vehicle, vessel, drone, hover craft or aircraft on residential premises, or allow it to be built, repaired, rebuilt, modified, operated or tested if it may cause a noise nuisance;
 - (g) use, discharge or allow the use or discharged of any explosive, firearm or similar device which emits sound that may cause a noise nuisance;
 - (h) emit a sound, or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device if it may cause a noise nuisance; and

- (i) stage any gathering that may cause a noise nuisance without the prior written authorisation from Council.

Application for authorisation to broadcast

- 3. (1) A person who wishes to broadcast –
 - (a) music;
 - (b) a speech;
 - (c) a message; or
 - (d) any other sound or vibration,

at a gathering, on or from a street, public open space, property or erf referred to in regulation (2)(b) and must apply to the Council for authorisation to broadcast, on a form determined by the Council.

- (2) An application made under subregulation (1) must –
 - (a) be accompanied by a plan –
 - (i) drawn to a scale of not less than 1:500 of the site from which the broadcasting is to take place;
 - (ii) which shows the position of each surrounding building on the erf and neighbouring erven and streets that will be within audible range of the broadcasting;
 - (b) provide a description of the broadcasting equipment to be used; and
 - (c) pay a fee determined by the Council under section 30(1)(u) of the Act.

(3) If mobile broadcasting is to take place, the applicant does not have to submit a plan with the application, but must provide the Council with a full description of the route along which broadcasting is to take place.

(4) The applicant must submit the completed application form, together with the documents and the fee referred to in subregulations (2) and (3), to the Council.

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

Consideration of application for authorisation to broadcast

- 4. (1) The Council must consider every application submitted to it in terms of regulation 3 and may, having regard to all accompanying documents and information –
 - (a) grant the application without imposing any conditions;
 - (b) refuse the application and in writing provide the applicant with reasons for the refusal; or

- (c) grant the application and impose conditions, including conditions which restrict the period of broadcasting and the sound or vibration levels of the broadcasting to take place.

(2) If an application is granted under subregulation (1)(a) or (c), the Council must issue to the applicant written authorisation to broadcast the music, a speech, a message or any other sound or vibration, subject to the conditions, if any, imposed by the Council and specified in that authorisation.

Non-compliance with conditions or instructions

5. (1) If the person to whom the Council has granted authorisation to broadcast under regulation 4 fails to comply with a condition imposed by the Council in terms of that regulation, the Council may –

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

(2) If the person to whom authorisation to broadcast has been granted under regulation 4, or the owner of the broadcasting equipment, fails to comply with an instruction given or condition determined by the Council under subregulation (1)(b), the Council may –

- (a) impound and remove, or silence, the broadcasting equipment; or
- (b) take any other action to ensure compliance with that instruction or condition by that person or owner,

and afterwards recover from that person or owner any costs incurred by the Council in connection with any action so taken.

(3) If any broadcasting equipment has been impounded under subregulation (2), the Council must return the broadcasting equipment to its owner, if the owner or the person to whom authorisation to broadcast has been granted under regulation 4 –

- (a) gives the Council a written undertaking –
 - (i) not to resume broadcasting after the broadcasting equipment is returned; or
 - (ii) to comply with the conditions imposed under these regulations by the Council; and
- (b) pays to the Council the costs incurred, if any, by the Council to impound and remove the broadcasting equipment.

Withdrawal of authorisation

- 6.** Despite regulation 5, the Council may, when it is reasonable and necessary –
- (a) withdraw an authorisation to broadcast granted under regulation 4;

- (b) amend or withdraw a condition imposed under regulation 4(1)(c); or
- (c) impose new conditions on the authorisation to broadcast granted under regulation 4,

after giving such written notice as may be reasonable under the circumstances to the person to whom such authorisation has been granted.

Authorised broadcasting

7. (1) For the purpose of this regulation –

“emergency” means any occurrence involving actual or imminent danger to persons or property and which demands immediate action;

“maintenance equipment” means all engine powered or motor driven garden or maintenance tools intended for use in residential areas, including lawnmowers, saws, grinders, drills or similar devices;

“public emergency sound signal” means an electronic or mechanical siren or signal device attached to a building or emergency vehicle for the purpose of sounding an alarm; and

“safety and protective device” means a device that is designed to be used for the prevention of exposure of any person or property to imminent danger, such as a circuit breaker, protective fuse or an alarm.

(2) Despite regulation 2, a person may, at any place in the local authority area, broadcast or cause to be broadcast sound or vibration, if the sound or vibration is emitted –

- (a) as a result of, or relating to, an emergency;
- (b) in the performance of public service by state institutions;
- (c) by a public emergency sound signal attached to an authorised emergency vehicle;
- (d) by a safety and protective device;
- (e) by engine powered or motor driven maintenance equipment or agricultural equipment;
- (f) by engine powered or motor driven equipment used for construction work, drilling work or demolition work in or near a residential area;
- (g) by a bell or similar device from a building clock, church or school;
- (h) as a result of on-site recreational or sporting activities, including athletic contest, carnival, parade and public celebration, authorised by the Council; or
- (i) from equipment like hair-dryers, pumps, grinders, lawnmowers, saws, drills,

subject to the conditions that the sound or vibration broadcasted is –

- (i) reasonable and necessary in the circumstances; and
- (ii) broadcasted at such times which are reasonable in the circumstances.

(3) The authorisation of the Council under these regulations is not required for the broadcasting of sound or vibration –

- (a) in an area zoned “business”, “restricted business”, “office”, “garage”, “industrial”, “private open space” or “special”, or reserved for the government, transportation or communication under the Scheme, subject to the condition that the music, speech, message or other sound or vibration broadcasted is not audible on or from any erf zoned “residential” “general residential” or “institutional”; or
- (b) in the interior of a building or a motor vehicle, subject to the condition that the music, speech, message or other sound or vibration broadcasted is not audible or felt on or from a street, public place or an adjacent erf.

Conditions applicable to broadcasting equipment

8. (1) A person who, under these regulations, broadcasts music, a speech, a message or any other sound or vibration must ensure that any equipment involved in the broadcasting has been set up in a safe way and does not endanger persons or property.

(2) The owner of any erf on which broadcasting equipment is being used and the owner of such broadcasting equipment are both, jointly and severally, responsible for the installation, maintenance, controlling, silencing and removal of that equipment.

Other powers of Council

9. (1) If broadcasting causes a noise nuisance to any person, the Council may, in accordance with section 93 of the Act, serve a written notice on the owner of the broadcasting equipment, if known, or on the owner or occupier of the erf or property on or from which the broadcasting is taking place.

- (2) A notice referred to in subregulation (1) must –
 - (a) state the nature of the complaint;
 - (b) instruct the owner of the broadcasting equipment, if known, or on the owner or occupier of the erf or property on or from which the broadcasting is taking place to remove, silence or repair the broadcasting equipment within a period specified in the notice; and
 - (c) inform the owner of the broadcasting equipment, if known, or the owner or occupier of the erf or property on or from which the broadcasting is taking place, that –
 - (i) if he or she fails to remove, silence or repair the broadcasting equipment within the period specified in the notice, the Council may -
 - (aa) impound and remove, or silence, that broadcasting equipment; or
 - (bb) take any other action to ensure compliance with the instruction given under paragraph (b),

and may recover from the such person any costs incurred by the Council in connection with any action so taken; and

- (ii) if any broadcasting equipment is impounded as contemplated in subparagraph (i), that equipment will be returned to the owner of the equipment only if such owner –
 - (aa) gives the Council a written undertaking –
 - (A) not to resume broadcasting after the broadcasting equipment is so returned; or
 - (B) to comply with the conditions imposed under these regulations by the Council; and
 - (bb) pays to the Council the costs, if any, contemplated in that subparagraph.
- (3) If a person broadcasts sound or vibration –
 - (a) in contravention of regulation 2; or
 - (b) in contravention of any condition imposed under regulation 4(1)(c) or 10(3)(c) by the Council on the broadcasting of sound or vibration,

then regulation 5(1) and (2) applies with the necessary changes.

(4) If a owner of the broadcasting equipment, if known, or the owner or occupier of the erf or property on or from which the broadcasting is taking place fails to comply with an instruction given by the Council under subregulation (2)(b) and regulation 5(1)(b), then regulation 5(2) applies with the necessary change required by the context.

Reconsideration of decision of Council

10. (1) A person who is aggrieved by a decision of the Council made under these regulations 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) confirm the decision and impose conditions, including conditions relating to sound or vibration levels and time limits, which are necessary and reasonable in the circumstances.

(4) The Council must, within 7 days of receiving an application made under subregulation (1), notify the applicant in writing of the decision the Council has made under subregulation (3).

Offences and penalties

11. (1) A person who –
- (a) in the local authority area, broadcasts or causes to be broadcast music, a speech, a message or any other sound or vibration in contravention of regulation 2;
 - (b) contravenes or fails to comply with a provision or any condition imposed by the Council under regulation 4(1)(c) or 10(3)(c), including a condition relating to sound or vibration levels and time limits, imposed under these regulations; or
 - (c) contravenes or fails to comply with an instruction or requirement set out in a notice issued under regulation 5(1)(b) or 9(2)(b) and served on him or her in accordance with section 93 of the Act;
 - (d) intentionally makes a false statement when making an application under regulations 3(1) and 10(1);
 - (e) threatens, resists, hinders or obstructs any staff member of the Council in the performance of his or her functions under these regulations;
 - (f) fails or refuses to grant admission to an authorised official to enter and to inspect a premise;
 - (g) fails or refuses to give information which may be requested by an authorised official;
 - (h) obstruct an authorised official in the execution of his duties; or
 - (i) give false or misleading information to an authorised official;

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 or to both such fine and such imprisonment.

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

- (a) the owner of land or a building from which the sound or vibration was broadcast is deemed to have broadcast that sound or vibration or caused it to be broadcast;
 - (b) the owner of broadcasting equipment from which the sound or vibration was broadcast is deemed to have broadcast that sound or vibration or caused it to be broadcast; or
 - (c) a person who was, either alone or jointly with any other person, responsible for organising, or was in control of, any meeting, function or event at which sound or vibration was broadcast, is deemed to have broadcast that sound or vibration in connection with that meeting, function or event or to have caused or allowed that broadcasting.
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