

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

SECOND ASSEMBLY-THIRD SESSION

NBI CA. PLC. 2019 / (036)

10th April, 2019

PAPER LAID

Pursuant to Standing Order 191 (6) I beg to lay the following Paper on the Table of the Assembly, today Wednesday 10th April, 2019.

THE REPORT OF THE SECTORAL COMMITTEE ON TRADE, TOURISM AND COOPERATIVES ON CONSIDERATION OF THE NAIROBI CITY COUTY TRADE LICENSING BILL, 2019.

(Chairperson, Sectoral Committee on Trade, Tourism and Cooperatives)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

Snr. C.A Ld P
For consideration by ABC.
AAOAGJ D.L.C.
10/4/19

THE NAIROBI CITY COUNTY GOVERNMENT



THE NAIROBI CITY COUNTY ASSEMBLY

SECOND ASSEMBLY – THIRD SESSION

Paper laid by Hon,
Thrd - Chairperson
Trade committee or
Wed 10/4/2019
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10/4/19.

THE REPORT OF THE SECTORAL COMMITTEE ON TRADE, TOURISM AND CO-OPERATIVES

ON
THE CONSIDERATION OF THE NAIROBI CITY COUNTY TRADE LICENSING BILL,
2018 PURSUANT TO STANDING ORDER 131

Clerk's Chambers,
CITY HALL,
NAIROBI.

Edition: April, 2019

10. Hon. Benson Mwangi Macharia, MCA
11. Hon. Millicent Wambui Mugadi, MCA
12. Hon. Wilfred Oluoch Odalo, MCA
13. Hon. Redson Otieno Onyango, MCA
14. Hon. Doris Ngoyo Kanario, MCA
15. Hon. Jacinta Wanjiru, MCA
16. Hon. Mary Njuguna Njambi, MCA
17. Hon. Cecilia Achieng Ayot, MCA
18. Hon. Eve Malenya, MCA
19. Hon. Jane Muasya, MCA

Hon. Speaker,

The County Assembly Committees are extensions of the Assembly established under the County Assembly Standing Orders and in accordance with Section 14 of the County Governments Act, 2012. The Committees are supposed to perform functions that the Assembly is not well fitted to consider in plenary.

The Committee exercise its oversight role on the work and administration of the Commerce, Tourism and Cooperatives Sector.

Pursuant to the provisions of Standing Order 203 (6) (b), (d) and (e), the Sectoral Committee on Trade, Tourism and Cooperatives is supposed to study the programme of the Commerce, Tourism and Cooperatives Sector and the effectiveness of the implementation; study, assess, and analyze the success of the Sector as measured by the results obtained; and inquire into all matters relating to the Sector.

In accordance with the Third Schedule of the Standing Orders, the Sectoral Committee on Trade, Tourism and Cooperatives is mandated to consider all matters relating to: - “*trade development and regulation, including markets, trade licenses (excluding regulation of professions), fair trading practices, local tourism and cooperative societies, Betting and Casinos and other forms of gambling*”.

1.3. Executive Summary

Hon. Speaker,

Pursuant to Section 23 of the County Governments Act, 2012, the Nairobi City County Trade Licensing Bill, 2018 was published in the special issue of the Nairobi City County Gazette Supplement No. 14 on 16th November, 2018. The Nairobi City County Trade Licensing Bill, 2018 was read a First Time on Tuesday, 4th December 2018. On Tuesday, 4th December, 2018, the Bill sponsored by Hon. Robert Mbatia, MCA, was read a First Time and thereafter committed to the Sectoral Committee Trade, Tourism and Cooperatives for scrutiny, public participation and reporting to the Assembly pursuant to Standing Order 131.

Article 196(b) of the Constitution requires the County Assemblies to facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees.

Hon. Speaker,

Upon committal of the said Bill, the Committee placed a notice in the local dailies on Thursday, 10th January, 2019 calling for representations and proposals for amendments from the public pursuant to Article 196(b) of the Constitution of Kenya, 2010 and the Nairobi City County Standing Orders 131 (3) which require public participation in the legislative and other business of the County Assembly and its Committees. The Committee also identified the following key stakeholders to the Bill and invited them to submit comments, reviews and propose amendments to the Bill;

- a) The State department of Trade;
- b) The State department of Industrialization;
- c) Kenya Association of Manufacturers;
- d) Micro and Small Enterprises Authority;
- e) Export promotion Council;
- f) Kenya National Hawkers Association (KENAHA);
- g) Jua Kali Association of Kenya;
- h) Kenya Private Sector Alliance (KEPSA);
- i) The Institute for Social Accountability (TISA);
- j) Kenya Investment Authority;
- k) Kenya Law Reform Commission;

- i) Kenya National Chamber of Commerce and Industry – Nairobi
- m) Association of Gaming Operators
- n) Pool table Operators;
- o) United Business Association;
- p) Markets Committee;
- q) Commerce Federation of Kenya (COFEK);
- r) Law Society of Kenya; and
- s) The Nairobi City County Sector of Commerce, Tourism and Cooperatives

Hon. Speaker,

The Committee held a public participation forum on Wednesday, 13th March, 2019 at Charter Hall, City Building. Following the notice and the public participation, the Committee received written memoranda from the following stakeholders: -

- i. The Nairobi City County Sector of Commerce, Tourism and Cooperatives;
- ii. Micro and Small Enterprises Authority;
- iii. Law Society of Kenya;
- iv. Kenya Private Sector Alliance (KEPSA);
- v. The Institute for Social Accountability (TISA);
- vi. Kenya Law Reform Commission;
- vii. Kenya National Chamber of Commerce and Industry – Nairobi

Hon. Speaker,

The Committee held a total of six meetings and a retreat (held from 21st to 24th March, 2019 at Windsor Golf Hotel, Kiambu County) to consider the Bill and all representations received from stakeholders. All stakeholders while supporting the Bill in principle, proposed amendments on some of the provisions of the proposed law.

Hon. Speaker,

The Committee finds this Bill to be a right step towards streamlining the handling of trade within the County. The Bill seeks to provide for regulation of trade in the County, provide a legal framework for application and issuance of trade licenses in the County.

Hon. Speaker,

The Committee considered the submissions by stakeholders as provided for in the Standing Order and had proposed amendment to the Bill in Long Title, Clauses 2,3,4,5,6,7,8,9,10,12,14, 15,16, 20,21,22, 24,25, 27 and 27. The Committee further proposed new clauses, sub-clauses, new paragraphs and new schedule to be included in the proposed law. Some of the amendments are editorial while others are aimed at ensuring that the Bill is consistent with the Constitution and also cater for the concerns of the stakeholders.

1.4. Acknowledgement

Hon. Speaker, I wish to acknowledge with gratitude the offices of the Speaker and the Clerk of the County Assembly for the logistical and technical support accorded to the members of the Committee to enable them consider the Nairobi City County Trade Licensing Bill, 2018. Appreciation is also extended to the sponsor of the Bill and the stakeholders for their immense contribution.

I am grateful for the Members of the Committee whose support and commitment enabled the Committee to accomplish this task. Special thanks to the Secretariat for their support at all times.

On behalf of the Committee and pursuant to Standing Order 131 (3), I now have the honour and pleasure to present this Report on the consideration of the Nairobi City County Trade Licensing Bill, 2018.

Thank You.

SIGNED

HON. CHARLES THUO WAKARINDI, MCA

(CHAIRMAN)

DATE.....

**MEMBERS' ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE NAIROBI
CITY COUNTY TRADE LICENSING BILL, 2018**

1. Hon. Charles Thuo Wakarindi, MCA
2. Hon. Jeremiah Karani Themendu, MCA
3. Hon. Samuel Ng'ang'a Mwangi, MCA
4. Hon. Benson Mwangi Macharia, MCA
5. Hon. Naftaly Wagura Mathenge, MCA
6. Hon. Jacinta Wanjiru, MCA
7. Hon. Jayendra Virchand Malde, MCA
8. Hon. Mary Njuguna Njambi, MCA
9. Hon. Paul Ndungu Irungu, MCA
10. Hon. Millicent Wambui Mugadi, MCA
11. Hon. ~~Jugmoh Karan Themendu~~, MCA
12. Hon. Doris Ngoyo Kanario, MCA
13. Hon. Wilfred Oluoch Odalo, MCA
14. Hon. Cecilia Achieng Ayot, MCA
15. Hon. Redson Otieno Onyango, MCA
16. Hon. Jane Muasya, MCA
17. Hon. Eve Malenya, MCA
18. Hon. Wilson Ochola Ongele, MCA
19. Hon. Maurice Ochieng Onyango, MCA

~~C. T. W.~~

~~Karan~~
~~Samuel~~

~~Mathenge~~

~~Odalo~~

~~P. N~~

~~Wambui~~

~~C. A.~~

~~Redson~~
~~J. M.~~

~~Wilson~~
~~Ochieng~~

2.0. INTRODUCTION

Pursuant to Article 185 of the Constitution of Kenya, 2010, the legislative authority of a County is vested and exercised and the County Assembly. The County Assembly is to make laws that are necessary for effective performance of the functions of the County Government as provided for in Part Two of the Fourth Schedule to the Constitution.

Pursuant to Section 23 of the County Governments Act, 2012, the Nairobi City County Trade Licensing Bill, 2018 was published in the special issue of the Nairobi City County Gazette Supplement No. 14 on 16th November, 2018. On Tuesday, 4th December, 2018, the Bill sponsored by Hon. Robert Mbatia, MCA, was read a First Time and thereafter committed to the Sectoral Committee Trade, Tourism and Cooperatives for scrutiny, public participation and reporting to the Assembly pursuant to Standing Order 131.

Article 196(b) of the Constitution requires the County Assemblies to facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees.

3.0. CONSIDERATION OF THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018

While examining the Bill, the Committee noted the following;

3.1. Objective of the Bill

The principle objective of the Bill is to provide a legal framework for application, issuance and enforcement of trade licensing in the County. The Bill requires that businesses to be licensed in accordance with the proposed law. It also establishes a Directorate of Trade Licensing with its responsibilities on issuance of trade licensing.

The Committee observed that paragraph 7 of Part two of the Fourth Schedule to the Constitution of Kenya, 2010 gives County Government powers to ensure trade development and regulation Sub-section (b) of the said paragraph specifically confers the power of trade licenses excluding regulation of professions to the County Governments. The Committee is therefore in agreement with the Bill since it seeks to give effect to the Part two of the Fourth Schedule to the Constitution of Kenya, 2010. Furthermore, since the Bill seeks to regulate trade licensing in the County, it will help in addressing some of the challenges facing traders such as annual payment of trade license where traders may

opt to pay either quarterly, half yearly or annually. In addition, the Bill will help the County Government to boost revenue collection.

3.2. Part I: Preliminary Provisions

Part I of the Bill sets out the preliminary matters with respect to the Bill. Clause 1 sets out the short title of the Bill. Clause 2 provides for definition and interpretation of terms as used in the Bill while Clause 3 gives a summary of the scope of application of the proposed law.

On the Long Title some stakeholders who commented on the Bill raised concerns on the definition of the title. For instance, the Kenya Law Reform Commission (KLRC) argued that the title should focus on regulation of trade licensing as the term ‘trade’ is broad. In their submission, KLRC proposed the title to be specific on trade licensing. The Committee agreed with the proposal amendment to the long title of the Bill to as the content of the Bill is on licensing of businesses and enforcement mechanisms.

On Clause 2, various stakeholders who commented on the Bill were concerned with the interpretation of ‘business’. For instance, the Kenya Private Sector Alliance and Law Society of Kenya proposed deletion of the word ‘include the businesses that are exempted’ and exclusion of the word ‘profession’. They argued that Professionals pay their annual licences to their professional bodies. The Committee acknowledges the provisions of Paragraph Seven (6) of Part Two (2) of the Fourth Schedule to the Constitution which gives County Government powers to regulate trade licences excluding regulation of professions. The Committee agreed with the proposals to conform to the provisions of the Constitution. In addition, the several proposed interpretation of various terms which were to be used in the proposed law. This include the following;

- (a) Licence holder
- (b) Licencee
- (c) Holder of a licence
- (d) E-Business (E-Commerce)
- (e) Provisions Permit
- (f) Provisional licence
- (g) Single Business Permit
- (h) Chief Officer

The Committee agreed to include the interpretation of the proposed new terms. However, some terms such as ‘licencee’, ‘licence holder’ and ‘holder of a licence’ meant the same thing. The County Executive opined that the Bill should include a clause for objects of the proposed law for clarity. The Committee was in agreement with the proposal. The Committee disagreed with the County Executive on the proposal to include ‘Chief Officer’ in the proposed law. In the opinion of the Committee, Chief Officer has no role in the proposed Act and therefore not necessary.

3.3. Part II: Administration of Trade Licences

Part II of the Bill contains the provisions relating to the administration of trade licenses. Clause 4 provides for establishment of the Directorate of Trade Licensing with responsibilities on the issues of trade in the County. Clause 5 provides for the appointment of a Director of Trade Licensing who shall be the head of the Directorate. Clause 6 highlights the function of the Director of Trade Licensing which include approval or rejection of applications for licenses under the proposed law. Clause 7 demands any person who intends to operate a business or trade within the County to obtain a license. The clause further provides for penalties of operating a business within the County without a valid license. Clause 8 gives a summary of procedure in applying for a license. Clause 9 requires the Director to monitor and consider all electronic application. The clause further requires the director to keep and maintain a database of all trade license holders in the County. Clause 10 provides for the timelines in which application for license is to be considered. The clause further provides grounds for rejection of an application for a trade license. Clause 11 demands the Director of Trade Licensing to grant a license where the applicant has met the requirements satisfactorily. The clause further requires the Director to communicate the decision to reject an application for a trade licensing within a given timeline stating the reasons for the rejection. Clause 12 highlights the steps in appealing the decision by the Director to reject an application. Clause 13 demands that a trade license granted to be applicable in one business or trade. Clause 14 provides for renewal of a license. The Clause outlines conditions under which an application for renewal of license is to be granted. Clause 15 provides the period for validity of a license which is either annually, quarterly or half yearly. Clause 16 demands that any individual license holder who will transfer

the license is to make application in writing to the Director which has to be approved by the Director. Clause 19 demands the holder of a trade license to display it in a visible place in the business premise. The Clause further provides for penalties against the provisions the proposed law. Clause 20 provides for application of a duplicate license in case of a lost or defaced license. Clause 21 demands the Director to maintain a register of all licenses to be issued under the proposed law.

The Committee finds this part to be the pillar of the Bill since despite the existing Directorate on Trade in the County Executive Sector, the proposed law provides for clear power of the Directorate of Trade Licensing. In this part, several stakeholders who commented on the Bill proposed amendments to various Clauses. For Instance, Kenya Law Reform Commission proposed establishment of Directorate of Trade Licensing with the department of Trade since the word 'Sector' was general. Kenya Private Sector Alliance proposed inclusion of a provisions for the qualification of the Director of Trade Licensing. The County Executive proposal that the Director of Trade Licensing to be answerable to the Chief Officer. The Committee concurred with the proposals. However, the Committee disagreed with the County Executive for the Director to be answerable to the Chief Officer. The Committee opined that the directorate of trade licensing should be answerable to the County Executive Committee Member as provided for under Section 36(1) of the County Governments Act, 2012 which provides that the executive committee has powers to supervise the administration and delivery of services in the County and all decentralized units and agencies in the County. In addition, the stakeholders had proposed to delete the consultation of the County Executive Committee Member in recruitment of Director of Trade Licensing by the County Public Service Board. They argued that the mandate of recruiting staff members is purely the mandate of County Public Service Board and they do not require to consult the CECM. The Committee agreed with the proposal. The Committee agreed with the proposal to merge Clauses 8 and 9 as both clauses deal with application for the licence. The County Executive proposed inclusion of a clause that gives CECM powers to establish an appeals committee to deal with appeals against the decisions of the Director of trade licensing. The Committee in concurring with the County Executive opined that

to avoid bias, an appeals committee should be established. The Committee proposed a five-member Committee comprising of County employees to avoid extra costs.

3.4. Part III: Enforcement

Part III of the Bill contains provisions on enforcement of the proposed law. Clause 22 pinpoints authorized officers under the Bill. Clause 23 gives authorized officers the powers to enter any proposed business premises for which an application under the proposed law is made for the purpose of inspection. Clause 24 provides for powers of authorized officers. The clause further contains provisions on the manner in which authorized officers ought to carryout inspection.

The Committee finds this part to be one of the vital parts of the Bill. This part mandates the County Executive Committee Member to designate officers within the Directorate to be authorized officers. The Count Executve proposed an amendment to clause 22 for the CECM to seek approval from County Chief Officer in designating officers. The Committee disagreed with the proposal as The CECM is the overall head of the Sector. The Kenya Law Reform Commission proposed amendment to Clauses 23 and 24 to provide for the licence holder consent to the entry into premises by authorized licensing officers during their duties. In addition, County Executive proposed in include a sub-clause for penalty when a person who hinders or obstructs an officer to perform their duties. While agreeing with the proposed amendments, the Committee resolved in retain Clause 23 as drafted for effective operationalisation of the proposed law. The Committee argued that enforcement officers must be given powers to enter any premises during business hours and they should not require consent to enter.

3.5. Part IV: General Provisions

Part IV of the Bill contains general provisions of the proposed law. Clause 25 identifies some offences that may attract penalties. Clause 26 provides for general penalty of not exceeding fifty thousand Kenya Shillings on an offence which has no specific penalty under the proposal law. Clause 27 empowers the County Executive Committee Member to make regulations for purposes of implementing the proposed Legislation. The clause further provides what may be included in the regulations. Clause 28 is providing for the validity of trade license or business permit that is in force prior to the proposed Act.

In this part, the Committee is cognizant of the fact that for a successful implementation of some of the provisions of the proposal law, enactment of regulations is essential. The Committee is in agreement with the areas in which the proposed law provides for development of regulations. The Committee agreed that a procedure for application and licensing of E-commerce should be included in the regulations. In addition, the Committee agreed to include the information that shall be contained in the register in the regulations. The regulations should also include Specification of the different categories of traders as proposed by some stakeholders. The Committee found the decisions to anchor various license fees in the Bill noble since any fee charged by the County should be based on a particular rule. The Committee agreed to the redrafting of Clause 28 for clarity as proposed by Kenya Law Reform Commission.

The Committee further deliberated on the proposed additional clauses and schedule as agreed as follows;

NEW CLAUSE: Objects of the Act

- a) To provide a County legal framework for business licence management functions as spelt in Part Two (2) of the Fourth Schedule of the Constitution of Kenya 2010;
- b) Provide a legal basis for the implementation of the County Business plan;
- c) Provide a conducive environment for fair business practices;
- d) Provide roles and responsibilities of various actors;
- e) Control and regulate business practices and management in the County;
- f) To provide an enabling regulatory framework which provides and promotes growth and development in the sector, promotes self-regulation by trading associations ensures accountability and answerability.

NEW CLAUSE: Hawkers and street vendors licensing

No person shall act as a hawker unless he or she is in possession of a valid hawker's licence granted to him or her for that purpose by the directorate of trade licensing unless they operate business exempted from licensing and stated under the regulations. A hawker's licence shall be in such form as may be prescribed and shall be granted subject to such conditions as to-

- a) The kind of goods which may be hawked;

- b) The area within which the hawking shall be restricted;
- c) The hours during which the goods may be hawked, and such other conditions as licensing authority may think fit to impose.

No hawkers licence shall be required in respect of any person who acts as a hawker of goods and services declared by the directorate of trade licensing and stated in the regulations of this Act to be hawked without a licence.

A hawker shall be required to produce his or her hawker's licence on demand for inspection by the enforcement officer at all times.

4.0. SUMMARY OF THE CONSIDERATION OF THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018

The Committee deliberated on the Bill as follows: -

Long Title	– proposed amendment
Short Title	– proposed amendment
Clause 2	– proposed amendments
Clause 3	– proposed amendments
Clause 4	– proposed amendments
Clause 5	– proposed amendments
Clause 6	– proposed amendments
Clause 7	– proposed amendments
Clause 8	– proposed amendments
Clause 9	– proposed amendments
Clause 10	– proposed amendments
Clause 11	– agreed to
Clause 12	– proposed amendments
Clause 13	– agreed to
Clause 14	– proposed amendments
Clause 15	– proposed amendments
Clause 16	– proposed amendments
Clause 17 to 19	– agreed to
Clause 20	– proposed amendments
Clause 21	– proposed amendments

Clause 22	– proposed amendments
Clause 23	– agreed to
Clause 24	– proposed amendments
Clause 25	– proposed amendments
Clause 26	– agreed to
Clause 27	– proposed amendments
Clause 28	– proposed amendments

New Clauses

3A – objects of the Act	– proposed new clause
7A – Hawkers and street vendors licensing	– proposed new clause

New Sub-Clauses

New Sub-clause 4 (2)A	– Proposed new sub-clause
New Sub-clause 5 (2)A	– Proposed new sub-clause
New Sub-clause 24 (2)A	– Proposed new sub-clause
New Sub-clause 28 (1)A	– Proposed new sub-clause
New Sub-clause 28 (1)B	– Proposed new sub-clause

New paragraphs

New paragraph 16 (1)b (A)	– proposed New paragraph
New paragraph 16 (1)b (B)	– proposed New paragraph
New paragraph 27 (2)g (A)	– proposed New paragraph

New Schedule

New Schedule 1: Business licence charges	– proposed new schedule
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5.0. COMMITTEE STAGE AMENDMENTS

(As attached to this Amendments Report)

MINUTES OF THE 20TH SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY
SECTORAL COMMITTEE ON TRADE, TOURISM AND COOPERATIVES HELD ON
TUESDAY, 9TH APRIL, 2019 AT 11.30 AM IN COMMITTEE ROOM 3, CITY HALL
BUILDING.

PRESENT

- | | | |
|---------------------------------------|---|---------------|
| 1. Hon. Jeremiah Karani Themendu, MCA | - | Vice-Chairman |
| 2. Hon. Cecilia Achieng Ayot, MCA | | |
| 3. Hon. Benson Mwangi Macharia, MCA | | |
| 4. Hon. Redson Otieno Onyango, MCA | | |
| 5. Hon. Jayendra Virchand Malde, MCA | | |
| 6. Hon. Wilson Ongele Ochola, MCA | | |
| 7. Hon. Jane Muasya, MCA | | |
| 8. Hon. Maurice Ochieng Onyango, MCA | | |
| 9. Hon. Wilfred Odalo Oluoch, MCA | | |
| 10. Hon. Samuel Ng'ang'a Mwangi, MCA | | |
| 11. Hon. Naftaly Wagura Mathenge, MCA | | |
| 12. Hon. Paul Ndung'u Irungu, MCA | | |

ABSENT

- | | | |
|---------------------------------------|---|----------|
| 1. Hon Charles Thuo Wakarindi, MCA | - | Chairman |
| 2. Hon. Lawrence Otieno Odhiambo, MCA | | |
| 3. Hon. Mary Njuguna Njambi, MCA | | |
| 4. Hon. Eve Malenya, MCA | | |
| 5. Hon. Jacinta Wanjiru, MCA | | |
| 6. Hon. Millicent Wambui Mugadi, MCA | | |
| 7. Hon. Doris Ngoyo Kanario, MCA | | |

SECRETARIAT

- | | | |
|----------------------|---|-----------------|
| 1. Mr. Kevin Wasike | - | Clerk Assistant |
| 2. Ms. Violet Odongo | - | Intern |

MIN.014/SC-TTC/APR/2019 - PRELIMINARIES

Hon. Cecilia Ayot (presiding Chair) called the meeting to order at 11.30 am and said the opening prayers. She then welcomed the Members present to the meeting and read the agenda which was adopted for discussion as proposed by Hon. Wilfred Odalo, MCA and seconded by Hon. Jayendra Malde, MCA as follows:

1. Preliminaries (prayers & adoption of the Agenda)
2. Confirmation of Minutes – 14th, 15th and 16th Sittings
3. Matters Arising
4. Consideration and adoption of the draft report on the consideration of the Nairobi City County Trade Licensing Bill, 2018
5. Any Other Business
6. Adjournment

MIN.015/SC-TTC/APR/2019 – PRELIMINARIES

The Chair read the Minutes of the 14th Sitting held on 26th March, 2019. The Minutes were confirmed to be true record of the proceedings as proposed by Hon. Redson Otieno, MCA and seconded by Hon. Maurice Ochieng, MCA

The Minutes of the 15th Sitting held on 27th March, 2019 were read by the presiding Chair. The confirmation of the Minutes was proposed by Hon. Naftaly Mathenge, MCA and seconded by Hon. Wilfred Odalo, MCA and confirmed the same to be true record of the proceedings.

The presiding Chair read the Minutes of the 16th Sitting held on 28th March, 2019. The confirmed of the Minutes was proposed by Hon. Jayendra Malde, MCA and seconded by Hon. Maurice Ochieng, MCA and confirmed the same to be true record of the proceedings.

MIN.016/SC-TTC/APR/2019 – MATTERS ARISING

There were no matters arose from the Minutes

MIN.017/SC-TTC/APR/2019 – CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018

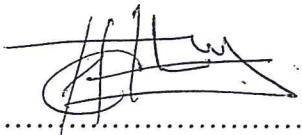
The Secretariat tabled the draft report on the consideration of the Nairobi City County Trade Licensing Bill, 2018 for consideration. The presiding Chair took the Members through the report. The Committee deliberated on the report and adopted it for tabling as proposed by Hon. Naftaly Mathenge, MCA and seconded by the Vice-Chairman.

MIN.018/SC-TTC/APR/2019 – ADJOURNMENT

There being no other business and time being ten minutes past Twelve O'clock, the Chair adjourned the meeting to Wednesday, 10th April, 2019 at 11.30am.

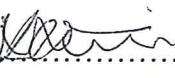
CONFIRMED AS TRUE RECORD OF THE PROCEEDINGS

SIGNATURE



(Chairperson)
DATE.....19/4/2019.....

SIGNATURE



(Clerk Assistant)
DATE.....19/4/2019.....

4th April, 2019

The Clerk
Nairobi City County Assembly
NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018

NOTICE is given that the Chairperson of the Sectoral Committee on Trade, Tourism and Co-operatives intends to move the following amendments to the Nairobi City County Trade licensing Bill, 2018, at the Committee Stage.

LONG TITLE

THAT the Long Title of the Bill be amended by deleting the expression “regulation of trade” and substituting therefor the expression “grant of trade licences within Nairobi City County”

SHORT TITLE

THAT the Short Title of the Bill be amended by deleting the numerical “2018” and substituting therefor the numerical “2019”.

CLAUSE 2

THAT Clause 2 of the Bill be amended as follows; -

- (i) by inserting the following definitions in their proper alphabetical sequence:
 - a) “licence holder” means a person or entity granted a license by the director of trade licensing to operate a trade within the county;

- b) “committee” means the Trade Licensing Appeals Committee established under Section 12 of this Act.
- c) “e-Commerce” means any form of transaction or business conducted electronically through the internet;
- d) “hawker” means a person who, whether on his or her own account sells goods by retail other than in trading premises or in a market established by the county.
- e) “street vendor” means a person who offers goods or services for sale to the public without having a permanently built structure but with a temporary static structure or mobile stall;
- f) “trader” means a person who buys and sells goods and services within Nairobi City County;
- g) “trading premises” means and includes shops or premises used for a retail trade or business;
- h) “provisional licence” means a licence issued by the Director of trade licensing after application to allow a trader to continue operating the business or trade before the issuance of the main trade licence;
- i) “profession” means a paid occupation governed and regulated by a professional body which involves prolonged training and a formal qualification
- j) “specified goods” means any goods or good of any particular class, declared as such under of this Act.
- (ii) In the definition of the word “trade” by deleting the definition of the word “trade” in its entirety and substituting therefor the following: -
“trade means any business whereby goods, services, wares, merchandise or provisions are sold in any trading premise or in any other manner including electronically, through the internet whether by retail or wholesale for which a license is required under this Act”

- (iii) In the definition of the word “business” by deleting the definition of the word “business” in its entirety and substituting therefor the following: -
- “business means any commercial activities conducted for the purpose of facilitating such buying and selling of goods and services with a clear definition of operating times or trade and includes exempted businesses.”

CLAUSE 3

THAT Clause 3 of the Bill be amended as follows; -

- (i) By inserting the words “with the exemption of professions” immediately after the word “Nairobi”
- (ii) By inserting a new Clause immediately after Clause 3 as follows: -

NEW CLAUSE

Objects of the Act “3 A” The objects of this Act is to provide for a legal framework for –

- (a) provision of business licence management functions as spelt out in part 2 of the Fourth schedule of the Constitution of Kenya, 2010;
- (b) provision of a legal basis for the implementation of the County Business plan;
- (c) provision of a conducive environment for fair business practices;
- (d) assignment of roles and responsibilities of various county officers in the directorate;
- (e) control and regulation of business practices and management in the County; and

(f) provision of an enabling regulatory framework which promotes growth and development in the sector, promotes self-regulation by trading associations and ensures accountability.

CLAUSE 4

THAT Clause 4 of the Bill be amended as follows;

- (I) in sub-clause (1) by deleting the expression “within the County Sector”
- (II) By inserting a new sub clause immediately after sub clause (2) as follows: -

NEW SUB CLAUSE

“(2) A” The Directorate shall be guided by the following principles including--

- a) The regulation of licensable activities in order to set minimum standards relating to such activities and to ensure-
 - i. National unity;
 - ii. Public safety and hygiene;
 - iii. Environmental protection;
 - iv. Inclusion of marginalized trading populations, including hawkers and street vendors; and
 - v. Promotion of transparency and public participation
- b) Licences shall be issued on the basis of clearly defined and transparent criteria.

CLAUSE 5

THAT Clause 5 of the Bill be amended as follows: -

- (i) in sub-clause (1) by deleting the expression “in consultation with the County Executive Committee Member”
- (ii) by inserting the following new sub-clause immediately after sub-clause (2)

NEW SUB CLAUSE

“2” A A person shall be eligible for appointment as a Director of Trade Licensing if the person --

- a) possesses a university degree in any area related to trade, business or commerce from university recognized by the Commission for University Education;
- b) has at least 3 years' experience working in trade, business, commerce or business management;
- c) is person of integrity and meets the requirements of Chapter 6 of the Constitution of Kenya;
- d) is not convicted of any criminal offence whose penalty does not exceed six (6) months.

CLAUSE 6

THAT Clause 6 of the Bill be amended in the marginal note by deleting the word ‘Functions’ and substituting therefor the word ‘Powers’

CLAUSE 7

THAT Clause 7 of the Bill be amended as follows: -

- i. In sub clause (1) by inserting the word “trade” immediately before the word “licence”
- ii. In sub clause (2) by deleting sub clause (2) in its entirety and substituting therefor the following: -

7 (2) “A person who operates a trade or business without a trade licence commits an offence and shall be liable upon conviction to a fine not exceeding Kenya Shillings one hundred thousand or to imprisonment for a term not exceeding six months or to both such fine and imprisonment”

CLAUSE 8

THAT Clause 8 of the Bill be amended

- i. by deleting the clause in its entirety and substituting therefor the following new Clause 8: -

NEW CLAUSE 8

Application
for Licence

(8A) (1) An application for the grant of a trade licence shall ---

- a) be lodged with the Directorate of Trade Licensing;
- b) be in the approved form;
- c) contain such information and be accompanied by such documents as are required by the approved form;
- d) be signed in a manner specified in the approved form; and
- e) be accompanied by the prescribed application fee in the First Schedule.

(2) An application may be made in an electronic format approved by the Directorate.

(3) The Directorate may, before dealing with an application, require the applicant to furnish such additional information or documents as is necessary to enable the application to be dealt with.

(4) The Directorate shall keep and maintain an updated database of all licence holders.

(5) The prescribed application fee shall not be refundable

- iii. By inserting a new Clause immediately after Clause 8 as follows: -

NEW CLAUSE 8

Hawkers
and Street
Vendors
Licence

(8B) (1) No person shall trade as a hawker or a street vendor unless he or she is in possession of a valid hawker or street vendor's licence granted to him or her for that purpose by the directorate of trade licensing unless they operate a business exempted from licensing under this Act.

(2) The licence described in sub section (1) shall be in such form as may be prescribed and shall be granted subject to the following conditions ---

- a) The kind of goods which may be hawked;
- b) The area within which the hawking shall be operated;
- c) The hours during which the goods may be hawked, and such other conditions as licensing authority may think fit to impose.

CLAUSE 12

THAT Clause 12 of the Bill be amended by deleting Clause 12 in its entirety and substituting therefor the following: -

Appeals “12 (1) ‘There is established the Trade Licensing Appeals Committee comprising of the following persons --

- (a) The Director responsible for Trade and Enterprises Development who shall be the chairperson to the Committee;
- (b) an officer designated by the County Executive Committee Member for the time being responsible for finance;
- (c) the Director of Revenue;
- (d) the County Attorney; and
- (e) the Director of Markets.

- (2) The Members of the Committee shall be appointed on such terms and conditions as the County Executive Committee Member may determine.
- (3) The County Executive Committee Member shall designate a Member of the Committee to be the secretary to the Committee.
- (4) The Members shall serve in the Committee for a period of five (5) years and shall not be eligible for reappointment
- (5) A person aggrieved by a decision of the Director of Trade Licensing shall within seven (7) days appeal to the Committee against the decision;
- (6) The Committee may, where it entertains a notice of appeal, decide the appeal by-
- a) confirming the decision of the Directorate of Trade Licensing;
 - b) varying the decision;
 - c) quashing the decision;
- (7) The Committee shall consider the appeal within fourteen (14) days after receipt of the appeal and make recommendations to the Executive Committee Member.
- (8) The Committee shall regulate its own procedure.

CLAUSE 15

THAT Clause 15 of the Bill be amended as follows: -

- i. In sub clause (1) by inserting the word “either” immediately before the word “annually”
- ii. In sub clause (2) by deleting sub clause (2) in its entirety and substituting therefor the following: -

“A provisional licence may be granted to an applicant by the Directorate of Trade Licensing and shall be valid for a maximum period of three (3) months”

CLAUSE 16

THAT Clause 16 of the Bill be amended in sub clause (1) paragraph (b) by inserting the following new paragraphs immediately after paragraph (b) as follows: -

NEW PARAGRAPHS

- “b a” “is operating an illegal business”**
- “b b” “the licence was fraudulently acquired”**

CLAUSE 20

THAT Clause 20 of the Bill be amended in sub-clause (2) by inserting the word “reasonable” immediately before the word “fees”

CLAUSE 22

THAT Clause 22 of the Bill be amended by deleting sub-clause (2) in its entirety.

CLAUSE 24

THAT Clause 24 of the Bill be amended as follows: -

- a) in sub-clause 1 paragraph (a) by deleting the words “licensed under this Act” appearing immediately after the word “premises”
- b) in sub-clause (2) by inserting the words “and shall carry out his duties with due diligence” immediately after the word ‘holder’
- c) By inserting the following new sub-clause immediately after sub-clause (2)

NEW SUB CLAUSE (2) A

“(2) A” A person who hinders or obstructs an officer performing their duties under this Section commits an offence and shall be liable on conviction to a fine not exceeding Kenya shillings one hundred thousand or to imprisonment for a term not exceeding six months or both’

CLAUSE 25

THAT Clause 25 of the Bill be amended as follows; -

- a) in sub-clause (2) by inserting the words **or to imprisonment for a term not exceeding three months, or to both'** immediately after the word '**thousand**'
- b) in sub-clause (3) by inserting the words '**or to imprisonment for a term not exceeding three months, or to both'** immediately after the word '**thousand**'

CLAUSE 27

THAT Clause 27 of the Bill be amended as follows; -

- i. in sub clause (2) paragraph (g) by inserting the words "**and e-commerce**" immediately after the word "**electronic**"
- ii. in sub-clause (2) by inserting the following new paragraph immediately after paragraph (g)

NEW PARAGRAPH

"g a" "Information that shall be contained in the register under Section 21"

CLAUSE 28

THAT Clause 28 of the Bill be amended as follows; -

- (i) By inserting the following new sub clauses immediately after Clause 28: -

NEW SUB CLAUSES

"(1) A" Any person who was authorized to trade within Nairobi City County on the basis of an approved trade licence before the coming into force of this Act shall make a fresh application to the Directorate of trade licensing upon expiry of the licence currently in possession.

(1) B" The Provisions of Schedules 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 and 2.8 of the Nairobi City County Revenue Act, 2015 are repealed.

- iii. By inserting a new schedule immediately after Clause 28 as follows: -

NEW SCHEDULE

FIRST SCHEDULE

1.1. GENERAL TRADERS SHOPS AND RETAIL SERVICES

This category includes traders, wholesalers, hypermarkets, departmental stores, supermarkets, showrooms, boutiques, exhibitions, retail shops, chemists, take-away, butcheries, kiosks

Hyper-supermarket: Over 100 employees / Over 5001 sq.m		150,000
Mega-supermarkets / Wholesalers: 50 -100 employees / 3001 - 5000 sq.m		100,000
Large trader shop or retail service: 21- 50 employees / 300 - 3000 sq.m / prime location		50,000
Medium trader shop or retail service: 5 - 20 employees / 50 - 3000 sq.m / fair location		20,000
Small trader shop or retail service: Up to 4 employees / less than 50 sq.m / far away location		5,000
Kiosk: Light or temporary construction less than 5 sq.m		4,000
Other general merchant shop and retail service		4,000

1.2. TRANSPORT STORAGE AND COMMUNICATIONS

Includes maritime and airlines / international carriers / freight forwarders / operation of taxis, matatus, buses, lorries, planes, boats / driving school / tours / safari operator - owned and hired vehicles. Fixed line and wireless communication providers / IT support companies / private vehicles parking / petrol stations / storage facilities / cold storage facilities. Publishing companies, e.g. newspapers, books, texts / radio / TV broadcasters / film producers.

Mega transport company: Over 50 vehicles & / or premises over 1000 sq.m		160,000
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Large transport company: 30 - 50 vehicles & / or premises of 500 - 1000 sq.m		100,000
Medium transport company: 6 - 30 vehicles & / or premises of 300 - 500 sq.m		36,000
Small transportation company: 2 - 5 vehicles & / or premises of 50 - 300 sq.m		25,000
Other transportation company: 1 vehicle / up to 50 sq.m		15,000
Independent transport operator: 1 vehicle / 1 Taxi & not in an office		7,000
Large petrol filling station: over 6 pumps or with garage / workshop and spares retail shop		30,000
Medium petrol filling station: 4 - 6 pumps or with garage / workshop or spares retail shop		20,000
Small petrol filling station: Up to three pumps and without garage / workshop or retail shop		10,000
Large cold storage facility: Over 1000 sq.m		70,000
Medium cold storage facility: From 101 - 1,000 sq.m		30,000
Small cold storage facility: Up to 100 sq.m		15,000
Large storage facility: Over 5000 sq.m go down / warehouse liquid storage tanks complex		60,000
Medium storage facility: From 1000 - 5000 sq.m		30,000
Large private vehicles parking: Capacity; over 100 vehicles		500,000
Medium private vehicles parking: Capacity; 51 - 100 vehicles		300,000
Small private vehicles parking: Capacity; 1 - 50 vehicles		200,000
Small storage facility: Up to 1000 sq.m		15,000
Mega communications company: Over 100 employees & / or premises over 1500 sq.m		200,000
Super large communications company: 61 - 100 employees & / or premises of 1001 - 1500 sq.m		200,000
Large communications company: -over 50 employees & / or premises of 500 - 1000 sq.m		100,000
Medium communications company: 21 - 50 employees & / or premises of 300 - 500 sq.m		60,000
Small communications company: 1 - 20 employees & / or premises of 1 - 300 sq.m		40,000
Other transport, storage and communications		10,000

Large Transport Network Companies (Uber, Taxify, Little Cab et al) capacity over 100 vehicles	Per annum	300,000
Medium Transport Network Companies (Uber, Taxify, Little Cab et al) :Capacity 51-100 vehicles	Per annum	100,000
Small Transport Network Companies (Uber, Taxify, Little Cab et al) capacity 1-50 vehicles	Per annum	50,000
FINANCIAL SERVICES		
Bank Head office/branch/money lender/hire purchase/Sacco/co-operative ATM machines/Mortgage providers/Money transfer and bank agency		
Money transfer agents and bank agency :over 2 tellers		15,000
Other financial services with 1 teller for money transfer /bank agency		7,000
Other transport, storage and communications		10,000

1.3. ACCOMMODATION AND CATERING

Includes international hotels / tourist camps / outside catering / lodging houses / restaurants / bars / eating houses / tea & coffee houses / butcheries with meat roasting & or soup kitchen facilities / membership clubs / nightclubs & casinos

Large high standard lodging house / hotel D class with over 100 rooms		200,000
Medium high standard lodging house / hotel D class with 41 to 100 rooms		140,000
Small high standard lodging house / hotel D class with up to 40 rooms		70,000
Large lodging house with restaurant and / or bar B/C class basic standard with over 15 rooms		55,000
Medium lodging house with restaurant and / or bar B/C class basic standard with 6 to 15 rooms		45,000
Small lodging house with restaurant and / or bar B/C class basic standard with up to 5 rooms		35,000
Large lodging house B/C class basic standards with over 15 rooms		70,000
Medium lodging house B/C class basic standard with 6 to 15 rooms		45,000
Small lodging house B/C basic standard with up to 5 rooms		35,000
Large fully serviced and furnished apartments: Over 10 apartments		120,000

Medium fully serviced and furnished apartments; from 6-10 apartments		90,000
Small fully serviced and furnished apartments: from 1-5 apartments		70,000
Mega restaurant with bar / membership club with over 70 members/ customers		100,000
Large restaurant with bar / membership club with 31 - 70 customers / members		50,000
Medium restaurant with bar / membership club with 11 - 30 members / customers		30,000
Small restaurant with bar / membership club; Up to 10 customers / members		20,000
Mega eating house / snack bar / tea house / outside catering / hotel with no lodging or alcohol served with over 50 customers		35,000
Large eating house / snack bar / tea house / outside catering / hotel with no lodging or alcohol served with 20 - 50 customers		25,000
Medium eating house; snack bar / tea house / no lodging or alcohol served; 6 - 20 customers		20,000
Small eating house; snack bar / tea house / hotel with no lodging or alcohol served; Up to 6 customers		15,000
Butchery with roast meat and / or soup kitchen		15,000
Large bar / traditional beer seller; Over 50 customers		20,000
Medium bar / traditional beer seller; 16 - 50 customers		15,000
Small bar / traditional beer seller; Up to 50 customers		10,000
Large night club / casino; Over 500 sq.m		100,000
Medium night club / casino; 100 - 500 sq.m		60,000
Small night club / casino; Up to 100 sq.m		40,000
Other catering and accommodation		10,000
Mega agricultural producer, processor, dealer, exporter with over 60 employees		100,000
Large agricultural producer, processor, dealer, exporter with 36 - 60 employees		80,000
Medium agricultural producer, processor, dealer, exporter with 11 - 35 employees		40,000

Small agricultural producer, processor, dealer, exporter with 4 - 10 employees		25,000
Other agricultural producer, processor, dealer, exporter with over up to 3 employees		20,000
Large mining or natural resources extraction operation with over 50 employees		200,000
Medium Mining or Natural Resources Extraction operation with 4- 50 employees		100,000
Small mining or natural resources extraction operation with upto 3 employees		50,000
Other agricultural, forestry and natural resources exploitation; 1 person acting individually		45,000

1.4. TECHNICAL AND FINANCIAL SERVICES

Data processing / liaison offices / landlord or care taker offices / secretarial support / agencies / clearing & forwarding / import & export / bookmaking / casinos / international affiliation / cleaning services / cybercafés / bureaus / security services etc. / bank head office / branch / money lender / hire purchase / real estate / property developers / SACCO / co-operative societies

Large financial services including Saccos and co-operative societies with over 25 employees & / or premises over 300 sq.m		150,000
Medium financial services including Saccos and co-operative societies with 6 – 24 employees & / or premises of 100 – 300sq.m		95,000
Small financial services including Saccos and co-operative societies with up to 5 employees & / or premises up to 100sq.m		65,000
Other financial services including financial consultants / creditors / loans on assets firms with no money accounts / 1 person acting individually etc.		40,000
Money points / ATMs / money machines separate from branch / office (per ATM)		50,000
Large Financial Agent and M-PESA; Over 5 outlets/Tellers separate from Branch office (per A.T.M)		30,000
Medium Financial Agent and Mpesa: from 2-5 outlets/Tellers		20,000

Small financial agent and Mpesa: Up to 1 outlet/Teller		10,000
Large cyber cafes / bureaus with over 20 computers / machines		30,000
Medium Cyber cafes / bureau with 6 – 20 computers / machines		20,000
Small Cyber cafes / bureau with 2 – 5 computers / machines		15,000
Other professional and technical services with 1 computer / 1 machine		10,000

1.5. PRIVATE EDUCATION, HEALTH AND ENTERTAINMENT

Private education institution including nursery / primary or secondary school / polytechnic / professional training centre / computer management / accountancy / secretarial / technical professions / universities / private health clinics / doctors surgeries / consulting offices of doctors / dentists / physiotherapists / physiologists & other health professionals / herbalists and traditional medicine practitioners / funeral homes / entertainment facilities including cinema / theatre / video shows / amusements arcade / juke box / arcade games / machines arcade / sports club / gym / massage parlours

Small complementary education institutions 1-200 pupils		8,000
Medium complementary education institutions 201-350 pupils		10,000
Large complementary education institutions over 350 pupils		15,000
Mega private higher education institutions; any type of private university college or higher education institution with over 200 students		150,000
Private higher education institution; any type of private university college or higher education institution with 100 - 200 students		90,000
Large private education institution; nursery, primary & secondary schools with over 100 pupils or fees of Kshs. 50,000 - 100,000 per year		50,000
Medium private education institution; with 31 - 100 pupils or fees of kshs. 30,000 - 50,000 per year		30,000
Small private education institution with 30 pupils or fees of up to kshs. 30,000 per year		20,000

Large private health facility hospitals, clinic, nursing home etc. providing over 30 beds overnight		150,000
Medium private health facility with 11 - 30 beds		70,000
Small private health facility with up to 10 beds		45,000
Health clinic / doctor's surgery/ doctor / dentistry / physiotherapist / psychologist or other health professional office with no overnight accommodation available		15,000
Traditional health services; herbalist traditional healer etc.		25,000
Large entertainment facility; cinema / theatre / video show / amusement arcade / games machines arcade / sports club / gym etc. over 100 seats / over 10 machines / over 50 members		100,000
Medium entertainment facility with 50 - 100 seats / 4 - 10 machines / 16 - 50 members		50,000
Small entertainment facility with up to 50 seats / up to 3 machines / up to 15 members		35,000
Mobile cinema operator; 1 person acting individually		30,000
Other education, health and entertainment services		20,000

1.6. INDUSTRIAL PLANTS, FACTORIES, WORKSHOP, CONTRACTORS

Includes manufacture, process and assembly of products / vehicles / machinery / equipment and workshop servicing and repairing products / vehicles / machinery / equipment. Also including contractors of new buildings, construction and old buildings restoration, plumbing and other services / repair

Large industrial plant with over 75 employees & or premises over 2500 sq.m		150,000
Medium industrial plant with 16 - 75 employees & or premises of 100 sq.m - 2500 sq.m		100,000
Small industrial plant with 6 - 15 employees & or premises of 51 sq.m - 100 sq.m		60,000
Other industrial plant / factory with 1 - 5 employees & or premises of 1 sq.m - 50 sq.m		25,000
Mega workshop with over 50 employees & or premises of over 1000sq.m		100,000

Large workshop / service / repair contractor with 21 - 50 employees & or premises of 501 sq.m - 1000 sq.m		70,000
Medium workshop / service / repair contractor with 6 - 20 employees & or premises of 25 sq.m - 500 sq.m		30,000
Small workshop / service / repair contractor with up to 5 employees & or premises of up to 25 sq.m		15,000
Other manufacturer / workshop / factory / contractor with one person acting individually		10,000
Application fee		200
WEIGHBRIDGE –NANYUKI ROAD DEPOT		
1 - 4,990	Per kg	100
5,000 - 6,990	Per Kg	120
7,000 - 8,990	Per Kg	160
9,000 - 14,990	Per kg	180
15,000 - 19,900	Per kg	200
20,000 - 29,990	Per Kg	240

1.7. SMALL TRADES SERVICES

Item Description	Unit of Measure	Charges
Hire of Open Space at ward level	Per day	7,000
Hawkers (outside C.B.D.)	Per day	30
Hawkers	Per Month	500
Kiosks		
Small Size	Per week	250
Medium Size	Per week	350
Large Size	Per week	550
Firewood Traders	Per day	200
INFORMAL SECTOR		
Item Description	Unit of Measure	Charges
1 Hawker with motor vehicle on a designated area	Per annum	15,000
1 hawker without motor vehicle	Per annum	7,000
1 vendor at Uhuru Park	Per annum	5,000
Small informal sector trader/service provider e.g. shoe shiner shoe repair,	Per annum	2,500

street vendor (newspapers, soda, sweet, cigarette etc.)		
Semi-permanent informal sector trader;-up to 2 Persons In Verandah or temporary building	Per annum	3,500
Other informal sector	Per annum	2,000

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Hon. Charles Thuo Wakaridi

Chairperson, Trade, Tourism and Co-operatives

This.....day.....2019



THE NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY
(THIRD SESSION)

SECTORAL COMMITTEE ON TRADE, TOURISM AND COOPERATIVES

**MATRIX OF STAKEHOLDER COMMENTS AND FINAL COMMITTEE PROPOSED AMENDMENTS TO THE
NAIROBI CITY COUNTY TRADE LICENSING BILL 2018 AND JUSTIFICATIONS**

CLAUSE OF THE BILL	COMMENTS PROPOSED AMENDMENTS BY STAKEHOLDERS	COMMENT(s) ON PROPOSED AMENDMENT(s)	COMMITTEE'S OWN COMMENT	PROPOSED COMMITTEE AMENDMENT	FINAL AMENDMENT	PROPOSED JUSTIFICATION
Long Title	KLRC A Bill for AN ACT of the county Assembly to provide for grant of trade licences and for related purposes	Agreed the content of the Bill is on licensing businesses and enforcement mechanisms	Agreed with the proposal	That, the Long Title of the Bill be amended by deleting the word “regulation of trade” and substituting therefor the word “grant of trade licences”	That, the Long Title of the Bill be amended by deleting “regulation of trade” and substituting therefor the expression “grant of trade licences within Nairobi City County”,	Trade regulation broad

Clause 1	No comment (Short Title)	NIL	Agreed with the Clause as drafted	NIL	NIL
Clause 2	<p>KLR ‘business’ includes a profession, trade or occupation</p> <p>Define;</p> <ul style="list-style-type: none"> i. Licence holder ii. Licencee iii. Holder of a licence iv. E-Business <p>‘E-Commerce’ - any form of business that is transacted through the internet</p>	<p>Agreed, this definition allows for different forms of interpretation</p>	<p>Agreed with the proposal</p>	<p>THAT, Clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical order:</p> <p>‘Licence holder’ - a person granted by the director licensing a licence to operate a trade within the county</p> <p>‘E-Commerce’ - any form of business that is transacted through the internet</p>	<p>THAT Clause 2 of the Bill be amended as follows:-</p> <p>i) by inserting the following definitions in their proper alphabetical sequence:</p> <p>a) “licence holder” means a person or entity granted a license by the director of trade licensing to operate a trade within the county;</p> <p>b) “committee” means the Trade Licensing Appeals Committee established under Section 12 of this Act.</p> <p>c) “e-Commerce” means any form of</p> <p>THAT the Short Title of the Bill be amended by deleting the numerical “2018” and substituting therefor the numerical “2019”.</p>

transaction or business conducted electronically through the internet;

- d) “hawker” means a person who, whether on his or her own account sells goods by retail other than in trading premises or in a market established by the county.
- e) “street vendor” means a person who offers goods or services for sale to the public without having a permanently built structure but with a temporary static structure or mobile stall;
- f) “trader” means a person who buys and sells goods and services within

	Nairobi County;
	<p>g) “trading premises” means and includes shops or premises used for a retail trade or business;</p>
	<p>h) “provisional licence” means a licence issued by the Director of trade licensing after application to allow a trader to continue operating the business or trade before the issuance of the main trade licence;</p>
i)	<p>“profession” means a paid occupation governed and regulated by a professional body which involves prolonged training and a formal qualification</p> <p>j) “specified goods” means any goods</p>

or good of any particular class, declared as such under of this Act.

ii) In the definition of the word "trade" by deleting the definition of the word "trade" in its entirety and substituting therefor the following: -

"trade means any business whereby goods, services, wares, merchandise or provisions are sold in any trading premise or in any other manner including electronically, through the internet whether by retail or wholesale for which a license is required under this Act"

			<p>iii) In the definition of the word “business”, by deleting the definition of the word “business” in its entirety and substituting therefor the following: -</p> <p>“business means any commercial activities conducted for the purpose of facilitating such buying and selling of goods and services with a clear definition of operating times or trade and includes exempted businesses.”</p>
<p><u>TISA</u></p> <p>i. Provide definition on all categories of its traders who are licensed;</p>	<p>i. Definition of business and trade covers these aspects</p> <p>Agreed to expound on definition of the term “trade”</p>	<p>Disagreed with the first proposal;</p> <p>Agreed to a) by inserting the following words ‘services’ immediately after</p>	<p>THAT, Clause 2 of the Bill be amended as follows;</p> <p>a) by inserting the following words</p>

<p>ii. Exound the definition of trade</p>	<p>the word ‘goods’ and ‘e-commerce’ immediately after the word ‘merchandise’</p> <p>b) by inserting the following new definitions in proper alphabetical order;</p> <p>“Trader” – a person who buys and sells goods and services; “Trading Premises” – Shops or premises used for a retail trade or business</p>	<p>THAT, Clause 2 of the Bill be amended by deleting the following words in the definition of the word ‘business’, ‘a profession’</p> <p>‘include the businesses that are exempted’</p>
<p>KEPSA</p> <p>In the definition of ‘business’ exclude a profession and exclude businesses that are exempted</p>	<p>Agreed. Delete the provision. The same is excluded in schedule 4 of the constitution.</p>	<p>THAT, Clause 2 of the Bill be amended by inserting the following</p>
<p>County Executive</p> <p>a) Define ‘County Chief Officer’;</p>	<p>a) He/she has no role in the Act, not necessary</p>	<p>THAT, Clause 2 of the Bill be amended by inserting</p>

	b) In the definition of ‘trade’ include service and e-commerce; c) Include the following in the definition; - i. E-commerce ii. Provisions iii. Permit iv. Provisional licence Single Business Permit	b) Viable c) Agreed	c) Agreed	definitions in proper alphabetical order; ‘Provisional licence’ – a licence given by the Director to trade licensing after application to continue operating the business or trade before the issuance of the main licence
<u>Law Society of Kenya</u>	Agreed	Agreed	THAT, Clause 2 of the Bill be amended by deleting the following words in the definition of the word ‘business’; ‘a profession’ ‘include the businesses that are exempted’	THAT, Clause 2 of the Bill be amended by deleting the following words in the definition of the word ‘business’; ‘a profession’ ‘include the businesses that are exempted’
<u>Clause 3</u>	<u>TISA</u> Specify different categories of traders	Disagreed	NIL	THAT Clause 3 of the Bill be amended as follows; - To be included in the regulations

(i) By inserting the words “with the exemption of professions” immediately after the word “Nairobi”

(ii) By inserting a new Clause immediately after Clause 3 as follows: -

NEW CLAUSE

Objects of the Act

“3 A” The purpose and objects of this Act is to provide for a legal framework for –

(a) provision of business licence management functions as spelt out in part 2 of the Fourth schedule of

the Constitution of Kenya, 2010;

- (b) provision of a legal basis for the implementation of the County Business plan;
- (c) provision of a conducive environment for fair business practices;
- (d) assignment of roles and responsibilities of various county officers in directorate of trade licensing
- (e) control and regulation of business practices and management in the County; and
- (f) provision of an enabling regulatory framework which

		promotes growth and development in the sector, promotes self-regulation by trading associations and ensures accountability.	To conform to the provisions of the Constitution on the function of the County Government
KEPSA Professionals should not pay for a trade licence	Agreed	Agreed <p>THAT, Clause 3 of the Bill be amended by inserting the following words immediately after the word ‘Nairobi’ –</p> <p>‘excluding professions as defined under Part Two (2) of the Fourth Schedule to the Constitution and exempted businesses’</p>	
Law Society of Kenya Include a sub-section for the exempted professional businesses	Agreed	Agreed	This makes it clear that the Act will only apply to trades and services that are not regulated by professional bodies.

Clause 4 KLRC There is established a Directorate of Trade Licensing within the county department of trade	Agreed. There is need to limit the directorate to county department of trade	Agreed with the proposed amendment	THAT, Clause 4 of the Bill be amended in sub-clause (1) by deleting the following words – ‘within the County Sector’	THAT Clause 4 of the Bill be amended as follows;	County Sector is too general
	<p>County Executive</p> <p>The directorate of trade licensing to be answerable to the Chief Officer Trade</p> <p>Disagreed, the directorate of trade licensing should be answerable to the CECM as provided for under section 36(1) of the county government act which provides that the executive committee has powers to supervise the administration and delivery of in the county</p> <p>i. National unity;</p> <p>ii. Public safety and hygiene;</p> <p>iii. Environmental protection;</p> <p>iv. Inclusion of marginalized trading</p>	<p>Disagreed with</p> <p>Disagreed with the proposal</p> <p>(II) By inserting a new sub clause immediately after sub clause (2) as follows: -</p> <p>NEW SUB CLAUSE</p> <p>“(2) A” The Directorate shall be guided by the following principles including—</p> <p>a) The regulation of licensable activities in order to set minimum standards relating to such activities and to ensure-</p> <ul style="list-style-type: none"> i. National unity; ii. Public safety and hygiene; iii. Environmental protection; iv. Inclusion of marginalized trading 	<p>(I) in sub-clause (1) by deleting the expression “within the County Sector”</p>		

		<p>populations, including hawkers and street vendors; and</p> <p>v. Promotion of transparency and public participation</p> <p>b) Licences shall be issued on the basis of clearly defined and transparent criteria.</p>	
Clause 5	<u>KEPSA</u> Add qualifications for director of licensing	<p>Agreed</p> <p>THAT, Clause 5 of the Bill be amended by inserting the following new sub-clause (3) immediately after sub-clause (2)</p> <p>Qualifications for the Director Trade Licensing; -</p> <p>a) Should have a university degree in any area related to trade from a recognized university in Kenya</p> <p>b) Should have at least 3 years' experience</p>	<p>THAT Clause 5 of the Bill be amended as follows:-</p> <p>in sub-clause (1) by deleting the expression “in consultation with the County Executive Committee Member”</p>

			working in the related field
		c) Should be a person of integrity	
		d) should not be convicted by the Court for any offence	
County Executive <i>Exclude 'in consultation with the County Executive Committee Member'</i>	Agreed, the mandate of recruiting staff members is purely the mandate of CPSB, they do not require to consult the CECM.	Agreed with the proposal	THAT, Clause 5 of the Bill be amended in sub-clause (1) by deleting all the words appearing after the word 'Board'
Clause 6 KLR On the marginal notes use powers instead of functions	Agreed 'power' means the ability or capacity to do something or act in a particular way	Agreed with proposed amendment	THAT, Clause 6 of the Bill be amended on the marginal notes by deleting the word 'functions' and substituting therefor the word 'powers'
County Executive <i>Include 'and any other legislation applicable' in sub-clause c and d</i>	Any other legislation applicable must be quoted	Disagreed	

<p>Clause 7</p> <p>TISA Sub-clause 1; Licence to be obtained spontaneously for efficiency accountability purposes.</p> <p>This is an issue on implementation of the Act and efficiency for considering an application and issuance of a license, we can create a sub clause stating the time limit within which an applicant will obtain the licence after application.</p> <p>Agreed with proposed amendment</p> <p>THAT, Clause 7 of the Bill be amended by inserting the following new sub-clause (2) after sub-clause (1): -</p> <p>(2) The Director of Trade Licensing shall issue licence within a period of seven (7) days from the date of application.</p> <p>THAT Clause 7 of the Bill be amended as follows: -</p> <ul style="list-style-type: none"> i. In sub clause (1) by inserting the word “trade” immediately before the word “licence” ii. In sub clause (2) by deleting sub clause (2) in its entirety and substituting therefor the following: - <p>“A person who operates a trade or business without a trade licence commits an offence and shall be liable upon conviction to a fine not exceeding Kenya Shillings one hundred thousand or to</p>

			imprisonment for a term not exceeding six months or to both such fine and imprisonment”
KEPSA Sub-Clause 1 Add the following at the end of the section’ <i>subject to the exemptions under section 7(b) of the Fourth Schedule of the Constitution’</i>	Agreed	Agreed	THAT, Clause 7 of the Bill be amended in sub-clause (1) by inserting the following words immediate after the word ‘licence’ – ‘subject to the exemptions under section 7(b) of the Fourth Schedule of the Constitution’
Micro and Small Enterprises Authority Sub-Clause 1 There should be clear categorization of businesses either in this clause or in the regulations.	Agreed	Agreed	To be included in the regulations

County Executive Delere 2(a) and (b)	Penalties to be provided for in the Bill
<p>Clause 8</p> <p>KLRC</p> <p>8 (1) An application for the grant of a trade licence shall-</p> <ul style="list-style-type: none"> a) Be lodged with the Directorate of Trade b) Be in the approved form; c) Contain such information and be accompanied by such documents as are required by the approved form; 	<p>Clauses on penalties and fine falls within the Bill</p> <p>Disagreed with the proposal</p> <p>Agreed with proposed amendment</p> <p>Agreed with proposed amendment</p> <p>THAT, Clauses 8 and 9 of the Bill be deleted in totality and substituted with the following new clause:</p> <p>-</p> <p>8 (1) An application for the grant of a trade licence shall-</p> <ul style="list-style-type: none"> a) Be lodged with the Directorate of Trade b) Be in the approved form; c) Contain such information and be accompanied by such documents as are required by the approved form; d) Be signed in a manner specified in the approved form;

	e) Be accompanied by the prescribed application fee.	specified in the approved form;
	(2) An application may be made in an electronic format approved by the licensing authority.	(2) An application may be made in an electronic format approved by the licensing authority.
	(3) The Directorate may, before dealing with an application, require the applicant to furnish such additional information or documents as is necessary to enable the application to be dealt with.	(3) The Directorate may, before dealing with an application, require the applicant to furnish such additional information or documents as is necessary to enable the application to be dealt with.
	(4) The Directorate shall keep and maintain an updated database of all licence holders.	(4) The Directorate shall keep and maintain an updated database of all licence holders.
	(5) The prescribed application fee is not refundable	(5) The prescribed application fee is not refundable

	KNCCI	A clause providing a breakdown of licence fees payable per type of business. A clause on the timeframe and circumstances within which prescribed fees may be reviewed		
Clause 10	<u>County Executive</u>	Agreed, however, the standards for the premises to be included in the purpose Regulations.	Agreed	THAT, Clause 10 of the Bill be amended in sub-clause (2) (b) by inserting the following words immediate after the word ‘purpose’ – ‘as stated in the standard operations guide’;
Clause 11	No comment	NA	Agreed with the Clause as drafted	NA
Clause 12	<u>County Executive</u>	Agreed, to avoid any form bias CECM to establish an appeals committee to deal with appeals against the decisions of the Director.	Agreed – member Committee;	THAT, Clause 12 of the Bill be amended as follows; a) by deleting sub-clause 1 in totality and substituting therefor with the following sub-clauses “12 (1) “There is established the Trade Licensing Appeals Committee comprising

12 (1) 'There is established the Trade Licensing Appeals Committee comprising of the following persons based on gender—	(a) Director responsible for Trade and Enterprises Development who shall be the chair to the Committee;	(b) an officer designated by the County Executive Committee Member for the time being responsible for finance;	of the following persons —
(b) Director of Markets who shall serve as the secretary to the Committee;	(c) the Director of Revenue;	(c) the Director of County Attorney; and	(a) The Director responsible for Trade and Enterprises Development who shall be the chairperson to the Committee;
(c) a Director in the Finance department designated by the County Executive Committee Member responsible for finance;	(d) the Director of Revenue;	(e) the Director of Markets.	
(d) Director of Revenue; and	(2) The Members of the Committee shall be appointed on such terms and conditions as the		
(e) County Attorney'			
12(2) 'A person aggrieved by a decision of the			

Director of Trade Licensing may within seven days appeal to the County Executive Committee Member against the decision?	<p>Committee Member may determine.</p> <p>(3) The County Executive Committee Member shall designate a Member of the Committee to be the secretary to the Committee.</p> <p>12 (3) Upon receipt of an appeal, the Executive Committee Member shall within seven years refer the appeal to the Committee for consideration'.</p>	<p>(4) The Members shall serve in the Committee for a period of five (5) years and shall not be eligible for reappointment.</p>	<p>(4) The Members shall serve in the Committee for a period of five (5) years and shall not be eligible for reappointment.</p> <p>(5) A person aggrieved by a decision of the Director of Trade Licensing shall within seven (7) days appeal to the Committee against the decision;</p>	<p>Committee Member.</p> <p>(6) The Committee may, where it entertains a notice of appeal, decide the appeal by-</p> <ul style="list-style-type: none"> b) In sub-clause 2 by inserting the following words immediately after the word 'decision' and <ul style="list-style-type: none"> a) confirming the decision of the

				before the for word 'and' – ' on the recommendation of the Committee'	Directorate of Trade Licensing;
					b) varying the decision; c) quashing the decision;
Clause 13	TISA Exound the definition of business, trade, a trader, trading premises.	Agreed	Agreed with proposed amendment	(7) The Committee shall consider the appeal within fourteen (14) days after receipt of the appeal and make recommendations to the Executive Committee Member. (8) The Committee shall regulate its own procedure.	(7) The Committee shall consider the appeal within fourteen (14) days after receipt of the appeal and make recommendations to the Executive Committee Member. (8) The Committee shall regulate its own procedure.
Clause 14	County Executive 14 (2) Delete sub-clause a and b and replace with- i. All suspended businesses must be reported to the director	Include the clause stating that change of business names, transfer if business or amendments shall attract a fee.	Agreed		

<p>failure to which attracts a penalty</p> <p>Change of business name, transfer of business or amendments shall attract fee</p>	<p>TISA 15(1)</p> <p>Include ‘either’ after payable</p>	<p>Agreed. Trader can either choose to pay for the licence annually, quarterly or half year since some applicants may be unable to pay the full fees as one installments</p>	<p>THAT, Clause 15 of the Bill be amended in sub-clause (1) by inserting the word ‘either’ immediately after the word ‘payable’ and immediately before the word ‘annually’</p> <p>THAT, Clause 15 of the Bill be amended as follows:</p> <ul style="list-style-type: none"> i. In sub clause (1) by inserting the word “either” immediately before the word “annually” ii. In sub clause (2) by deleting sub clause (2) in its entirety and substituting therefor the following: - <p>“A provisional licence may be granted to an applicant by the</p>
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			Directorate of Trade Licensing and shall be valid for a maximum period of three (3) months”
	County Executive		
15 (1)	Licence fees should be paid annually	There is need to cater for traders who are only able to pay quarterly or half-yearly to maximize revenue collection	Disagreed with the proposal That, Clause 15 of the Bill be amended by inserting the following sub-clause (4); (4) “The provisional licence shall not exceed a period of 3 months”
15 (2)	Provisional licence not exceed 3 months	Agreed to the proposal Agreed. delete sub clause 2	Disagreed with the proposal That Clause 16 of the Bill be amended in sub clause (1) paragraph (b) by inserting the following new paragraphs immediately after paragraph (b) as follows: -
Clause 16	KNCCI		
16 (4)	A clause for review of fines payable to reflect economic times and value for money.	Disagreed. Amendments can be done later on we do not need such a provision in our bill.	Disagreed with the proposal That Clause 16 of the Bill be amended in sub clause (1) paragraph (b) by inserting the following new paragraphs immediately after paragraph (b) as follows: -
		NEW PARAGRAPHS	“b A” “is operating an illegal business”

				“b AB” was acquired”	“the licence fraudulently acquired”
<u>County Executive</u>	Agreed. Delete ‘ <i>has breached a condition in the licence</i> ’ after the word licence and add ‘ <i>is operating an illegal business</i> ’	Agreed to the proposal No harm it covers any lacuna in the legislation	THAT, Clause 16 of the Bill be amended in sub-clause (1) (b) by deleting the words ‘ <i>has breached a condition in the licence</i> ’ appearing immediately after the word ‘ <i>licence</i> ’ substituting therefor the words ‘ <i>is operating an illegal business</i> ’	THAT, Clause 16 be amended in sub-clause (1) by inserting the following new paragraph (d) i) The licence was fraudulently acquired	NA
Clause 17	No comment	NA	Agreed with the Clause as drafted	NA	NA
Clause 18	<u>County Executive</u>	Transfer of licence should be allowed as	Disagreed with the proposal		

	Delete the entire clause and replace it with ' <i>A trade licence shall not be transferable from one business to another.</i> '	long as it is approved by the Director of Trade Licensing and to avoid contravening provisions of Article 209(5) of the constitution 2010.
Clause 19	KNCCI Clause 19 (3) A clause for review of fines payable to reflect economic times and value for money.	Disagreed. Amendments can be done later on we do not need such a provision in our Bill.
Clause 20	County Executive Delete the entire clause	There should be a provision for replacement of lost or defaced licence upon payment of prescribed fees. (This can be caused by an act of God beyond the control of the license holder.)
Clause 21	KLRC Clause 21 (2) The Register shall contain such information as may be prescribed.	Agreed, it mirrors what is contained in sub- section 3 Agreed with proposed amendment

Clause 22	KLRC Does not make sense as drafted because it is referring to other legislation which is not identified	Agreed, clause to be re-drafted to state “Any authorized officer designated as such in any county legislation shall be authorized officers for the purposes of this Act.”	Agreed with proposed amendment	THAT, Clause 22 of the Bill be amended by deleting sub-clause (2) in its entirety and substituting therefor the following new sub-clause;
			(2) Any authorized officer designated as such in any county legislation shall be authorized officers for the purposes of this Act.	THAT Clause 22 of the Bill be amended by deleting sub-clause (2) in its entirety.
Clause 23	County Executive Add ‘in concurrence with County Chief Officer’ after shall	Disagreed. CECM is the overall head of the sector	The proposal	Disagreed with the proposal
Clause 24	KLRC A licensing officer may, on producing a staff identity card-	Agreed- so as to conform with the constitution on the right to privacy.	(1) enter any premises for the purpose of i. Granting or renewing a trade licence; or	THAT, Clause 24 of the Bill be amended as follows:- a) in sub-clause 1(a) by deleting the following words ‘licensed under this Act’ - b) in sub-clause 2 by adding the following words

- ii. Finding out whether the holder of a trade licence is complying with the licence, or this Act or the rules made under this Act.
- (2) search the premises or any part of the premises;
- (3) inspect or examine anything in or on the premises;
- (4) seize anything that may afford evidence of the commission of an offence against this Act;
- (5) take extracts from and take copies of any documents in or on the premises;
- (6) require licence holder or any person found in the premises
- and that the licensing officer suspects the commissioning of an offence.
- Enforcement officers must be given powers to enter any premises during business hours and they should not require consent to enter.
- immediately after the word 'holder' – 'and shall carry out his duties with due diligence'.
- c) By adding the following new sub-clause immediately after sub-clause (2)
- 3) 'Any person who hinders or obstructs an officer performing their duties under this section shall have committed an offence and is liable to pay a fine not exceeding Kenya shillings one hundred thousand or imprisonment for a term not exceeding six months or both'.
- immediately after the word "premises"
- b) in sub-clause (2) by inserting the following words immediately after the word 'holder' "and shall carry out his duties with due diligence"
- c) By inserting the following new sub-clause immediately after sub-clause (2)
- "(2) A" A person who hinders or obstructs an officer performing their duties under this Section commits an offence and shall be liable on conviction to a fine not exceeding Kenya shillings one hundred thousand or to imprisonment for a term not exceeding six months or both'.

<p>to give reasonable assistance</p> <p>(2) A licensing officer shall not enter premises unless-</p> <ul style="list-style-type: none"> i. The owner or occupier consents to the entry; or ii. The entry is made when the premises are open for the conduct of business or otherwise open for entry; or iii. The licensing officer suspects on reasonable grounds that an offence is being committed against this Act in or on the premises <p>If an authorized officer is trained as such, then such a case of malpractice is prohibited in their authorization letter.</p> <p>This is also provided for in the Inspectorate Act which applies to all enforcement officers. No need to include it in our Act</p>	<p>Agreed with the proposal</p>
<p>TISA</p>	

Clause 24
Include 'and shall carry out his duties with due diligence' after word holder

Agreed, to include the amendment

County Executive

Delete '*licensed under this Act*' in clause 24(a)

Add sub-clause 3 to read as: -

- (1) Any person who hinders or obstructs an officer performing their duties under this section shall have committed an offence and is liable to pay a fine not exceeding

Kenya shillings one hundred thousand or imprisonment for a term not exceeding six months or both.	KNCCI Clause 25 (1) A clause for review of fines payable to reflect economic times and value for money.	Disagreed. Amendments can be done later on we do not need such a provision in our bill.	Disagreed with the proposal
County Executive Clause 25 (3) Include imprisonment for a term not exceeding six	Agreed. Reduce to 3 months	Agreed with the proposal the Bill be amended in sub-clause 3 by adding the following words after the word 'thousand' – 'or imprisonment for a term not exceeding three months'. i. in sub-clause (2) by inserting the following words after the word 'thousand' or to imprisonment for a term not exceeding three months, or to both'.	THAT Clause 25 of the Bill be amended as follows; - - i. i. in sub-clause (2) by inserting the following words after the word 'thousand' – 'or imprisonment for a term not exceeding three months'. to imprisonment for a term not exceeding three months, or to both'.

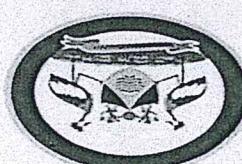
				ii. in sub-clause (3) by inserting the following words after the word ‘thousand’ or to imprisonment for a term not exceeding three months, or to both’.
Clause 26	No comment	NA	Agreed with the Clause as drafted	NA
Clause 27	<u>KLRC</u> Include the information that shall be contained in the register.	Agreed proposed amendment Agreed. Agreed proposed amendment	Agreed with THAT, Clause 27 of the Bill be amended in sub-clause (2) by inserting the following new paragraphs after paragraph (g) (h) Information that shall be contained in the register? (i) Procedure for application and licensing of E-Business	THAT Clause 27 of the Bill be amended as follows: - i. in sub clause (2) paragraph (g) by inserting the words “and e-commerce” immediately after the word “electronic”, ii. in sub-clause (2) by inserting the following new

		paragraph immediately after paragraph (g)
	NEW PARAGRAPH “g” “Information that shall be contained in the register under Section 21”	
Clause 28	<p>KLRC</p> <p>1) This section applies to any by-law relating to business permits made by a local authority within the county if that by-law was in force immediately before the commencement of this Act.</p> <p>(2) On and after the commencement of this Act, the by-law continues in force as if- ad been made by the nity government;</p>	<p>Redrafted for clarity</p> <p>Agreed</p> <p>THAT, Clause 28 of the Bill be deleted in its entirety and substituted with the following new clause;</p> <p>28 (1) This section applies to any by-law relating to business permits made by a local authority within the county if that by-law was in force immediately before the commencement of this Act.</p> <p>(2) On and after the commencement of this Act, the by-law continues in force as if- ad been made by the nity government;</p> <p>]</p> <p>THAT Clause 28 of the Bill be amended as follows: -</p> <p>(1) By inserting new sub clauses immediately after Clause 28 as follows: -</p> <p>NEW SUB CLAUSE</p> <p>“(1) A” Any person who was authorized to trade within Nairobi City</p>

<p>ference in the by-law local authority were a reference to the county government;</p> <p>ference in the by-law clerk, however described, were a reference he Directorate; and fees or charges able to the local authority were payable to county government</p> <p>(3) A business permit issued under the by-law continues in force as if it were a trade licence granted under this Act by the county government.</p>	<p>continues in force as if-</p> <p>a) It had been made by the county government;</p> <p>b) A reference in the by-law to a local authority were a reference to the county government;</p> <p>c) A reference in the by-law to clerk, however described, were a reference to the Directorate; and</p> <p>d) Any fees or charges payable to the local authority were payable to the county government</p>	<p>County on the basis of an approved trade licence before the coming into force of this Act shall make a fresh application to the Directorate of trade licensing upon expiry of the licence currently in possession.</p> <p>(1) B” The Provisions of Schedules 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 and 2.8 of the Nairobi City County Revenue Act, 2015 are repealed.</p>

	<p>law continues in force as if it were a trade licence granted under this Act by the county government.</p>		
New Schedule	Attached to the report	Attached to the report	

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NAIROBI CITY COUNTY

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Nairobi,
KENYA.

COMMERCE, TOURISM & COOPERATIVES

13TH MARCH, 2019

NCC/TLD/001/13/3/2019

Jacob Ngwelo
Clerk

Nairobi City County Assembly
P.O BOX 45844-00100

NAIROBI
CITY HALL
KENYA

Dear Mr. Ngwelo,



We acknowledge receipt of your letter Ref: NCC/TTG/CORR/2019
dated 4th March, 2019.

A stakeholders meeting was held on 12th March, 2019 at the Committee room to review the Nairobi City County Trade Licensing Bill, 2018. A Memorandum was established on amendments and proposed input for the bill hereby attached.

County Secretary & Head of County Public Service
Nairobi City County

H.E. Governor
County
Nairobi City County

Cc -

ALLAN IGAMBRI
CECM - COMMERCE, TRADE & INDUSTRIALISATION

Yours sincerely,

CLAUSE	JURISDICTION/COMMENT	PROPOSED AMENDMENT/INPUT	OBJECTS OF THE ACT
Part 1 Preliminary provisions	Interpretation 2	County Chief Officer – for the time being responsible for the chief officer is part of the structure	"trade" means any business in the course of which any goods, services, wares, merchandise or services conducted on the intervals. Business that is transacted by transferring data electronically especially on the internet.
		"E-Commerce" means whole sale or E-Commerce; promises, whether by retail, required, in any trading which a license under this Act is provided, are sold and for provisions are included in this Act that should be included in this trade is a form of trade services, wares, merchandise or services conducted on the intervals.	"Business transactions conducted on the intervals. Business that is transacted by transferring data electronically especially on the internet.
		"Provisions" means	"Permit" means Grant permission to do something An official Certificate or document granting or authorisation for a period less than a year.
		"Provisional License" means A certificate giving permission to do business before	

4. Establishment of the Directorate of Trade Licensing	(1) There is established a Directorate of Trade Licensing answerable to the Chief Officer to be the implementer of policy and one to advise the Executive committee member. (2) (g) monitoring the implementation of the provisions of this Act; to -	5. Director of Trade Licensing. - 5 The Directorate of Trade Licensing shall have power to - (1) There shall be a Director of Trade Licensing who shall be appointed by the County Public Service Board.
6. Functions of the Director of Trade Licensing.	The Directorate of Trade Licensing shall have power to - (a) Approve or reject applications for licences under this Act; (b) Issue licences under this Act and any other legislation applicable; (c) Suspend licences issued under this Act and any other legislation applicable; (d) Cancel licences issued under this Act and any other legislation applicable;	Requirement for a license. (2) A person who operates a trade or business without a trade licence commits an offence and shall be liable for fine not exceeding registered business, to a (a) in the case of a conviction.
These 2 shall be regulations for penalties	These 2 shall be regulations for penalties	These 2 shall be regulations for penalties

Section 15 (1)	The licence fees being payable quarterly or half yearly is not paying licence fee quarterly or half yearly will create a gap due	
Renewal of Licence 14	(a) - (b) has complied with all (c) has paid the licence fees safely applicable to the health, hygiene and the laws relating to the safety of food and make such orders decisions, and make such decisions, and make such orders to make and communicate to establish an appeals committee Committee Member shall Decisions arrived at need to be (2) The County Executive objection Appeal 12.	attract a fee (a) All suspended businesses must be reported to the director failure to which attracts a penalty (b) Change of business name, transfer of business or amendments shall attract a fee year in full to the previous and current years for the arrears for the effect of Revenue. businesses must be reported to the director failure to which attracts a penalty (c) has paid the licence fees safely applicable to the health, hygiene and the laws relating to the safety of food and make such orders decisions, and make such decisions, and make such orders to make and communicate to establish an appeals committee Committee Member shall Decisions arrived at need to be (2) The County Executive objection Appeal 12.
Considerations of an application 10.	(2)(b) the premises on which it is proposed to be established is unfit for the purpose as stated operations guidelines in the regulations There shall be a standard guide	Director of Trade Licensing as may be necessary to give effect to his or her decision. Director of Trade Licensing as and give directions to the and make such orders decisions, and make such decisions, and make such orders to make and communicate to establish an appeals committee Committee Member shall Decisions arrived at need to be (2) The County Executive objection Appeal 12.

16. (1)The Director of Licensing shall suspend or cancel a licence where- <ul style="list-style-type: none"> (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 which requires the licensee to act with due diligence and honesty in the carrying on of his business; or (c) the licensee fails to comply with the requirements of this Act. (d) The licence was fraudulently acquired. 	Cancellation or suspension of a licence	
(2) Notwithstanding subsection (1), the Director of Trade Licensing may classify a licence to be valid for one day, one week, one month, six months or one year. <p>A provisional licence cannot exceed 3 months.</p>	Validity of a license 15.	
advisable <ul style="list-style-type: none"> I) loss of revenue due to insufficient capacity of the county to enforce, leading to games by business community to hide and seek to integrity issues on the part of county officers II) loss of revenue due to integrity issues on the part of county officers 		

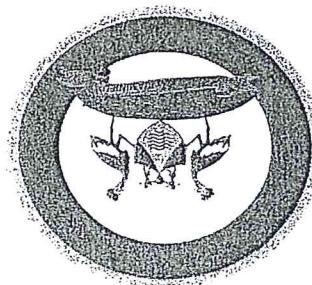
	(4) Where a licence is suspended or cancelled, the reasons for the cancellation, the holder of the licence starting the suspension or cancellation, the director of Trade Licensing or a designated officer shall confiscate the licence and the holder of the licence shall cease to conduct the business.	(5) 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 not exceeding 6 months imprisonment not thousand or imprisonment not exceeding 6 months	Transfer of a licence 18
	(1) The transfer of a licence shall not be valid, unless the Director of Trade Licensing approves the transfer. A trade licence shall not be transferred from one business to another business to another.	Licence defaced or lost. 20.	
	7. (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.	PART III- ENFORCEMENT
	22. (1) The County Executive Committee Member shall in concurrence with the County Chief Officer designate such number of officers within the purpose of this Act.	21 An authorized officer shall have the power to enter any prepossessed business premises for which an application under this Act has been made and to enter	Inspection 21

24	(1) In carrying out inspection under this Act, an authorized officer shall have power to- (a) enter any business premises lawfully held under this Act; (3) Any person who hinders or obstructs an officer performing their duties under this section shall have committed an offence and is liable to pay a fine not exceeding one hundred Kenya Shillings one hundred 100,000 or six months imprisonment or both months or both	PART IV – GENERAL PROVISIONS
25 Offences and penalties	25. (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 or expresses penalty, shall be liable on conviction to a fine not exceeding Kenya Shillings thirty thousand.	26 General penalty
26 General penalty	26. A person who commits an offence, for which there is no defence, shall be liable on conviction to a fine not exceeding Kenya Shillings thirty thousand.	27 Regulations
	(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 cancellations; and (d) procedure for trade licences;	

<p>(e) procedure for application of E-businesses licensing</p> <p>(f) trade licence fees;</p> <p>(g) publication of notices and documents;</p> <p>(h) procedure and format for electronic applications.</p>	<p>The County Executive Committee members in consultation with the Governor, shall allow for, and facilitate the participation of all persons including individuals, corporations entities and community and neighborhood associations and organizations in determination of rates, business classification and implementation of the Acts and interpretation of the Acts.</p>
---	--

NCAC/TTC/CORR/2019/ (024)

OFFICE OF THE CLERK



Telephone: 020 221 0391/2, 020 2216131
Mobile: 0700 330 846/7, 0731 808 078
Email: clerks@nrbccountyassembly.go.ke
Web: www.nrbccountyassembly.go.ke

Teleggraphic Address:

Nairobi, Kenya
P O Box 45844-00100

RE: PUBLIC PARTICIPATION ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY TRADE LICENSING BILL 2018 TO BE HELD ON WEDNESDAY, 13TH MARCH, 2019 AT 10.00 AM AT CHARTER HALL, CITY HALL BUILDING.
The Sectoral Committee on Trade, Tourism and Cooperatives is established under the Sectoral Committee on Trade, Tourism and Cooperatives to facilitate, investigate and report on all matters relating to trade development and regulation, including markets, trade licenses (excluding regulation of professions), fair trading practices, and scrutiny, public participation and reporting to the Assembly.

The Nairobi City County Licensing Bill, 2018 was therefore read a First Time on Tuesday, 4th December 2018. Pursuant to Standing Order 131, the Bill was thereafter committed to the Sectoral Committee on Trade, Tourism and Cooperatives for scrutiny, public participation and reporting to the Assembly.

Article 196(b) of the Constitution requires the County Assemblies to facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees.

Pursuant to the above, the Committee resolved to undertake a public participation exercise on Wednesday, 13th March, 2019 at Charter Hall, City Hall Building from 10.00 am.

The purpose of this letter is therefore to request you to examine the said Bill and submit your memorandum before or on Wednesday, 13th February, 2019 during the public participation exercise at Charter Hall, City Hall Building.

Attached herewith, please find a template format of memorandum and a copy of
the Bill for your reference.

JACOB NGWELA
CLERK, NAIROBI CITY COUNTY ASSEMBLY
CC: Chief Officer
Commerce and Industrialization
Nairobi City County
NAIROBI.



ATTENDANCE REGISTER FOR MEETING TO DELIBERATE ON TRADE LICENSING BILL 2018 HELD ON 12TH MARCH, 2019 AT COMMITTEE ROOM

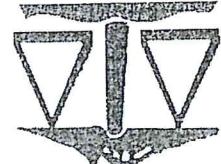
No.	Name	P/No	Department	Email	Signature
1	FREDERICK NDUKA		TRADE	frnduku@nairobim.com	
2	Titus Musumba	88075241	DSTA	titus_musumba@yahoo.com	
3	Hannah Wego			hannahwego@gmail.com	
4	Benson Mjonca	91101027	W.M. DEPT	bensonmjonca@gmail.com	
5	FREDERICK NDUNGU	19930003535	MASERS	ndungu.fred@gmail.com	
6	Eliud Okoth Nyau	199102856	Trade	eliudokothnyau@gmail.com	
7	Agnes Misake	2005001217	LICENSING	agnesmisake@gmail.com	
8	SAMMY N. JACOB	19910002548	LICENSING	sammyjacob@gmail.com	
9	Shabon Ateman	148700010503	TRADE	shabonateman50@yahoo.com	
10	Albert Nyambura	1990006368	LICENSING	albertnyambura@gmail.com	
11	GEOFFREY MUSITHIMU	1995032783	LICENSING	geoffrey.musithimu@gmail.com	
12	Christine Iren	20070081973	Legal Affairs	christineirene@gmail.com	
13	PAUL KIBBU	19996082258	IT&S C-GOV	paulkibbu@yahoo.com	
14	Hesbon M. Agwain	1988004731	Trade licen	mochehesbon@yahoo.com	

Dear Sir
 RE:MEMORANDUM ON THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018
 The above matter refers and the contents of your letter dated 13th March 2019 are noted and acknowledged.
 The Law Society of Kenya is a professional statutory body established by an Act of Parliament. The Law Society Act 2014 and draws membership of all advocates in the the country.
 The Society has scrutinized the Nairobi City County Trade Licensing Bill, 2018 and has developed a memorandum.
 We hereby forward our Memorandum on the Nairobi City County Trade Licensing Bill,
 2019 per the instructions on the above mentioned letter.

Date: Tuesday, March 19, 2019
 Your Ref: NCAC/TRC/CORR/2019/(027)
 Our Ref: S/20
 Website: www.lsk.or.ke
 Cell: +254 720 904983
 Tel: +254 20 387 5534
 Fax: +254 20 387 5534
 P.O. Box 72219-00200 Nairobi, Kenya
 Droppling Zone 149 - Revolution Plaza
 020-2625391, 0208155295
 Nairobi City County Assembly
 The Clerk's Chamber
 County Assembly
 City Hall Buildings
 P.O. Box 30075-00100 Nairobi
 P.O. box 45844-00100



LAW SOCIETY OF KENYA



Allen Wayyaki Gichuki (President), Harrlette Chigga (Vice-President)
 Herine Kabita, Maria Mbeneka, Roseline Odere (General Membership Representatives)
 Boniface Akusala, Carolyne Kamende, Aliso Ingati (Nairobi Representatives)
 Damaris KiNyili, Bernhard Negetich, David Njoroge, Jane Masai (Upcountry Representatives)

Encl:
 CEO/SECRETARY
 Mercy K. Wambua
 Yours faithfully
 Dennis Ngugi

CC: S/LC
 Mr. Jacob Ngwela
 Mr. Dennis Ngugi
 Mr. John Mbithi
 Mr. Paul Ongoro
 Mr. Peter Muigai
 Mr. Simon Mwangi

Damatis Ndimba, Bernhard Kipkoech, David Njoroge, Jane Masai, (Coast Representative)

Boniface Akusala, Carolynne Kamende, Alileen Ingati, (Nairobi Representative)

Hermine Akoth, Maria Mbengeka, Roseline Odhiambo (General Membership Representatives)

Alleen Waivaki Gichuki (President), Harriet Chege (Vice-President)

Email: alleen@wamaeallen.com Website: www.ls.kn.ke

Tel: +254 20 387 4664 Cell: +254 720 904983 Fax: +254 20 387 5534

Githang'a Road P.O Box 72219 - 00200 Nairobi | Kenya

Lavington, Opp Valley Arcade,

Allen Waivaki President Law Society of Kenya

THE NAIROBI CITY COUNTY TRADE LICENSING BILL OF 2018

THE CLERK OF THE NAIROBI CITY COUNTY GOVERNMENT
TO
MEMORANDUM

0720 904983

Tel. 387 4664

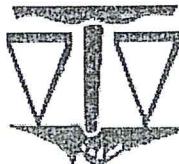
NAIROBI

P.O.Box 72219-00200

Githang'a Road

Lavington, Opposite Valley Arcade

LAW SOCIETY OF KENYA



In the performance of its mandate, the Law Society of Kenya circulates Bills, Legislation and Regulations made pursuant thereto to its members for comments, collates those comments before engaging with relevant arms of government and other stakeholders.

- | | | |
|-------|---|--|
| I. | Allan Waiyaki Gichuhi (President), | |
| II. | Harrlette Chigga (Vice-President) | |
| III. | Herine Akoth (General Membership Representatives) | |
| IV. | Maria Mbenekeka (General Membership Representatives) | |
| V. | Roseline Odhiambo (General Membership Representatives- Senior Advocate) | |
| VI. | Boniface Akusala, (Nairobi Representatives) | |
| VII. | Caroline Kamende (Nairobi Representatives), | |
| VIII. | Aluso Ingati, (Nairobi Representatives) | |
| IX. | Damaris Ndindala (Upcountry Representatives) | |
| X. | Bernhard Kipkoech (Upcountry Representatives) | |
| XI. | David Njoroge (Upcountry Representatives) | |
| XII. | Jane Masai, (Upcountry Representatives) | |
| XIII. | Eric Wafua (Coast Representative) | |

Council comprise of:

The Council is the governing body of the Law Society of Kenya. It comprises a President and ten other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society Act. Currently the

Pursuant to this mandate, the Law Society among other things circulates Bills to its members for comments, collates those comments and engages relevant arms of National and County Government, including Ministers and Departmental Committees of Parliament with a view to ensuring that any proposed legislation is drafted to achieve its desired goal of promoting the Rule of Law.

The Law Society of Kenya is 15,000 member body corporate established by the Law Society of Kenya Act, 21 of 2014. One of its statutory objects as provided for in section 4 of the Act is to assist the Government and the courts in all matters affecting legislation and the

administration and practice of the law in Kenya.

A professional is a member of a profession. The term also describes the standards of education and training that prepare members of the profession with the particular knowledge and skills necessary to perform the role of that profession. Professionals are subject to strict codes of conduct ensuring rigorous ethical and moral obligations and process commitment to competence, integrity and morality, altruism, and the promotion of the public good within their expert domain. Professionals are accountable to those served and to society. Professional

A profession is a disciplined group of individuals who adhere to ethical standards. This group positions itself as possessing special knowledge and skills in a widely recognized body of learning derived from research, education and training at a high level, and is recognized by the public as such. A profession is also prepared to apply this knowledge and exercise these skills in the interest of others.

Or

formal education and practical experience. Every organized profession (accounting, law, medicine, etc.) is governed by its respective professional body.

Under section 2, a business is defined to include a profession, occupation or clear mastery of a complex set of knowledge and skills through, often long and intensive operation times or trade, and include businesses that are exempted. A profession can be defined as:

. Occupation, practice, or vocation, that is not mechanical or agricultural, requiring

medicinal, etc.) is governed by its respective professional body.

Section 2 -Definitions of businesses and Trade Licences

ISSUES ARISING.

- iv. The Appointment of authorized officers and inspection powers.
- iii. The Procedure for application, renewal, suspension and cancellation of trade licenses, executive of trade.
- ii. The establishment of an administrative authority who is a director under the county proposals of key concern include:
- i. The Administration of trade licenses

The Nairobi City County Trade Licensing Bill, 2018 broadly proposes various legislative

GENERAL COMMENTS

The Law Society of Kenya has prepared observations on the Nairobi City County Government Trade Licensing Bill of 2018.

There are characteristics of a profession that have been described by different people without which entry to the profession is barred.

"Professional expertise". Training involves obtaining degrees and professional qualifications "professional expertise". Professional qualifications involve technical, specialised and highly skilled work often referred to as professions involved in society as a whole and thus of having a special and valuable nature. All is regarded as vital to society as a whole and thus of having a special and valuable nature. All society. This high esteem arises primarily from the higher social function of their work, which affaires. Professions enjoy a high social status, regard and esteem conferred upon them by affaires. Professions are mostly autonomous as they have a high degree of control of their own professional reputation and control of their members' conduct.

Professions are mostly autonomous as they have a high degree of control of their own professional reputation and control of their members' conduct.

Characteristics of a profession

Practice is to be professionally engaged in.

Or

such as a law practice or a medical practice.

A business in which a professional or number of associated professionals offer services, professionals run practices. A practice is defined as:

work.

would be that a professional does mainly *mental work*, as opposed to engaging in physical work. Electrician, mason, painter, plumber and other similar occupations. A related distinction apprenticeship is generally associated with skilled labour, or trades such as carpenter, maintenance work are more generally thought of as trades or crafts. The completion of an incorrecty referred to as professions, occupations such as skilled construction and

In narrow usage, not all expertise is considered a profession. Although sometimes through widely recognized professional associations.

standards of practice and ethics for a particular field are typically agreed upon and maintained

the Society.

herewith to the secretary of the Council of Legal Education and to the secretary of applicant shall also deliver a copy of the petition and of any document delivered has been so filed together with such other documents as may be prescribed and the Justice, and filed with the Registrar together with a notice intimating that the petition prescribed form, verified by oath or statutory declaration addressed to the Chief for admission as an advocate, and the application shall be made by petition in the (1) Every person who is duly qualified in accordance with this Part may apply

15. Admission as an advocate

The Advocates' Act is the law relating to advocates. Advocates are admitted under section 15 of the Advocates' Act applies for admission to the Chief Justice.

Advocates' Act, the Office of the Attorney General Act, The Law Society of Kenya Act.

Jurisdiction. The Legal Profession in Kenya is governed by the following legislation: The

The Legal profession is a body of individuals qualified to practice law in a particular county government to issue trade licenses - but exclude regulation of professions.

regulation under the County Government. Specifically, Sub article 7(b) confers powers of the

government. Under Part II of the Fourth Schedule sub article 7 places Trade development and

Under Part I of the Fourth Schedule sub article 8 places courts under the national

Constitution of Kenya has delineated the functions of the National and County Governments.

The section makes the Act applicable to all trades and businesses in Nairobi. The

Section 3: Application of the Act

The Industrial Training Act is the law that relates to the regulation of the training of persons engaged in industry. The Act defines "Trade" means a skilled occupation:

"A job requiring manual skills and special training."

The professions are therefore differs from 'a trade'. A Trade is defined as

Definition of a Trade

that profession.

public. This is often an association made up of individuals who are regulated participants in professional entity, professional standards and compliance expectations on behalf of the entity for a profession to exist there must be a capable entity to oversee and administer

Following bodies-The Chief Justice, the Attorney General and the Law Society of Kenya.

The Legal Profession in Kenya is governed by a co-regulatory framework by the under Chapter 10, Article 16(2) (a).

The Courts are a national government function. The Chief Justice is the head of the judiciary. The Act places the matter of licensing under the Chief Justice and under the Courts.

Office hours without payment

Chief Justice may give, and shall allow any person to inspect the Roll during Act and any directions as to its form and the information to be recorded as this The Registrar shall keep the Roll of Advocates in accordance with this

16. Custody of Roll

advocate has the name on the Roll and has a practising certificate. The qualifications to act as an advocate is set out in section 9 include; admission as an person mentioned in section 10.

Advocates having the rank of Senior Counsel and, for the purposes of Part IX, includes any person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates' Act Cap 16 is the law relating to Advocates. It defines an "advocate" as any Section 6 details the functions of the Directorate of Trade Licensing. However, the

Section 6 Functions of Directorate of Trade Licensing

and practice. There exist bodies that regulate the legal profession at the national level. Consequently, the Director does not jurisdiction over the advocates, their licensing Attobery General as the titular head of the bar.

Section 6 of the Office of the Attorney General Office Act No 49 of 2012 empowers the Law Society of Kenya, of advancing the Government on the regulation of the legal profession. General. Under section 5 (1) (h), the Act confers on the responsibility in consultation with the Office of the Attorney General Office Act No 49 of 2012 makes provision for the Attorney Part 4 Article 156(1) of the constitution and is part of the National Government. Furthermore, The Office of the Attorney General is established under Chapter Nine-the Executive. Register and the Law Society of Kenya.

The Section makes provision for the establishment of an administration authority for trade licensing under the Directorate of Trade Licensing. The Administrative authorities under the Advocates' Act for the legal profession are the Chief Justice under section 15, Chief

The following bodies-The Chief Justice, the Attorney General and the Law Society of Kenya.

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The Act places the matter of licensing under the Chief Justice and under the Courts.

Office hours without payment

Chief Justice may give, and shall allow any person to inspect the Roll during Act and any directions as to its form and the information to be recorded as this The Registrar shall keep the Roll of Advocates in accordance with this

- The Law Society of Kenya is a statutory body established by an Act of Parliament that draws its membership from all advocates. It is the professional association for the Legal Profession in Kenya. The Law Society of Kenya; its objects and conduct of affairs of the Society. Some of the objects and Society of Kenya, its objects and conduct of affairs of the Society. Some of the objects and Kenya meet the standards of learning, professional competence and competency of legal services in Kenya. ensure that all persons who practise law in Kenya or provide legal services in Kenya maintain and continuously improve the standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide set, maintain and continuously improve the standards of learning, professional competence and competence and professional conduct for the provision of legal services in Kenya
- i. functions of the Society as set under section 4 are:
1. ensure that all persons who practise law in Kenya or provide legal services in Kenya meet the standards of learning, professional competence and competency of legal services in Kenya.
- ii. facilitate the acquisition of legal knowledge by members of the Society and determine, maintain and enhance the standards of professional practice and
- iii. Kenya
- iv. facilitate the acquisition of legal knowledge for the legal profession in Kenya ethical conduct, and learning for the legal profession in Kenya
- v. represent, protect and assist members of the legal profession in Kenya in standards of legal education and training;
- vi. facilitate the realization of a transformed legal profession that is cohesive, matters relating to the conditions of practice and welfare
- vii. develop and facilitate adequate training programmes for legal practitioners accountable, efficient and independent
- viii. Chief Justice with regards to the professional practice, conduct and discipline of advocates amongst others.
- Section 15(1) License Fees
- The Bill makes provisions regarding the licensing fees. The Advocates Act under section 84 Application of certain fees, etc, prescribes the fees and subscriptions payable by the Chief Justice with regard to the professional practice, conduct and discipline of advocates
- Section 17 of the Act establishes the Council which is the governing body of the Society. section 81 (1) gives the Council of the Society to make rules with the approval of the Chief Justice with regard to the professional practice, conduct and discipline of advocates
- Section 17 of the Act makes provisions the fees and subscriptions payable by the Chief Justice with regard to the professional practice, conduct and discipline of advocates
- Section 15(1) License Fees
- Advocates for practice.

From the foregoing, the Law Society of Kenya, requests that these amendments need to be reconsidered urgently before enactment of the Bill.

CONCLUSION

3	Application	Insert a subsection that makes provision for the exempted professional businesses under the constitution.	The clause allows with the businesses that the Act applies to.	businesses that are exempted professionally. it provides a clear demarcation regarding the businesses that the constitution aligns with the constitution.	This aligns with the constitution.	professionally, it provides a clear demarcation regarding the businesses that the constitution aligns with the constitution.	businesses that are exempted professionally. it provides a clear demarcation regarding the businesses that the constitution aligns with the constitution.
2	Definition of businesses	Delete the phrase "include the Retention of the global definition of businesses that are exempted business."	Retain the definition of the global definition of businesses that are exempted business.	Definition of professional businesses, exempted professional businesses professionally. it provides a clear demarcation regarding the businesses that the constitution aligns with the constitution.	This aligns with the constitution.	Definition of professional businesses, exempted professional businesses professionally. it provides a clear demarcation regarding the businesses that the constitution aligns with the constitution.	businesses that are exempted professionally. it provides a clear demarcation regarding the businesses that the constitution aligns with the constitution.
	Issues	Proposal	Justification				

SPECIFIC COMMENTS ON THE NAIROBI CITY COUNTY TRADE LICENSING BILL OF 2018

Subsequently, any fees demanded and paid by the Director of Trade Licensing would amount to double taxation over the right to practice.

All admission fees received by the Registrar under section 11(2) or 15(4), and all fees received by the Registrar in respect of replacing an advocate's name on the Roll under section 7, shall be paid by the Registrar to the Society, and those fees together with the fees for practising certifies and the Society's annual subscriptions, both of which shall be collected by the Society, shall be applied by the Society to all or any of the objects of the Society, shall be applied by the Society to all or any of the objects of the Society, shall be applied by the Society to all or any of the objects of the Society, shall be applied by the Society to all or any of the objects of the Society, shall be applied by the Society to all or any of the objects of the Society.

Society.

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I. While Article 185 of the Constitution grants county governments legislative powers in respect of functions falling within their mandate to be exercised through their county assemblies, it is specific that a county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the assemblies, This proposal in the Bill is unconstitutional for the following reasons:

Section 3 states that the Act applies to all persons who trade or have businesses in Nairobi while the definition of "business" at Section 2 as read together with Section 7(1) requiring professionals to pay for trade licenses means that professionals such as auctioneers, lawyers, engineers, accountants etc. are also required to pay for their trade licenses, even though they already pay for their annual licenses to their professional bodies.

Section 7(1) should be amended by adding the following at the end of the section, "subject to the exemptions under Section 7(b) of the Fourth Schedule of the Constitution".

Replace the word "include" with "exclude" throughout the definition of a "business". Section 2 should be amended to exclude a profession and exclude businesses that are exempted.

PROPOSED AMENDMENT

Section 7(1) a person who intends to operate any business or trade within the County shall obtain a license.

Section 2 defines a "business" to include a profession, occupation clear definition of operating times or trade, include the businesses that are exempted.

CLAUSES

SUBMISSIONS ON THE NAIROBI CITY COUNTY TRADE LICENSING BILL 2018



II. Section 7(b) of the Fourth Schedule of the Constitution 2010 provides that the County Government shall deal with trade licences **excluding regulations of professionals**;

III. Section 5(2) of the County Government Act also provides that a county government shall be responsible for functions provided for in Article 186 and assigned in the **Fourth Schedule of the Constitution**;

IV. Professionals who render services and are regulated by bodies established under an Act of Parliament are thus expressly excluded from taking out licences. Professionals provide services across different counties and it would amount to double taxation if they were to pay for licences from different counties before they operate. Each county would be at liberty to impose its own conditions on the carrying out of businesses which are already regulated by national legislation aimed at uniform regulation throughout the country. The result would be busineses in other parts of the country, and not just the county of Nairobi. This would also be in contravention of Article 209(5) of the Constitution 2010 which provides that the taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national economy.

✓ 14/3/19
 ✓ L.C.TX
 ✓ Gmny. Hse
 ✓ LBU bldrs
 ✓ C.R. IYCA
 ✓ 13/3/19
 ✓ JAD muni
 ✓ D/L

MSEA
CEO'S OFFICE

Thanks you

Attached please find the views of the Micro and Small Enterprises Authority for your kind consideration.

MICRO AND SMALL ENTERPRISES AUTHORITY



- Views of MSEA Nairobi County Trade Licensing Bill.pdf (~155 KB)

Subject: Nairobi City County TRADE LICENSING BILL, 2018
 From: mseakenya.msed (<mseakenya@gmail.com>)
 To: clerk@nrbcountyassembly.go.ke
 Date: 2019-03-13 03:13

Clause 7(1)	PROPOSED AMENDMENT/INPUT	JUSTIFICATION/COMMENT	
	We propose that there be a clear categorization of Businesses either in this clause or in the Regulations – SMEs therby inhibiting their growth.	The categorisation of Businesses either in this clause or in the Regulations – SMEs therby inhibiting their growth. Such categorisation should clearly take into consideration the interests of SMEs in as far as licence fees is concerned.	The definitions of 'Micro and Enterprise', and 'Small Enterprise' in the Micro and Small Enterprises Act, 2012 can be adopted.

NAME OF THE INSTITUTION: MICRO AND SMALL ENTERPRISES AUTHORITY
MEMORANDUM ON THE NAIROBI CITY COUNTY TRADE LICENSING BILL,
2018



NAIROBI COUNTY
KNCCI

Introduction

KNCCI is a non-profit, autonomous, private sector business membership organization whose overall mandate is to protect and develop the interests of its members in attaining continued and sustainable economic growth. The Chamber works in close collaboration with the National and County Governments, stakeholders and business membership organizations regionally and internationally on behalf of the private sector. KNCCI has devolved its operations to ensure a countrywide outreach within its 47 County Chambers Chapters to advocate for the creation of a favourable commercial, trade and investment environment that supports enterprise expansion.

In Kenya, the Private Sector remains a key engine for economic growth and development and an important partner to the government in its quest to realize various development and economic objectives such those enumerated under the Kenya Vision 2030 blueprint. The Private Sector also engages with the legislature on critical bills that impact on the role of the Private Sector and the development process framework on the regulation of trade and business in the county. The Chamber proposes the following amendments and recommendations which aim to strengthen the Bill.

PROPOSED AMENDMENTS TO THE NAIROBI CITY COUNTY TRADE LICENSING BILL 2018

- | Current Section in | Proposed Amendment | Rationale and Justification |
|-----------------------------------|------------------------------|---|
| 8. (3) An Applicant for a license | 1) A complementary clause | providing a breakdown of fees payable per traders or businesses as to how |
| | 2) A clause on the timeframe | type and nature of trade or much they are expected to pay |
| | | licensing fees payable per business, and |
| | | 3) A clause on the fee structure |
| | | and circumstances within reviews of the same; |
| | | which such prescribed fees |
| | | may be reviewed to reflect |
| | | create a framework upon which |
| | | the Directorate of Trade |

7. (2) A person who operates a 1) A clause creating a Amendment (1) intends to government.
economic changes in value Licensing may review the
of money over time. payable license fees to reflect
changes in value of money over
time for the benefit of the county
framework for review of the create a framework that enables
trade or business without a
offence and shall be liable upon
prohibited fines to reflect review of fines payable for
trade licence commits an
conviction-
(a) in case of a registered
business, to a fine not
exceeding KSh 100,000 or 6
(b) in case of an individual to a
fine not exceeding KSh 50,000.
16. (4) A person who
in case of an individual to a
months imprisonment or both;
contravenes the provisions of
this section commits an offence
and shall be liable upon
conviction to a fine not
exceeding KSh 100,000.
19. (3) A licence holder who
contravenes the provisions of
this section commits an offence
and shall be liable upon
conviction to a fine not
exceeding KSh 100,000.
25. (1) A person who wilfully
refuses to give information or to
produce any document required
to be produced or gives false or
misleading information,
10,000.

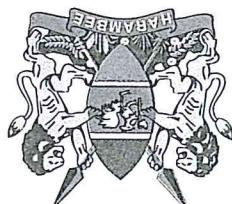


- Commits an offence and is liable on conviction, to a fine not exceeding KSh 50,000 or imprisonment for a term not exceeding 3 months or both.
- (2). A person who forges or alters a licence without authority commits an offence and shall be liable to on conviction to a fine not exceeding KSh 50,000 or imprisonment for a term not exceeding 3 months or both.
- (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 KSh 50,000.
26. A person who commits an offence, for which there is no defence, shall be liable on conviction to a fine not exceeding KSh 30,000.



14th March, 2019

KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAFIA ROAD
P.O. Box 34999-00100
Nairobi, Kenya
Tel: +254-20-2225786
Fax: +254-20-2241186/2241201
Telephoni: Nairobi, +254-20-2241186/2241201
Telegrams: "LAWREFORM" NAIROBI
"A vibrant Agency for responsive Law Reform"
Ref No: Ref No: KLR/C/RES/84TY



KENYA LAW REFORM COMMISSION



Yours sincerely,
Joseph Dache, MBS
SECRETARY/CEO

Encl.

We acknowledge with thanks receipt of your letter Ref. No. NCCAA/ITC/CORR/2019 dated 4th March, 2019 on the above subject.
Enclosed herewith please find the Commission's comments on the Review of the Nairobi County Trade Licensing Bill, 2018 for further action.

RE: PUBLIC PARTICIPATION ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018 TO BE HELD ON WEDNESDAY, 13TH MARCH, 2019 AT 10.00 AM AT CHARTER HALL, CITY HALL BUILDING

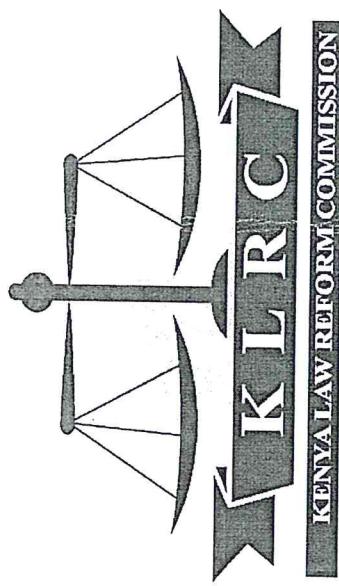
Dear Mr. Ngwelo,

Mr. Jacob Ngwelo,
Clerk, Nairobi City County Assembly,
Clerks Chamber,
City Hall Buildings, First Floor, Assembly Wing,
P.O. BOX 45844-00100
NAIROBI
Kenya 00100
E-mail: info@klrc.ke
www.klrc.ke

When replying please quote
Ref No: Ref No: KLR/C/RES/84TY

"A vibrant Agency for responsive Law Reform"
Ref No: Ref No: KLR/C/RES/84TY





A REVIEW OF THE NAIROBI COUNTY TRADE LICENSING BILL, 2018

The Nairobi City County invited the Commission to make submissions on the above bill. Please find below our written submissions.

THE NAIROBI CITY COUNTY TRADE LICENSING BILL, 2018

In principle, the Bill is well drafted and provides adequately for the regulation of trade, administering trade licences and enforcing the same. However, below we raise the following concerns for further review and reflection.

PROVISION	PROPOSED AMENDMENT/INPUT	JUSTIFICATION
Clauses		
1. Long title	A Bill for AN ACT of the County Assembly to provide for grant of trade licences and for related purposes.	As currently drafted, it speaks to trade regulation which is quite broad especially when considering the content of the bill which is on licensing of businesses and enforcement mechanisms
2. Clause 2- interpretation	“business” includes a profession, trade or occupation;	As drafted the definition is incomprehensible
3. Clause 4 on the establishment of the Directorate of Trade Licensing	There is established a Directorate of Trade Licensing within the county department of trade	The county sector is too general hence the variation to limit the directorate to the county department of trade
4. Clause 6 on functions of the Powers of the Director of Trade	Powers of the Director of Trade	The content of clause 6 denotes powers

Director of Trade Licensing	Licensing (marginal note)	rather than functions
5. Clause 8 and 9 on application for licence	<p>8. (1) An application for the grant of a trade licence shall—</p> <ul style="list-style-type: none"> (a) be lodged with the Directorate of Trade; (b) be in the approved form; (c) contain such information and be accompanied by such documents as are required by the approved form; (d) be signed in a manner specified in the approved form; and (e) be accompanied by the prescribed application fee. <p>(2) An application may be made in an electronic format approved by the licensing authority.</p> <p>(3) The Directorate may, before dealing with an application, require the applicant to furnish such additional information or documents as is necessary to enable the application to be dealt with.</p> <p>(4) The Directorate shall keep and maintain an updated database of all licence holders.</p> <p>(5) The prescribed application fee is not refundable.</p>	<p>This provision has been redrafted to enhance clarity</p> <p>We propose that clause 8 and 9 be merged as they speak to the same issue on application for licence</p>
6. Clause 21 on register	<p>21.(1)The Directorate shall maintain a register of all licences issued under the</p> <ul style="list-style-type: none"> • Redrafted to enhance clarity • Subsection (2) as drafted also 	

	<p>Act.</p> <p>(2) The Register shall contain such information as may be prescribed.</p> <p>(3) The Register shall be available for inspection by the public during official working hours.</p>	<p>mirrors what is contained in subsection (3)</p>
7. Clause 22 on Authorized officers	<p>Sub-clause 3 does not make sense as drafted because it is referring to other legislation which is not identified note.</p> <p>This clause should also deal with how authorized officers identify themselves during inspection</p>	<p>When a reference is made to other legislation, then mention the legislation and it should be part of the marginal note.</p> <p>The identification is necessary especially during the inspection of the businesses.</p>
8. Clause 23 and 24	<p>23. A licensing officer may—</p> <p>(1) enter any premises for the purposes of—</p> <ul style="list-style-type: none"> (a) granting or renewing a trade licence; or (b) finding out whether the holder of a trade licence is complying with the licence, or this Act or the rules made under this Act; <p>(2) search the premises or any part of the premises;</p> <p>(3) inspect or examine anything</p>	<p>Redrafted for purposes of clarity</p> <p>combine the two clauses for clarity and they are dealing with similar issues</p>

in or on the premises;

(4) seize anything that may afford evidence of the commission of an offence against this Act;

(5) take extracts from, and take copies of, any documents in or on the premises;

(6) take into or onto the premises such persons, equipment and materials as the inspector reasonably requires for the purpose of exercising any of the powers mentioned in subsection (1) to (5); and

(7) require the licence holder or any person in or on the premises to give to the inspector reasonable assistance in relation to the exercise of the powers mentioned in subsections (1) to (6).

(2) A licensing officer shall not enter premises unless—

- (a) the owner or occupier consents to the entry; or
- (b) the entry is made when the premises are open for the conduct of business or otherwise open for entry; or
- (c) the licensing officer suspects on reasonable grounds that an

	Offence is being committed against this Act in or on the premises.	
9. Provide a definition for Licence Holder	The licence holder, licensee or holder of a licence has been referred to numerous times in the body of the Bill. It has also been used interchangeably (choose one)	For clarity purposes, provide a definition for a licence holder/licencee/holder of a licence.
10. Clause 28 on saving provision	<p>28. (1) This section applies to any by-law relating to business permits made by a local authority within the county if that by-law was in force immediately before the commencement of this Act.</p> <p>(2) On and after the commencement of this Act, the by-law continues in force as if—</p> <ul style="list-style-type: none"> (a) it had been made by the county government; (b) a reference in the by-law to a local authority were a reference to the county government; (c) a reference in the by-law to clerk, however described, were a reference to the Directorate; and (d) any fees or charges payable to the local 	Redrafted for clarity

	authority were payable to the county government.
	(3) A business permit issued under the by-law continues in force as if it were a trade licence granted under this Act by the county government.
11. Clause 27 on Regulations	Include the information that shall be contained in the register

Clause 21 provides that regulations shall provide this information hence the need for an additional paragraph in this clause

General comments

There is need for consistency when referring to the directorate of trade licensing. In some instances, it is referred to as the 'Director', in other cases it is referred to as the 'Directorate'. As it is defined under the interpretation section, that is the term that should run through the bill.

cc: Ag. S/L/C
20/3/18
D/C
JL/C
JL/C
JL/C
JL/C
JL/C
JL/C

TISA wishes to make the following comments on the proposed Nairobi City County Trade and Licensing Bill, 2018 in addition to submissions shared on 12th March 2019 at Charter Hall during the public hearings on the proposed Trade and Licensing Bill, 2018.

TISA is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. TISA has established itself as a leading player in decentralized governance and has engaged with relevant state and non-state actors in the quest to promote effective local governance in Kenya.

RE: Memorandum on Nairobi City County Trade Licensing Bill, 2018

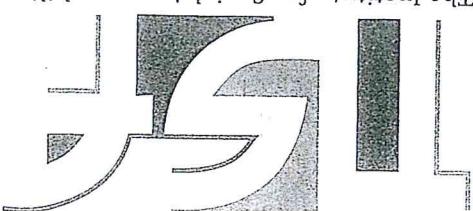
19th March 2019



Mr. Jacob Ngwewe
Clerk
P.O. Box 45844 - 00100 Nairobi.
Nairobi County Assembly
P.O. Box 45844 - 00100 Nairobi.
Hon. Charles Thuo Wakati
Chairperson
Trade, Tourism and Cooperatives Committee
Nairobi City County Assembly
P.O. Box 45844 - 00100 Nairobi.
C.C.

TO

The Institute for Social Accountability



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No	Topic/Clause	Proposed Amendment	Justification
	New Clause: Guiding principles	<p>The county should introduce a section on principles to guide the Act as follows;</p> <ul style="list-style-type: none"> • To provide an enabling regulatory framework which provides and promotes growth and development in the sector, promotes self-regulation by trading associations, ensures accountability and answerability; • To give effect to Article 232 on the values and principles of public service which include responsive, prompt, effective, impartial and equitable provision of services; involvement of the people in the process of policy making, accountability for administrative acts and transparency; affording adequate and equal opportunities for all and provision to the public of timely, accurate information • To give effect to Article 10 to promote public participation, inclusiveness, equality, human rights, non -discrimination and 	<p>The Constitution¹ of Kenya sets a legislative standard of codifying values and principles to guide the interpretation and implementation of the supreme law. To ensure compliance to the statutory requirements and to promote right to trade for all, the bill should conform to the guiding principles provided</p>

¹ Chapter Four of the constitution of Kenya 2010 provides for the Bill of Rights and points out that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. Article 27 (5) provides that women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres. Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected. Article 29 states that Every person has the right to freedom and security of the person, which includes the right not to be subjected to any form of violence from either public or private sources and subjected to torture in any manner whether physical or psychological. The above in essence affects the proposed Bill and requires that right of all traders are protected by the Bill.

	<p>protection of the marginalised that include in this case the vulnerable trading populations</p> <ul style="list-style-type: none"> • To give effect to article 35 and provide for open governance based on proactive disclosure of information; The government should adopt a proactive information disclosure to enhance transparency in preferential procurement facilities. • To give effect to Article 27 (3) which provides that women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres. Thus, the Act should be aimed at facilitating access to trading spaces for marginalized groups especially women and youth; 	<p>Through licensing, registration of informal sector will be enabled subsequently allowing traders to get onto county database which would allow them to gain access to government support programmes; Licensing of all traders will ensure greater security to operate a business</p>
	<p>Part 1 Preliminary provisions: Interpretations²</p> <p>“Business” includes a profession, occupation clear definition of operating times or trade, include the businesses that are exempted</p> <p>“Trade” means any business in the course of which any goods, wares, merchandise or provisions are sold and for which a license under this Act is required, in any trading premises, whether by retail or wholesale.</p>	<p>Revision: “Business” includes <i>commercial activities conducted for the purpose of facilitating such buying and selling of goods and services with clear definition of operating times or trade</i>, including the businesses that are exempted</p> <p>Revision “Trade” or “Trading” means any business in the course of which any goods, wares, merchandise or provisions are sold and for which a license under this Act is required,</p>

² Under Cap 500; Business is interpreted as “business” means *any trade or occupation, other than a profession, carried on with a view to profit*

	<p>in any trading premises, whether by retail or wholesale.</p> <p><i>Recommendations on other interpretations relevant to the Bill:</i></p> <ol style="list-style-type: none"> “General trade area” means an area declared under section 3 to be a general trade area for the purposes of this Act; this will allow section 3 (1) provide in detail general trade area under the act “Street trading” the selling or offering for sale of any article in the street “Hawker” means a person who, whether on his or her own account or as the servant of another person, sells goods by retail other than in trading premises or in a market established by the county and / or authorities related to the county “specified goods” means any goods, or goods of any particular class, declared as such under section for the purposes of this Act. 	<p>Revision Clause 3: This Act shall apply to all persons who trade or have businesses in Nairobi cutting across all business classifications specified under subsection 3(1) General trade areas- this part should set out the general trade areas under the act-</p>
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	<p>basically it will provide how the trade areas will be designated</p> <p>Introduce subsection on business classification</p> <p>Micro enterprises</p> <ul style="list-style-type: none"> ❖ sector including hawkers, street vendors and small traders and service providers operating on the street verandahs or temporary buildings³ <p>Small enterprises</p> <ul style="list-style-type: none"> ❖ Shop and retail services ❖ Communication Transport, storage and Accommodation and catering <p>Medium enterprises</p> <ul style="list-style-type: none"> ❖ Agriculture, forestry and natural resources extraction activities ❖ Technical Financial, and Professional services ❖ Entertainment, Health and Education 	<p>Revision 4(3): the directorate of trade shall be guided by the principles including</p> <p>(a) The regulation of licensable activities which shall aim to set minimum standards relating to such activities and to ensure</p> <p>To promote compliance to statutory regulations, transparency and accountability</p>
Part II-Administration of Trade Licenses	<p>4(1) There is established a Directorate of Trade Licensing within the County Sector responsible for matters relating to trade</p>	

³ community, social and personal services trade sub sector: Jua Kali Artisans; motorcycle taxi; Car wash; Tomato vendors; Food vendors; Salons and barber shops; Fishmongers; Small slaughter house; Juice parlor; Second hand clothes; Outdoor food and drinks; Mobile coolers and Barbeque; Catering type trucks; Mobile food kiosks; Posho mill etc.

	<ul style="list-style-type: none"> i. national security; ii. public safety and hygiene; and iii. environmental protection; iv. Inclusion of marginalized trading populations, including hawkers and street vendors v. Promotion of transparency and public participation <p>(b) Licences shall be issued on the basis of clearly defined and transparent criteria;</p>	<p>Revision 7.(1) A person who intends to operate any business or trade within the county and fall within the brackets of traders <i>under subsection (3)</i> shall obtain a license</p> <p>Revision 7(2) A person who operates a trade or business <i>listed under subsection (3)</i> without a trade license commits an offence and shall be liable upon conviction (b) in the case of an individual to a fine not exceeding Kenya Shillings Fifty Thousand or <i>a 6 months' imprisonment or both</i></p>	<p>This enhances transparency and effective management of trade in the county</p>
Clause 7.(1) A person who intends to operate any business or trade within the county shall obtain a license	Clause 7(2) A person who operates a trade or business without a trade license commits an offence and shall be liable upon conviction (b) in the case of an individual to a fine not exceeding Kenya Shillings Fifty Thousand	<p>Include: on Declaration of General trading areas and trading centres.</p> <p>The County Executive Committee Member through the directorate of trade, may from time to time, by statutory order, declare any area of county that meets set standards to be a general trading area for the purposes of this Act;</p>	<p>Compliance on constitution provision on right to trade by all</p>
New clause: Declaration of specified goods		Include: Declaration of specified goods,	

		<p>The County Executive Committee Member for the sector, through the directorate of trade may, from time to time, by statutory order, declare any particular goods or goods of any particular class to be specified goods for the purposes of this Act.</p>
	New clause: Hawkers and street vendors licensing	<p>Include: Grant of hawker's licence.</p> <p>No person shall act as a hawker unless he or she is in possession of a valid hawker's licence granted to him or her for that purpose by the directorate of trade unless they operate business exempted from licensing and stated under the regulations</p> <p>The directorate of trade may, on application made to it in the prescribed manner and on payment of the appropriate fee specified in the Finance Act, grant to the applicant a hawkers licence.</p> <p>A hawker's license shall be in such form as may be prescribed and shall be granted subject to such conditions as to—</p> <ol style="list-style-type: none"> 1. the kind of goods which may be hawked; 2. the area within which the hawking shall be restricted; 3. the hours during which the goods may be hawked, and such other conditions as the licensing authority may think fit to impose.

Where any person employs one to hawk goods on his or her behalf, he or she shall take out, in his or her own name, a licence to be carried by the employee; and where it is desired that more employees than one shall be so employed, an additional licence shall be taken out in respect of each additional employee.

No hawkers licence shall be required in respect of any person who acts as a hawker of goods and services declared by the directorate of trade and stated in the regulations of this Act to be hawked without a license

The directorate of trade may refuse to grant a hawker's license under this section and may revoke any hawkers licence granted under this section if it is satisfied that any of the terms and conditions upon which the hawkers licence was granted has been contravened.

Duration of hawker's licence: Unless earlier revoked, a hawker's licence granted under this Act in respect of any year shall expire 12 months after the date of issue.

Hawkers licence not transferable: A hawker's licence granted under this Act shall be personal to the holder of the licence and shall not be transferable.

	<p>Production of hawkers licence on demand:</p> <p>Every person who holds a hawkers licence granted to him or her under this Act shall carry his or her licence with him or her at all times while he or she is acting as a hawker, and shall produce the license for inspection on the demand of any enforcement officer, police officer or any person authorised in writing by the the directorate of trade</p>	
New clause: licensing charges	<p>Include:</p> <p>a) The directorate of trade shall ensure that the license charges remain reasonable and proportionate through establishing regular and robust review process annually</p>	<p><i>Revision Clause 12(2)</i> A person who is aggrieved by any decision of the Directorate of Trade licensing may make a written appeal to the county Executive Committee Member within fourteen days in a prescribed form</p>
Clause 12(1)	A person who is aggrieved by the decision of the Directorate of Trade licensing may make a written appeal to the county Executive Committee Member within fourteen days in a prescribed form	To promote transparency and accountability <i>Appeals board</i> within fourteen days in a prescribed form

	<p>Include clause on Appeal</p> <p>Appeals Board</p> <ol style="list-style-type: none"> 1. There shall be an Appeals Board to hear and determine appeals against the decisions of the directorate of trade. 2. The Appeals Board shall consist of the following members appointed by the County Executive Committee Member — <ol style="list-style-type: none"> a chairperson; b. a representative of the Attorney General; c. a representative of the Fair-Trading unions; d. a representative of a non-governmental organisation that represents the interests of the public. 3. A person appointed as a member of the Appeals Board shall have experience in legal, administrative, economic or financial matters. 4. A member of the Appeals Board shall be appointed on such terms and conditions as the County Executive Committee Member may determine. 5. The Chairperson and other members of the Appeals Board shall hold office for five years and shall not be eligible for reappointment. 6. The County Executive Committee Member shall at any time terminate the appointment of a member who has been found guilty of
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	<p>a. any misconduct, default or breach of trust in the discharge of that member's duties; or</p> <p>b. an offence of such nature as renders it desirable that the member's appointment be terminated.</p> <p>The Appeals Board may regulate its own proceedings.</p> <p>Appeal Verdicts</p> <p>7. The Appeal Board may, where it entertains a notice of appeal, decide the appeal by —</p> <ul style="list-style-type: none"> a. confirming the decision of the Directorate of Trade licensing; b. varying the decision; c. quashing the decision; d. ordering the Directorate of Trade licensing to reconsider the Directorate's decision as directed by the Appeals Board. 	<p>This bill is intended to provide for regulation of trade in the County of Nairobi. It is intended to give simple, facilitative framework for the licensing application procedures by providing set norms and standards and promoting competent governance and support for businesses.</p>
	<p>Memorandum of Objects and Reasons (pg 11):</p> <p>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</p>	

- Define informal trade as: “Any business that includes the selling of goods and services in public spaces and informal traders” to mean any person that carries on a business as a street vendor, hawkers and include an employee of such person.
- Provide a comprehensive co-ordinated multi-agency approach aimed at promoting formality in businesses; enhancing social employment and investor protection; and ensuring compliance or conformity to statutory and regulatory requirements;
- Support implementation of the national legal and regulatory framework for the informal sector;
- Provide a comprehensive license that is readily accessible, and the process is fast and efficient;
- Promote a licensing regime which integrates the informal sector into mainstream trade development and regulation;

To this end, TISA recommends that the proposed Trade Licensing Act should be designed in such a manner to:

The Kenya 2013 Enterprise Survey identifies Practices of the informal sector as the top businesses of entry and lower cost of compliance. This creates an uneven playing field for formalized competitors. Informal enterprises have a slight advantage when compared to formal enterprises, given the relative ease of entry and lower cost of compliance. This creates an uneven playing field for formalized competitors. The environment construct experienced by the formal enterprises sampled. Nonetheless the informal sub-sector continues to face barriers to its growth and graduation to formal trade status.

Sessional Paper No.2 of 1992 on Small Enterprise and Juu Kali Development in Kenya, emphasized the need to create an enabling environment through appropriate legal and regulatory framework and measures to promote the growth of the sector. The paper was informed by the successes of the newly industrialized Asian nations and identified four principal challenges facing informal trade, namely, lack of access to credit, land and infrastructure, training and technical support, technology and market information. Under its proposals the EPZs and national industrialization promotion council were launched. Its failure has been attributed to macro level economic policy that was preoccupied with privatization and foreign investment than with local initiatives and investments. Failure attributes the failure of the policy to a preoccupation with the SAs and the short-term focus of government.

The informal sector emerges as a result of limited formal job opportunities, slow economic growth, and high population growth. Although, these sectors present less business entry challenges, they present survival challenges.

Informal enterprises face challenges of health standards and infringement of copyright laws, heavily relying on self-supplying and “informal” institutional arrangements. The informal sector is largely unregulated and therefore leads to some undesirable social and environmental impacts such as environmental degradation, nonobservance of health standards and infringement of copyright laws, heavily relying on self-supplying and “informal” institutional arrangements.

References

- Constitution of Kenya 2010 -right to trade and inclusion of disadvantaged groups in development matters
- The National Trade Policy 2016,
- National Land Policy 2009, and the following reports:
 - Kijama and others, A Cry for Justice: torture and ill treatment of Hawkers and Small-Scale Traders in Nairobi City County, IMLU 2012.
 - The Institute for Social Accountability, Exploring Vulnerability among Small Scale Traders in the Informal Sector in Nairobi, Kenya, (Draft) 2018
 - Underscore the overall objective of the motion mover and the county assembly committee of Committee of trade, tourism and cooperatives in the development of the World Bank survey: Informal enterprises in Kenya, 2016
 - Related legislations in other jurisdictions and countries with similar scenarios: south Africa, Seychelles, Mombasa and Laijipia Counties

The proposed Nairobi City County Trade and Licensing Bill has been reviewed in reference to the following

- should therefore introduce a section on principles to guide the act as follows:
2. Principles: The Constitution of Kenya sets a legislative standard of codifying values and principles to guide the interpretation and implementation of the supreme law. The country included in the Bill.

1. Long title: The long title describes the contents of a Bill. It is an indication of the objectives enacted. Therefore, the long title is very important and should encompass all the law is and intention of the law. It includes the scope and the general purpose for which the law is enacted.

Broad inputs

the Informal Sector in Nairobi, Kenya, (Draft) 2018

- The Institute for Social Accountability, Exploring Vulnerability among Small Scale Traders in Kenya and others, A Cry for Justice: torture and ill treatment of Hawkers and Small-Scale Traders in Nairobi City County, IMLU 2012.
- Kiama and others, National Land Policy 2009, and the following reports:
- The National Trade Policy 2016,
- Constitution of Kenya 2010

In reviewing this Bill, we have referred to the

contributions into the bill.

time accorded we have only made a few inputs and request more time to make more substantive to submit a memorandum on the proposed County Trade Licensing Bill, 2018. However, due to limited Kenya. This memorandum is prepared in response to your letter dated 4th March 2019 requesting TISA engage with relevant state and non-state actors in the quest to promote effective local governance marginalized. TISA has established itself as a leading player in decentralised governance and has government in local development in Kenya, to uplift livelihoods of, especially, the poor and good TISA is a civil society initiative committed towards the achievement of sound policy and good

About The Institute for Social Accountability (TISA)

RE: MEMORANDUM ON NAIROBI CITY COUNTY TRADE AND LICENSING BILL 2018

Dear Sir/Madam

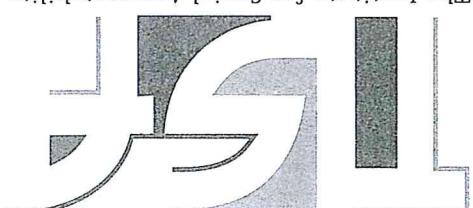
12th March 2019

P. O. Box 45844 - 00100, Nairobi
Nairobi City County Assembly,

Charperson
Sectoral Committee on Trade, Tourism and Cooperatives

Attn:

The Institute for Social Accountability



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that come with licensing such as garbage collection, water and security among others. The same, the outcry of majority traders in question is to be licensed and subsequently enjoy benefits fully aware of the government's directive/measures on micro enterprises including scrapping of CESS on both licensed and unlicensed establishments concentrated in Nairobi City County. Whereas TISA is SMEs in the country accounting for 92.1% of the licensed establishments in the SME majority of according to 2016 SME basic survey report, Micro enterprises establish limited services from the bulk of conducted in undesignated trading spaces, unregistered and receive limited services from the county. the Institute for Social Accountability (TISA) in 2018, micro businesses are largely unregulated and scenario in Nairobi City and also according to a Vulnerability assessment study conducted by practicality who include the micro-enterprise, small and medium enterprises (SMEs). The Nairobi County who have businesses in Nairobi. Known to all is that there are different categories of traders in Nairobi City businesses in Nairobi. Known to all is that the Act shall apply to all persons who trade or have

- Section 3 of Part I of the proposed Bill states that the Act shall apply to all persons who trade or have**
- 4. Traders' Clusters**
- Specific inputs:**
3. We propose the bill take an integrated approach and address trade development comprehensively.

- To provide a comprehensive license that is readily accessible, and the process is fast and efficient;
- To give effect to article 35 and provide for open governance based on proactive disclosure accountability and answerability;
- To provide an enabling regulatory framework by traders associations, ensures development in the sector, promotes self-regulation by trading associations, promotes growth and development;
- To promote a licensing regime which integrates the informal sector into mainstream trade of information;
- To provide a comprehensive multilateral coordinated approach aimed at promoting formality in business; enhancing social employment and investor protection; and ensuring compliance or conformity to statutory and regulatory requirements;
- Develop an enabling and business friendly national legal and regulatory framework for by all Government Agencies;
- Support implementation of the national legal and regulatory framework for the informal information sector, geared towards giving formal traders legal status that will be recognized by all sectors;
- The government should adopt a proactive information disclosure to enhance transparency in preferential procurement facilities.

Act shall apply to one business or trade. The above sections as is, could be construed in different ways due to its indistinctness.

notes that the above definition affects Section 13 which states that A trade license granted under this Act is required, in any trading premises, whether by retail or wholesale. TISA

a license under this Act is required, in any goods, wares, merchandise or provisions are sold and for which any business in the course of which any goods, wares, merchandise or provisions are sold and for which

According to the Proposed Nairobi City County Trade and Licensing Bill, 2018, trade refers to

7. Definition of Trade

licences target and/or state all traders categories in Nairobi City County allowed/permited to secure the stated businesses or trade within the county shall obtain a licence spontaneously, this bill should include the For transparency and accountability and to affirm section 7(1) that A person who intends to operate any

Recommendation:

licences have before proved futile and even the few who have been lucky obtained the same otherwise. As aforementioned, efforts by traders especially in the micro enterprise category to secure appealing to any trader in Nairobi City County in as far as right to trade is concerned, the reality states business or trade within the county shall obtain a license. Whereas the above section remains Section 7(1) of the Nairobi City County licensing Bill states that; A person who intends to operate any

6. Part II-Administration of trade licenses-Section 7(1)

transparency and Accountability, there is need include a section on standard licensing charges for different clusters of traders in Nairobi City County

TISA notes with concern that there is missing in the proposed Nairobi City County Trade and Licensing Bill, 2018 a section addressing standards for licensing charges to traders in Nairobi City County. For

5. Standards Licensing Charges

- That the committee through consultations should consider including the micro enterprises in Nairobi City County to take care of the interest of all traders including the micro enterprises in Nairobi City County.

the Nairobi City County Trade Licensing Bill, 2018

- That the bill should specify different categories of traders referred to under Section 3 of Part I of

in such a way to reflect the precise county scenario

the proposed Nairobi City County Trade Licensing Bill, 2018. The definitions should be designed

- That the bill should provide definition to all categories of its traders who are to be licensed under revenue generation,

For sustainability and for the benefit of both the micro enterprise traders and the county with respect to

9. Limited Regulatory Framework for Micro enterprises

Clause	Proposed Amendment/Inset	Justification
15(1) The license fees payable under this Act shall be as prescribed and shall be payable annually, quarterly or half yearly	15(1) The license fees payable under this Act shall be as prescribed and shall be payable either annually, quarterly or half yearly	By inserting the word, either,to meaning of the clause slightly changes the sentence to consider payment of license fees through any terms stated above as may be deemed appropriate/agreeable by the authorities or them
24(2) An authorized officer shall produce an identity card shall produce an identity card and certificate issued under Section 22 for inspection by the officers as well as to guide the malpractices by traders from license holder	24(2) An authorized officer shall produce an identity card and certificate issued under Section 22 for inspection by the officers as well as to guide the malpractices by traders from license holder and certificate issued under Section 22 for inspection by the officers on duty	This amendment is provided to protect the trader from officers on duty

b. Clauses review

Across the proposed Nairobi City County Trade Licensing Bill, 2018, there is evidence of inconsistency in the use of the word license. The Bill interchangeably uses the words ‘license’ and ‘licensure’. Whereas ‘license’ is a thin line between the two words, ‘license’ and ‘licensure’, the Bill should adopt use of the word ‘licensure’ for consistency/reliability.

a. Inconsistencies

8. General Observations

- Firstly, what constitutes one business or trade? And,
- Secondly, who is a trader?
- Thirdly, what is/constitutes trading premises?

TISA recommends that the following consideration expounding on the following

Recommendations:

Micro enterprises has over the years been constained by an un-conducive regulatory framework. The by-laws previously applied by the former Local Authorities are still being enforced and the most hit hard are the unregulated businesses/traders. Limited laws that promote the growth and development of informal trade within a conducive regulatory and legal framework while at the same time safeguarding the environment, security and other social and economic activities. Some businesses are required to acquire multiple licenses at times from the same or different government agencies.

Recommendation

County assemblies should therefore endeavour to pass laws and regulations which specifically benefit micro enterprises. They should be given priority in order to spur growth.

