



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

MUNICIPALITY OF GOBABIS

No. 304

2004

REGULATIONS ON INFORMAL TRADING: LOCAL AUTHORITIES ACT, 1992

The Council of the Municipality of Gobabis, after consultation with the Minister of Regional and Local Government and Housing, under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992), has made the regulations set out in the Schedule.

P.M. KATJAOHA
CHAIRPERSON OF THE COUNCIL
BY ORDER OF THE COUNCIL

SCHEDULE

Definitions

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

“assistant informal trader” means a person registered as an assistant informal trader under regulation 4;

“authorized staff member” means a staff member of the Council authorized to implement any of these regulations;

“Council” means the Municipal Council of Gobabis;

“food”, includes any product 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, 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 a staff member appointed in such capacity, and includes a health practitioner appointed by the Council to act in that capacity;

“informal trader” means a person registered as an informal trader under regulation 4;

“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, but excludes the conducting of a business registered and approved in terms of Government Notice No. 121 of 14 October 1969, and “trade” has the same 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;

“municipal area” means the area of the Municipality of Gobabis;

“prohibited area” means any place declared by the Council to be an area in which any form of trading is 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 goods in which such person trades;

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

“registration certificate” means a certificate of registration issued under regulation 6;

“sell”, includes -

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

and “sale” has the same meaning;

“services”, includes any work performed for any advantage, gain, 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;

“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.

Informal traders and assistant informal traders to be registered

2. (1) A person may not conduct a trade, or assist another person in conducting a trade, within the municipal area, unless such person is registered as informal trader or as an assistant informal trader under regulation 4 and is in the possession of a registration certificate.

(2) An informal trader may not for the purposes of his or her trade, employ any person as an assistant trader, unless such person is registered as such under regulation 4 and is in the possession of a registration certificate.

Application for registration as informal trader or assistant informal trader

3. (1) A person who wishes to be registered as an informal trader or an assistant informal trader must, subject to regulation 4, apply to the Council for registration as an informal trader or assistant informal trader in the form and manner determined by the Council.

(2) Upon consideration of the application referred to in subregulation (1), the Council may -

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

(3) The Council must by prepaid registered mail inform the applicant of its decision under subregulation (2) within 30 days of receipt of the application.

(4) If an application for registration as informal trader or assistant informal trader is refused, the applicant may, within 60 days of receipt of the notice referred to in subregulation (3) -

- (a) appear before the Council, either in person or through a legal practitioner registered under the Legal Practitioners Act, 1995 (Act No. 15 of 1995), to make representations; or
- (b) make representations in writing to the Council,

to show cause why his or her application should not be refused.

(5) After hearing the applicant or the applicant's legal practitioner, or receipt of the written representations made by the applicant, under subregulation (4), the Council must -

- (a) reconsider the application and make a decision in accordance with subregulation (2); and
- (b) in writing inform the applicant of its decision within 30 days after the hearing or receipt of the written representations.

Application and registration fees

4. (1) Any application for registration as informal trader or assistant informal trader or for renewal thereof made in terms of regulation 3 or 5, respectively, must be accompanied by a non-refundable application fee of N\$50,00.

(2) No fee is payable for the issue of a registration certificate.

(3) The fees payable in respect of the issue of a duplicate registration certificate under regulation 7(2) is N\$20,00.

Issue, display or renewal of registration certificate

5. (1) Upon registering the applicant as informal trader or assistant informal trader under regulation 3, the Council must issue to the applicant a registration certificate in a form determined by the Council.

(2) A registration certificate must -

(a) specify -

(i) the area or place at or where the trade concerned is conducted;

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

(iii) the date of its expiry.

(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.

(3) A registration certificate is valid for a period of 12 months from the date of issue thereof, or for such shorter period as the Council may determine at the time of issue.

(4) A registration certificate may be renewed on application by the holder thereof in accordance with regulation 3, and subject to the fee referred to in regulation 4.

(5) An application for renewal of a registration certificate must be lodged with the Council not less than 14 days and not more than 30 days before the date of expiry of the certificate.

Change of address

6. If a holder of a registration certificate changes his or her residential address, such holder must furnish the Council with full particulars of his or her new address within 14 days after the change.

Duplicate registration certificate and nontransferable of registration certificate

7. (1) If a registration certificate issued to any person is lost, such person must, within 14 days from the date on which such loss became known to him or her -

(a) notify the Council in writing of such loss; and

(b) in the form determined by the Council, apply to the Council for the issue of a duplicate registration certificate, if he or she so requires.

(2) Upon receipt of an application referred to in subregulation (1) and payment of the fees referred to in regulation 4, the Council must issue to the applicant concerned a duplicate registration certificate.

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

Control over registered business

8. (1) The holder of a registration certificate must identify himself or herself and produce such registration certificate for inspection when required to do so by a member of the Namibian Police, a health officer or any authorized staff member, or any person with whom business is transacted or sought to be transacted.

(2) An informal trader or assistant informal trader may not sell anything which he or she is not authorized to sell by virtue of his or her registration certificate.

Conditions of trading

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

(2) A person may not 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) An informal trader dealing in foodstuffs or second hand clothing may not store any food or clothing forming part of his or her stock-in-trade in any place other than in a container approved in writing by a health officer.

(4) An informal trader may not convey any goods for the purposes 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 purposes of conveying of such goods.

(5) Food may not 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

10. (1) A person may not in any building, including a private dwelling, handle, prepare, serve or pre-pack any food for human consumption, except for own domestic use, unless such person is a holder of a certificate of fitness issued by the Council in respect of such building or dwelling and any activity conducted therein.

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

Temporary registration certificate and exemption relating to registration

11. (1) A 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 organization, may apply to the Council for the issue of a temporary registration certificate.

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

- (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 is exempted from the requirements of registering as an informal trader or assistant informal trader in terms of regulation 2 and the payment of registration fees payable in terms of regulation 4.

General rules of conduct for informal traders

12. (1) An informal trader may not -

- (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;
- (c) attach any object by any means on any building, structure, pavement, tree, parking metre, 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) An informal trader must -

- (a) 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
- (b) at the request of an authorized staff member 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

13. An informal trader must, to the satisfaction of the Council -

- (a) keep the area or site occupied by him or her for the purpose of his or her 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 purposes of trade is free of litter;
- (f) in the case of an informal 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 odour emanating from his or her activities which may constitute public nuisance; and
- (g) at the request of an authorized staff member 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 area or site where he or she conducts business.

Obstruction of pedestrians

14. A person may not 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

15. (1) A person may not trade at such place or in such 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 municipal area, 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) This regulation applies together with any other existing regulations relating to the control of traffic in the municipal area.

Trading restricted to approved trading areas

16. A person may not trade or place, pack or store any goods, including goods referred to in regulation 22(1), outside the area or place of trading specified in his or her registration certificate.

No trading on or in stand or area not leased

17. Despite anything to the contrary in these regulations contained, a person may not 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 a written proof of such lease or allocation.

No trading near place of worship, national monument or public building

18. A person may not trade within a distance of 10 metres from any place of worship, any national monument or any public building.

Areas for trading and signs indicating such areas

19. The Council may -

- (a) determine areas for and hours of trading, and other restrictions relating to trading;
- (b) prescribe signs, marking or other devices indicating -
 - (i) specified hours, places, goods or services in respect of which trading may be restricted or allowed; or
 - (ii) the boundaries of a stand or area set aside for the purpose of trading.

Trading near residential premises

20. A person may not, for the purpose of trading, display his or her goods or other property on any residential premises.

Trading near certain business premises

21. A person may not 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 conducted and where goods of the same nature as or of a nature similar to goods offered for sale by such person are on sale, unless such person conducts such business with the written consent of the owner of such registered business.

Removal and impounding

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

- (2) An authorized staff member 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 so 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 authorized staff member, or which have been left at such place or have been abandoned.

- (3) An authorized staff member acting in terms of subregulation (2) must -
 - (a) issue to the person conducting a trade a receipt in respect of any goods the authorized staff member removes and impounds, which receipt must specify such goods in detail and be signed by such member;
 - (b) take proper care of goods so removed and impounded; and
 - (c) forthwith deliver any goods so removed and impounded 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) is, subject to regulation 23, 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 regulation 23.

(5) A certificate issued by the treasurer of the Council or any person authorized thereto by him or her must 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, a member or employee of the Council is not liable for any loss of or damage to any goods removed and impounded in good faith under this regulation.

Disposal of impounded goods

23. (1) The owner of perishable goods that have been impounded in terms of regulation 22(2) may, within 24 hours from the time such goods were impounded, apply in writing to the Council for the return of such goods and presents the relevant receipt issued to him or her in terms of regulation 22(3)(a).

(2) If the Council removes and impounds any perishable goods under regulation 22(2), and 24 hours from the time the goods were impounded has expired without such goods being collected, the Council may destroy or by public auction sell the perishable goods so impounded.

(3) The owner of any goods impounded under regulation 22(2), excluding perishable goods, may, within 30 days from the date of the impoundment, apply in writing to the Council for the return of such goods and must attach to the application the relevant receipt issued in terms of regulation 22(3)(a), failing which the Council may sell such goods by public auction.

(4) If the owner of any goods impounded under regulation 22(2) claims the return of such goods from the Council under subregulation (1) or (3), and such owner refuses or fails to refund in full the expenses incurred by the Council in respect of the removal and impoundment of such goods, the Council may decline to return such goods or part thereof to the owner, and may sell such goods or part thereof by public auction, or determine otherwise.

(5) 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 impoundment of such goods, must, upon presentation of the relevant receipt issued in terms of regulation 22(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.

(6) In the event of the proceeds of any sale of goods under this regulation not being sufficient to defray the expenses incurred by the Council in respect of the removal and impoundment of such goods, the owner of such goods must in terms of regulation 22(4) remain liable to the Council for payment of so much of such expenses as is not defrayed by such proceeds.

(7) If the owner of any goods impounded under 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 such goods were sold, the Council, within a period of six months after the expiry of such period of three months, must pay such proceeds, less the expenses incurred by the Council in respect of the removal, impoundment and sale of such goods, to the Master of the High Court, Windhoek.

(8) When making any payment in terms of subregulation (7), the Council must furnish to the Master of the High Court all the particulars relating to the owner of the goods sold under this regulation which it may have at its disposal.

Offences and penalties

24. (1) A person who -

- (a) contravenes or fails to comply with any provision of these regulations or any condition imposed in respect of any registration certificate;
- (b) threatens, resists, hinders, interferes with or obstructs any authorized staff member 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;
- (c) in an application for registration as an informal trader or assistant informal trader, furnishes any false or misleading information, or makes any false statement;
- (d) furnishes false or misleading information to any authorized staff member;
- (e) not being an authorized staff member, holds himself or herself out to be, or presents himself or herself as, an authorized staff member; or
- (f) willfully damages any registration certificate, or without the prior written approval of the Council, makes any alteration to, or destroys, such certificate,

commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

(2) If an employee of an informal trader or an assistant of an informal trader is charged with an offence under subregulation (1), and he or she alleges that he or she commits the offence -

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

such informal trader must also be charged with the same offence and be liable to the same penalties.
