



GOVERNMENT GAZETTE

OF THE

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General Notice

OUTAPI TOWN

No. 422

2016

ANIMAL POUND REGULATIONS: LOCAL AUTHORITIES ACT, 1992

Under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992), the Outapi Town Council, after consultation with the Minister of Urban and Rural Development, has made regulations set out in schedule.

K. EILO

CHAIRPERSON OF THE COUNCIL

BY ORDER OF THE COUNCIL

Outapi, 27 September 2016

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Definitions

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

“animal” means horse, donkey, mule, cattle, sheep, goat or pig;

“community” means any person, registered person, lawful occupier or lessee of property, owner of property within the municipal area of Outapi;

“Council” means the Outapi Town Council;

“fee” means a fee determined by the Council in terms of section 30(1)(u) of the Act;

“local authority area” means the local authority area of the town of Outapi;

“nuisance” means any condition which is a cause of public offence or injurious or dangerous to health;

“owner” in relation to any animal, means an owner who is known or whose identity can be ascertained including the representative of the owner or other person having the lawful custody or possession of the animal;

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

“poundmaster” means a person appointed by Council as a poundmaster or a person acting in such capacity;

“property” means an erf or premises situated in the local authority area of Outapi; and

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

Establishment of Pound

2. (1) The Council must establish and maintain a pound within the local authority area for the impounding of animals.

(2) The Council must appoint a poundmaster to manage and control a pound established under subregulation (1).

Impounding of trespassing and straying animals

3. (1) The owner of a property within the local authority area who finds an animal trespassing on his or her property may seize the animal for impounding and must deliver the animal to the pound within 24 hours of seizing it or if the pound is closed on the next business day.

(2) An animal found straying on a public place or a street may be seized for impounding by -

(a) a member of the Namibian Police Force;

(b) a member of the community; or

(c) a staff member of the Council authorised by the Council for that purpose,

who must deliver the seized animal to the pound within 24 hours of seizing it or if the pound is closed on the next business day.

Duties of person who has impounded an animal

4. (1) A person who seized an animal with the intention to have it impounded must deliver the animal to pound within 24 hours of seizing the animal.

(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 abuse, ill-treat or overdrive an animal commits an offence.

Fencing of area

5. (1) Despite any provisions to the contrary in these regulations but subject to regulation (3), the Council may determine that a person may not impound an animal which has trespassed his or her property if the property is not adequately fenced.

(2) For the purpose of this regulation, property is regarded as being adequately fenced if it is enclosed with a fence of at least 1.25 meters 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 a poundmaster

6. (1) The poundmaster must receive all animals delivered at the pound and keep them impounded until they are released or sold in terms of these regulations.

(2) The daily hours of business of each pound is from 07:00 hours till 16:00 hours during week days, excluding Saturdays, Sundays and public holidays.

(3) The poundmaster must keep a pound book, which must be made available for public inspection at all reasonable times, in which the poundmaster must record the following information in respect of every animal impounded:

- (a) the type of animal and its esteemed age;
- (b) the distinguishing colours and marks it bears;
- (c) the name and address, if known, of the person who has delivered the animal for impounding;
- (d) the address or description of the property on which the animal trespassed or has been found;
- (e) the circumstances under which the animal was found;
- (f) the name and address, if known, of the owner or suspected owner of the animal;
- (g) if the animal is sold, the name and address of the purchaser and the sum realised by the sale;
- (h) the dates on which the animal was impounded and released or sold;
- (i) all fees and expenses accumulated in respect of animals impounded in terms of these regulations; and
- (j) all claims for damages filed with the poundmaster and if paid, the date and amount of payment.

(4) The poundmaster, or, in his absence, the person in charge of the pound, must issue a certificate, to the person who delivers an animal for impounding, in the form contained in Annexure A.

(5) The poundmaster must retain a copy of the certificate referred to in subregulation (4) for a period of at least five years.

Care of impounded animals

7. (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 an impounded animal or allow any other person to use, harness or ill-treat the 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 Chief Executive Officer and record the fact in the pound book with a proper description of the animal concerned.

(4) If the poundmaster fails to comply with any provision of this regulation he or she commits an offence.

Separation of impounded animals

8. 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

9. (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 that animal in any effective manner or place that animal in a separate camp or kraal.

(2) The poundmaster must immediately after he or she has isolated an animal as required in subregulation (1) summon a veterinarian to examine that animal or if a veterinarian is not available immediately notify the Council.

(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 the animal and give 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 veterinarian or the Council with regard to that animal.

Costs incurred

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

Injured or ill animals

11. (1) If the poundmaster is of the opinion that an impounded animal is ill or injured or is in a poor physical condition that it is unlikely that if that animal were to be sold, would realise enough money to cover its pound fees as well as the expenses in respect of the sale, the poundmaster may summon a veterinarian, a person in command of the local police station or two adult persons whom he considers to be reliable and of sound judgment to examine that animal.

(2) Where the officer or persons referred to in subregulation (1) certify that the condition of the said animal is as described in subregulation (1) the poundmaster may destroy the animal in a humane possible way if it is not released within three days after impoundage.

Isolation of vicious or wild animals

12. Where the poundmaster at anytime finds that an impounded animal is so wild or vicious that its detention might be dangerous to other animals in the pound, he or she must immediately notify the Council so that the Council notifies the relevant authorities.

Dealing with dead or injured animals

13. When an impounded animal dies or is destroyed in terms of these regulations the poundmaster must dispose of the carcass in the manner the Council directs.

Fees and costs

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

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

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

(4) The poundmaster must issue a receipt to the person to whom he or she has paid driving fees.

(5) 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.

(6) Where animals belonging to different owners have been driven to the pound in one group a pro rata portion of the driving fees must be payable by each owner.

(7) Where an animal is being driven to the owner of the animal and the owner or any other person on his behalf tenders to pay the person driving the animal the amount payable in respect of driving fees and damage, the owner is entitled to the immediate release of the animal upon payment of that animal.

(8) A person is guilty of an offence if he or she refuses to release an animal under the circumstances referred to in subregulation (7).

Notice to owner of animals

15. (1) The poundmaster must, if the name and address of the owner of an impounded animal is known to him or her, notify the owner that his or her animal is impounded.

(2) The poundmaster must, in the notification contemplated in subregulation (1), state the amount which is payable for the release of the animal as well as any fees that are payable in respect of the animal.

(3) If an animal is impounded and 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 will 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 terms of subregulation (3) is recoverable from the owner of the animal concerned or, if it is sold, from the proceeds.

Right to claim damages

16. (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 that animal to the property concerned.

(2) The Council may claim compensation in terms of these regulations for any damage to the property of the Council caused by that animal.

(3) If the owner of the animal that has caused damage on the property as contemplated in subregulation (1) is unknown or cannot be traced the damages must be paid from the net proceeds in accordance with regulation 28 if the animal is sold.

Claiming of damages

17. (1) The owner of property who intends to claim damages in terms of regulation 16(1) must, when delivering the animal to the pound or within 24 hours after the animal has been impounded, give the poundmaster a notice of intention to lodge a claim.

(2) The poundmaster, after the receipt of a notice in terms of subregulation (1), may not release the animal to which the 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, the poundmaster may not release the animal concerned, except in accordance with the provisions of regulation 21.

Duty of a person claiming damages

18. (1) The owner or occupier of property who wishes to claim damages in terms of regulation 16(1), or his or her representative, must together with two persons with no interest in the matter, inspect the property concerned and prepare a written memorandum, setting out the nature and extent of the damage as well as the amount of compensation being claimed.

(2) If the owner of the animal which is claimed to have caused damage is known to the owner of the property contemplated in subregulation (1), the owner or occupier must give notice of the time and place of that inspection to the owner and afford him or her opportunity to be present at the inspection.

(3) If at the inspection contemplated in subregulation (1) the owner of the animal admits liability for the damage, and -

- (a) accepts the amount assessed in terms of that subregulation as correct;
- (b) reaches an agreement with the owner or occupier of the property with regard to the amount and pays it; or
- (c) arranges for the payment with the owner or occupier of the property,

those facts with full particulars must also be recorded in the written memorandum and signed by both parties.

(4) If the damages contemplated in this regulation are paid directly to the owner or occupier of the property, the owner must issue a receipt in respect of that payment to the owner of the animal.

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

Council claiming damages

19. (1) The Council must, if it wishes to claim damages as contemplated in regulation 16(2), first cause an inspection of the damaged property by the pound master or any staff member of the Council and two persons with no interest in the matter.

(2) Regulation 18 applies with necessary changes to the Council when claiming damages.

(3) 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\$ 100 for their services.

(4) 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

20. Where a claim for damages by the owner or occupier of property -

- (a) is disputed by the owner of the animal;
- (b) the owner of the animal in respect of which the claim is made denies liability for any damages; or
- (c) the owner of the animal 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 an animal

21. The Poundmaster may not release an impounded 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 that animal; and
- (b) 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.

Dispute of claim

22. (1) If 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 -

- (a) despite the provisions of regulation 16 on condition that the fees and expenses referred to in that regulation have been paid in full; or
- (b) where pending settlement of that dispute, the owner gives security to the satisfaction of the poundmaster for the payment of the amount claimed,

release the animal.

(2) If the poundmaster is of the opinion that the value of the animal to which claim for damages relates is less than the amount of the claim the poundmaster may determine the amount of surety which is equal to the value of the animal concerned.

Proof of ownership

23. The poundmaster may, before he or she releases any animal, require that the person claiming that 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 authorised by the owner to claim its release.

When to sell an impounded animal

24. If a stallion or bull is not released within 30 days from the date of publication of the advertisement in terms of regulation 15, and any other animal not released within 21 days from the date of impoundage, the animal referred to must be sold in accordance with regulations 26 or 27.

Notice of intention to sell

25. (1) The poundmaster must, after expiry of the relevant period referred to in regulation 24, by notice published once in the *Gazette* and once a 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 will 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 the notice to be affixed in a prominent place at the pound and the offices of the Council.

(4) The date of the sale may not be less than 21 days after the date on which the animal was impounded and not less than seven days after the publication in the newspaper in terms of subregulation (1).

Sale of an impounded animal

26. (1) Any donkey, mule, sheep, goat or pig may, after the expiry of the period of 21 days referred to in regulation 25 and provided that subregulation (2) has been complied with, be sold by public auction held at a public place which is centrally situated in the local authority area.

(2) The poundmaster must advertise the sale contemplated in subregulation (1) by affixing a notice, not later than four days before the date of the sale, containing all information as required by regulation 25(2) 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 the provisions of subregulation (1), sell any donkey, mule, sheep, goat or pig on a public auction held in terms of regulation 27, on condition it has been advertised as that in the notice of sale referred to in subregulation (2).

Sale by auction

27. (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 shall 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

28. (1) The Council is entitled to the commission of five percent on the gross proceed 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) thereafter, in 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 claimant concerned.

(3) Any surplus that remains after the settlement referred to in subregulation (2) must be deposited into the bank account of the Council.

Sale of more than one animal

29. (1) If the notice of sale referred to in regulation 24 relates to more than one animal, the expenses incurred in connection with the publication of that notice must be recovered, subject to the provisions of subregulation (2), in equal parts from the proceeds of each animal sold.

(2) If any animal to which notice of sale relates 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 the costs which would have been recoverable in respect of that animal had it been sold.

Claim of proceeds

30. (1) If at any time within six 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 28(3) or any part, 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 the surplus; 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 that amount to the person concerned.

(2) The right to claim payment of the surplus or any portion from the Council under subregulation (1) may prescribe after a period of six months from the date of the 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 that claim was at that stage still disputed, that right must prescribe -

- (a) after a period of six months from the date of the settlement of the claim; or
- (b) three 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

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

(2) All horses, donkeys, mules and cattle sold in terms of these regulations must be branded with the registered brand of the Council before delivery to the purchaser.

Fees

32. (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 thereof, 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 subregulation (1) and (2), the Council is entitled to recover the shortfall from the owner of the animal.

Penalties

33. (1) Any person, except the pound master, who is convicted of any offence under these regulations, is liable -

- (a) on a first conviction, to a fine not exceeding N\$1 000;
- (b) on a second or subsequent conviction for the same offence, to a fine not exceeding N\$2 000 or imprisonment for a period not exceeding three months, or to both fine and imprisonment;
- (c) in case of a continuing offence after the conviction if the commission of the crime continues after the conviction referred to in paragraph (a) or (b), to a further fine not exceeding N\$4 a day, for each day the offence continues.

(2) If the poundmaster is convicted of an offence under these regulations, he or she is liable to a fine not exceeding N\$2 000.

Savings

34. Any regulation which applied to the local authority area in respect of impounding of animals is repealed.

ANNEXURE B

POUND FEES

- 1. Detention fees:**
- (a) In respect of all animals except sheep, goats and pigs, per animal per day or part of the day N\$12.00
 - (b) Per sheep or goat per day or part of a day N\$ 6.00
- 2. Grazing fees:**
- (a) In respect of all animals except sheep, goats and pigs, per animal per day or part of the day N\$ 5.00
 - (b) Per sheep, goat or pig per day or a part of a day N\$ 3.00
- 3. Driving fees**
- All animals per day or part of the day N\$ 5.00

Note! Fees are changeable due to the tariff of Council.
