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General Notice

TOWN OF ARANDIS

No. 168

2012

REGULATIONS RELATING TO THE CONDUCTING OF BUSINESS IN THE ARANDIS LOCAL AUTHORITY AREA: LOCAL AUTHORITIES ACT, 1992

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

BY ORDER OF THE COUNCIL

D. MUHUURA
CHAIRPERSON OF THE COUNCIL

SCHEDULE

Definitions

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

“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 certificate of registration issued in terms of regulation 7;

“Council” means the Town Council of Arandis;

“environmental health officer” means a person appointed by the Council in the capacity of an environmental health officer and a health practitioner acting in such capacity;

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

“inspecting officer” means a staff member authorised by the Council to conduct inspections in respect of a business premises;

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

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

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

“town area” means the area of jurisdiction of the Council;

“waste” means any undesirable or superfluous by-product, emission or residue, regardless of its form, and which results from any process or activity in the conducting of a business.

Prohibition on conducting business without authorisation

2. (1) A person may not conduct a business within the town area unless -

(a) a certificate of fitness; and

(b) a certificate of registration,

has been issued to him or her in terms of these regulations.

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

(a) certain areas to be areas within which the conducting of a business is prohibited; and

(b) certain businesses to be noxious business.

(3) A person may not conduct business in a prohibited area.

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

Application for certificate of fitness

3. (1) An application for a certificate of fitness must be made on the form provided by the Council, and -

- (a) be submitted to the environmental health officer for consideration;
- (b) be accompanied by the appropriate fee;
- (c) be accompanied by such other information as the environmental health officer may consider necessary for purposes of making a decision in terms of regulation 5; and
- (d) where an application for a certificate of fitness is made for the conducting of a noxious business, be 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;
 - (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 used in the conducting of the noxious business;
 - (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.

(2) A certificate of fitness must be obtained in respect of each business premises on which business is to be conducted.

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

Publication of notice in respect of noxious business

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 an application for a certificate of fitness has been made to the environmental health officer;
- (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 the noxious business to be conducted on the business premises and the outcome, if any, 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, with the environmental health officer, objections to the granting of the application, which objections must be lodged by a date being not less than 14 days from the date of publication of such notice.

(2) Where an objection is lodged in terms of subregulation (1) the environmental health officer must -

- (a) within 7 days from the date referred to in paragraph (0) of that subregulation give notice to the applicant of the objections lodged; and
- (b) call upon the applicant or his or her representative, to make, within 7 days from the date of the notice referred to in paragraph (a), written representation against the objections, if any, in support of the application.

Issuing of certificate of fitness and validity of certificate

5. (1) The environmental health officer must consider the application for a certificate of fitness, and any objections or representations made in terms of regulation 4, if applicable, and may -

- (a) grant the application and issue the certificate of fitness; or
- (b) refuse the application and within 7 days provide the applicant with written reasons for the refusal.

(2) The environmental health officer must, when considering an application for certificate of fitness, 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) A certificate of fitness issued in terms of this regulation is valid for a period of one year 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 12 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, whichever occurs first.

(4) The holder of a certificate of fitness must before the date of expiry of the certificate, apply to the environmental health officer for a renewal of the certificate in the manner provided in regulation 10.

Application for certificate of registration

6. An application for a certificate of registration must be made on the form provided by the Council, and be -

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

Issuing of certificate of registration and validity of certificate

7. (1) The registration officer must consider the application for certificate of registration and may -

- (a) grant the application and issue the certificate of registration; or
- (b) refuse the application and within 7 days provide the applicant with written reasons for the refusal.

(2) The registration officer must, when considering an application for a certificate of registration -

- (a) satisfy himself or herself that the conditions imposed by the environmental health officer and endorsed upon the certificate of fitness issued under regulation 5 have been complied with; and
- (b) take into consideration any objections lodged and any representations made in terms of regulation 4.

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

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

- (a) the certificate of fitness issued in terms of regulation 5 becomes invalid; or
- (b) the nature of the business for which a certificate of registration is issued changes in any way, whichever occurs first.

(5) The holder of a certificate of registration must before the date of expiry of that certificate apply to the registration officer for a renewal of that certificate in the manner provided in regulation 10.

Temporary certificates of fitness and certificate of registration

8. (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 an appropriate fee, apply for a temporary certificate of fitness and a temporary certificate of registration.

(2) Regulations 3, 4, 5, 6 and 7 apply with necessary change to an application referred to in subregulation (1).

(3) The environmental health officer or the registration officer, as the case may be, must endorse on the certificate of fitness or the certificate of registration, as the case may be, the period for which the certificate is valid.

Display of certificate of registration and certificate of fitness

9. (1) The certificate of fitness or a certificate of registration issued in respect of a business must be displayed in a conspicuous place at the place of business.

(2) Where a certificate of registration is issued to a person who goes from place to place or who goes to a particular place with goods, wares or merchandise for sale, such person must keep the certificate of registration and certificate of registration with him at all times while carrying out business and must show the certificate to an inspecting officer if so requested.

Application for renewal of certificate of fitness or certificate of registration

10. (1) An application for the renewal of the certificate of fitness or certificate of registration must be made on the form provided by the Council, to the registration officer or the environmental health officer, as the case may be, within thirty days before the date of expiry of the certificate concerned and be accompanied by the appropriate fee.

(2) Subject to subregulation (3) and (4), on receipt of an application for the renewal of a certificate of fitness or a certificate of registration, the registration officer or the environmental officer, as the case may be, must renew the certificate concerned and issue to the applicant a certificate of fitness or certificate of registration.

(3) For the purposes of renewing the certificate of fitness or the certificate of registration, the registration officer or the environmental health officer, as the case may be, may require additional information or documents and may refuse to renew the certificate concerned, if the applicant does not provide the information and documents required.

(4) Where the registration officer or the environmental health officer, as the case may be, receives an application for renewal of a certificate of fitness or a certificate of registration and the appropriate fees have been paid, he or she must, before renewing any such certificate -

- (a) ensure that all inspections, approvals and documents as may be required have been obtained;
- (b) make inquiries into all relevant matters in order to ascertain if the applicant is entitled to obtain a renewed certificate under the provisions of this regulation;
- (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 who has carried out inspections or investigations relative to the business or business premises concerned.

Duplicate certificates

11. (1) Where a certificate of fitness or a certificate of registration is lost or stolen or is damaged beyond legibility, the person to whom the 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 registration officer or the environmental health officer, as the case may be; and
- (b) apply to the registration officer or the environmental health officer, as the case may be, for a duplicate of such certificate of fitness or certificate of registration.

(2) An application referred to in subregulation (1) must be made on the form provided by the Council and be accompanied by the appropriate fee.

(3) The registration officer or the environmental health officer, as the case may be, must after considering the application referred to in subregulation (1) issue a duplicate certificate of fitness or a duplicate certificate of registration, whichever is applicable.

Application for approval to make structural alterations

12. (1) A holder of a certificate of fitness or a certificate of registration may not make structural alterations or cause structural alterations be made to the business premises for which a certificate of fitness or a certificate of registration has been issued, except with the prior written approval obtained from the environmental health officer.

(2) A holder of a certificate of fitness or a certificate of registration who intends make structural changes referred to in subregulation (1), must apply for approval to the environmental health officer in the manner provided for in this regulation.

(3) An application referred to in subregulation (2) must be made on the form provided by the Council and must be 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, as the case may be, to be undertaken or used in the intended alterations;
- (c) a certified copy of the certificate of fitness or the certificate of registration, as the case may be, of the business premises;
- (d) written representations, if any, in support of the application; and
- (e) such further particulars as the environmental health officer 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 the applicant written approval for the undertaking of the structural alterations applied for and must indicate such approval in the business register of the Council.

(5) An approval under this regulation is for purposes of ensuring compliance of the business premises with public health and safety requirements, and does not exempt the owner of the premises from obtaining other authorisation required by law.

Transferability of certificates

13. (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, except 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 and upon payment of the appropriate fee, apply to the environmental health officer or the registration officer, as the case may be, to have -

- (a) the certificate of fitness or certificate of registration transferred into the name of a another person; or
- (b) the name 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 registration officer or the environmental health officer, as the case may be, must cause changes to be made on the certificate of fitness or the certificate of registration, whichever is applicable, and must indicate changes in the business register of the Council.

Change of ownership of business

14. (1) Where the ownership of business in respect of which certificate of registration or certificate of fitness has been issued changes, the owner of the business must return the certificate of fitness and certificate of registration to the registration officer or the environmental health officer, as the case may be.

(2) The new owner of the business contemplated in subregulation (1) must make an application for a certificate of registration or a certificate of fitness in terms of these regulations.

Cessation of business

15. (1) If the holder of a certificate of fitness or 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 or the environmental health officer, as the case may be, of such cessation and must return the certificate of fitness or the certificate of registration to the registration officer or environmental health officer, as the case may be.

(2) The registration officer or the environmental health officer, as the case may be, must upon being informed of the cessation referred to in subregulation (1) and upon receipt of the certificate of registration and certificate of fitness, cancel that certificate of registration and must indicate such cancellation in the business register of the Council.

Inspections

16. (1) An inspecting officer may, in terms of section 91 of the Act, at any reasonable time, enter business premises for the purpose of inspecting the premises and any work or process carried out on the for purposes of ensuring compliance with these regulations.

(2) An inspecting officer must carry upon his or her person an identification card issued by the Council indicating that he or she is authorised to carry out inspections for the purpose of these regulations and must, when requested to do so, present for inspection that identification card to the holder of the certificate of fitness or the certificate of registration or to the person in charge of the premises, as the case may be.

(3) For the purpose of ensuring compliance with these regulations an inspecting officer 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) Where an inspecting officer removes any document for the purpose set out in subregulation (3)(b), he or she must issue out a receipt for the removed documents and must return the documents within a reasonable period.

(5) Where in the opinion of the inspecting officer a contravention of these regulations is being committed, he or she must report such contravention to the Council.

(6) If, by reason of the fact that a business premises is locked or the entrance to it is blocked or obstructed in any manner, it is not reasonably possible for the inspecting officer 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, as the case may be, 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.

Notice for rectifying non-compliance

17. If, after inspecting the premises or any work or process undertaken on such premises, the inspecting officer finds that the premises or the work or 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 inspecting officer must -

- (a) give notice to the holder of the certificate of fitness or the certificate of registration, as the case may be, 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.

Duties of holders of certificates

18. The holder of a certificate of fitness or a certificate of registration must -

- (a) maintain the premises in respect of which a certificate of fitness or a certificate of registration has been issued in a clean and sanitary condition and in good repair; and
- (b) observe and comply with, and ensure the observance and compliance with these regulations and laws relation to public health and safety and the provisions of the

town planning scheme or township condition applicable to the premises in respect of which certificate of fitness or a certificate of registration has been issued.

Cancellation or suspension of certificate of fitness or certificate of registration

19. (1) The Council may cancel or, for such period of time as it may determine, suspend a certificate of fitness or a certificate of registration if the holder of that certificate carries out or causes to be carried out any unapproved alterations or does anything or causes anything to be done on such business in contravention 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 for the action; 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 Council's proposed action.

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

Business registers

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

Notices

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

Exemption from regulations

22. The Council may exempt certain businesses, persons and class of persons from the provisions of these regulations subject to such conditions as it may consider necessary, but only if the exemption is not in conflict with any provision of the Act.

Appeals

23. (1) A person 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 referred to in subregulation (1) must -
 - (a) be lodged with the management committee within 30 days from the date of such decision;
 - (b) be in writing;
 - (c) be in the form approved by the management committee of the Council;
 - (d) indicate the grounds for appeal; and

- (e) 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 7 days from the date of the transmission, deliver or send a hard copy of the appeal together with any representations made in support of the application 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 provide the appellant with written reasons for the decision made under subregulation (4), and must inform the Council of its decision

Offences and penalties

24. (1) A person commits an offence, if that person -

- (a) contravenes or fails to comply with any of these regulations, notice or any condition imposed under it;
- (b) threatens, resists, hinders or obstructs a staff member of the Council in the execution of his or her duties or functions in terms of these regulations;
- (c) in an application for a certificate of fitness or a certificate of registration or a temporary certificate of fitness or a temporary certificate of registration provides incorrect or false information;
- (d) intentionally gives false or misleading information to a staff member carrying out his or her duties in terms of these regulations; or
- (e) alters or falsifies a certificate of fitness or a certificate of registration or a temporary certificate of fitness or a temporary certificate of registration.

(2) A person convicted of an offence in terms of subregulation (1) is liable to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
