



GOVERNMENT GAZETTE

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General Notice

MUNICIPAL COUNCIL OF WINDHOEK

No. 77 2006

NOISE CONTROL REGULATIONS

The Municipal Council of Windhoek, after consultation with the Minister of Regional and Local Government, Housing and Rural Development, under section 94(1) of the Local Authorities Act, 1992 (Act No. 23 of 1992), makes the regulations set out in the Schedule.

M.K. SHIKONGO
CHAIRPERSON OF THE COUNCIL

BY ORDER OF THE COUNCIL

SCHEDULE

Definitions

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

“broadcast” means to emit or amplify, by means of broadcasting equipment or otherwise, music, speech, messages of any kind or any other sound which causes, or is likely to cause, a noise nuisance, and “broadcasting” has a corresponding meaning;

“broadcasting equipment” means any equipment or device which is used for any electrical, electronic, mechanical, or inanimate or animate means of broadcasting;

“Council” means the Municipal Council of Windhoek;

“erf” means an erf as defined in section 1 of the Township and Division of Land Ordinance, 1963 (Ordinance No. 11 of 1963), and includes a farm portion;

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

“noise nuisance” means any sound which disturbs or impairs, or is likely to disturb or impair, the convenience, peace, safety or health of any person residing in the municipal area;

“owner”, in relation to an erf, includes the occupier or person in charge of the erf and, when used in relation to broadcasting equipment, includes the person broadcasting with such equipment or the person in charge of the broadcasting equipment;

“Scheme” means the Windhoek Town Planning Scheme prepared in terms of the Town Planning Ordinance, 1954 (Ordinance No. 18 of 1954); and

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

Prohibition of noise nuisance

2. A person may not, in the municipal area, on or from -

- (a) a street;
- (b) a public place;
- (c) any property belonging to the Council; or
- (d) any other erf,

broadcast or cause to be broadcasted music, speech, messages or any other sound which causes or is likely to cause a noise nuisance, unless that person has obtained the Council’s written authorisation to do so.

Application for authorisation to broadcast

3. (1) A person who wishes to broadcast music, speech, messages or any other sound on or from a street, public place, property or erf referred to in regulation 2 must, on a form determined by the Council, apply to the Council for authorisation to do so.

(2) An application made under subregulation (1) must, unless the Council otherwise determines, be accompanied by -

- (a) a plan of the site on or from which the broadcasting is to take place, and the plan must -

- (i) be drawn to a scale of not less than 1:500; and
- (ii) show the position of each surrounding building on the erf and neighbouring erven and streets that will be within audible range of the broadcasting,

but, when mobile broadcasting is to take place, the applicant does not have to submit a plan with the application but must provide the Council with a full description of the route along which broadcasting is to take place;

- (b) a description of the broadcasting equipment to be used; and
- (c) a fee determined by the Council under section 30(1)(u) of the Act.

(3) The completed application form, together with the documents, information and fee contemplated in subregulation (2), must be submitted to the Council.

(4) On receipt of a completed application form, documents, information and fee contemplated in subregulation (3), the Council may request the applicant to submit to the Council such further information as may be reasonable and necessary in respect of the application.

Consideration of application for authorisation to broadcast

4. (1) The Council must consider every application submitted to it in terms of regulation 3, and may, having regard to all accompanying documents and information -

- (a) grant the application without imposing any conditions;
- (b) refuse the application and in writing provide the applicant with reasons for the refusal; or
- (c) grant the application and impose conditions, including conditions which restrict the period of broadcasting and the sound levels of the broadcasting to take place.

(2) If an application is granted under subregulation (1)(a) or (c), the Council must issue to the applicant a written authorisation to broadcast music, speech, messages or any other sound, subject to the conditions, if any, imposed by the Council and specified in that authorisation.

Non-compliance with conditions or instructions

5. (1) If the person to whom the Council has granted authorisation to broadcast under regulation 4 fails to comply with a condition imposed by the Council in terms of that regulation, the Council may -

- (a) withdraw or amend the authorisation and in writing inform that person of the withdrawal or amendment; or
- (b) in writing, instruct that person or the owner of the broadcasting equipment to remove, silence or repair the broadcasting equipment or to comply with any condition which the Council may determine, within a period specified by the Council in the instruction.

(2) If the person to whom authorisation to broadcast has been granted under regulation 4 or the owner of the broadcasting equipment fails to comply with an instruction given or condition determined by the Council under subregulation (1)(b), the Council may impound and remove, or silence, the broadcasting equipment or take any other action to ensure compliance by that person or owner with that instruction or condition, and thereafter the Council may recover from that person or owner any costs incurred by the Council in connection with any action so taken.

(3) Where any broadcasting equipment has been impounded under subregulation (2), the Council must return the broadcasting equipment to its owner, if that owner or the person to whom authorisation to broadcast has been granted under regulation 4 -

- (a) gives the Council a written undertaking -
 - (i) not to resume broadcasting after the broadcasting equipment is so returned; or
 - (ii) to comply with the conditions imposed under these regulations by the Council; and
- (b) pays to the Council the costs, if any, contemplated in that subregulation.

(4) Any action taken by the Council under this regulation is in addition to any penalty imposed under regulation 11(1).

Withdrawal of authorisation

6. Notwithstanding regulation 5, the Council may, when it is reasonable and necessary -

- (a) withdraw an authorisation to broadcast granted under regulation 4, after giving such written notice as may be reasonable under the circumstances to the person to whom such authorisation has been granted;
- (b) amend or withdraw a condition imposed under regulation 4(1)(c), after giving such written notice as may be reasonable under the circumstances to the person to whom such authorisation has been granted; or
- (c) impose new conditions on an authorisation to broadcast granted under regulation 4, after giving such written notice as may be reasonable under the circumstances to the person to whom such authorisation has been granted.

Authorised broadcasting

7. (1) For the purpose of this regulation -

“emergency” means any occurrence involving actual or imminent danger to persons or property and which demands immediate action;

“maintenance equipment” means all engine powered or motor driven garden or maintenance tools intended for repetitive use in residential areas, including lawnmowers, saws, grinders, drills or similar devices;

“public emergency sound signal” means an electronic or mechanical siren or signal device attached to a building or emergency vehicle for the purpose of sounding an alarm; and

“safety and protective devices” means devices that are designed to be used for the prevention of exposure of any person or property to imminent danger, such as circuit breakers, protective fuses or alarms.

(2) Notwithstanding regulation 2, a person may at any place in the municipal area broadcast or cause to be broadcasted sound, if -

- (a) the sound is emitted as a result of, or relating to, an emergency;
- (b) the sound is emitted in the performance of public service by government agencies;
- (c) the sound is emitted by a public emergency sound signal attached to an authorised emergency vehicle: or
- (d) the sound is emitted -
 - (i) by safety and protective devices;
 - (ii) by engine powered or motor driven maintenance equipment or agricultural equipment:
 - (iii) by engine powered or motor driven equipment used for construction work, drilling work or demolition work in or near a residential area,
 - (iv) by a bell or similar devices from a building clock, church or school; or
 - (v) as a result of on site recreational and sporting activities, including athletic contest, carnivals, parades and public celebrations, authorised by the Council,

subject to the conditions that -

- (aa) the sound broadcasted is reasonable and necessary in the circumstances; and
- (bb) the sound is broadcasted at such times which are reasonable in the circumstances.

(3) The Council’s authorisation under these regulations is not required for the broadcasting of sound -

- (a) in an area -
 - (i) zoned “business”, “restricted business”, “office”, “garage”, “industrial”, “private open space” or “special”;
 - (ii) reserved for the government, transportation or communication,under the Scheme, subject to the condition that the music, speech, messages or other sound broadcasted is not audible on or from any erf zoned “residential” “general residential” or “institutional”; or
- (b) in the interior of a building or a motor vehicle, subject to the condition that the music, speech, messages or other sound broadcasted is not audible on or from a street, public place or an adjacent erf.

Conditions applicable to broadcasting equipment

8. (1) A person who, under these regulations, broadcasts music, speech messages or any other sound must ensure that any equipment involved in the broadcasting has been set up in a safe way and does not endanger persons or property.

(2) The owner of any erf on which broadcasting equipment is being used and the owner of such broadcasting equipment are both, jointly and severally, responsible for the installation, maintenance, controlling, silencing and removal of that equipment.

Other powers of Council

9. (1) Where broadcasting causes a noise nuisance to any person, the Council may, in accordance with section 93 of the Act, serve a written notice on the owner of the broadcasting equipment, if known, or on the owner or occupier of the erf or property on or from which the broadcasting is taking place (hereinafter referred to as the recipient).

(2) A notice referred to in subregulation (1) must -

- (a) inform the recipient about the nature of the complaint;
 - (b) instruct the recipient to remove, silence or repair the broadcasting equipment within a period specified in the notice; and
 - (c) inform the recipient that -
 - (i) if he or she fails to remove, silence or repair the broadcasting equipment within the period specified in the notice, the Council may impound and remove, or silence, that broadcasting equipment or take any other action to ensure compliance with the instruction given under paragraph (b), and may thereafter recover from the recipient any costs incurred by the Council in connection with any action so taken; and
 - (ii) if any broadcasting equipment is impounded as contemplated in subparagraph (i), that equipment will be returned to the owner of the equipment only if the recipient -
 - (aa) gives the Council a written undertaking -
 - (A) not to resume broadcasting after the broadcasting equipment is so returned; or
 - (B) to comply with the conditions imposed under these regulations by the Council; and
 - (bb) pays to the Council the costs, if any, contemplated in that subparagraph.
- (3) Where a person broadcasts sound -
- (a) in contravention of these regulations; or
 - (b) in contravention of any condition imposed under these regulations by the Council on the broadcasting of sound,

subregulations (1) and (2) apply with the necessary changes.

(4) Where a recipient fails to comply with an instruction given by the Council under subregulation (2)(b), regulation 5(2) and (3) apply with the necessary changes.

Reconsideration of Council's decision

10. (1) A person who is aggrieved by a decision of the Council made under these regulations may, within 14 days of receiving that decision, apply to the Council for reconsideration of that decision.

(2) An application made under subregulation (1) must be in writing and must specify the grounds on which the decision is to be reconsidered.

(3) On receipt of an application made under subregulation (1), the Council must reconsider its decision, and may -

- (a) confirm the decision;
- (b) rescind the decision; or
- (c) rescind the decision and impose conditions, including conditions relating to sound levels and time limits, which are necessary and reasonable in the circumstances.

(4) The Council must, within 30 days of receiving an application made under subregulation (1), notify the applicant in writing of the decision the Council has made under subregulation (3).

Offences and penalties

11. (1) A person who -

- (a) in the municipal area, broadcasts or causes to be broadcasted music, speech, messages or any other sound in contravention of these regulations;
- (b) contravenes or fails to comply with an instruction or requirement set out in a notice issued under these regulations and served on him or her in accordance with section 93 of the Act;
- (c) intentionally makes a false statement when making an application under these regulations;
- (d) contravenes or fails to comply with any provision of these regulations, other than a provision contemplated in paragraph (a), or a condition, including a condition relating to sound levels and time limits, imposed under these regulations; or
- (e) threatens, resists, hinders or obstructs any staff member of the Council in the performance of his or her functions under these regulations,

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

(2) In a prosecution for an offence under these regulations, unless evidence to the contrary is adduced -

- (a) the owner of land or a building from which the sound was broadcasted is deemed to have broadcasted that sound or caused it to be broadcasted;
- (b) the owner of broadcasting equipment from which the sound was broadcasted is deemed to have broadcasted that sound or caused it to be broadcasted; or
- (c) any person who was, either alone or jointly with any other person, responsible for organising, or was in control of, any meeting, function or event at which sound was broadcasted, is deemed to have broadcasted that sound in connection with that meeting, function or event or to have caused or allowed that broadcasting.

Transitional arrangements

12. A person who was broadcasting sound with the written authorisation of the Council before the commencement of these regulations or the owner of the erf or property on or from which the sound was broadcasted with the written authorisation of the Council before the commencement of these regulations must within 3 months after the commencement of these regulations -

- (a) cease the broadcasting, if the broadcasting is prohibited by these regulations; or
 - (b) in the case that the broadcasting does not comply with these regulations, change the broadcasting to comply with these regulations.
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