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THE BUSIA COUNTY TRADE ACT, 2017

No. 6 of 2017

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THE BUSIA COUNTY TRADE ACT, 2017

AN ACT of the County Assembly of Busia to establish a framework and provide a mechanism for the imposition of certain taxes, charges, fees and for the grant of trade and related licenses, to provide for the promotion, development and regulation of trade in the County and for connected purposes.

ENACTED by the County Assembly of Busia, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Busia County Trade Act, 2017 and shall come into force on the 14th day of its gazettment. Short title and commencement

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

“approved form” means a form approved by a licensing officer as set out in Schedule 1;

“authorized officer” has the meaning given by section 37;

“business” includes a profession, trade or occupation carried out for purposes of making profit but excludes the regulation of professionals;

“casual trader” means a person who attends a particular market with their goods with the hope of being allocated a trading position for that day only from the vacant positions in the market;

“County ” means Busia County;

“County Assembly” means Busia County Assembly;

“County Government” means the County Government of Busia;

“Department” means the county department responsible for trade as established by the County Executive Committee;

“Executive Member” means Member of the County Executive Committee for the time being responsible for trade in the County;

“hawker” means a person who advertises and/or sells goods or merchandise by moving them from place to place;

"holder" in relation to a trade license, means the person to whom a license is granted or to whom a trade license is transferred or assigned to;

"license" means a license or permit issued under this Act for purposes of carrying out business within the county and shall be in the prescribed form in schedule 2;

"license fee" means the fee payable for the grant or renewal of a trade license;

"licensing officer" means an officer of the county government appointed as a licensing officer under this Act;

"private market" means a supermarket or any other establishment which operates under private ownership as a market under this Act;

"prescribed" means prescribed by this Act or by the rules made under this Act;

"public market" means a place designated and gazetted by the Department as a public market;

"receiver of revenue" means a person designated by the Executive Member in charge of Finance to collect revenue in accordance with Section 157 of the Public Finance Management Act;

"town" has the same meaning assigned to it under the Urban Areas and Cities Act, 2011.

3. The objective of this Act is to provide for the implementation of section 7 of Part 2 of the fourth Schedule to the Constitution and to—

Objectives of the Act

- (a) provide for promotion of development of trade; regulation of trade; promotion of local economic development; and promotion of private sector development;
- (b) establish a mechanism to reliably raise revenue in the County;
- (c) establish a framework for the conduct and regulation of business and trading activities in the County;
- (d) provide a framework for licensing of businesses and trading activities in the County.

PART II— ADMINISTRATION

4. The Department shall be responsible for—
- (a) promotion and development of trade;
 - (b) regulation of trade;
 - (c) except as otherwise provided in this Act, issuing of trade licenses;
 - (d) facilitating the private sector in trade development;
 - (e) in collaboration with other stakeholders, facilitating the development of policies, strategies and plans for trade promotion and development;
 - (f) promotion and facilitation of access to markets;
 - (g) promotion and facilitation of development and access to trade related infrastructure;
 - (h) facilitation of acquisition, adoption and utilization of technology in trade;
 - (i) carrying out research and maintaining trade data and statistics;
 - (j) facilitation of public-private sector engagement in trade;
 - (k) advising the Executive Member on the appropriate policies for promoting conducive business climate;
 - (l) review of policies, systems and procedures;
 - (m) monitoring and evaluating implementation of this Act; and
 - (n) carrying out any other functions as may be assigned by the Executive Member.

Functions of the
Department

(2) Whenever it shall consider necessary, or where there is an existing law on licensing, the County Executive Committee may authorize the Department responsible for Finance or any other department of the County Government to issue a trade license relating to the functions of that department.

5. (1) Any money received as fees or charge by a person authorized under this Act or any other Act shall;

Fees collected to
be county
revenue

- (a) have an official receipt issued there for and a record thereof kept;

- (b) be deemed to be County revenue; and
- (c) be deposited in the County Revenue Fund account in accordance with the provisions of the Public Finance Management Act, 2012.

(2) Such person authorized to receive county revenue under this Act shall be answerable to the Chief Officer in respect thereof.

6. The Chief Officer in the relevant department shall ensure that all monies received as taxes, charges or fees are fully accounted for in accordance with the Public Finance Management Act and a report of the same submitted to the County receiver of revenue on a monthly basis.

Responsibility of
Chief officers

7. (1) The County receiver of revenue shall, in every quarter, prepare an account in respect of revenue collected, received and recovered by the County under this Act in the quarter and prepare and submit a report thereof to the County Executive Committee.

Responsibility of
receiver of
revenue

(2) The Executive Member in charge of Finance shall, within fourteen days of receipt of the report by the County Executive Committee, transmit it to the County Assembly for debate.

8. The Department shall within three months after the end of each Financial year, prepare and submit to the Executive Member a status report for the immediate preceding year which shall consist of—

Trade status
report

- (a) the status of the implementation of the Act;
- (b) the growth of the number of new businesses established in the county;
- (c) the trade status report dis-aggregated according to geographical areas, age and gender of persons who established the businesses and sectors in which the businesses were established among others;
- (d) challenges faced in implementing this Act;
- (e) overall status of trade development in the county;
- (f) measures taken or adopted to promote business and trade development;
- (g) growth of existing businesses and any relevant projections for the following year;

- (h) measures taken to promote enabling business climate and facilitate trade;
- (i) consultations or initiatives undertaken for dialogue with the private sector; and
- (j) any other matter as the Executive Committee Member may require.

(2) The Executive Committee Member shall, within fourteen days of receiving the report, submit it to the County Executive Committee for consideration and adoption.

(3) The Department shall—

- (a) publish the report prepared under subsection (1);
- (b) publicize the report to the private sector and residents in the county; and
- (c) facilitate the collection of views and feedback from county residents in relation to the report.

PART III— TRADE PROMOTION AND DEVELOPMENT

9. The Department shall promote and facilitate *Trade promotion* trade development through—

- (a) providing business support and advisory services;
- (b) carrying out regular assessment on business climate;
- (c) reviewing policies and practices that affect the business climate and advising the County Executive Committee on appropriate measures to be adopted for promoting trade development;
- (d) facilitating access to markets for goods and services produced in the county;
- (e) facilitating and promoting cross border trade with other neighboring countries and counties;
- (f) in collaboration with other stakeholders organizing trade and market fairs for promoting products;
- (g) providing sector and inter sector Trade promotion development, linkages among private sector players within and outside the county; and

(h) carrying out any other function as may be assigned by the Executive Committee Member.

10. (1) There is established the Inter-departmental Trade Development Committee.

Interdepartmental
Trade
Development
Coordinating
Committee

(2) The Inter departmental trade development co-ordinating Committee shall consist of—

- (a) Chief Officers responsible for administering policy matters affecting trade as designated by the County Executive Committee;
- (b) town administrators of the various towns in the County; and
- (c) any officer responsible for a department of national government in the county that is responsible for policy matters affecting trade in the county.

(3) The Executive Member shall be the chairperson of the Interdepartmental Trade Development Co-ordinating Committee and the Chief Officer in the Department of Trade shall be the Secretary.

(4) The Interdepartmental trade development co-ordinating Committee shall be responsible for—

- (a) co-ordinating the implementation of inter sector policies and programs related to trade;
- (b) developing of common strategy for trade development;
- (c) advising the County Executive Committee on appropriate policies and programs for promoting and facilitating trade development; Inter departmental development Coordinating Committee;

(d) co-ordinating implementation of inter-sector policies and programs related to trade;

(e) facilitating collaboration with national government on trade development;

(f) carry out any other function as may be assigned by the County Executive Committee.

(5) The Interdepartmental trade development co-ordinating Committee shall submit monthly progress

reports of its operations to the County Executive Committee through the Executive Member.

11. (1) In accordance with the Urban Areas and Cities Act, the Department and other authorized departments shall co-operate and collaborate with the Boards and Committees of the various towns and municipalities in the County and other stake holders on matters relating to trade.

(2) The collaboration and co-operation referred to in subsection (1) above shall be conducted in the interdepartmental trade development co-ordinating committee established under section 10.

12. (1) There is established the county public-private sector consultative forum.

(2) the Governor shall be the convener of the forum.

(3) the forum shall comprise of—

- (a) the Executive member and Executive Committee Members in authorized Departments;
- (b) the Chief Officer of the Department as the Secretary;
- (c) Administrators of the various towns and municipalities in the County;
- (d) one representative from the chamber of commerce;
- (e) one member from the Kenya Private Sector Association;
- (f) one member from the Kenya Association of manufacturers;
- (g) one member representing the Association of Persons with Disabilities in Kenya
- (h) a member representing the youth nominated by the Kenya Youth Council;
- (i) two persons nominated by the Association of Professional Societies in East Africa represented in the County.

(4) The organizations nominating members to the forum under this section shall submit to the Executive Member two names for each slot representing each gender.

Collaboration with boards and Committees under the Urban Areas and Cities Act

County public - private sector consultative forum

(5) In appointing members to the forum nominated under clauses (d) to (i), the Executive Member shall ensure that not more than two thirds of the membership is of the same gender.

(6) The county public-private sector consultative forum shall—

(a) be an avenue for consultation and dialogue between the county government and the private sector on matters affecting the private sector;

(b) provide the platform for the County Executive Committee to—

(i) articulate the county agenda, policies and programs being planned or implemented in order to promote private sector development;

(ii) report on the progress of addressing matters raised by the private sector related to trade and private sector development;

(c) provide a platform for—

(i) mobilizing the private sector to participate in county development programs relating to trade; and

(ii) consultation with the private sector on matters related to compliance with county and national laws on trade.

13. (1) There shall be established in each town such business and industrial Parks or centers as are necessary to facilitate trade development in the county. Business and industrial parks or centers

(2) The business and industrial parks or centers established under this Section may include—

(a) technology parks;

(b) business incubation parks;

(c) special economic zones which may target general business processes or specific manufacturing sectors; and

(d) special services zones.

(3) The County Executive Committee shall in collaboration with the national government, private sector and other stakeholders take appropriate measures to

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facilitate the development and operation of the business and industrial parks established under this section.

(4) The County Executive Committee shall in each year prioritize the infrastructure essential for the promotion and development of trade in the County;

(5) The County Assembly shall in each year appropriate such funds as may be necessary to provide essential infrastructure described under this Business and industrial parks or centers.

14. The Executive Committee Member shall in collaboration with other public and Private stakeholders develop and implement policies and programs for the development of micro and small enterprises.

Micro and small enterprises development

PART IV—REGULATION OF TRADE

15. (1) The Executive Committee Member shall, with the approval of the County Executive Committee—

Classification of trades and business trading areas

(a) classify trades and businesses for the purposes of administration of this Act and any other written law or matter that requires classification of businesses.

(b) classify business trading areas.

(2) For purposes of subsection (1), the County Government shall establish standards and guidelines for such classification.

(3) In establishing standards and guidelines for classification, the County Government shall consult the interdepartmental trade development coordinating committee and the county public-private sector consultative forum.

16. (1) In accordance with the set standards and guidelines, the Executive Member shall, with the approval of the County Executive Committee prescribe the specific trading areas designated for each classification of trade or business.

Designation of trading areas

(2) The classification of businesses and designation of areas shall accord with the spatial plan adopted for the specific area taking into consideration Public health, environmental health, public order, safety and security matters.

(3) The Executive Committee Member shall, while designating trading areas take into consideration the welfare of persons with disabilities who are carrying out trade or business which shall include special and preferential treatment.

(4) The designation of the trading areas shall be displayed on the license.

(5) The Executive Committee Member may specify the days or hours of operation for a class of business in the respective trading area.

17. (1) A person shall not carry out any trade or business in an area not designated as a trading area for the class of trade or business. Trading in a non-designated area

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding three months or both.

18. (1) A person may carry out a trade or business in a designated street as may be prescribed. Designated street trading

(2) A person shall not carry out any trade or business in a non-designated street or sell any goods or supply services that are prohibited to be sold or supplied in a particular street.

(3) A person who contravenes this section commits an offense and shall be liable to a fine not exceeding five thousand or imprisonment for a term not exceeding one month or both.

19. (1) There shall be such public markets in each urban area or such areas as the Executive Committee Member may designate for the purposes of facilitating trade for the prescribed goods and services. Public markets

(2) The Executive Committee Member shall designate the markets on the basis of geographical position, type of goods or services traded, whether permanent or trading in a designated area or street trading.

20. The Executive Committee Member may designate certain days to be market days for public markets established under this Act. Market days

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21. (1) Each public market established under this Act shall be managed by a management committee which shall be appointed in accordance with the prescribed procedure.

Market
Management
Committee

(2) The market management committee shall be responsible for—

- (a) assigning trading space or market stalls to traders and casual traders operating in the market;
- (b) co-ordinating the operations of the market;
- (c) providing liaison between the traders, the Department and the town or municipal administration;
- (d) managing disputes between traders operating in the market; and
- (e) carrying out any other function as may be assigned by the Executive Committee Member.

22. (1) The Executive Committee Member shall prescribe the guidelines for managing the allocation of trading space or operating areas within a market.

Allocation of
trading space
within the market

(2) The guidelines shall ensure that—

- (a) only persons operating trade in the market are allocated trading space;
- (b) allocation of trading space is conducted in a transparent manner;
- (c) persons with disabilities are accorded preferential treatment; and
- (d) there is gender balance in allocation of trading space.

(3) The allocation of trading space shall not promote anti-competition behaviors or tendencies in the market.

23. The Department shall ensure that each public market complies with Public health and environmental health requirements.

Compliance with
public and
environmental
health
requirements
Collaboration on
compliance with
standards and
anti-counterfeit
requirements

24. The Department shall collaborate with national government entities responsible for standardization, quality control and counterfeit control.

PART V— TRADE LICENSING

25. (1) Save and except as may be provided otherwise in any other written law, any person intending to carry on or conduct any business or trade in the County shall first apply and obtain a license in that behalf as provided in this Act or other written law of the County.

Requirement for
licensing

(2) Every person carrying on or conducting a business or trade in the County shall take out a business or trade license in respect thereof which shall be renewable every year on such terms and conditions as may be imposed.

(3) No person shall conduct a business or carry on a business or trade within the County, unless the person is the holder of a valid business or trade license in accordance with this Act or other County law.

(4) A person who operates a trade or business without a license commits an offense and shall be liable—

- (a) in the case of a registered business to a fine of ten thousand shillings in the first instance and twenty thousand shillings for any subsequent similar offence within the same year; and
- (b) in the case of an individual to a fine of five thousand shillings and fifteen thousand shillings for any subsequent similar offence within the same year.

26. (1) An application for a grant of a business or trade license shall—

Application for a
license

- (a) be in the approved form as provided in schedule 1;
- (b) contain such information and accompanied by such documents as may be required by the approved form;
- (c) be signed in a manner specified in the approved form;
- (d) be lodged with the licensing officer; and
- (e) be accompanied by the prescribed application fee, if any.

(2) It shall be lawful for an application to be made in an electronic format approved by the County Government.

(3) A fee paid as prescribed application fee shall not be refundable.

27. Before determining an application for a grant of a

Determination of
application for

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business or trade license, a licensing officer may require the applicant to furnish to the licensing officer such or such additional information or documents as may necessary to enable the application to be determined.

License

28. (1) Where the licensing officer is satisfied that an applicant meets the requirements of this Act, the officer shall, upon the applicant paying the prescribed license fee, grant the license in the form prescribed in schedule 2.

Grant of License

(2) Where the licensing officer is not satisfied that the application meets the requirements of this Act, the officer shall reject the application and shall within fourteen days of such rejection communicate to the applicant giving reasons for the rejection of the license application.

(3) An applicant whose application for a license is rejected under subsection (2), may re-submit an application upon meeting the requirements of this Act.

29. Where an application for a license meets the requirements of this Act but the license under which the applicant has been carrying out business or trade has expired, the licensing officer may issue a provisional license which shall be valid for a period not exceeding one month in order to enable the licensing officer process the license under section 28.

Provisional License

30. (1) A license granted under this Act shall run from the date of grant thereof and be valid for the remainder of the calendar year and shall expire at mid-night on the thirty first day of December in the same year.

Duration and validity of a license

(2) License fees payable for the grant of a business or trade license shall be the same regardless of the month in which it is applied for.

31. (1) The licensing officer may impose such conditions on a license which shall be endorsed on the license as the licensing officer deems necessary in order to ensure compliance with this Act or any other written law.

Conditions of a License

(2) The licensing officer shall sufficiently specify on the license the conditions imposed under this section.

32. A license granted under this Act shall not apply to more than one business.

License to apply to only one premise

33. (1) A licensing officer may cancel or suspend a business or trade license granted under this Act if satisfied that—

Cancellation or withdrawal of license

- (a) the conduct of the business is endangering the health or safety of persons who live or work in the neighborhood of the premises from which the business is conducted; or
- (b) the holder of the business or trade license has breached a condition of the license.

(2) Where an officer cancels or suspends a license (or after cancelling or suspending the license, revokes the cancellation or suspension), the licensing officer shall give the holder of the license a written notice of the cancellation, suspension or revocation, together with a statement of the reasons for the decision.

(3) On the suspension or cancellation of a business or trade license, the holder thereof shall immediately cease to conduct in the County the business the license in respect whereof shall have been suspended or cancelled.

(4) If the licensing officer revokes the cancellation or suspension of a license, the holder of the license shall be at liberty to resume the business in respect thereof upon compliance with the requirements of issuing a license.

34. A holder of a business or trade license may—

Transfer of license

- (a) with the consent of the licensing officer, transfer or assign a business or trade license to another person.
- (b) after giving a written notice to the licensing officer surrender the license by returning it to the licensing officer.

Provided that the surrender shall not entitle the holder to a refund of any fees or part fees paid in respect thereof.

35. (1) A licensee under this Act shall—

License to be displayed

- (a) where a license is granted in respect to premises, it must be prominently and conspicuously displayed on the premises to which it relates; or

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(b) where the license is granted in respect of an individual without premises, be in possession of the license at all times and shall produce the license to a licensing officer whenever required.

(2) A licensee who fails to display or produce the license when required so to do commits an offense and shall be liable to a fine not exceeding five thousand shillings.

36. (1) A person aggrieved by any decision of a licensing officer under this Act may appeal against the decision to the Executive Member or to the Executive Member of the relevant authorized department as the case may be. Appeal against decision of licensing officer

(2) The relevant Executive Member shall consider the appeal and may confirm, reverse or modify the decision appealed against and make such orders and give such directions as may be necessary to give effect to his or her decision.

(3) A person aggrieved by the decision of the relevant Executive Member shall have a further right of appeal to the High Court.

PART VI— ENFORCEMENT

37. The enforcement of this Act shall be carried out in a manner that; Principles of enforcement

- (a) recognizes and respects the private nature of persons or businesses licensed under this Act;
- (b) supports and encourages compliance with the Act;
- (c) promotes trade and business operations; and
- (d) respects and observes the rule of law and fundamental rights.

38. The Executive Members of the relevant authorized departments shall appoint such persons to be authorized officers for purposes of the enforcement of this Act. Authorized officers

39. An authorized officer shall be responsible for ensuring compliance with this Act and any other relevant law while enforcing this Act. Roles of authorized officers

40. (1) An authorized officer may enter any premises licensed under this Act or carrying out any trade or Inspections

business, whether such premises are licensed or not for the purposes of carrying out inspections in compliance with this Act.

(2) An authorized officer entering any premises for the purposes of carrying out an inspection under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises a certificate of identification as an authorized officer.

41. In carrying out an inspection under this Act, an authorized officer shall have power to—

Powers of an authorized officer

- (a) enter any premises licensed under this Act or carrying out any trade or business whether such premises are licensed or not;
- (b) carry out an inspection of the premises or any documentation required under paragraph (c); or
- (c) require any person in such place to produce for inspection any document or information related to compliance with the Act.

42. The inspections carried out under this Act may be scheduled or non-scheduled.

Forms of inspections

43. A person who refuses to produce information as required by an authorized officer under section 40 commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year.

Failure to produce information

PART VII— GENERAL PROVISIONS

44. A person who—

Offences

- (a) trades in a public market or any designated trading area without a license; or
- (b) gives to a licensing officer or authorized officer any statement in relation to a trade license or other matter under this Act which the person knows to be false or misleading; or
- (c) obstructs or opposes any officer in the execution of their duty; or
- (d) creates or causes any disturbance in the public market or designated trading areas.

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commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year.

45. (1) The Executive Committee Member shall make regulations generally for the better carrying out of the objectives of this Act. Regulations

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe the license fees;
- (b) prescribe the forms;
- (c) prescribe matters related to compliance with written laws in regard to application for license;
- (d) prescribe the classification of trades and businesses;
- (e) prescribe the designation of trading areas;
- (f) prescribe matters related to street trading;
- (g) prescribe the goods and services to be traded in a public market;
- (h) prescribe the appointment procedure for public market's management committees
- (i) prescribe the guidelines for allocation of trading space in public markets; and
- (j) prescribe the form of identification certificate for authorized officers.

46. A trade license or a business permit issued and is valid prior to the coming in to force of this Act, shall have effect at the coming into force of this Act as if granted under this Act and on such terms and conditions applicable at the time of issuing the trade license or the permit. Savings