

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY ACTS, 2017

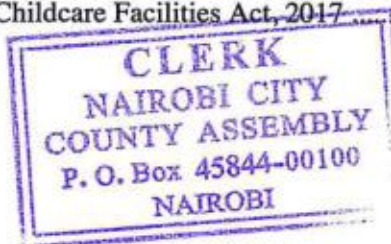
NAIROBI, 10th July, 2017

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**THE NAIROBI CITY COUNTY CHILD CARE FACILITIES ACT,
2017**

No. 7 of 2017

Date of Assent: 3rd July, 2017

Date of Commencement: 24th July, 2017

ARRANGEMENT OF SECTIONS

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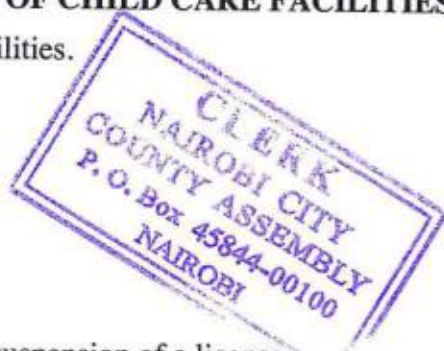
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**THE NAIROBI CITY COUNTY CHILD CARE
FACILITIES ACT, 2017**

AN ACT of the Nairobi City County Assembly to provide for the registration, licensing and assessment of child care facilities in the county and for connected purposes

ENACTED by the County Assembly of Nairobi City County, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nairobi City County Child Care Facilities Act, 2017 and shall come into operation upon publication in the gazette by the County Executive Committee Member.

Short title and
commencement

2. In this Act unless the context otherwise requires —

Interpretation

“applicant” means an individual legal associations, groups or organizations applying for a license under this Act;

“care giver” means an individual who takes care of the children while in the child care facility;

“child” means a child of tender years who for the purpose of this Act is a child below the age of 6;

“child care” means the temporary care and supervision of a child conducted in a location other than the provider’s permanent residence or separate from the provider’s living quarters and shall include welfare protection, supervision and training of a child;

“child care provider” is the person, their agents or representatives licensed or required to be licensed under this Act in order to establish, conduct or maintain a child care facility;

“County Education Board” means the Board established under section 17 of the Basic Education Act, 2013;

“Department” means the county government Sector responsible for matters relating to Education, Youth Affairs, Culture, Children and Social Services;

“Executive Committee Member” means the County Executive Committee Member responsible for matters relating to Education, Youth Affairs Culture, Children and Social Services;

“facility” means a designated place in which child care is offered at any time to more than five children all of whom are less than six years of age and who are not related to the child care provider; and

“quality assurance and standards officer” means a quality assurance and standards officer deployed under section 20 of this Act;

“parent” means a mother, father or guardian of a child and includes any person who is responsible under the law to maintain a child or is entitled to a child’s custody;

“protection” means the care provider shall take all necessary measures to ensure that the rights of the children under their care are not violated”;

“Related” refers to any relationship by marriage, blood or adoption between the provider and the children in care;

“working hours” means the hours between 8am and 5 pm, between Monday and Friday and shall exclude public holidays.

3. The object and purpose of this Act is to provide a legal framework for registration the protection of a child under the care of a child care facility in line with the Children’s Act, licensing and assessment of child care facilities therefore allowing parents of children who cannot take care of them because of work or other reasons to leave them in a safe, stimulating and child friendly learning environment and to—

Objects and
purpose

- (a) ensure that every applicant intending to establish or operate a childcare facility does so in a structured manner in line with this Act and any other written law and in doing so, must comply with the best interests of the child;
- (b) ensure that the minimum standards of hygiene, safety and care are maintained and are in line with the Occupational Safety and Health Act, 2007 and the Public health Act;
- (c) ensure that the prescribed basic minimum standards required to operate are met and that a sleeping bay and furniture are amongst them;
- (d) ensure that the child care facilities so established are not utilized for other purposes other than those approved; and
- (e) allow for periodic assessment of child care

facilities to ensure compliance with provisions of this Act.

PART II—FUNCTIONS AND POWERS OF THE DEPARTMENT

4. The Sector shall be responsible for performing the following functions among others—

Functions of the department

- (a) regulation and licensing of child care facilities within the county;
- (b) assessment of compliance and quality standards within the provisions of this Act
- (c) developing and implementation of policy on child care facilities;
- (d) developing standards to be observed for child care facilities;
- (e) receiving and investigating complaints on child care facilities;
- (f) implement policies and resolutions of the County Education Board regarding early childhood care;
- (g) ensuring that the curriculum developed for child care facilities by the County Education Board is implemented
- (h) submitting and annual report of all licensed child care facilities to the County Education Board and the county executive committee member;
- (i) to sensitize the general public on the provisions of this Act; and
- (j) carrying out any other activity relating to child care facilities that may be necessary or assigned by any national or county legislation in consultation with the County Education Board.

5. The Sector shall have all the necessary powers for execution of its functions under this Act including powers—

Powers of the department

- (a) of entry into any child care facility for purposes of ascertaining compliance with standards and conditions of license;
- (b) any officer exercising the power of entry under

paragraph (a) shall identify himself to the service provider and shall thereafter file a report with the Sector outlining his findings and recommendations thereon;

- (c) to issue, decline to issue and suspend license for establishment and running of a child care facility;
- (d) if a license is revoked or suspended under paragraph (b), the Sector shall issue a notice letter to the Service Provider outlining the reasons for the revocation; and
- (e) to demand corrective action from any person or body seeking to establish a child care facility.

PART III—REGISTRATION, LICENSING AND ASSESSMENT OF CHILD CARE FACILITIES

6. (1) A person shall maintain and operate a child care facility within the county, only if it is registered and licensed in accordance with this Act.

Licensing of child care facilities

(2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term of not more than four years.

7. (1) An application for a license under this Part shall be in writing to the Sector and in the prescribed form and shall be accompanied by the prescribed fee.

Application for a license

(2) The Sector may —

- (a) issue a license, in accordance with this Act;
- (b) refuse to issue the license on any ground which may appear to the Sector to be sufficient and inform the applicant, in writing, the reasons; or
- (c) cancel, vary or suspend any license if, in the finding of the Department, the license is found to have contravened the Act for the operation of the facility.

8. (1) Upon receipt of a completed application for a license, in the form provided by the Sector, a licensing investigation shall be made to ensure compliance with licensing rules, which investigation shall include an assessment of the entire premises of the child care facility.

Licensing process

(2) The applicant of a license shall submit to the

Sector the following—

- (a) a sketch or diagram of the facility showing the arrangements and measurements of the rooms including the location of separate toilets for male and female, hand washing facilities, doors and the windows;
- (b) a sketch or diagram of the outdoor play area and placement of equipment, indicating if the area is fenced and child friendly as per prescribed standards;
- (c) a schedule of proposed age appropriate daily activities for children;
- (d) a declaration to adhere to discipline and guidance guidelines inclusive of the Child Protection Policy;
- (e) the names and addresses of two referees who have knowledge of the applicant's character, experience and ability; and
- (f) evidence of compliance with county government requirements for any non-public water supply or sewage disposal system.
- (g) a clearance report from the Ethics and Anti-Corruption Commission, the County Public health Department, the Director of Criminal Investigation and evidence that a firefighting system and equipment has been put in place; and
- (h) provide working day contact details.

9. (1) The Sector shall issue licenses to applicants subject to such lawful conditions as the Sector may determine.

Issuance of licenses

(2) Every license shall specify the premises upon which the business specified in the license may be carried on.

(3) The Sector, after consultation with the Executive Committee Member, shall prescribe the fees payable for the issue of licenses under this Act.

(4) The Sector shall, at least sixty days before granting a license under this Act, give notice of the proposed grant in the County Gazette and in such other manner as the Sector may determine.

(5) The notice referred to in subsection (4) shall—

- (a) specify the name or other particulars of the person or class of persons to whom the license is to be granted;
- (b) state the purpose for the proposed license and indicate the date such license is proposed to be issued to the successful applicant; and
- (c) invite objections to the proposed grant of license and direct that such objections be lodged in writing with the Sector within twenty one days following the date of the notice.

(6) The Sector may after considering the objections if any, made under this section, grant the license applied or, grant it subject to such terms and conditions as may be specified in the license within fourteen days.

(7) The issuance of a license to an applicant under this Act shall not be withheld without reasonable cause.

(8) A license issued under this Act is not transferable.

(9) The Sector shall ensure that an updated register is kept and maintained for all licenses issued pursuant to this Act.

(10) The child care provider shall request a criminal record review of any person prior to their employment, from the Directorate of Criminal Investigations.

10. (1) An application for the renewal of a license under this Act shall be made to the Sector at least (30) days prior to expiration of the license.

Renewal of license

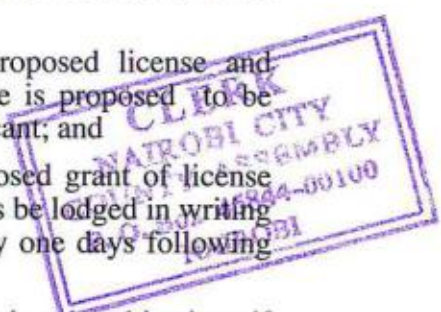
(2) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the Sector.

(3) Application for a license under this Act shall be done in a prescribed form.

(4) Application for renewal of license shall be accompanied by evidence of compliance with fire and safety inspection report from the relevant county Sector and a report from the quality assurance and standards officers in compliance with provisions of this Act.

11. (1) A license issued under this Act shall be subject to such conditions as the Sector may determine and as specified in the license.

Conditions of a license



(2) The Sector may in consultation with the County Education Board at any time during the validity of a license—

- (a) vary the conditions of the license; or
- (b) impose conditions or further conditions on the license.

(3) The Sector shall issue the applicant with written notice of 14 days to effect the variation or imposition in sub section 2.

12. (1) The Sector may revoke, alter or suspend a license issued under this Act if—

Revocation,
alteration or
suspension of a
license

- (a) an offence under this Act or in respect of the licensed activity under any other written law, has been committed by the license holder or any employee of the license holder; or
- (b) a condition of the license has been contravened or not complied with;
- (c) The Sector shall notify the person whose license has been altered, revoked or suspended in writing, within 7 days.

13. (1) The holder of a license which is revoked shall immediately surrender it to the Sector within 7 days and shall cease operations immediately.

Surrender of
license

14. (1) A person aggrieved by the decision of the Sector under this Part may appeal, within fourteen days from the date of being notified of the decision, in writing, to the Executive Committee Member—

Appeals by
applicant

- (a) the grant, refusal, renewal, variation or revocation of the license; or
- (b) the conditions imposed on the grant, renewal or variation, of the license,

(2) The Executive Committee Member shall consider the appeal and respond to the applicant within 14 days of the lodging of the appeal.

(3) A party aggrieved by the decision of the Executive Committee Member may appeal to the High Court within thirty days

15. Where a revocation order has been made under section 12 of this Act directing that a license be revoked,

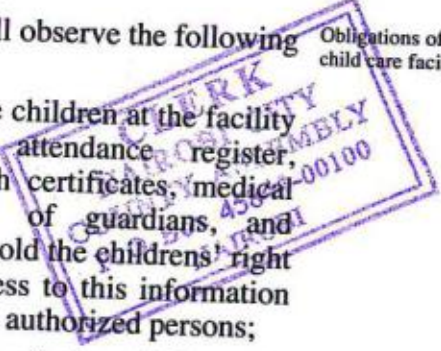
Publication of
order

the Sector shall inform the public of that order in such manner as it considers necessary under the circumstances.

16. The Department may issue the revocation, alteration, suspension orders or notices under this Part through the ward administrator or the local coordinator of the county government who shall issue a public notice in writing through the National language to the locality or ward where the childcare facility is located.

PART IV—MANAGEMENT OF CHILD CARE FACILITIES

17. (1) A child care facility shall observe the following obligations:

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- (a) keep accurate records of the children at the facility including the children attendance register, immunization records, birth certificates, medical records, an updated list of guardians, and emergency contacts and uphold the children's right to privacy by allowing access to this information only to parents, guardians or authorized persons;
 - (b) if providing transportation of the children the transport hours shall be 6am and 6pm, and the child care facility shall meet all motor vehicle laws including inspection, insurance, license and restraint requirements.
 - (c) ensure the health of children by sanitizing areas and providing sanitary materials and equipment;
 - (d) offer a balanced diet to the children at least every four hours in the prescribed portions; and
 - (e) outdoor play spaces shall be fenced and free from hazards while any outdoor equipment shall take into consideration the child's size.
 - (f) provide for the welfare and observe the human rights and ensure safety of the children, caregivers and anyone else at the facility.

(2) Childcare facilities shall take into account the special needs of children with disabilities and shall have special facilities or modifications to accommodate a child with a disability.

(3) In the management of the childcare facilities, the child's best interests shall be of paramount importance.

18. A child care facility shall not be licensed to operate under this Act unless— Staff of child care facility

- (a) it has teachers who are at least 18 years old and who have early child hood education training from a recognized institution;
- (b) all staff employed are 18 years and above, have a certificate of good conduct and a medical certificate evidencing soundness of mind; and
- (c) it has put in place firefighting equipment, first aid and other emergency equipment and non-prescription medicine as the county executive committee member may prescribe.

19. (1) Any caregiver who takes advantage of his or her position and induces or seduces a child in their care to have sexual intercourse with him or her or commits any other offence under the Sexual Offences Act 2014, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction to imprisonment for a term of not less than ten years. Sexual offences

(2) A person who has been convicted of a sexual offence and who fails to disclose such conviction when applying for employment in a child care facility is guilty of an offence and liable upon conviction to imprisonment for a term of not less than three years or to a fine of not less than fifty thousand shillings or to both.

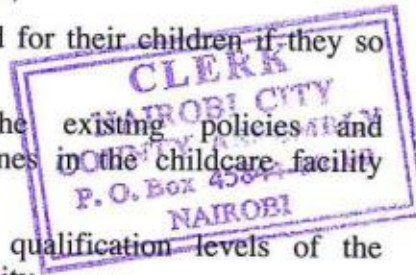
(3) A childcare provider shall confirm that a person seeking employment to any position in a childcare facility has not been charged or convicted of an offence under the Sexual Offences Act, 2014.

(4) A childcare provider who knowingly employs a convicted sexual offender in a childcare facility commits an offence and is liable upon conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings or to both.

20. A parent of a child in a child care facility shall have the following rights— Rights of parents

- (a) right to enter the child care facility at any time while their child is present therein;

- (b) right to see the license issued to the child care facility displayed at a conspicuous place in the precincts of the facility;
- (c) right to know how their child will be disciplined and be given a copy of the discipline policy upon enrolment of the child;
- (d) right to provide food for their children if they so wish;
- (e) right to know the existing policies and management guidelines in the childcare facility and;
- (f) right to know the qualification levels of the caregivers in the facility.



21. (1) The Executive Committee Member may upon request of the Sector, deploy a public officer working in the sector to assess a childcare facility.

Appointment of inspectors

(2) Despite subsection (1), the County Public Service Board shall ensure that the quality assurance and standards officer deployed shall be suitably qualified to carry out the inspection.

22. (1) An quality assurance and standards officer deployed under section 20 shall—

Assessment of child care facilities

- (a) assess child care facilities in respect of which an application for a license is made;
- (b) make quarterly inspections of licensed child care facilities;
- (c) make recommendations to the Sector whether or not the premises proposed as a child care facility meets the standards to be issued with a license; and
- (d) for licensed child care facilities, make recommendation on whether or not they qualify to have the license renewed or revoked;
- (e) assess the facility to ensure implementation and adherence with the provisions of this Act; and
- (f) file a report with the Sector detailing his observations, findings and recommendations from the visit. The report shall be forwarded to

the Executive Committee Member who shall give his views in support of the recommendations made or he shall make his own recommendations.

23. (1) A quality assurance and standards officer may with or without notice and without a search warrant enter and carry out an investigation in respect of any premises where the Sector has reasonable ground to believe that a facility is operated in contravention of this Act.

Power to enter
child care facility

(2) Every quality assurance and standards officer in performance of his duties shall, at the time of assessment, possess the appropriate written authorization, and evidence of identity, and shall produce them to the person in charge of the childcare facility concerned or, as the case may be, the person having possession or control of the books, records, or accounts concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the person in charge

PART V— MISCELLANEOUS PROVISIONS

24. No action or omission by a public officer or any person carrying out a function under this Act shall, if the act was done in good faith for the purpose of carrying out the provision of this Act or any other law, subject the person to any liability, action, claim or demand.

Protection from
personal liability

25. A person who contravenes the provisions of this Act for which no penalty is specified or fails to comply with any order or direction given under this Act, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment to a term not exceeding one year.

General penalty

26. (1) Subject to the provisions of this Act, the Executive Committee Member, in consultation with the County Education Board, shall make regulations—

Regulations

- (a) for prescribing anything that may be prescribed under this Act; or
- (b) generally for the better carrying out of the provisions of this Act

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) minimum size of the child care facility and the number of children each facility may hold;
- (b) standards of hygiene and sanitation to be observed by each child care facility;
- (c) procedure for reporting of complaints against a child care facility by an aggrieved parent or member of the public and action to be taken by the Sector upon receiving such complaint;
- (d) Procedure for an appeal by applicants for license or owners of a license to the Executive Committee Member;
- (e) fees payable under part 11 of this Act;
- (f) nutritional portions for food provision;
- (g) qualifications of caregivers of children under this Act;
- (h) guidelines on maintaining an appropriate staff to child ratio depending on age;
- (i) parameters in relation to assessment of facilities prior to licensing;
- (j) other matters pertaining to licensing including the grounds for refusal to grant a license and conditions under which a license that may be varied or imposed;
- (k) minimum standards for the health and safety of children and for a satisfactory environment for childcare.

