



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

MUNICIPALTY OF OMARURU

No. 142

2016

ANIMAL POUND REGULATIONS: LOCAL AUTHORITIES ACT, 1992

The Municipality of Omaruru Council, after consultation with the Minister of Urban and Rural Development, under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992), has made the regulations set out in the Schedule.

H.M. GEBHARDT
CHAIRPERSON OF COUNCIL
BY ORDER OF THE COUNCIL

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Definitions

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

“animal” means horses, donkeys, mules, cattle, sheep, goats or pigs;

“authorised official” means a staff member of the Council who has been authorised by the Council to administer, implement or enforce the provisions of these regulations;

“Council” means the Municipal Council of Omaruru;

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

“municipal area” means the local authority area of the Municipality of Omaruru;

“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; and

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

Establishment of pounds

2. (1) The Council may within the municipal area -

- (a) establish and operate a pound; or
- (b) enter into an agreement with a person to establish and operate a pound on its behalf, subject to any conditions or limitations the Council may impose, 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 animal

3. (1) The owner or occupier of a property situated within the municipal area who finds an animal trespassing on that owner or occupiers property may seize such animal for impounding and must deliver the animal to a pound within 24 hours of seizing it or if the pound is closed on the next business day.

(2) A -

- (a) member of the Namibian Police Force; or
- (b) authorised official of the Council, authorised by the Council for that purpose,

may seize an animal found straying on a public place or a street for impounding, and deliver the seized animal to a 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 has seized an animal for impounding under regulation 3 -
- (a) may not use, harness or ill-treat the animal or allow any other person to use, harness or ill-treat such animal; or
 - (b) must, if he or she keeps an animal for more than six hours, provide the animal with sufficient food.
- (2) A person who contravenes subregulation (1) commits an offence.

Freeing of impounded animal

- 5.** A person may not release -
- (a) an animal which has been taken into custody under regulation 3, unless that person obtains the consent of the person who has taken the animal into custody;
 - (b) an animal which has been impounded in terms of these regulations, unless that person obtains the consent of the poundmaster.

Penalties

- 6.** A person convicted of an offence under regulation 4 or 5 is liable -
- (a) on a first conviction, to a fine not exceeding N\$500;

- (b) on a second or subsequent conviction for the same offence, to a fine not exceeding N\$1000 or to imprisonment for a period not exceeding three months, or to both such fine and 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 fine not exceeding N\$100 a day, for each day the offence continues.

Duties of poundmaster

7. (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 poundmaster must keep the pound open between 08:00 and 16:30 from Monday to Friday and Saturday between 08:00 and 12:00 unless any such day is a public holiday, but may keep the pound open during such earlier or later hours as he or she considers necessary, subject to displaying an easily legible notice to that effect at the entrance to the pound and on the Council's official notice board.

(3) The poundmaster must keep a pound book or register, which must be made available for public inspection at all reasonable times.

(4) The poundmaster must record in the pound books or register 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 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 name and address, if known, of the owner of the animal;
- (f) if the animal is sold, the name and address of the purchaser and the sum realised by the sale;
- (g) the dates on which the animal was impounded and released or sold;
- (h) all fees and expenses accumulated in respect of animals impounded in terms of these regulations; and
- (i) all claims for damages filed with the poundmaster and if paid, the date and amount of payment.

(5) The poundmaster must issue a certificate, to the person who delivers an animal for impounding, on a form determined by the Council.

Dealing with injured, ill or vicious animal

8. (1) If the poundmaster is of the opinion that an impounded animal is ill or injured or is in a poor physical condition he or she must request a veterinarian designated by the Council to examine and treat the animal.

(2) If the poundmaster finds that an impounded animal is wild or vicious and its impounding is likely to be dangerous to other animals in the pound, the poundmaster must immediately notify the Council and isolate the animal.

(3) If an impounded animal dies, is injured or is destroyed in terms of these regulations the poundmaster must -

- (a) dispose of the carcass in such manner as the Council directs;
- (b) record the injury or cause of death in the pound book kept in terms of regulation 7; and
- (c) if the owner is known, notify the owner of the animal in writing of the injury, death or the fact the animals has been destroyed.

Care of impounded animal

9. (1) The poundmaster must take proper care of all impounded animals and must ensure that the animals are at all times provided with sufficient food 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 such animal.

Separation of impounded animal

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

Recovery of costs

11. The Council must recover any costs incurred by it in respect of the services of a veterinarian or in connection with treatment given to an impounded animal from -

- (a) the owner of that animal; or
- (b) if the animal is sold in terms of regulation 21, from the proceeds of the sale.

Notice to the owner of animals

12. (1) The poundmaster must, if the name and address of the owner of an impounded animal is known to him or her, in accordance with section 93 of the Act, notify the owner of the impounding of the owner's animal.

(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 an owner is unknown the poundmaster must immediately cause an advertisement to be published in at least three newspapers circulating in the municipal 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 who delivered the live animal for impounding; and
- (e) that the animal will be sold if it is not reclaimed 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) are recoverable from the owner of the animal concerned, or from the proceeds of the sale of the animal sold.

Right to claim damages

13. (1) The owner referred to in regulation 3(1) on whose property an animal has trespassed is entitled to claim compensation in terms of these regulations for damage caused by the animal to the property concerned.

(2) The Council may claim compensation in terms of regulation 15 for damage to the Council's property caused by an animal.

(3) The owner of an animal which has caused the damage as contemplated in subregulation (1) or (2), must compensate the owner of the property concerned or the Council for the damages.

(4) If the owner of the animal contemplated in subregulation (1) or (2) is unknown or cannot be traced the damages must be paid from the net proceeds, in accordance with regulation 25 or 27, when the animal is sold.

Claiming damages

14. The owner of property referred to in regulation 3(1), who intends to claim damages in terms of regulation 13(1) must when delivering the animal to the pound or within 24 hours after the animal has been impounded, give the pound master a notice of intention to lodge a claim.

Procedure for claiming damages

15. (1) The person who intends to claim damages in terms of regulation 13(1) must together with a Council staff member, inspect the property concerned and prepare a written memorandum, setting out the nature and extent of 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 of the property must give notice of the time and place of the inspection contemplated to subregulation (1) to the owner of the animal and afford the owner of the animal the 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 of the property with regard to the amount and pays its; or

- (c) arranges for the payment with the owner of the property; those facts with full particulars must be recorded in the written memorandum contemplated in that subregulation and signed by both parties.

(4) If the damages contemplated in this regulation are paid directly to the owner of the property, that 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 an inspection contemplated in subregulation (1) and if his or her name and address is known to the poundmaster, the poundmaster, must immediately on receipt of the written memorandum, contemplated in that subregulation give notice, in accordance with section 93 of the Act, 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.

Council claiming damages

16. The Council must, if it intends to claim damages in terms of regulation 13(2), first cause an inspection of the damaged property to be held by the poundmaster or staff member of the Council authorised by the Council for that purpose and two persons with no interest in the matter and the provisions of regulation 15 apply with necessary changes.

Denial of liability

17. If -

- (a) the claim for damages by the owner of the property in terms of regulation 15 is disputed by the owner of the animal;
- (b) the owner of the animal in respect of which a claim for damage is made, admits liability but disputes the amount claimed,

the poundmaster must immediately give notice, in accordance with section 93 of the Act, to the owner 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

18. The poundmaster may not release an impounded animal unless -

- (a) all fees due in terms of these regulations;
- (b) all disputes relating to the claim; and
- (c) the amount in respect of damages, if any,

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

Disputed claim

19. (1) If a claim for damages in terms of regulation 13, whether instituted by the owner of the property or the Council is disputed by the owner of the animal concerned the poundmaster must -

- (a) on condition that the fees referred to in that regulation have been paid in full; and

- (b) if pending settlement of such dispute, the owner of the animal 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 the claim for damages relates is less than the amount of the claim, the poundmaster, subject to the direction form Council, may determine the amount of surety which is equal to the value of the animal concerned.

Proof of ownership

20. The poundmaster may, before he or she releases an animal under regulation 19, require that the person claiming the release of the animal provide proof 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 animal may be sold

21. If -

- (a) an animal is not released within 30 days from the date of publication of the advertisement in terms of regulation 12(3); or
- (b) the owner of an animal is notified in terms of regulation 12(1) and the animal is not released within seven days from the date of impounding the animal, it must be sold in accordance with the provisions of regulation 23 or 24.

Notice of intention to sell

22. (1) The poundmaster must, after expiry of the relevant period referred to in regulation 21, by notice publish once a week for two consecutive weeks in three newspapers circulating in the municipal 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 of the impounding 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 in a newspaper cause a copy of such notice to be affixed in a conspicuous place at the pound and the office of the Council.

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

Sale of impounded animal

23. (1) After the expiry of the period referred to in regulation 21 the auctioneer must, from or between 08:00 and 12:00, sell the animal by public auction held at a public place which is centrally situated in the municipal 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 the information as required by regulation 22, on the notice board at the offices for the Council and at or as near as possible to the place where the sale to actually take place.

(3) The poundmaster may, despite regulation (1), sell any animal by public auction held in terms of regulation 24, on condition it has been advertised as such in the notice of the sale referred to in subregulation (2).

Sale by auction

24. (1) 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 livelihood, must be sold together with that animal; and
- (b) sheep, goats or pigs may be sold together in lots of not more than 10.

(2) The auctioneer or 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

25. (1) The Council is entitled to a commission of five percent 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 used -

- (a) for payment of all expenses incurred before and during the sale; and
- (b) for 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) If two or more competing claims are to be considered for settlement in terms of subregulation (2) any surplus that is available but which is insufficient to settle all the claims concerned in full must be distributed on a *pro-rata* basis among 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

26. (1) If the notice of sale referred to in regulation 22 relates to more than one animal, the expenses incurred in connection with the publication of such notice must be recovered, subject to the provisions of subregulation (2), in equal parts from the proceeds of each animal sold.

(2) If an animal to which a 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 such costs which would have been recovered in respect of that animal had it been sold.

Claims of proceeds

27. (1) If at any time within six months after the sale of an animal in terms of these regulations, a person lays a claim to the surplus, contemplated in regulation 25(4) and the Council is satisfied that -

- (a) the animal sold did belong to that person; or
- (b) that person is on any 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 surplus to the person concerned.

(2) The right to claim payment of the surplus or any portion from the Council under the subregulation (1) expires after a period of three years from the date of sale of the animal concerned but if the animal concerned at the time of the sale had been the subject of a claim for damages in terms of these regulations and such claim was at that stage still disputed such right expires after a period of three years from the date of the settlement of the claim or three years from the date of the sale of the animal.

(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 contemplated in regulation 25(4) becomes the property of the Council upon expiry of the right to claim payment in terms of this regulation.

Ownership and branding of sold animal

28. (1) Ownership of an animal sold in terms of these regulations passes on when the animal is purchased.

(2) An authorised official must brand an animal sold in terms of these regulations with the Council's registered brand before the animal is delivered to the purchaser.
