



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

MUNICIPALITY OF WALVIS BAY

No. 291 1998

LOCAL AUTHORITIES ACT, 1992 : REGULATIONS ON INFORMAL TRADING

The Council of the Municipality of Walvis Bay has 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 and Housing -

- (a) made the regulations set out in the Schedule; and
- (b) repealed the Hawkers and Pedlars Regulations promulgated under Government Notice No. 17 dated 15 January 1966.

BY ORDER OF THE COUNCIL

MANUEL DA CONCEIÇÃO JARIMBA DE CASTRO

CHAIRPERSON OF THE COUNCIL

Walvis Bay, 28 September 1998

SCHEDULE

Definitions

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

“**authorised official**” means an official of the Council authorised to implement the provisions of these regulations;

“**Council**” means the Municipal Council of Walvis Bay, or any committee of such Council or any official to whom such Council has lawfully delegated the powers, duties or functions vested in the Council in terms of the Act or of these regulations;

“**food**” includes any article, product or thing in any form, state or stage of preparation which is intended for human consumption, or which is capable of being so consumed;

“**food premises**” means any building, shed, stand, construction, vehicle or other structure used in or with regard to the handling of food;

“**goods**” includes any living thing and any transferable interest;

“**Health Officer**” means an employee of the Council appointed in such capacity;

“**informal trader**” means any person registered under these regulations to trade in the Municipal Council Area of Walvis Bay;

“**informal trading**” means the selling of goods or services in a street, a public place or outside or inside any building in terms of a registration certificate issued under these regulations, but excludes the conducting of a business registered and approved in terms of Government Notice No. 121 of 14 October 1969, and “**trade**” or “**trader**” has a corresponding meaning;

“**litter**” includes any container or other object which has been discarded, abandoned or left behind by any trader or by any of his or her customers;

“**prohibited area**” means any place declared by the Council by resolution to be an area in which any form of trading shall be prohibited;

“**property**”, in relation to a person conducting the business of trading, includes any article, receptacle, vehicle or structure used or intended to be used in connection with such business, or any goods in which such person trades;

“**public building**” means a building occupied solely by the State or the Council;

“**registration certificate**” means a certificate issued by the Council under regulation 6 for the purpose of trading in the area of jurisdiction of the Municipality of Walvis Bay;

“**sell**” includes -

- (a) supply;
- (b) exchange, barter, lease or hire;
- (c) store, exhibit, offer or prepare for sale,

and “**sale**” has a corresponding meaning;

“**services**” includes any advantage or gain for consideration or reward;

“**sidewalk**” means that portion of a street intended mainly for use by pedestrians, including the area between a street and a building line, provided such area is normally used by the public as a footway; and

“**street**” includes -

- (a) a public road as defined in legislation relating to traffic;
- (b) the shoulder of any street;
- (c) any bridge, ferry, ford or drift traversed by any street; and
- (d) any other object or thing forming part of or connected with or belonging to a street.

Application

2. These regulations shall apply and be valid in the area of jurisdiction of the Municipality of Walvis Bay.

Traders to be registered

3. (1) No person shall within the area of jurisdiction of the Municipality of Walvis Bay conduct a trade, or assist another person in conducting a trade, unless such person is registered as an informal trader or as an assistant to a trader, as the case may be, under regulation 4 and is in the possession of a registration certificate issued under regulation 6(1).

(2) No person registered as an informal trader shall for the purposes of his or her trade employ any other person as an assistant unless such other person is registered as such under regulation 4 and is in the possession of a registration certificate.

Application for registration as a trader or an assistant, and registration as such

4. (1) Any person who wishes to be registered as a trader or as an assistant to a trader shall in the form and manner determined by the Council, subject to regulation 5, apply to the Council for registration as a trader or as assistant, as the case may be.

(2) On receipt of an application for registration referred to in subregulation

(1), the Council shall consider such application, and shall either -

- (a) refuse the application; or
- (b) grant the application; or
- (c) grant the application subject to such conditions as the Council may deem appropriate.

(3) The Council shall by prepaid registered post inform the applicant of its decision under subregulation (2) within a period of 30 days after receipt of the application by the Council.

(4) If an application for a registration certificate in terms of this regulation is refused, the applicant may appear before the Council to either in person or through a legal practitioner registered under the Legal Practitioners Act, 1995 (Act No. 15 of 1995), make representations to the Council in order to show cause why his or her application for registration as a trader or as an assistant should be granted by the Council, or may in writing make such representations, not less than 60 days after the receipt of the notice by the Council in terms of subregulation (3).

(5) The Council shall, after hearing the applicant or a legal practitioner in terms of subregulation (4), or after receipt of the written representations made in terms of that subregulation -

- (a) reconsider the application and make a decision *mutatis mutandis* in accordance with subregulation (2); and
- (b) in writing inform the applicant of its decision within a period of 30 days after hearing the applicant or the legal practitioner, or after receipt of the written representations, as the case may be.

Application fees and registration fees

5. (1) Every application for registration as a trader or as an assistant to a trader made in terms of regulation 4 shall be accompanied by an application fee of N\$50, which amount so paid shall not be refundable, whether or not such application is granted.

(2) If an application referred to in subregulation (1) is granted, the registration certificate concerned shall be issued under regulation 6 without the payment of any additional fees.

(3) The fees payable in respect of the issue of a duplicate registration certificate under regulation 8(2) shall be N\$10 per certificate.

Issue, display or renewal of registration certificates

6. (1) Upon the granting of an application for registration under regulation 4, the Council shall issue to the applicant a registration certificate in such form as the Council may determine.

(2) A registration certificate issued under subsection (1) shall be valid for a period of twelve months from the date of issue thereof, or for such shorter period of time as the Council may determine on the issue thereof, and the date on which the certificate shall lapse shall be endorsed on the certificate.

(3) A registration certificate may be renewed on application by the holder thereof *mutatis mutandis* in accordance with regulation 4, which application for renewal shall, subject to regulation 5, be lodged with the Council not less than 14 days and not more than 30 days before the date of expiry of the certificate.

(4) Every registration certificate issued under subregulation (1) shall -

(a) specify -

(i) the area or place at or where the trade concerned shall be conducted; and

(ii) the article or articles, or the class or kind of articles, which the holder of the registration certificate is entitled to sell,

by virtue of such registration certificate; and

(b) at all times be kept by the person in whose name the certificate is issued on his or her person or in his or her immediate proximity.

Change of address

7. Any person to whom a registration certificate has been issued under regulation 6 shall within a period of 14 days after changing his or her residential address, in writing notify the Council of such change and shall furnish the Council with full particulars of his or her new address.

Duplicate registration certificate or transfer of registration certificate

8. (1) If a registration certificate issued to any person becomes lost, such person shall, within a period of 14 days from the date on which such loss became known to him or her, in writing notify the Council of such loss and, in the form determined by the Council, apply to the Council for the issue of a duplicate registration certificate.

(2) Upon receipt of an application in terms of subregulation (1) and payment of the fees prescribed by regulation 5(3), the Council shall issue to the applicant concerned a duplicate registration certificate, which shall replace the lost registration certificate.

(3) A registration certificate shall not be transferable and no person other than the person in whose name it was issued shall be entitled to conduct any business by virtue thereof.

Control over registered business

9. (1) The holder of a registration certificate shall when required to do so by a member of the Namibian Police, a Health Officer or any authorised official, or by any person with whom business is transacted or sought to be transacted, identify himself or herself and produce such registration certificate for inspection.

(2) No trader or assistant to a trader shall sell anything which he or she is not authorised to sell by virtue of his or her registration certificate.

Conditions of Trading

10. (1) A trader or assistant to a trader conducting business in any kind of food shall keep all such food in or on a vehicle, cart, handcart, barrow, display-stand or receptacle, and shall not allow any food to come in direct contact with the ground or the surface of any sidewalk, street or public place.

(2) No person shall trade in food or second hand clothing unless he or she has at his or her disposal the use of a container approved in writing by a Health Officer.

(3) No trader dealing in foodstuffs or second hand clothing shall store any food or clothing forming part of his or her stock-in-trade in any place other than in a container approved in terms of subregulation (2).

(4) No trader shall convey any goods for the purpose of his or her trade in or on any vehicle, wagon, cart, handcart, barrow or other conveyance, unless it has been approved in writing by a Health Officer for the purpose of conveying such goods.

(5) No food shall be prepared, made available or served for human consumption, if such food contains any of the components in excess of the following bacteriological standards :

Standard plate count	100 000 / gm
Coliforms organisms	10 / gm
Escherichia coli	0 / gm
Staphylococcus aureus	0 / gm
Salmonella	0 / gm
Clostridium	0 / gm
Vibrio parahacmolyticus	0 / gm
Vibrio cholera	0 / gm
Pathogenic organisms	0 / gm.

Requirements relating to domestic occupations and home-made food products

11. (1) No person shall in any building, including a private dwelling, handle, prepare, serve or pre-pack any food for human consumption, except for own domestic use, unless the Council has issued a certificate of fitness in respect of, and in respect of any activity being conducted in, such building or private dwelling.

(2) A certificate of fitness referred to in subregulation (1) shall be applied for in the form and manner, and be issued in the form, determined by the Council.

Exemptions relating to registration

12. (1) Any person in charge of a food stall, or of a vehicle which is used for the transport of food, if such food is sold on behalf or for the benefit of a church, or of a political, cultural, educational, charity, amateur sport or agricultural organisation, may apply to the Council for the issue of a temporary registration certificate.

(2) A temporary registration certificate referred to in subregulation (1), shall -

(a) be applied for in the form and manner;

(b) be issued in the form; and

(c) be valid for such period of time,

as the Council may determine.

(3) A person to whom a temporary registration certificate is issued under this regulation shall be exempted from the obligation to register as a trader or as an assistant in terms of regulation 3 and from the payment of registration fees payable in terms of regulation 5.

General rules of conduct for traders

13. (1) No trader shall -

(a) place or stack his or her property in such a manner that it constitutes a danger to any person or is likely to injure any person; or

(b) obstruct access to a fire hydrant; or

(c) attach any object by any means to any building, structure, pavement, tree, parking meter, lamppost, power standard, telegraph-pole, telephone booth, mail-box, traffic sign, bench or any other similar object in or on a street or public place; or

(d) light a fire in any area where it may cause a public nuisance.

(2) A trader shall -

(c) on concluding business for the day, remove his or her property from the trading area to a place which does not form part of a street or public place; or

(d) at the request of an authorised official or of a person acting on behalf of the Council or of any supplier of telecommunication or electricity or other services, move his or her property, or any property under his or her

control or in his or her care, so as to permit the carrying out of any work in relation to a street, public place or any such service.

Cleanliness

- 14.** A trader shall, to the satisfaction of the Council -
- (a) keep the area or site occupied by him or her for the purpose of such business in a clean and sanitary condition;
 - (b) keep his or her property in a clean and sanitary condition;
 - (c) properly dispose of litter generated by his or her business;
 - (d) not dispose of litter in a manhole 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 purpose of trade is free of litter;
 - (f) in the case of a trader dealing in foodstuffs, take such precautions as may be necessary to prevent the spilling of any fat, oil or grease in the course of conducting his or her business and to prevent any smoke, fumes or odours emanating from his or her activities which may constitute a public nuisance; or
 - (g) at the request of an authorised official or person acting on behalf of the Council, move his or her property, or any property in his or her care or under his or her control so as to permit the cleansing of the surface of the area or site where he or she is trading.

Obstruction of pedestrians

15. No person shall trade at such a place or in such a manner so as to cause any obstruction of, or any interference with -

- (a) access to any street fixture or any other facility intended for the use of the general public;
- (b) the visibility of a display window on any business premises, if the person conducting business in the business premises concerned objects thereto;
- (c) access to any entrance to or any exit from a building or any automatic bank teller machine;
- (d) access to or from a pedestrian crossing;
- (e) access to or from any legally parked vehicle; or
- (f) any pedestrian using a sidewalk.

Obstruction of traffic

- 16.** (1) No person shall trade at such a place or in such a manner so as to -
- (a) cause an obstruction in or on any street;
 - (b) limit access to parking or loading bays or other facilities relating to traffic;
 - (c) obscure any road traffic sign erected in terms of any traffic regulations applicable in the area of jurisdiction of the Municipality of Walvis Bay, or any marking, notice or sign displayed or made in terms of these regulations; or
 - (d) in any way interfere with any vehicle which may be parked alongside such place where the trading is conducted.

(2) The provisions of this regulation shall be in addition to, and not in substitution of, any existing regulations relating to the control of traffic in the area of jurisdiction of the Municipality of Walvis Bay.

Trading restricted to approved trading areas

17. No person shall trade or shall place, pack or store any goods, including goods referred to in regulation 23(1), outside the area or place of trading specified in his or her registration certificate under regulation 6(2).

No trading on or in stands or areas not leased by the trader

18. Notwithstanding anything to the contrary in these regulations, no person shall trade on any stand or in any area unless he or she has leased such stand or area from, or it has otherwise been allocated to him or her by, the Council, and is in the possession of written proof of such lease or allocation.

No trading near places of worship, national monuments or public buildings

19. No person shall trade within a distance of ten metres from any place of worship, any national monument or any public building.

Areas for trading, and signs indicating such areas

- 20.** The Council may by resolution -
- (a) determine areas for and hours of trading, and other restrictions relating to trading;
 - (b) prescribe signs, markings or other devices indicating -
 - (i) specified hours, places, goods or services in respect of which trading shall be restricted or shall be allowed;

- (b) the boundaries of a stand or area set aside for the purpose of trading.

Trading near residential buildings

21. No person shall, for the purpose of trading, display his or her goods or other property on any residential erf.

Trading near certain business premises

22. No trader shall conduct any business in or on any place adjacent to or forming part of a building in which any business registered in terms of Government Notice No. 121 of 14 October 1969 is being conducted and where goods of the same nature as or of a nature similar to goods offered for sale by such trader are on sale, unless such trader conducts such business with the written consent of the owner of such business and subject to the other provisions of these regulations.

Removal and impounding

23. (1) For the purpose of this regulation and of regulations 17 and 24, the expression "goods" includes any receptacle, vehicle or movable structure.

- (2) An authorised official may remove and impound any goods -
- (a) which he or she reasonably suspects are being used or are intended to be used or have been used in or in connection with the conducting of any trade; and
 - (b) which goods he or she finds at any place where -
 - (i) the conducting of the trade concerned is prohibited; or
 - (ii) in his or her opinion such goods are placed in such a manner as to -
 - (aa) prevent pedestrians from passing on the sidewalk; or
 - (bb) cause an obstruction to traffic, or
 - (cc) are in front of a fire hydrant or an entrance to or exit from a building,

and which the person conducting a trade 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.

- (3) Any authorised official acting in terms of subregulation (2) shall -
- (a) to the person conducting a trade, issue a receipt in respect of any goods the authorised official removes and impounds, which receipt shall specify such goods in detail and shall be signed by the authorised official;
 - (b) shall take proper care of goods so removed and impounded; and

- (c) forthwith deliver any goods referred to in paragraph (a) to the Council at a place determined by the Council.

(4) The owner of any goods which have been removed and impounded under subregulation (2) shall, subject to regulation 24, be liable for any reasonable expenses incurred by the Council in respect of the removal and impounding of such goods, and the Council may keep such goods in its possession until all such expenses have been paid, or may deal with such goods as contemplated in that regulation.

(5) A certificate issued by of the treasurer of the Council or any person authorised thereto by him or her shall be *prima facie* proof of any expenses incurred by the Council in respect of the removal and impounding of any goods under this regulation.

(6) The Council nor any Councillor or employee of the Council shall be liable for any loss of or damage to any goods removed and impounded in good faith under this regulation.

Disposal of impounded goods

24. (1) If the Council, under regulation 23(2), removes and impounds any perishable goods, and unless the owner of such goods within a period of 24 hours after such goods were impounded, in writing applies to the Council for the return of such goods and presents the relevant receipt issued in terms of regulation 23(3)(a), and after the expiry of such period of 24 hours, the Council may destroy or by public auction sell the perishable goods so impounded.

(2) The owner of any goods impounded under regulation 23(2), excluding perishable goods referred to in subregulation (1), who claims the return of such goods to him or her shall, within a period of 30 days after the date of the impounding of such goods, in writing apply to the Council for such return and shall together with such application present the relevant receipt issued in terms of regulation 23(3)(a), failing which such goods may be sold by the Council by public auction.

(3) If the owner of any goods impounded under regulation 23(2) claims the return of such goods from the Council in terms of subregulation (1) or (2), as the case may be, and such owner is unable or refuses to refund in full the expenses incurred by the Council in respect of the removal and impounding of such goods, the Council may refuse to return such goods to the owner and such goods may be sold by the Council by public auction.

(4) In the event of the sale of any impounded goods by the Council in terms of this regulation, the proceeds of such goods so sold, less the expenses incurred by the Council in respect of the removal and impounding of such goods, shall, upon presentation of the relevant receipt issued in terms of regulation 23(3)(a) to the owner of such goods, be paid to the person who was the owner of such goods when such goods were impounded.

(5) In the event of the proceeds of any sale of goods contemplated by this regulation not being sufficient to defray the expenses incurred by the Council in respect of the removal and impounding of such goods, the owner of such goods shall

in terms of regulation 23(4) remain liable to the Council for payment of so much of such expenses as is not defrayed by the proceeds from the sale of such goods.

(6) If the owner of any goods referred to in this regulation fails to claim the proceeds of the goods sold in accordance with this regulation within a period of three months after the date on which such goods were so sold, such proceeds, less the expenses incurred by the Council in respect of the removal, impounding and sale of such goods, shall, within a period of six months after the expiry of such period of three months, be paid by the Council to the Master of the High Court, Windhoek.

(7) The Council shall, when making any payment in terms of subregulation (6), furnish to the Master all the particulars relating to the owner of the goods sold under this regulation which it may have at its disposal.

Offences and penalties

25. Any person who -

- (a) contravenes any provision of these regulations or fails to comply with any condition imposed, or registration certificate issued, in terms thereof;
- (b) threatens, resists, hinders, interferes with or obstructs any authorised official in the exercise of his or her powers or the performance of his or her duties or functions in terms of or under these regulations, or
- (c) in an application for the issue of a registration certificate, furnishes any false or misleading information, or makes any false statement; or
- (d) furnishes false or misleading information to any authorised official; or
- (e) not being an authorised official, holds himself or herself out to be, or presents himself or herself as, an authorised official; or
- (f) without the prior written approval of the Council, makes any alteration to, or damages or destroys, any registration certificate,

shall be guilty of an offence and on conviction be liable 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.

Vicarious responsibility of persons conducting business

26. If an employee of a trader conducting business is convicted of an offence under regulation 25, such trader shall, if it is proven that such offence was committed by the employee -

- (a) in the normal course of his or her employment; and
- (b) on the instructions or with the connivance of such trader,

be guilty of the same offence, and on conviction be liable to the penalties prescribed by that regulation.
