

REPUBLIC OF KENYA

VIHIGA COUNTY TRADE AND MARKETS MANAGEMENT BILL 2018

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MEMORANDUM OF OBJECTS AND REASON

THE VIHIGA COUNTY TRADE AND MARKETS MANAGEMENT BILL, 2018

A Bill for

AN ACT of the Vihiga County Assembly to give effect to paragraph 7(a) of part 2 of the Fourth Schedule to the Constitution; to promote trade, market licensing; to provide for regulation of trade, markets; and for related purposes.

ENACTED by the County Assembly of Vihiga County as follows-

PART 1-PRELIMINARY

Short title 1. This Act may be cited as the Vihiga County Trade and Markets Management Act, 2018.

interpretation 2. In this Act –
“Authorized officer” means an officer appointed under this Act;
“Butcher’s meat” include beef, mutton, veal, lamb, pork, kid or the meat of any other authorized animal slaughtered for human consumption for the purpose of sale;
“Casual trader” means a person who attends a particular market with their goods, in the hope that they may be allocated a trading position for that day only, from the vacant positions in the market;
“Defective goods” include goods that –
(a) are in the particular circumstances, unfit for purpose and use; or
(b) do not comply with a product safety or quality standard.
“Directorate” means a section within the department of Trade dealing with Trade, Markets and related functions ;
“ Marketable commodities ” includes all goods and services capable of being traded in;
“ Executive committee member ” means the Executive Committee Member responsible for matters relating to Trade and markets management.
“Public market” means a public market established under this Act;
“Regular Trader” means a trader who has been permitted to use a particular trading position on a particular day at a particular market site;
“ Slaughter-house ” means any premises used in connection with the slaughtering of animals whose meat is intended for human consumption;
“Stall” a stand booth or compartment in a market erected and leased to traders by the County Government for sale of goods; and
“Trade” means carrying on the business of exchanging goods or services for a consideration.

Object and purpose of the Act 3. The object and purpose of this Act is to:-
a) promote trade and Enterprise Development in the County;
b) regulate trade within the County;
c) promote local economic development;
d) promotion of private sector development

PART II -ESTABLISHMENT OF THE DIRECTORATE OF TRADE AND MARKETS

Directorate of Trade and Markets. 4. (1) There is Established a Directorate of Trade and Markets.

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- Appointment 5). The County Public Service Board shall, in consultation with the Executive Member, establish offices and appoint such staff under the Department, in accordance with the County Governments Act, 2012.
- Functions and powers of the directorate 6) In addition to functions that may be assigned, the Directorate of Trade shall perform the following functions –
- a) advise the Executive Committee Member on all matters affecting the development of county trading relationships with other counties;
 - b) represent, when appropriate and considered necessary by the executive committee member, the county at meetings, conferences or similar gatherings where matters of trade and investment affecting the county are discussed or considered;
 - c) encourage and assist in the promotion of the county's produce and products including exhibiting at trade fairs;
 - d) advice on the commodities pricing and marketing information within the County;
 - e) advise the Executive Committee Member, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any legislation which promotes trade, for the time being in force in the county;
 - f) ensure laws relating to fair trading and consumer protection are adhered to;
 - g) promote the development of small businesses, to disseminate knowledge of sound business and commercial practice in the county;
 - h) undertake research into any aspect of County trade, commerce and industry, including the conducting of surveys, gathering statistics and publishing reports from time to time;
 - i) to make or cause to be made and paid for out of public funds all such repairs, alterations, improvements and additions to the public market as the directorate considers necessary;
 - j) With the concurrence with the County Government collaborate with national government entities responsible for standardization, quality control and counterfeit control.
 - k) evaluate investment proposals suitable for funding by the Government or donors; and
 - l) Carry out such other functions or acts that will promote trade investment in the County.
- Trade status report 7) (1) The Department shall, within three months after the end of each financial year, prepare and submit to the Executive Member a trade status report for the immediate preceding year which shall consist of-
- (a) the status of the implementation of the Act;
 - (b) the growth of the number of new businesses established in the county disaggregated

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according to geographical areas, age and gender of persons who established the businesses and sectors in which the businesses were established among others;

- (c) challenges faced in implementing this Act;
- (d) overall status of trade development in the county;
- (e) measures taken or adopted to promote business and trade development;
- (f) growth of existing businesses and any relevant projections for the following year;
- (g) measures taken to promote enabling business climate and facilitate trade;
- (h) consultations or initiatives undertaken for dialogue with the private sector; and
- (i) any other matter as the Executive Member may require.

(2) The Executive 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 collation of views and feedback from county residents in relation to the report.

Trade
promotion and
development

8. The Directorate shall promote and facilitate 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 business climate and advising the Executive Committee Member on appropriate measures to be adopted for promoting trade development;
- d) Facilitating access to markets for goods and services produced in the county and outside.
- e) facilitating and promoting trade within and outside the County;
- f) in collaboration with other stakeholders organizing trade fairs for promoting products;
- g) providing sectorial and inter sectorial linkages in collaboration with private sector players within and outside the county; and
- h) Performing any other role intended to facilitate and promote trading as may be assigned by the Executive Committee Member.

Confidential
information.

9. (1) An authorized officer who divulges confidential information obtained during the course of his or her duties under this Act or any other law commits an offence. This section does not apply to information that is –

- a) given as evidence in proceedings taken under this Act or any law relating to consumer protection;
- b) given by the authorized officer as part of a report prepared for the purpose of an investigation; or
- c) a matter of public record or is otherwise in the public domain.

(2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding six months, or both.

County public
private forum

10. (1) There is established the county public-private sector stakeholder consultative forum which shall -

- a) be an avenue for consultation and dialogue between the county government and the private sector on matters affecting trade;
- 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 trade 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; and
 - ii. Consultation with the private sector on matters relating to compliance with county and national laws.

(2) The Executive Committee Member shall be the convener of the forum.

(3) The Executive Committee Member shall ensure the county public-private sector forum is held at least once every year

Business parks

11. (1) The County Government shall progressively ensure that there is established in each sub county such business parks as are necessary to facilitate trade development in the county.

(2) The business parks established under this section may include-

- a) business incubation parks;
- b) special economic zones which may target general business processes; and
- c) Special services zones.

(3) The Executive Committee Member may collaborate with other stakeholders to facilitate the development and operationalization of the business parks established under this section.

(4) The Executive Committee Member shall in each year prioritize the essential infrastructure to be developed for the financial year.

PART III -MARKETS

Market
development
fund

12. a) Budget shall be set aside annually from the Executives Budget for Market Development Activities.

b) The Budget shall be used to Build Modern markets, Renovate & Maintain the existing Markets, Provide lighting, and Modern Toilets, and any other infrastructure viable for

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creating conducive environment for Trade and Enterprises to thrive in the County.

c) Part of the Funds shall also be used to facilitate the Day to day management of the Markets.

Establishment and control of public markets

13. The directorate shall establish, maintain, manage and regulate public markets for the sale of marketable commodities therein and provide all such things as may be necessary for the convenient use of such markets.

Markets to be held only in appointed places

14. (1) A person shall not hold any market for the sale of marketable commodities in any place not being a public market established under this Act, unless authorized by the Directorate.

(2)The Directorate may authorize any person to establish and use at any place a market for the sale of marketable commodities and such authority may be granted upon such terms and conditions as may be prescribed.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding six months, or to both

Power to make charges for use of stalls, etc.

15. (1) The Directorate may demand and take from every person-

- a) occupying or using any stall or place in any public market;
- b) into any such market any marketable commodities or anything which the Executive Committee Member may permit to be sold therein; or
- c) using any weighing or measuring instrument provided and kept in any such market,

Such stalls and charges as may be prescribed.

(2) Stalls and charges payable in respect of any public market or weighing or measuring instruments shall be paid at such times and in such manner as may be prescribed.

(3) Any person who fails to comply with the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five thousand Kenya shillings or to a term of imprisonment not exceeding one month.

Market days

16. (a) The Executive Committee Member through regulations in consultation with the relevant stakeholders may designate certain days to be market days for public markets.

(b) The Executive Committee Member through regulations in consultation with the relevant stakeholders may designate certain days to be market clean up days for public markets.

Trader

17. (1) A regular trader, who wants to carry out any commercial activity from an open-air market must obtain a license or, in the case of a casual trader, pay such fee as may be prescribed

(2) A license issued under subsection (1) shall not entitle the regular trader to carry out such activity unless it is in relation to a specific open-air market.

(3)A regular trader shall not be issued with more than one license for a post in a market

that operates on the same day and time.

(4) A regular trader using a motor vehicle to carry on their commercial activity may be provided a space to operate –

- i. in the case that the activity being undertaken concerns the selling of food items prior approval by the county public health authorities must be obtained: Provided that with reference to food related items the Directorate, following recommendation by the Health Authorities, may order the licensee to sell or not to sell specific items as ordered by the county public health authorities.
- ii. In the case of non-food related items the Directorate may issue an order to the licensee to restrict the selling of any item that may be offensive to the public.

Street hawker. 18.A street hawker who is authorized may carry out their commercial activity from the authorized streets and in the prescribed manner.

Car boot sales. 19. (1) A person who organizes a car boot sale or who sells goods from a car boot in a market or any public place must be authorized in a prescribed manner an application for authority under this section shall contain the following information-

- a) the name of the applicant;
- b) the place where the car boot sale will be held; and
- c) the date or dates when the car boot sale will be held.

Buskers. 20.Selling by busking is subject to the following conditions-

- a) an application by any busker who produces and sells his or her ware on site, is filed on the prescribed form;
- b) the place where the busker stops to sell their goods is at least five metres of walking distance from the entrance of any commercial premises; for such purpose, a fixed kiosk is considered to be commercial premises;
- c) no selling by busking is permitted in the precincts of any public building or establishment, hotel or any shopping complex unless authorized in the prescribed manner;
- d) no objects are placed on the pavement; and
- e) No nuisance or inconvenience is caused to the members of public.

Selling commodities within prescribed areas 21.(1) No person shall sell any marketable commodities in the entrance to any building or on the pavements of any road which is situated within the limits of a prescribed area for the purposes of this section.

(2) Subject to sub-section (1), no person shall sell any marketable commodities in any part of any public place within the limits of a prescribed area.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or a term of imprisonment not exceeding one month.

Obstructing an authorized officer 22. A person who obstructs an authorized officer from receiving any stall or charge prescribed under this Act or any other written law or any person employed to superintend a market or to keep order therein, whilst in the execution of his or her duty,

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is liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

Disorderly behavior in public market

23. (1) An authorized officer or a n y other authorized person may remove from any market any person who behaves in a disorderly or offensive manner or may arrest such person without a warrant.

(2) A person who in a market behaves in a disorderly or offensive manner c o m m i t s an offence and is liable on conviction to a fine not exceeding t e n thousand shillings or to a term of imprisonment not exceeding t h r e e months, or to both.

Duty to provide information

24. (1) No trader shall sell or offer for sale at a market prescribed goods unless information with respect to the goods is maintained by the vendor in accordance with this section.

(2) A trader shall maintain information in the prescribed manner in respect of the goods he or she sells or offers for sale.

(3) No trader or market operator shall falsify, obliterate or destroy the information required to be maintained pursuant to this section.

(4) A market operator shall maintain the information provided to him or her pursuant to this Act for the period prescribed by regulations.

(5) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten thousand or imprisonment to a term not exceeding three months.

Duty to produce prescribed goods

25. A trader shall upon request, produce prescribed goods or provide access to prescribed goods to an authorized officer.

Seizure of prescribed goods

26. Where an authorized officer, is satisfied that the goods and services being sold or offered for sale are —

(a) prohibited ; or

(b) Being sold are stolen or suspected of being stolen, the authorized officer may, without laying any information or obtaining any warrant, seize and remove those goods.

PART IV-MANAGEMENT OF MARKETS

Market Management Committee.

27. (1) Traders in every market within the county shall elect a market management and Development committee consisting of —

(a) chairperson ;

(b) secretary(Market In-charge)

(c) treasurer; and

(d) three other members

(2) A person elected as a member of a market management/Development committee shall serve for a period of two years and may be re-elected, but not serve for more than two terms.

(3) An election under sub section (1) shall be presided over by a market master or in his or her absence an authorized officer.

Removal of management committee

28. (1) A market management/Development committee or a member thereof may be removed from office by authorized officer for —

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- a) incompetence;
- b) misappropriation of funds;
- c) gross misconduct;
- d) prolonged mental or physical infirmity;
- e) declared bankrupt; or
- f) Violation of the Constitution or any other law.

(2) A member of a market management/Development committee may cease to hold office if he or she-

- (a) dies;
- (b) resigns; or
- (c) if removed under subsection (1)

(3) A market management/Development committee or a member thereof who ceases to be a member under sub section (2) shall be replaced as provided in section 23.

Functions of the markets management committee

29. 1) The functions of the market management/Development committee shall be to –
- a) regulate the entry of persons and of vehicular traffic into the market;
 - b) develop income generating programs to maintain the market;
 - c) assist the directorate assign stalls and other facilities within the market to traders;
 - d) assist the directorate in dispute resolution within the market;
 - e) provide liaison between the market traders and the Directorate;
 - f) ensure garbage collection and management;
 - g) supervise the conduct of those who enter the market for transacting business;
 - h) regulate the marketing of notified agricultural produce in the market area;
 - i) fixing the time for holding auctions;
 - j) collect, maintain, disseminate and supply information in respect of market activities including market intelligence;
 - k) enforce the provisions of the rules, regulations and by-laws including the conditions of licenses granted;
 - l) Examination of contents of vehicles and other vessels and their seizure.
 - m) Prepare Development plan for the market.
 - n) Prepare annual Budget for the operation and Development of the Market.
 - o) Carry out any other functions as may be assigned by the Directorate.

2) The Executive Committee Member shall prescribe guidelines and criteria for selection of the Market Development/Development Committee.

Functions of Market in-charge

30. The Market in-charge officer Shall:
- a) Be the Secretary to the Market Management Committee.
 - b) Coordinate the Smooth running of the Markets
 - c) Make monthly report to the Sub County Trade Development Officer

Functions of Market Attendant

31. The Market Attendants shall:
- a) Assist the Market In- charge on day to day running of the Markets

Revenue Collected from the Markets

32. (1) The Directorate shall ensure that at least thirty percent of revenue collected at every market is ploughed back against the budget and used for market improvement and provision of amenities.

(2) The Directorate shall designate an officer to ensure accountability of the money collected and retained at the markets.

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Allocation of trading spaces or operating area

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

(2) The guidelines shall ensure that –

- a) persons who were operating trade in refurbished or reconstructed markets are given priority in allocation of trading space;
- b) allocation of trading space is conducted in an open and transparent manner;
- c) there is inclusivity in the allocations;
- d) the allocation of trading space does not promote monopoly and anti-competition in the market;
- e) no trader leases more than one stall, block or space at the same time; and
- f) no lessee of any stall or block assigns the lease to any other person or permits the use of any stall or block by any other person without the written permission of the market committee.

(3) The Executive Committee Member may by notice in writing revoke any lease granted to a trader.

Compliance with public and environmental health requirements

34. The Directorate shall liaise with public and environmental health officers to ensure that every market complies with public and environmental health requirements

PART V-MISCELLANEOUS

Inspection powers

35. An authorized officer may, at any reasonable time, enter any place that he or she believes on reasonable grounds to be a place where goods are being, or have been manufactured, prepared or supplied or that is a place where services are supplied or arranged, and may-

- a) inspect any goods or partly manufactured goods and make such other inspections as he or she considers to be necessary;
- b) inspect all butcher's meat, fish, vegetables and all other articles of food offered for sale in the public market and, if in their opinion the same are unfit for human consumption, immediately seize the same pending any action under the provisions of the County Public Health law;
- c) take a sample of anything from which goods are manufactured or produced;
- d) make inquiries of any person employed at that place or who has responsibility over that place;
- e) inspect and take copies of records required to be kept under this Act or any other law regulating or applying to the business being conducted at that place; or
- f) require the production of any accounting documents, returns, inventories or other information whether or not relating to the business of any manufacturer or trader if such information is considered necessary for the discharge of any power or function vested in the Directorate.

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- Enforcement to promote business environment 36. The enforcement of this Act shall be carried out in a manner that-
- a) recognizes and respects the right to property and privacy;
 - b) supports and encourages compliance with the bill;
 - c) promotes trade and business operations; and
 - d) respects and observes the rule of law and fundamental rights.
- Authorized officers 37. (1) The Executive Committee Member shall appoint persons to be authorized officers for the purposes of this bill.
- (2) Notwithstanding the provisions of sub section (1), all officers working in or seconded to the Directorate, the county public health officers and officers who are for the time being referred to as enforcement officers shall be authorized officers for the purposes of this bill.
- (3) An authorized officer shall be responsible for ensuring compliance with this bill.
- Regulations 38. The Executive Committee Member may make regulations—
- a) regulating the use of markets and market buildings;
 - b) prescribing, and regulating the pattern, description and use of, weighing or measuring instruments to be used by persons selling marketable commodities in any market ;
 - c) preventing nuisances and obstructions in markets and for maintaining cleanliness therein and on the approaches thereto;
 - d) prescribing the goods that may be sold in any market;
 - e) fixing, regulating and collecting stalls or charges and the payment and collection thereof in any public market;
 - f) for the inspection and examination of marketable commodities sold or offered for sale in any market;
 - g) fixing the days and hours during each day on which any market may be opened and for preventing the sale and purchase of marketable commodities in any market on any day or at any times except as fixed;
 - h) prescribing the conditions subject to which the several stalls or places in any public market shall be held, occupied or used by persons having or using the same;
 - i) imposing on any person having or using any stall or place in any market the duty of taking steps and using such means for protecting from contamination any articles of food offered or exposed for sale in any market; for maintaining order and preventing disturbances in a public market; and
 - j) for excluding or removing from public markets any person suffering from any infectious or contagious disease.
- Savings 39. All markets established before the coming into operation of this Act are deemed to

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have been established under this Act, and all regulations, rules, orders or bylaws made under any other law in force at the time of the commencement of this Act shall be deemed to have been made under this Act and shall remain in force until other provisions are made in accordance with this Act.

MEMORANDUM OF OBJECTS AND REASON

This Bill seeks to provide for a framework for developing and promoting trade and local economic development.

Part I - provides for preliminary matters such as interpretation and the object of the Bill.

Part II – establishes Directorate of Trade and Markets and sets out its functions. It further establishes county public private forum.

Part III – establishes markets and sets out market development activities, regulates public markets for the sale of market commodities, sets out places for markets, activities for traders and duties for officers.

Part IV – establishes the management of markets committees and sets out functions of the committee and guidelines to allocation of trading spaces.

Part V—contains miscellaneous provisions including rules and Regulations.

Dated the November 2018.

Hon. Calystus Ayodi Amuhaya
Chairperson, Trade, Industry Tourism & entrepreneurship Committee.