



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 2 September 2010

No. 4557

CONTENTS

Page

GENERAL NOTICE

No. 250 Town of Opuwo: Pound Regulations: Local Authorities Act, 1992 1

General Notice

TOWN OF OPUWO

No. 250

2010

POUND REGULATIONS: LOCAL AUTHORITIES ACT, 1992

Under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992) the Town Council of Opuwo, after consultation with the Minister of Regional and Local Government, Housing and Rural Development, has made the regulations set out in the Schedule.

P. DE VILLIERS
CHAIRPERSON
BY ORDER OF THE COUNCIL

Opuwo, 4 August 2010

SCHEDULE

PART 1

1. Definitions
2. Establishment of pounds
3. Trespassing animals impounded
4. Fencing of area
5. Duties of person who impounded animal
6. Guidelines for impounding animals
7. Responsibilities of poundmaster or his or her representative
8. Keeping of pound register

PART 2

9. Care of impounded animals
10. Separation of impounded animals
11. Isolation of infected animals
12. Recovery of Costs incurred
13. Isolation of wild animals
14. Dealing with dead or injured animal
15. Fees and costs
16. Notice to owner
17. Right to claim damages
18. Claiming of damages
19. Duty of person claiming damages
20. Council claiming damages
21. Where claim is denied
22. Conditions for release of animal
23. Claim dispute
24. Proof of ownership
25. When to sell impounded animal
26. Notice of intention to sell
27. Sale of impounded animal
28. Sale by auction
29. Apportionment of proceeds of sale
30. Sell of more than one animal
31. Claim of proceeds
32. Ownership and branding of sold animals

PART 3

33. Fees
34. Penalties
35. Savings

Definitions

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

“animal” means any animal belonging to any one of the following types of animals, namely horses, donkeys, mules, cattle, sheep, goats or pigs;

“Council” means the Local Authority Council of Opuwo Town;

“local authority area” means the local authority area of Opuwo Town;

“owner” in relation to any animal, means an owner who is known, or whose identity, with the exercise of reasonable diligence, can be ascertained, and includes the agent of the owner or other person having the lawful custody or possession of such animal;

“pound” means a pound established in terms of regulation 2;

“poundmaster” means a person appointed as poundmaster in terms of regulation 2 (3), and includes a person acting in such capacity;

“property” means any erf or premises situated in the local authority area; and

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

PART 1

Establishment of pounds

2. (1) The Council must erect pounds at approved places within the local authority area which are safe, strong, secure and large enough to contain and keep the impounded animal for a specific period.

(2) The pound must be divided into kraals and enclosure as may be necessary to isolate any animal which is -

- (a) sick;
- (b) of a different species.

(3) The Council must appoint a poundmaster for each pound.

(4) The poundmaster appointed in terms of subregulation (3) is responsible for the management and maintenance of the pound in accordance with these regulations.

Trespassing or straying animals may be impounded

3. (1) The owner of a property upon which any animal is found trespassing may seize such animal for impounding.

(2) Any animal found straying untended upon any public road or public place may be seized for impounding by -

- (a) a member of the Namibian Police Force;
- (b) a staff member of the Council authorized for that purpose.

(3) A person may not keep an animal, seized for purposes of impounding in terms of subsection (1) or (2), for a period longer than six hours without supplying such animal with adequate food and water.

Fencing of area

4. (1) Despite any provisions to the contrary in these regulations but subject to regulation 3, the Council may determine that no person is entitled to impound animals which has trespassed on his or her property if such property is not adequately fenced.

(2) For the purpose of this regulation, property must be regarded as being adequately fenced if it is enclosed with a fence of at least 1.25 metres high and where the property is enclosed with a wire fence and the fence consists of at least 5 horizontal strands with gates that can be closed properly.

(3) The Council must enforce the requirements in subregulation (2) after it has published it once by notice in the *Gazette* and once a week for four consecutive weeks in a newspaper circulating in the local authority area and the date on which the resolution comes into operation is also mentioned in the notice.

Duties of person who impounded animal

5. (1) A person who catches an animal with the intention to have it impounded must deliver the animal to the pound within 24 hours after it was caught.

(2) A person may not detain any trespassing animal which has been caught on his or her property or any other property except for the purpose referred to in subregulation (1).

(3) A person who uses, abuses, ill treats or overdrives any animal detained by him or her or allows any other person to do so commits an offence.

Guidelines for impounding animals

6. (1) A person who by threat of violence or otherwise frees or attempts to free an animal from the person who is in control whilst it is being taken to the pound in accordance with these regulations commits an offence.

(2) A person who causes an animal to be impounded contrary to these regulations commits an offence and must in addition to the penalties prescribed in regulation 34, be liable for all damages and must compensate the owner of the animal for any loss and cost occasioned by the impoundage.

Responsibilities of poundmaster or his or her representative

7. (1) The poundmaster must subject to these regulations receive all animals delivered at the pound during business hours and keep them until they are released or sold.

(2) The daily hours of business of each pound is from 07:00 hours till 15:30 hours during week days, excluding Saturdays, Sundays and public holidays.

(3) Where the poundmaster is of the opinion that an impounded animal is dangerously vicious, permanently disabled, terminally ill, diseased or injured or is in a poor physical condition he or she must summon a staff member responsible for animals to examine that animal.

(4) Based on the results of the staff member the poundmaster can summon the owner to pay for the animal and take it to hospital or the animal can then be destroyed in a humane manner or deal with it in terms of regulation 11.

Keeping of Pound register

8. (1) The poundmaster must keep a pound register, which must be available for public inspection during office hours in which he or she must record the following information in respect of every animal impounded -

- (a) the type of animal and its estimated age;
- (b) the distinguishing colours and marks it bears;
- (c) the name and address if known of the complainant by whom it was impounded;
- (d) the address or description of the property on which the animal trespassed or was found;
- (e) the name and address if known of the owner of the animal;

- (f) if the animal was sold the name and address of the purchaser and the sum realized by the sale;
- (g) the dates on which the animal was impounded and released or sold respectively;
- (h) all fees and expenses accumulated in respect of the animal in terms of these regulations; and
- (i) all claims for damages filed with him or her and if paid the date and amount of such payment.

(2) The poundmaster or his or her representative must issue to the person delivering an animal for impoundage a certificate in the form contained in Annexure A.

(3) A poundmaster who -

- (a) neglects or refuses to comply with any of the provisions of subsection (1);
- (b) knowingly makes a false entry in the pound register;
- (c) fraudulently destroys or erases any previous entry in the pound register; or
- (d) wilfully delivers a false copy or extract purportedly to be from the pound register to any person,

commits an offence.

PART II

Care of impounded animals

9. (1) The poundmaster must take proper care of all impounded animals and ensure that they are at all times provided with sufficient grazing or fodder and water.

(2) The poundmaster may not use, harness or ill-treat any impounded animal or allow any other person to use, harness or ill-treat such animal but the poundmaster is entitled to milk any cow or she-goat.

(3) If an animal dies during its detention in the pound the poundmaster must immediately notify the Council and record that fact in the pound register with proper description of the animal concerned.

(4) A poundmaster who fails to comply with any provision of this regulation commits an offence.

Separation of impounded animals

10. The poundmaster must keep all stallions and bulls above the age of 2 years and all he-goats and rams above the age of 6 months in a separate camp or kraal or keep them tied up or isolate them from other animals in the pound in any other way.

Isolation of infected animals

11. (1) The poundmaster must, if he or she has reasonable grounds to believe that an animal delivered to the pound or any impounded animal is infected or becomes infected with a

disease which is contagious or which is likely to be dangerous to human life or to other impounded animals isolate such animal in any effective manner or place such animal in a separate Kampor kraal.

(2) The poundmaster must immediately after he or she has isolated an animal as required in subregulation (1), summons a veterinarian or a responsible staff member to examine that animal or immediately notify the Council in writing.

(3) The Council must when it receives the notice in terms of subregulation (2) immediately cause an investigation to be conducted into the condition of that animal and give such instructions to the poundmaster as it thinks fit.

(4) The poundmaster must strictly carry out all instructions that are given to him or her by such veterinarian or the Council with regard to such animal.

Costs incurred

12. All costs incurred by the Council in respect of the services of a veterinarian or in connection with any treatment given to an impounded animal must be recovered from the owner of that animal or if it is sold under these regulations from the proceeds.

Isolation of animals that is wild

13. Where the poundmaster at any time finds that an impounded animal is wild or vicious that its detention might be dangerous to other animals in the pound, he or she must immediately notify the Council and isolate the animal.

Dealing with dead or injured animal

14. When an impounded animal dies, is injured or is destroyed in terms of these regulations the poundmaster must -

- (a) dispose of the carcasses in such a manner as the Council directs;
- (b) record the injury or cause of death in the pound book; and
- (c) notify the owner of the animal in writing of the injury or the death.

Fees and costs

15. (1) The poundmaster must pay to the person who delivers or causes to deliver an animal to the pound the delivery fees prescribed in Annexure B provided that if that person is a member of the Namibian Police Force or a staff member of the Council such fees must be paid to the Council.

(2) Driving fees are not payable for the return journey of the person who has driven the animal to the pound.

(3) Additional driving fees are not payable where the animal has been driven to the pound by more than one person.

(4) The driving fees that have been paid by the poundmaster in terms of subregulation (1) together with other moneys due under these regulations are recoverable from the owner of the animal concerned.

(5) The poundmaster must recover from the owner of an impounded animal or from the proceeds of the sale of the animal, the cost of any dipping, inculation, medical care or other treatment done to the animal.

Notice to owner

16. (1) Where the name and address of the owner of an impounded animal is known to him or her, the poundmaster must immediately by letter, delivered personally or sent by registered post, give notice to the owner to notify the owner that his or her animal has been impounded.

(2) The poundmaster must state in the letter the amount which, as at the date of the notice is payable for the release of such animal, as well as any further fees that will be levied daily in respect of the animal.

(3) Whenever an animal is impounded and where the name of the owner is not known the poundmaster must immediately cause an advertisement to be published in a newspaper circulating in the local authority area setting out the following information -

- (a) a short description of the animal;
- (b) the estimated value of the animal;
- (c) the date on which the animal was impounded,
- (d) the name and address of the person by whom it was impounded; and
- (e) that the animal must be sold if it is not redeemed by its owner within 30 days from the date of publication of the advertisement.

(4) The costs incurred in respect of the publication of an advertisement in terms of subregulation (2) must be recoverable from the owner of the animal concerned or, if it is sold, from the proceeds.

Right to claim damages

17. (1) The owner or occupier on whose property an animal has trespassed is entitled to claim compensation in terms of these regulations for any damage caused by the animal to the property concerned.

(2) The Council is entitled to claim compensation in accordance with the provisions of these regulations for any damage to the property caused by the animal.

(3) The owner of an animal which has caused the damage referred to in subregulation (1) or (2), is liable to compensate the owner or occupier of the property concerned or the Council for the damages.

(4) Where the owner of the animal concerned is unknown or cannot be traced the damages must be paid from the net proceeds in accordance with regulation 31 if the animal is sold.

Claiming of damages

18. (1) The owner or occupier of property who wishes to claim damages in terms of regulation 17 must when delivering the animal to the pound hand to the poundmaster a notice where he or she makes his or her intention to lodge a claim known.

(2) The poundmaster may not after the receipt of a notice in terms of subregulation (1), release the animal to which such notice relates before the expiry of a period of 24 hours after the animal was impounded but if the written memorandum referred to in subregulation (1) has been delivered to him or her, he or she may not release the animal concerned, except in accordance with regulation 22.

Duty of person claiming damages

19. (1) The owner or occupier of property who wishes to claim damages in terms of regulation 17, or her or his representative must in co-operation with the Council's staff member and one person with no interest in the matter, inspect the property concerned and prepare a written memorandum, where the nature and extent of damage as well as the amount of compensation must be fully set out.

(2) Where the owner of the animal is known to the owner or occupier of the property he or she must give notice of the time and place of the inspection to the owner and afford him or her, the opportunity to be present -

- (a) if at such inspection the owner of the animals admits liability for the damage, while he or she -
 - (i) accepts the amount assessed in terms of subregulation (1) as correct;
 - (ii) reaches an agreement with the owner or occupier of the property with regard to the amount and pays it, or
 - (iii) arranges for the payment with the owner or occupier of the property those facts with full particulars must be recorded in the written memorandum and signed by both parties.
- (b) where the damages are paid directly to the owner or occupier of the property in terms of paragraph (b), he or she must issue a receipt in respect of that payment to the owner of the animal.

(3) The owner or occupier of the property must within 24 hours after the animal concerned has been impounded deliver the written memorandum prepared in accordance with subregulation (1) to the poundmaster.

(4) Where the written memorandum is delivered to the poundmaster after expiry of a period of 24 hours and the animal has not been released the poundmaster must accept the memorandum and must release the animal in terms of regulation 22.

(5) Where the owner of the animal has not attended to the inspection referred to in subregulation (1) and if his or her name and address is known to the poundmaster he or she must immediately upon receipt of the written memorandum by letter delivered to him or her personally or sent by registered post, give notice to the owner of the animal of the findings of the persons who held the inspection and give full particulars of the damages as determined by them.

Council claiming damages

20. (1) The Council must, if it wishes to claim damages in terms of regulation 17(1), first cause an inspection of the damaged property to be held by the poundmaster or any other authorized staff member of the Council and two persons with no interest in the matter and regulation 18 applies with any necessary changes.

(2) The owner or occupier of the property or the Council must pay each of the persons assisting with the inspection and preparation of the written memorandum in terms of regulation 18 or 19, except the poundmaster or an employee of the Council, a fee of not less than N\$10 for their services.

(3) The amount paid in terms of subregulation (1) may be recovered as part of the damages in terms of these regulations.

Where claim is denied

21. Where a claim for damages by the owner or occupier of the property is -
- (a) disputed by the owner of the animal;
 - (b) where the owner denies liability for any damages; or
 - (c) admits liability but disputes the amount claimed,

the poundmaster must immediately by letter, delivered personally or sent by registered post, give notice to the owner or occupier of the property concerned of the fact that the owner of the animal is denying liability or is disputing the amount claimed.

Conditions for release of animal

22. The pound master may not release an animal unless -
- (a) all fees due in terms of Annexure B and all other expenses which, in terms of these regulations, accrued in respect of such animal; and
 - (h) the amount in respect of damages if any,

have been paid or it is proved to the satisfaction of the poundmaster that the amount in respect of damages has been paid directly to the owner or occupier of the property, or that an acceptable arrangement for the payment has been made.

Claim dispute

23. Where a claim for damages whether instituted by the owner or occupier of the property or the Council is disputed by the owner of the animal concerned the poundmaster must do the following -

- (a) despite regulation 20(2) on condition that the fees and expenses referred to in that regulation have been paid in full; or
- (b) where pending settlement of such dispute, the owner gives security to the satisfaction of the poundmaster for the payment of the amount claimed,

release the animal: Provided that if the poundmaster is of the opinion that the value of the animal to which such claim relates is less than the amount of the claim, he or she may fix the amount of surety which is in his or her opinion equal to the value of the animal concerned.

Proof of ownership

24. The poundmaster may, before he or she releases an animal, require that the person claiming such release prove by affidavit or otherwise to the satisfaction of the poundmaster, that he or she is the owner of the animal or has been authorized by the owner to claim its release.

When to sell impounded animal

25. Where an animal is not released within 30 days from the date of publication of the advertisement in terms of regulation 16, and any other animal not released within 7 days from the date of impoundage, must be sold in accordance with regulation 27 or 28.

Notice of intention to sell

26. (1) The poundmaster must, after expiry of the relevant period referred to in regulation 25, by notice published once in the *Gazette* and once per week for 2 consecutive weeks in newspapers circulating in the local authority area advertise that the animal concerned is to be sold by public auction.

(2) The notice referred to in subregulation (1), must set out the following information -

- (a) the place where, the date and time when the sale is to be held;
- (b) a description of the animal to be sold; and
- (c) the date on which the animal was impounded and the name and address of the person by whom it was impounded.

(3) The poundmaster must not later than the date on which the notice referred to in subregulation (1) is published for the first time whether in the *Gazette* or a newspaper cause a copy of such notice to be affixed in a conspicuous place at the pound and the offices of the Council.

(4) The date of the sale may not be less than 14 days after the date upon which the animal was impounded and not less than 7 days after the publication of the notice in the *Gazette* and the second publication in the newspaper in terms of subregulation (1).

Sale of impounded animal

27. (1) An animal may after the expiry of the period of 7 days referred to in regulation (2) have been complied with be sold at the first morning market or by public auction held at a public place which is centrally situated in the local authority area.

(2) The poundmaster must advertise such sale by affixing a notice not later than 4 days before the date of the sale containing all the information as required by regulation 26, on the notice board at the offices of the Council and at or as near as possible to the place where the sale is actually taking place.

(3) The poundmaster may, despite subregulation (1), sell any animal on a public auction held in terms of regulation 28, on condition it has been advertised as such in the notice of sale referred to in subregulation (2).

Sale by auction

28. (1) The poundmaster or any person designated by the Council for that purpose must act as auctioneer at a sale taking place in terms of these regulations.

(2) At a sale in terms of these regulations all animals must be sold individually, except that -

- (a) the offspring of any animal which is still dependent on that animal for its food, must be sold together with that animal;
- (b) sheep or goats may be sold together in lots of not more than 10.

(3) The poundmaster may not whether personally or through an agent purchase any animal which is being sold in terms of these regulations.

Apportionment of proceeds of sale

29. (1) The Council is entitled to a commission of 5% on the gross proceeds of every animal which is sold in terms of these regulations.

(2) The proceeds from the sale of any animal in terms of these regulations, must be applied -

(a) for the payment of all fees owed to the Council in accordance with Annexure B and all other expenses in respect of that animal recoverable by the Council in terms of these regulations; and

(b) after the settlement of any claim for damages instituted in terms of these regulations and in respect of which no dispute is existing between the owner of the animal and the claimants concerned.

(3) Where two or more competing claims are to be considered for settlement in terms of subregulation (1) any surplus that is available under that paragraph but which is insufficient to settle all the claims concerned in full must be distributed on *apro-rata* amongst the claimants.

(4) Any surplus that remains after the settlements referred to in subregulation (2) must be deposited in the Council's bank account.

Sale of more than one animal

30. (1) Where the notice of sale referred to in regulation 26 relates to more than one animal, the expenses incurred in connection with the publication of such notice must be recovered, subject to subregulation (2), in equal parts from the proceeds of each animal sold.

(2) Where an animal to which a notice of sale relate is released in terms of these regulations at any time before it is sold the poundmaster must recover from the person redeeming the animal an equal part of such costs which would have been recovered in respect of that animal had it been sold.

Claim of proceeds

31. (1) Where at any time within 6 months after the sale of an animal in terms of these regulations, any person lays claim to the surplus, which the Council has a right to in terms of regulation 29(3), or any part thereof, and the Council is satisfied that -

(a) the animal sold did belong to that person, or

(b) that person is on any other ground entitled to it; and

(c) no claim for damages of which notice has been given to the poundmaster in terms of these regulations, is pending;

the Council must pay the amount to the person concerned.

(2) The right to claim payment of the surplus or any portion from the Council under subregulation (1) must prescribe subject to this regulation after a period of 6 months from the date of sale of the animal concerned, but if the animal concerned at the time of the sale has been the subject of a claim for damages in terms of these regulations and such claim was at that stage still disputed such right must prescribe -

- (a) after a period of 6 months from the date of the settlement of the claim or
- (b) 3 years from the date of the sale of the animal,

whichever is the earliest.

(3) The Council may refuse to pay out any claim in terms of this regulation unless an agreement of settlement or a court order is submitted as proof that the person who claims the money is entitled to it.

(4) The surplus concerned becomes the property of the Council upon prescription of the right to claim payment in terms of this regulation.

Ownership and branding of sold animals

32. (1) Ownership in an animal sold in terms of these regulations must pass on to the purchaser.

(2) Any animal sold in terms of these regulations must be branded with the Council's registered brand before delivery to the purchaser.

PART 3

Fees

33. (1) The Council must levy the fees set out in Annexure B in respect of the services rendered in terms of these regulations.

(2) The Council must recover the fees referred to in subregulation (1) and all other expenses prescribed in these regulations or incurred in terms of this regulation from the owner of the animal in respect of which it is payable or if the animal is sold from the proceeds.

(3) If the proceeds from the sale of a particular animal are insufficient to cover the charges referred to in subregulations (1) or (2), the Council is entitled to recover the shortfall from the owner of such animal.

Penalties

34. (1) Any person, except the poundmaster, who is convicted of an offence under these regulations, is liable -

- (a) on a first conviction, to a fine not exceeding N\$1000;
- (b) on a second or subsequent conviction for the same offence, to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding 6 months, or to both such fine and such imprisonment;
- (c) in case of a continuing offence after the conviction if the commission of the crime continues after conviction referred to in paragraph (a) or (b), to a further penalty not exceeding N\$ 10 a day, for each day the offence continues.

(2) Where the pound master is convicted of an offence under these regulations, he or she is liable to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding 6 months.

ANNEXURE A

CERTIFICATE WITH DETAILS OF IMPOUNDING ANIMALS

Description of animal: _____

Number of animals: _____

Name and address of person who sent animals: _____

Place where animals were found: _____

Name and address of person who delivers animals: _____

Signature of person who delivers animal

Pound master

Date

Place

ANNEXURE B**POUND FEES****1. Detention fees:**

- (a) in respect of all animals except sheep and goat, per animal per day or part of a day N\$1 1.00
- (b) per sheep or goat per day or part of a day N\$5.50

2. Grazing fees:

- (a) in respect of all animals except sheep and goat, per animal per day or part of a day N\$4.50
- (b) per sheep or goat per day or part of a day N\$2.30

3. Feeding fees:

- (a) in respect of all animals except sheep and goats, per animal per day or part of a day N\$8.25
- (b) per sheep or goat per day or part of a day N\$2.30

4. Driving fees:

Per animal irrespective of the distance driven N\$3.00

5. Branding Fees

Branding fees in terms of regulation 32: per animal N\$1.00
