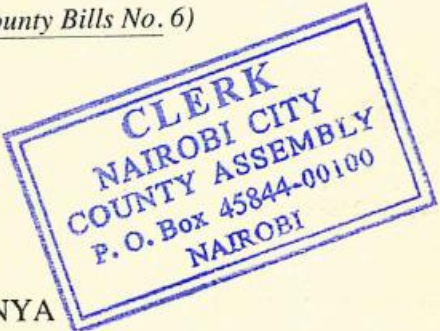


SPECIAL ISSUE

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REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY BILLS, 2017



NAIROBI, 31st March, 2017

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**THE NAIROBI CITY COUNTY CHILDCARE
FACILITIES BILL, 2017**

A Bill for

AN ACT of the Nairobi City County Assembly to provide for the registration, licensing and inspection 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 Executive Committee Member.

Short title and commencement

2. In this Act unless the context otherwise requires—

Interpretation

“applicant” means an individual applying for a license under this Act;

“child” means a person under the age of six years;

“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 may include protection, supervision and training of a child;

Child care provider is the person (s) is the person 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 department responsible for matters relating to Education.

“Executive Committee Member” means the county Executive Committee Member responsible for matters relating to Education, Youth Affairs and sports.

“facility” means any 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

“Inspector” means an inspector deployed under section 14 of this Act.

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

3. The object and purpose of this Act is to provide a legal framework for registration, licensing and inspection of child care facilities allowing parents and guardians of children who cannot take care of them because of work or other reasons to leave them in a safe, stimulating and learning environment and to—

Objects and purpose of the Act

- (a) ensure that anybody or person intending to establish a child care facility does so in a structured manner and within a known legal framework;
- (b) Ensure that there are certain basic minimum standards of hygiene and care maintained and given at child care facilities so established;
- (c) Ensure that the child care facilities so established are not utilized for other purposes other than those approved; and
- (d) Allow for periodic inspection of child care facilities to ensure compliance with provisions of this Act.

PART II—FUNCTIONS AND POWERS OF THE DEPARTMENT

4. The department 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) Developing and implementation of policy on child care facilities;
- (c) Developing standards to be observed for child care facilities;
- (d) Receiving and investigating complaints on child care facilities;
- (e) Implement policies and resolutions of the County

Education Board regarding basic education of children and

- (f) Liaising with the County Education Board on the curriculum to be offered in child care facilities;
- (g) Submitting an annual report of all licensed child care facilities to the County Education Board; and
- (h) Carrying out any other activity relating to child care facilities that may be necessary or assigned by any national or county legislation.

5. The department 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) to issue, refuse to issue and suspend license for establishment and running of a child care facility; and
- (c) to demand corrective action from any person or body seeking to establish a child care facility.

PART III—REGISTRATION, LICENSING AND INSPECTION 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 Department and in the prescribed form and shall be accompanied by the prescribed fee.

Application for a license

(2) The Department may —

- (a) issue a license, in accordance with this Act;
- (b) refuse to issue the license on any ground which may appear to the Department 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 department, a licensing investigation shall be made to ensure compliance with licensing rules, which investigation shall include an inspection of the entire premises of the child care facility.

Licensing process

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

- (a) A sketch or diagram of the home showing the arrangement of the rooms including location of the toilet, hand washing facilities and the doors;
- (b) A sketch or diagram of the outdoor play area and placement of equipment, indicating if the area is fenced;
- (c) A schedule of proposed daily activities for children;
- (d) A statement of discipline and guidance policies;
- (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.

9. (1) The Department shall issue licenses to applicants subject to such lawful conditions as the Department 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 Department, after consultation with the Executive Committee Member, shall prescribe the fees payable for the issue of licenses under this Act.

(4) The Department shall, at least thirty 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 Department 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 Department within fourteen days following the date of the notice.

(6) The Department 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.

(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 Department 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 within ten (10) days following 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 Department 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 Department.

(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 department and a report from the inspectors who on compliance with provisions of this Act.

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

Conditions of a license

(2) The Department may 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.

12. (1) The Department 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.

13. (1) The holder of a license which is revoked shall immediately surrender it to the Department.

Surrender of license

(2) A license holder may, at any time, surrender the license to the Department and the license shall cease to have effect forthwith.

14. (1) An applicant for or the holder of a license who is aggrieved by a decision of the Department, may appeal to the Executive Committee Member on—

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.

15. Where a revocation order has been made under

Publication of order

section 11 of this Act directing that a license be revoked, the Department shall inform the public of that order in such manner as it considers necessary under the circumstances.

PART IV – MANAGEMENT OF CHILD CARE FACILITIES

16. A child care facility shall observe the following obligations:

Obligations of the
child care facility

- (a) Keep accurate records of the children at the facility including the children attendance register, immunization records and emergency phone numbers;
- (b) If providing transportation of the children, 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 an equipment used by the children;
- (d) Offer food to the children at least once every four hours in portions large enough to satisfy their hunger; and
- (e) Outdoor play space must be fenced and the outdoor equipment be child size and free of hazards that could harm children.

17. 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 at least 18 years old and any staff who is below 18 years of age is working under close supervision of a staff above 21 years of age; and
- (c) At least one member of staff in the premises has first aid training from a recognized institution.

18. A parent of a child in a child care facility shall have the following rights accruing to them—

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; and
- (c) Right to know how their child will be disciplined and be given a copy of the discipline policy upon enrolment of the child

19. (1) The County Public Service Board may upon the request of the Department, deploy a public officer working in the county to inspect a child care facility operating under this Act.

Appointment of inspectors

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

20. (1) An inspector deployed under section 15 shall—

Inspection of child care facilities

- (a) inspect child care facilities in respect of which an application for a license is made;
- (b) make periodic inspections of licensed child care facilities;
- (c) Make recommendations to the department 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.

21. (1) An inspector may without a search warrant enter and carry out an investigation in respect of any premises where the Department has reasonable ground to believe that a facility is operated in contravention of this Act.

Power to enter child care facility

(2) Despite subsection (1), the inspector shall produce a valid identification document before entering any premises and shall conduct himself in a civil manner.

PART V— MISCELLANEOUS PROVISIONS

22. No action or omission by a public officer or

Protection from personal liability

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.

23. A person commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand or imprisonment to a term not exceeding one year if he—

Offences

- (a) operates a facility without a valid license;
- (b) fails to observe any terms and conditions imposed on the issue of a license; or
- (c) contravenes an order of the Department under section 10 of this Act.

24. (1) The Executive Committee Member may make regulations for the better carrying out into effect any of the provisions of this Act.

Regulations

(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 Department upon receiving such complaint.
- (d) Procedure for an appeal by applicants for license or owners of a license to the Executive Committee Member.

MEMORANDUM OF REASONS AND OBJECTS

The principal object and purpose of this Act is to provide a legal framework for registration, licensing and inspection of child care facilities to protect the well-being of children while away from their parents allowing parents and guardians of children who cannot take care of them because of work or other reasons to leave them in a safe, stimulating and learning environment.

The Act vests in the department responsible for education the duty of licensing child care facilities and ensuring that they conduct their business in a safe environment and maintain the premises in a state that is safe for children.

The Act requires persons intending to set up child care facilities to meet some minimum standards with regard to status and hygiene of premises, number of staff to children ratio and qualification of staff at the facility among others.

The Act further imposes obligations on the child care facilities to keep and maintain up to date records of children at the facility specifically, immunization records, emergency contacts, daily attendance registers, to provide healthy food and in adequate proportions to the children, to sanitize the playing areas and facilities and ensure any playing equipment is of right size and free of any hazards.

The Act also grants parents of children at the facilities certain rights among them right to know the kind of punishment the children may be subjected to at the facility, right to enter the premises any time while their children are there and right to be shown the license of the premises.

This Act shall not result in expenditure of public funds.

NGARUIYA CHEGE,
Member of the County Assembly.

