



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$5.2.0

WINDHOEK - 5 February 2016

No. 5943

CONTENTS

Page

GENERAL NOTICE

No. 8 Town of Lüderitz: Regulations relating to registration of businesses: Local Authorities Act 1992 1

General Notice

TOWN OF LÜDERITZ

No. 8

2016

REGULATIONS RELATING TO REGISTRATION OF BUSINESSES: LOCAL AUTHORITIES ACT, 1992

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

H. MUKAPULI
CHAIRPERSON
BY ORDER OF THE COUNCIL

SCHEDULE

Definitions

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

“business” means any profession, occupation, trade, undertaking, service, industry or activity conducted for gain;

“business premises” includes any land, site, building, structure or any portion of land, site, building or structure and any appurtenances of such building or structure used or intended to be used for purposes of conducting a business;

“certificate of fitness” means a certificate of fitness issued in terms of regulation 5;

“certificate of registration” means a valid certificate of registration issued in terms of regulation 8;

“Council” means the Town Council of Lüderitz;

“environmental health practitioner” means a person appointed as environmental health practitioner in terms of section 27(1)(b) of the Act;

“fee” means the fee determined as referred to in regulation 23;

“holder of certificate of fitness” means the person issued with a certificate of fitness or the person in who’s name that certificate is transferred in terms of regulation 9;

“inspector” means a staff member authorised in writing to conduct inspections in respect of business premises and the conducting of any work or business;

“noxious business” means a business of a nature which may reasonably be considered to be offensive to the general public, or which is harmful in effect to the environment, or to the health of the general public or any business determined by the Council under regulation 2(3)(b) to be a noxious business;

“registration officer” means a staff member authorised to consider applications for and to issue certificates of registration;

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

“Town area” means the area of jurisdiction of the Council.

Conducting of business

2. (1) A person may not conduct a business within the Town area, unless a certificate of registration to conduct business has been issued to him or her in terms of regulation 8.

(2) A person conducting a business must ensure that the business premises from which he or she conducts the business is at all times maintained in a state of good repair and ensure that such premises is kept clean and hygienic.

(3) The Council may, for the purpose of these regulations, determine -

- (a) certain areas to be areas upon which the conducting of a business is prohibited; and
- (b) certain businesses to be noxious businesses.

(4) A person who fails to comply with subregulation (1), (2) or (3) commits an offence.

Application for certificate of fitness

3. (1) A person who intends to conduct a business within the town area must, in the manner provided for in this regulation, apply to the environmental health practitioner for a certificate of fitness in respect of each business premises upon which that business is to be conducted.

- (2) An application for a certificate of fitness is -
- (a) made on the form provided by the Council for that purpose;
 - (b) submitted to the environmental health practitioner for consideration;
 - (c) accompanied by the appropriate fee;
 - (d) accompanied by such other information as the environmental health practitioner considers necessary for purposes of making a decision in terms of regulation 5; and
 - (e) where an application for a certificate of fitness is made for the conducting of a noxious business, accompanied by -
 - (i) particulars relating to the nature of the noxious business to be conducted;
 - (ii) particulars relating to the nature of materials or goods to be sold, if any;
 - (iii) particulars relating to any processing of goods or materials, which are to be processed;
 - (iv) particulars relating to the equipment to be installed or used on the business premises, including the number, type and capacity of each piece of equipment;
 - (v) particulars relating to the measures to be taken for purposes of minimizing public nuisance and for the disposal of waste;
 - (vi) an environmental impact assessment undertaken in relation to the noxious business to be conducted on the business premises; and
 - (vii) proof of publication of the notice referred to in regulation 4.

(3) A person who wilfully furnishes incorrect or false information or particulars in terms of this regulation commits an offence.

(4) For the purposes of this regulation “waste” means any undesirable or superfluous by-product, emission or residue and which results from any process or activity in the conducting of a business.

Notice calling for objections

4. (1) A person who intends to conduct a noxious business within the town area must, in addition to the application for a certificate of fitness referred to in regulation 3, cause a notice to be published in a newspaper circulating in the Town area -

- (a) stating that such application has been made to the environmental health practitioner;
- (b) stating the nature of the noxious business to be conducted;
- (c) indicating the business premises from which the noxious business is to be conducted;
- (d) stating whether any environmental impact assessment has been undertaken in relation to a noxious business to be conducted on the business premises and the outcome of the assessment;

- (e) indicating the place at which and the times and dates during which the application and any documentation in support of the application may be inspected; and
- (f) calling upon persons to lodge any objections and make representation with the environmental health practitioner.

Decision of environmental health practitioner

5. (1) An environmental health practitioner may after receiving an application referred to in regulation 3 and after considering any objections or representations made in terms of regulation 4 -

- (a) grant the application with or without such conditions as the environmental health practitioner may consider appropriate; or
- (b) refuse the application.

(2) An environmental health practitioner must, when considering an application made under regulation 3, take into account -

- (a) whether the conducting of the type of business applied for on the business premises is in conflict with any laws relating to public health and safety or is in conflict with any town planning scheme or township condition applicable to that premises;
- (b) any objection raised or representation made in pursuance of a notice published under regulation 4;
- (c) any representation made in support of the application; and
- (d) whether the provisions of regulation 3 and where applicable regulation 4 have been complied with.

(3) If an application is refused an environmental health practitioner, within seven days from refusing the application, must provide the applicant with written reasons for the refusal.

(4) If an application is granted under subregulation (2), the environmental health practitioner must issue to the applicant a certificate of fitness and must endorse upon that certificate such conditions as he or she considers necessary.

(5) A certificate of fitness issued in terms of this regulation is valid for a period of 12 months from the date of issue or until such time that -

- (a) the premises, in respect of which the certificate of fitness is issued, undergoes any form of alteration, other than alterations approved in accordance with regulation 10 or which is necessary for the purpose of maintaining the business premises concerned; or
- (b) the nature of the business, for which a certificate of fitness is issued, changes in any way.

(6) The holder of a certificate of fitness may during the validity of the certificate, or within five days from the date of expiry thereof, apply to the environmental health practitioner for a renewal of that certificate.

(7) A holder of a certificate of fitness who wishes to renew that certificate must apply to the environmental health practitioner for such renewal in the manner provided for in regulation 3.

Application for certificate of registration

6. (1) A person may not conduct a business within the Town area except pursuant to and in terms of a certificate of registration issued by the Council, in respect of each such business on each business premises, in terms of these regulations.

(2) A person may, if a certificate of fitness has been issued to him or her in terms of regulation 5, apply to the registration officer for a certificate of registration in the manner provided for in this regulation.

(3) An application for a certificate of registration is -

- (a) made on the form provided by the Council for that purpose;
- (b) submitted to the registration officer for consideration;
- (c) accompanied by the appropriate fee;
- (d) accompanied by a certified copy of a valid certificate of fitness issued in terms of regulations 5; and
- (e) accompanied by such other information as may be necessary for purposes of making a decision in terms of regulation 7.

(4) A person who wilfully furnishes incorrect or false information or particulars when submitting an application as contemplated in subregulation (3) commits an offence.

Application for renewal of fitness certificate

7. (1) A person who intends to renew a fitness certificate must submit to the environmental health practitioner an application for renewal of the certificate on a form as provided by the Council.

(2) An applicant must obtain and submit any and all inspections, approvals and documentation as required by these regulations.

(3) An environmental health practitioner may refuse to accept an application for a fitness certificate that is not accompanied by all necessary documentation or which does not reflect all required sign offs and approvals.

(4) An environment health practitioner may not issue a certificate until all required approvals and inspections have been obtained by the applicant, required documentation has been provided and fees have been paid in full.

(5) Where the environmental health practitioner receives an application for renewal of a fitness certificate and the appropriate fees have been paid, he or she must, prior to the issuance of any such certificate -

- (a) ensure that all inspections, fitness certificate, approvals and documents as may be required are received;
- (b) make inquiries into all relevant matters in order to ascertain if the applicant is entitled to obtain a renewed certificate under these regulations;
- (c) inquire into any and all relevant changes in circumstances since the previous certificate was issued to the applicant; and

- (d) make any inquiries to any staff member of the Town who has carried out inspections or investigations relative to the business under application.
- (6) There must be a separate application for each premise to be used or business to be conducted.
- (7) Where the environment health practitioner is satisfied that the applicant is entitled to obtain a renewal of the fitness certificate under these regulations, he or she must prepare and issue a renewal certificate to the applicant.

Issuance of certificate of registration

8. (1) When considering an application for a certificate of registration, the registration officer must -

- (a) satisfy himself or herself that the conditions imposed by the environmental health officer and endorsed upon the certificate of fitness have been complied with and where such conditions have not been complied with he or she must take into consideration any particulars submitted in terms of regulation 6(3); and
- (b) take into consideration any objections lodged and any representations made in terms of regulation 4.

(2) After considering an application for a certificate of registration referred to in regulation 6, the registration officer may -

- (a) grant the application with or without such conditions as the registration officer may consider appropriate; or
- (b) refuse the application.

(3) Where an application is refused, the registration officer must, within seven days from the date of refusing the application, provide the applicant with written reasons for such refusal.

(4) Where an application is granted under subregulation (2), the registration officer must issue to the applicant a certificate of registration and must endorse upon that certificate such conditions, if any, he or she considers necessary.

(5) A person to whom a certificate of registration has been issued may conduct such business on such business premises for which the certificate of registration is issued.

(6) A certificate of registration issued in terms of this regulation is valid for a period of 12 months from the date of issue or until such time that -

- (a) the certificate of fitness becomes invalid; or
- (b) the nature of the business for which a certificate of registration is issued changes in any way, whichever occurs first.

(7) The holder of a certificate of registration may at any time during the validity of that certificate, or within five days from the date of expiry of that certificate, apply to the registration officer for a renewal of that certificate.

(8) A holder of a certificate of registration who wishes to renew that certificate must apply to the registration officer in the same manner provided for in regulation 7.

Transferability of certificates

9. (1) A certificate of fitness or a certificate of registration, or any right granted under such certificate, may not be transferred from one business premises to another business premises or from one person to another person or from one business to another business, unless in accordance with subregulation (2).

(2) The holder of a certificate of fitness or a certificate of registration may, on the form provided by the Council for that purpose and upon payment of the appropriate fee, apply to the environmental health practitioner or the registration officer to have -

- (a) the certificate of fitness or certificate of registration transferred into the name of another person;
- (b) the name of the business indicated on the applicable certificate of fitness or certificate of registration changed; or
- (c) the premises of the business indicated on the applicable certificate of fitness or certificate of registration changed.

(3) Where an application referred to in subregulation (2) is approved, the environmental health practitioner or registration officer must cause such changes to be made on the certificate of fitness or the certificate of registration, whichever is applicable, and must indicate such changes in the business register of the Council.

Application for approval to make structural alterations

10. (1) A holder of a certificate of fitness or a certificate of registration may not effect structural alterations or cause structural alterations to be effected to the business premises for which a certificate of fitness or a certificate of registration has been issued, but such alterations may be made with the prior written approval obtained from the environmental health practitioner.

(2) A holder of a certificate of fitness or a certificate of registration who wishes to obtain the approval referred to in subregulation (1) must apply to the environmental health practitioner or registration officer in the manner provided for in this regulation.

(3) An application referred to in subregulation (2) is made on the form provided by the Council for that purpose and is accompanied by -

- (a) a detailed plan of the premises, showing the existing business premises and the intended structural alterations;
- (b) particulars relating to the construction, lay-out, furnishing, fixtures, fittings, and floor coverings to be undertaken or used in the intended alterations;
- (c) a certified copy of the certificate of fitness or the certificate of registration of the business premises;
- (d) written representations, if any, in support of the application; and
- (e) such further particulars as the environmental health practitioner may consider necessary for purposes of granting the approval.

(4) If the application referred to in subregulation (2) is approved the environmental health officer must issue to that application written approval for the undertaking of the structural alterations applied for and must indicate such approval in the business register of the Council.

(5) A holder of a certificate of fitness or a certificate of registration who undertakes or causes any structural alterations, other than alterations necessary for purposes of maintenance, to be made as contemplated in this regulation without having first obtained the written approval of the environmental health practitioner commits an offence.

Posting of fitness certificate

11. (1) A person conducting a business must, throughout the validity of such fitness certificate of registration, display that certificate, or a certified copy of that certificate, in a conspicuous place on the business premises in respect of which that certificate was issued.

(2) All licenses issued under these regulations must be prominently and conspicuously posted on the licensed premise at all times.

(3) Where a business licence is issued to a person who goes place to place or a particular place with goods, wares, or merchandise for sale, the licensee must keep the licence with him or her at all times while carrying out his or her business and must exhibit it to any Council law enforcement officer or environmental health practitioner, peace officer or other duly appointed person who so requests.

Change of name

12. (1) Where ownership of a business is not changed or affected but the operating name of a business changes, the business owner must immediately notify the registration officer and the environmental health practitioner and upon payment of a fee and being satisfied that there have been no other changes in the circumstances of the licensed business, the registration officer or the environmental health practitioner may issue a replacement of the original fitness certificate.

(2) The business owner must return and surrender the original certificate in order to affect such a change.

Change in ownership

13. (1) Every business owner must, upon change of ownership of the registered business return and surrender the current fitness certificate to the registration officer or the environmental health practitioner.

(2) A new owner of the business must make application for a new fitness certificate upon assuming ownership of a registered business as set out in these regulations.

Appeals

14. (1) An applicant who is aggrieved by a decision made under these regulations may lodge an appeal with the management committee against that decision in the manner provided for in this regulation.

(2) An appeal contemplated in subregulation (1) -

(a) is lodged with the management committee of the Council within 30 days from the date of such decision;

(b) is lodged in writing;

(c) is lodged in the form approved by the management committee of the Council;

- (d) must indicate the grounds for appeal; and
- (e) must indicate the redress sought.

(3) Where an appeal is lodged with the management committee by way of electronic transmission the applicant must, within a period of seven days from the date of the transmission, deliver or send a hard copy of the appeal together with any representations made in support thereof to that committee.

(4) The management committee must, within 30 days from the date of receipt of the appeal, consider the appeal and after hearing oral representations, if any, from the appellant, or the appellant's legal representative, either -

- (a) confirm the appeal;
- (b) refuse the appeal; or
- (c) confirm the appeal subject to such conditions as the management committee may consider appropriate.

(5) The management committee must furnish the appellant with written reasons for the decision made under subregulation (4), and must inform the Council of its decision.

(6) A person aggrieved by a decision made by the management committee under subregulation (4) may lodge an appeal with the Minister against such decision and such appeal must, with the necessary changes, be in accordance with this regulation.

Report of lost or stolen certificate and issue of duplicates

15. (1) Where a certificate of fitness or a certificate of registration is lost or stolen or is damaged beyond legibility, the person to whom such certificate of fitness or certificate of registration had been issued must, as soon as is reasonably possible after becoming aware of such loss, theft or damage -

- (a) report such loss, theft or damage to the environmental health practitioner or the registration officer, whichever is applicable; and
- (b) apply to the environmental health practitioner or the registration officer, whichever is applicable, for a duplicate of such certificate of fitness or certificate of registration.

(2) An application referred to in subregulation (1) is made on the form provided by the Council for that purpose and accompanied by the appropriate fee.

(3) A person who fails to report the loss or theft of or damage to a certificate of fitness or a certificate of registration after 14 days of that loss, theft or damage commits an offence.

Cessation of business

16. (1) If the holder of a certificate of registration ceases to conduct the business for which such certificate is issued he or she must, within 30 days from the date of ceasing to conduct such business, inform the registration officer of such cessation and must submit the certificate of registration to the registration officer for cancellation.

(2) The registration officer must, upon being informed of the cessation referred to in subregulation (1) and upon receipt of the certificate of registration, cancel the certificate of registration and must indicate such cancellation in the business register of the Council.

Inspections

17. (1) An inspector may at any reasonable time, or in the instance of an emergency at any time enter business premises for the purpose of inspecting such premises and any work or process carried out thereon for purposes of ensuring compliance with these regulations or any other law.

(2) An inspector must -

- (a) carry upon his or her person an identification card issued by the Council indicating that such person is authorized to carry out inspections for the purpose of these regulations; and
- (b) when requested to do so, present for inspection the identification card to the holder of the certificate of fitness or the certificate of registration or to the person in charge of the premises.

(3) For the purpose of ensuring compliance with these regulations an inspector may -

- (a) require a person in possession or in custody of or who has control over any documentation required for the purpose of these regulations, or which may serve as evidence of non-compliance with a provision of these regulations, to produce those documents;
- (b) inspect and remove, for the purpose of making copies or extracts, the documents, referred to in paragraph (a); and
- (c) require a person referred to in paragraph (a) to furnish his or her full name and address and to produce his or her identification document.

(4) If an inspector removes any document for the purpose of subregulation (3) (b), he or she must issue out a receipt for the removed documents and must return the documents no later than 14 days.

(5) If in the opinion of the inspector a contravention of these regulations is being committed he or she must report such contravention to the Council for the purpose of regulation 15.

(6) If, by reason of the fact that a business premises is locked or the entrance thereto is blocked or obstructed in any manner, it is not reasonably possible for the inspector to enter upon the business premises concerned the Council may by written notice to the holder of the certificate of fitness or the certificate of registration require -

- (a) the unlocking of such entrance; or
- (b) the removal of such obstruction,

for the purpose of restoring access to the business premises within a period specified in that notice.

(7) If, in the instance contemplated in subregulation (6), the inspector -

- (a) is of the opinion that the gaining of access to the business premises concerned is a matter of urgency; or
- (b) reasonably suspects that a contravention of these regulations or any provision of a law relating to public health and safety or relating to a town planning scheme or township condition applicable to that business premises is being contravened,

the inspector may take or cause such steps to be taken to gain access to the business premises concerned and the Council may recover from the holder of a certificate of fitness or a certificate of registration over that business premises the costs incurred for the purpose of gaining access.

(8) An inspector may, where he or she considers it reasonably necessary, take or cause to be taken such steps as to rectify a contravention of a law relating to public health and safety with regards to the business premises concerned or the conducting of the business concerned.

(9) The Council is not liable for any damage resulting from any action taken under subregulation (7), but must restore such premises to its former condition if no contravention of any provision referred to in that subregulation has been found.

(10) A person who fails to comply with a notice referred to in subregulation (6), commits an offence.

Fees and facilities for inspection

18. (1) The holder of a certificate of fitness or a certificate of registration must give reasonable opportunity and assistance, where applicable, to an inspector to inspect the premises and any work or process carried out thereon.

(2) The Council may in terms of regulation 23 determine the amounts or tariff of fees chargeable for purposes of defraying the cost of any inspection carried out under these regulations.

Failure to pass inspection

19. (1) If, after inspecting the premises or any process undertaken on such premises, the inspecting officer finds that the premises or the processes undertaken on such premises fails to comply with any provision of these regulations or is in conflict with any provision relating to public health and safety or relating to any town planning scheme or township condition applicable to that premises, the inspector must -

- (a) give notice to the holder of the certificate of fitness or the certificate of registration of such failure; and
- (b) call upon such holder of the certificate of fitness or certificate of registration to comply with the requirements of the notice within the period specified in such notice.

(2) After the expiry of the period stipulated in the notice referred to in subregulation (1), the Council may cause a further inspection to be carried out on the premises concerned.

(3) A holder of a certificate of fitness or of a certificate of registration who fails to comply with the requirements stipulated in the notice referred to in subregulation (1) commits an offence.

Withdrawal or suspension of certificate of fitness or certificate of registration

20. (1) The Council may cancel for such period as it may determine or suspend a certificate of fitness or certificate of registration if the holder of that certificate -

- (a) carries out or causes to be carried out any unapproved alterations on such business premises; or
- (b) does or causes anything to be done on such business premises,

which is in contravention of any provision of these regulations.

(2) The Council may not cancel or suspend a certificate of fitness or a certificate of registration unless the Council -

- (a) gives the holder of a certificate at least 21 days' notice in writing of its proposed action and of the reasons therefore; and
- (b) in such notice, invites such person to lodge with the Council in writing any representation, which he or she wishes to make in connection with the proposed action.

(3) Where a certificate of fitness or certificate of registration is cancelled or suspended, the Council must cause such cancellation or suspension to be indicated in the business register.

Notices

21. A notice required or permitted to be given in terms of these regulations is in accordance with section 93 of the Act.

Temporary certificates of fitness and registration

22. (1) A person who intends to conduct a business for a limited period may, on the form provided by the Council for that purpose and upon payment of the applicable fee, apply for a temporary certificate of fitness and a temporary certificate of registration in accordance with regulations 3 to 7.

(2) If an application referred to in subregulation (1) is granted, the environmental health practitioner must issue to the applicant a temporary certificate of registration.

(3) The environmental health practitioner or the registration officer, whichever is applicable, must endorse upon the certificate of fitness or the certificate of registration the period for which that certificate is valid.

Determination of fees

23. The fees and charges payable in terms of these regulations are as determined by the Council under section 30(1) (u) of the Act.

Business registers

24. The Council must keep a register in which it must enter particulars relating to every certificate issued in terms of these regulations.

Exemptions

25. If, due to exceptional circumstances, the Council considers it desirable to authorize a departure or exemption from any provision of these regulations the Council may, subject to such conditions as it may impose, authorize such departure or exemption if the departure or exemption is not in conflict with the Act.

Combating of nuisance

26. (1) Every person required to be licensed under these regulations, in addition to any other provisions or requirements expressed elsewhere in these regulations -

- (a) must at all times maintain and keep safe and clean and in good condition and repair any object, amusement, vehicle, place or premise for which the certificate is issued;

- (b) may not breach or violate or cause, suffer, or permit any breach or violation of any part of these regulations and any other legislation relating to business premises in, upon, or in connection with the business or premise for, or in relation to which such certificate was issued;
- (c) may not cause, suffer or commit any nuisance to arise in, on, or in connection with the object, amusement, vehicle, place or premise for which the certificate was issued;
- (d) may not cause, suffer or permit any shouting, noise or other disturbance on, in or in connection with the object, amusement, vehicle, place or premise for which the certificate was issued, which is unnecessary, unreasonable or contrary to any legislation; and if any such shouting, noise or other disturbance occurs, the business owner must immediately take steps to cause it to be ended;
- (e) may not cause, suffer, or permit any obstruction on any highway, lane or public place in front of or adjoining the place or premise for which the certificate was issued;
- (f) may not cause, suffer or permit any profane, offensive or abusive language or disorderly conduct in, on, or in connection with any place or premise for which the certificate was issued.

(2) Every person who acquires a business licence that is issued under these regulations is responsible for the due performance and observance of all the provisions of these regulations by himself or herself and by his or her employees and all other persons in or upon the premise which is licensed under the provisions of these regulations.

Other offences

27. (1) A person may not obstruct, hinder, or otherwise interfere with an inspector in the exercise or performance of his or her powers functions in terms of these regulations.

(2) A person may not neglect or refuse to produce any information or thing or to provide any information by any person acting pursuant to these regulations.

Expiry of certificate of fitness

28. (1) A certificate of fitness expires on 31 March of the year that follows from its date of issue, unless otherwise specified on the certificate.

(2) A renewal of a certificate of fitness expires on the date specified on the certificate so renewed.

Penalties

29. A person who contravenes or fails to comply with the provisions of regulations 6, 10, 15, 16, 17, 19, 26 or 27 of these regulations 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.
