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NAIROBI CITY COUNTY BILLS, 2018

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THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018

A Bill for

AN ACT of the County Assembly of Nairobi City to provide for regulation of trade and for connected purposes

ENACTED by the County Assembly of Nairobi City as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the Nairobi City County Licensing Act, 2018. Short title.

2. In this Act unless the context otherwise requires— Interpretation.

"authorized officer" means an officer appointed under section 22;

"business" includes a profession, occupation clear definition of operating times or trade, include the businesses that are exempted

"Director of Trade Licensing" means an officer appointed under section 5

"County Executive Committee member" means the County Executive Committee Member for the time being responsible for matters relating to trade;

"Directorate" means the Directorate of Trade Licensing established under section 4;

"trade license" means a licence granted under this Act to conduct business within the County;

"trade" means any business in the course of which any goods, wares, merchandise or provisions are sold and for which a licence under this Act is required, in any trading premises, whether by retail or wholesale;

"sector" means the sector responsible for Trade at the time.

3. This Act shall apply to all persons who trade or have businesses in Nairobi. Application.

PART II—ADMINISTRATION OF TRADE LICENSES

Establishment of the Directorate of Trade Licensing.

4. (1) There is established a Directorate of Trade Licensing within the County sector responsible for matters relating to trade.

(2) The Directorate shall be responsible for—

(a) issuing trade licenses;

(b) advising the County Executive Committee Member on classification of businesses and trades;

(c) advising the County Executive Committee Member on matters affecting development of county trading relationships;

(d) ensuring compliance with the provisions of this Act;

(e) carrying out inspections for the purpose of this Act;

(f) advising the County Executive Committee Member on appropriate policy on trade matters and trade licensing;

(g) monitoring the implementation of the provisions this Act;

(h) performing such other functions as may be assigned by the Executive Member.

Director of Trade Licensing.

5. (1) There shall be a Director of Trade Licensing who shall be appointed by the County Public Service Board in consultation with the County Executive Committee Member.

(2) The Director of Trade Licensing shall be the head of the Directorate

Functions of the Director of Trade Licensing.

6. The Director of Trade Licensing shall have power to—

(a) Approve or reject applications for licenses under this Act;

(b) Issue licenses under this Act and any other legislation applicable;

(c) suspend licenses issued under this Act;

(d) cancel licenses issued under this Act.

7. (1) A person who intends to operate any business or trade within the County shall obtain a licence. Requirement for a Licence.

(2) A person who operates a trade or business without a trade licence commits an offence and shall be liable upon conviction—

(a) in the case of a registered business, to a fine not exceeding Kenya Shillings one hundred thousand or 6 months imprisonment or both;

(b) in the case of an individual to a fine not exceeding Kenya Shillings Fifty Thousand.

8. (1) An application for grant of a trade licence shall be in the prescribed form and shall be made to Director of Trade Licensing.(2) An application shall contain such information and be accompanied by such documents as may be prescribed. Application for Licence.

(3) An applicant for a licence shall pay such fees as shall be prescribed.

(4) The Director of Trade Licensing may require an applicant to provide additional information related to compliance with laws relating to standards, manufacturing, distribution or sale of certain products.

9. (1) The Director of Trade Licensing shall— Electronic Application.

(a) Monitor and consider all electronic applications.

(b) Keep and maintain a database of all license holders.

10. (1) The Director of Trade Licensing shall consider an application for a trade licence within fourteen days. Consideration of an Application.

(2) An application may be rejected if—

(a) the trade or business is not lawful;

(b) the premises on which it is proposed to be established is unfit for the purpose;

(c) any other matter as may be prescribed.

11. (1) Where the Director of Trade Licensing is satisfied that an applicant meets the requirements set out under section 8, the officer shall grant the trade licence. Grant of Licence.

(2) The Director of Trade Licensing may impose such conditions, which shall be endorsed on the licence as may be necessary for the trade.

(3) The Director of Trade Licensing may reject an application which does not meet the requirements of this Act.

(4) The Director of Trade Licensing shall communicate, in writing, a decision to grant or reject an application within fourteen days.

(5) Where the decision of the Director of Trade Licensing is to reject an application, the communication shall state the reasons.

Appeal.

12. (1) A person who is aggrieved by the decision of the Director of Trade Licensing may make a written appeal to the County Executive Committee Member within fourteen days in a prescribed form.

(2) The County Executive Committee Member shall make and communicate his or her decision, and make such orders and give directions to the Director of Trade Licensing as may be necessary to give effect to his or her decision.

(3) An appeal against the decision of the County Executive Committee Member shall lie in a Court of competent jurisdiction and shall be made within twenty-one days.

Licence to apply to one trade.

13. A trade licence granted under this Act shall apply to one business or trade.

Renewal of Licence.

14. (1) A holder of a trade licence may before the expiry of the licence or at a prescribed date, apply for renewal of the licence in the prescribed form and pay the prescribed renewal fees.

(2) The Director of Trade Licensing shall only grant an application for renewal of a trade license if the applicant;

(a) has complied with all the laws relating to health, hygiene and safety applicable to the trade license;

(b) has paid the license fees in arrears for the previous and current year in full to the collector of Revenue.

Validity of a Licence.

15. (1) The licence fees payable under this Act shall be as prescribed and shall be payable annually, quarterly or half yearly.

(2) Notwithstanding subsection (1), the Director of Trade Licensing may classify a license to be valid for one day, one week, one month, six months or one year.

(3) An annual license shall be valid for a period of twelve (12) months from the date of issue.

(4) Every licence shall be authenticated by the Director of Trade Licensing or such person as may be designated by the Director of Trade Licensing.

Cancellation or suspension of a Licence.

16. (1) The Director of licensing shall suspend or cancel a licence where—

(a) the conduct of the business is detrimental to the health and safety of persons;

(b) the holder of the licence has breached a condition in the licence; or

(c) the licensee fails to comply with the requirements of this Act.

(2) Where a licence is suspended, the Director of Trade Licensing shall issue a notice to the holder of the licence stating the reasons for the suspension, the conditions for reinstatement and the period under which the licence shall remain suspended.

(3) Where a licence is cancelled, the Director of Trade Licensing shall issue a notice to the holder of the licence stating the reasons for the cancellation.

(3) Where a licence is suspended or cancelled, the Director of Trade Licensing or a designated officer shall confiscate the licence and the holder of the licence shall cease to conduct the business.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand.

Reinstatement of a Licence.

17. The Director of Trade Licensing may reinstate a trade licence where the holder complies with the conditions set out in this Act.

Transfer of a Licence.

18. (1) A trade licence holder who sells, leases or otherwise disposes off the business or trade specified in the licence, shall apply in writing to the Director of Trade Licensing for transfer of the licence.

(2) The transfer of a licence shall not be valid, unless the Director of Trade Licensing approves the transfer.

Display of Licence.

19. (1) The holder of a trade licence shall cause it to be displayed in a conspicuous place within the business premises.

(2) The holder of a trade licence shall produce it whenever an authorised officer requires him or her.

(3) A licence holder who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding Kenya Shillings Ten Thousand.

Licence defaced or lost.

20. (1) The holder of a licence, which is lost or defaced, may apply to the Director of Trade Licensing for issuance of a duplicate.

(2) The Director of Trade Licensing may require such fees, as may be prescribed, to be paid before issuing a duplicate licence.

Register.

21. (1) The Director of Trade Licensing shall maintain a register of all licenses issued under this Act.

(2) The Register shall contain such information as may be prescribed and which is not confidential.

(3) The Register shall be available for inspection by the public during official working hours.

PART III—ENFORCEMENT

Authorised Officers.

22. (1) The County Executive Committee Member shall designate such number of officers within the Directorate to be authorized officers for the purpose of this Act.

(3) All authorised officers designated as such in other legislation, shall be authorised officers for the purposes of this Act.

(4) An authorized officer shall be responsible for ensuring compliance with the provisions of this Act.

Inspection.

23. An authorized officer shall have the power to enter any proposed business premises for which an application under this Act has been made and to enter any premises for which a license has already been issued under this Act for the purpose of carrying out inspections.

Powers of Authorized Officers.

24. (1) In carrying out inspection under this Act, an authorized officer shall have power to—

(a) enter any premises licensed under this Act;

(b) carry out inspection of the business premises or documentation;

(c) require a person to produce such document as may be necessary for inspection.

(2) An authorized officer shall produce an identity card and certificate issued under section 22 for inspection by the licence holder.

PART IV – GENERAL PROVISIONS

Offences and Penalties.

25. (1) A person who willfully refuses to give information or to produce any document required to be produced or gives false or misleading information, commits an offence and is liable on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months, or to both.

(2) A person who forges or alters a licence without authority commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand.

(3) A person who fails or neglects to renew a licence as required and continues to operate the business or trade commits an offence and shall be liable upon conviction to a fine not exceeding fifty thousand.

General penalty.

26. A person who commits an offence, for which there is no expresses penalty, shall be liable on conviction to a fine not exceeding Kenya Shilling thirty thousand.

Regulations.

27. (1) The County Executive Committee Member may make regulations for the better carrying into effect of this Act.

(2) Without prejudice to the generality of this section, the Regulations may prescribe—

(a) application forms;

(b) procedure for application of licence;

(c) procedure for inspections;

(d) procedure for cancellation of trade licenses;

(e) trade licence fees;

(f) publication of notices and documents;

(g) procedure and format for electronic applications.

Saving Provision.

28. A trade licence or business permit which was force or valid prior to the enactment of this Act, shall continue to be valid as if it was issued under this Act, and shall exist on such terms and conditions as may be set under this Act.

MEMORANDUM OF OBJECTS AND REASONS

This Bill is intended to provide for regulation of trade in the County of Nairobi. It is intended to give a legal framework for application and issuance of trade licenses.

The structure of the Bill is as follow—

Part I (clauses 1, 2 and 3) contains preliminary provisions.

Part II (Clauses 4-21) sets out provisions on the administration of trade licenses. In this part there is established the Directorate of Trade licensing. It also provides for the appointment of the Director of Trade Licensing. The procedure for application, renewal, suspension or cancellation of a trade license is also provided for in this Part.

Part III (clauses 22-24) provides for enforcement. Section 22 provides for the appointment of authorized officers. Section 23 contains the power to inspect a business.

Part IV (clauses 25-28) contains general provisions including the power to make regulations under section 27 and saving provision under section 28.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

ROBERT MBATIA,
Member of County Assembly.