

SPECIAL ISSUE

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**MARSABIT COUNTY GAZETTE
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**THE MARSABIT COUNTY TRADE LICENCING BILL,
2016**

A Bill for

**AN ACT of the County Assembly of Marsabit to
provide for the trade licensing process and for
connected purposes**

ENACTED by the County Assembly of Marsabit, as follows—

PART I—RELIMINARY

1. This Act may be cited as the Marsabit County Trade Licensing Act, 2016. Short title.

2. In this Act— Interpretation

“Chief licensing officer” means an officer of the county government appointed under section 5;

“Department” means the county department responsible for matters relating to trade;

“Directorate” means an office designated in the Department;

“Executive Member” means the County Executive Committee Member responsible for matters relating to trade;

“Trade license” means a license and a permit issued under this Act for the purposes of carrying out trade or business;

“Licensee” means a person licensed under this Act;

“License fee” means fee payable for grant or renewal of a trade license;

“Licensing unit” means the County Trade Licensing Unit established under section 4;

“Trade” means a business, craft, profession or occupation for supply or sale of goods or services whether for monetary exchange, barter or exchange without use of money.

3. The objects of this Act are— Objects of the Act.

- (a) to provide for the grant of trade licenses;
- (b) to regulate licensing of trade and business within the county;

- (c) to promote investment through creation of a friendly business environment for micro and small businesses.

PART II—ADMINISTRATION OF TRADE LICENSES

4. The Directorate of Trade shall be responsible for— Issuance of trade license.

- (a) issuing trade licenses;
- (b) advising the Executive Member on the classification of businesses and trades for the purposes of this Act;
- (c) ensuring compliance with the requirements of this Act;
- (d) carrying out inspections for the purposes of this Act;
- (e) advising the Executive Member on the appropriate policy for promoting conducive business climate through trade licensing;
- (f) monitoring and evaluating the implementation of this Act; and
- (g) carrying out any other functions as may be assigned by the Executive Member.

5. There shall be a Chief Licensing Officer who shall be designated by Directorate. Chief Licensing Officer

6 (1) The Chief Licensing Officer shall have powers to— Powers of the Chief Licensing Officer.

- (a) issue a license under this Act;
- (b) suspend a license
- (c) withdraw or cancel a license issued under this Act; and
- (d) impose such conditions on a license issued under this Act.

7. (1) A person shall not carry out any trade or business in a trading area unless in accordance with the conditions of a license issued under this Act. Requirement for license.

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

- (a) in the case of a registered business to a fine of not exceeding fifty thousand Kenya shillings in the first instance and not exceeding hundred thousand shillings for any subsequent similar offence;
- (b) in the case of an individual to a fine of not exceeding ten thousand Kenya shillings and twenty thousand shillings for any subsequent similar offence within the same year.

7. (1) A person intending to carry out any trade or business in the county shall— Application for license

- (a) make an application to the Chief Licensing Officer for a license;
- (b) be in the prescribed form;
- (c) contain such information and be accompanied by such documents as required by application form or regulations;
- (d) be signed in the manner specified in the application form;
- (e) be accompanied by the prescribed application fee.

(2) The application may be made in an electronic format approved by the Chief Licensing Officer.

(3) The Chief Licensing Officer may require an applicant to additionally provide information related to compliance with written laws related to standards, manufacture, distribution or sale of certain products as may be prescribed.

8. An application for a license by a holder of a license in the immediate preceding year shall be made not later than thirty first of March in each year. Late application

9. The holder of a license may before the expiry of the license or such other prescribed date, apply in the prescribed form and pay renewal fee for the renewal of the license. Renewal of license.

10. (1) Where the Chief Licensing Officer is satisfied that an applicant meets the requirements of this Act, the officer shall, upon the applicant paying the license fee, grant the license in the prescribed form. Grant of license

(2) Where the Chief 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 application

11. (1) A person aggrieved by decisions of the Chief Licensing officer may appeal to the Executive Committee Member against the decision within 14 days.

Appeals

(2) The Executive Committee Member may confirm, reverse or modify the decision appealed against, and make such orders and give such directions to Chief Licensing officer as may be necessary to give effect to his or her decision.

12. A person aggrieved by decision of the Executive Committee Member may appeal against the decision to the High Court within 21 days.

Appeals to High Court

13. Where an application for a license meets requirement 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 licensee which shall be valid for a period not exceeding one month in order to enable the Licensing Officer process the licensee under section 11.

Provisional licensee

14. (1) The Chief 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.

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

License to apply to only one business

16. (1) The initial term of license starts on the date which the license is granted and ends on 31st December of that year.

Validity of a license

(2) Notwithstanding subsection (1), the Executive Member shall classify the licenses to be valid for one day, one week, one month, six months or one year depending on the nature of business or trade.

(3) Every license shall be authenticated by the Chief

Licensing Officer or such other officer as the Chief Licensing Officer may designate.

17. (1) The Chief Licensing Officer may withdraw or cancel a license issued under this Act where—

Cancellation, suspension, surrender 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;
- (b) the holder of license has breached a condition in the license;
- (c) the licensee fails to comply with the requirements of this Act.

(2) Where a license is withdrawn or cancelled under this section, the Chief Licensing Officer shall issue a notice to the holder of the license which shall contain the reasons for such withdrawal or cancellation.

(3) If a license is withdrawn, cancelled or suspended, the holder of the license shall immediately cease to conduct the business and the licensing officer shall confiscate the license.

(4) A holder of a license may surrender the license by returning license to the Chief Licensing officer but no refund of the license fee is payable.

(5) If a person contravenes the provisions of this section, the person is guilty of an offence punishable on conviction by a fine not exceeding one hundred thousand Kenya shillings

(6) If the Chief Licensing officer revokes the suspension of a trade license , the holder of the license may resume conducting the business or trade.

18. Where a licensee sells or leases or otherwise disposes of the premises or business specified in the license, the licensee may apply in writing to the Directorate for the transfer of the license to the purchaser or lessee or otherwise of such premises, and the licensing officer may, if the officer deems fit, grant a transfer of such license.

Transfer of license

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

License to be displayed

- (a) where a license is granted in respect to premises, prominently and conspicuously display on the premises to which it relates; or
- (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 or neglects so to display the license commits an offence and shall be liable to a fine not exceeding five thousand shillings.

20. The license fees payable under this Act shall be established on principles of equity and fairness and shall promote the establishment and operation of businesses in the county.

Principles for setting the license fees

21. The licenses applicable under this Act shall be as classified in the Regulations.

Classification of licenses

22. The license fees payable under this Act shall be as prescribed in the Regulations

License fees

23. (1) The Executive Member shall adopt such appropriate electronic system for the purposes of implementing this Act.

Electronic system

(2) Any transaction under this Act carried out through electronic system shall have legal effect in accordance with this Act.

(3) Where a transaction is carried out through an electronic system, the Executive Member shall ensure that there is established sufficient record as evidence of the transaction.

24. The Directorate shall collaborate with relevant government departments and agencies in the implementation of this Act.

Collaboration with government agencies

25. (1) The Chief Licensing officer shall maintain a register of trade licenses.

Register

(2) The register shall be available for inspection by the public during usual government office hours.

(3) The register shall contain such information as is

prescribed but shall not include information that is commercial-in-confidence information.

26. (1) A person shall not make any false or misleading statements in connection with an application for a license or in provision of any information required under this Act.

Misleading statements.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding twenty thousand Kenya shillings or an imprisonment of a term not exceeding one year or both.

27. (1) The Chief Licensing Officer shall, not later than three months after the end of each calendar year, cause to be prepared an annual report in a prescribed form in respect to each financial year which shall consist of among others:

Reporting

(a) the number and type of licenses issued during the year classified under—

- (i) each sub county and wards; and
- (ii) each town or urban area;

(b) the challenges faced in the implementation of this Act;

(c) the proposed policy or legislative measures to be adopted in order to enhance the implementation of this Act;

(d) the level of compliance with this Act by the licensees or potential licensees; and

(e) any other matter as the Executive Member may require.

(2) The Chief Licensing Officer shall submit the report prepared under this section to the Executive Member.

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

PART III—ENFORCEMENT

28. 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 this Act;
- (c) promotes trade and business operations; and
- (d) respects and observes the rule of law and fundamental rights and freedoms.

29. (1) The Executive Member shall appoint such persons to be authorized officers for the purposes of this Act.

Authorized officers.

(2) The Executive Member shall issue a certificate of appointment to a person appointed under this section in the prescribed form.

(3) Notwithstanding the provisions of this section, the county public health officers shall be authorized officers for the purposes of this Act.

30. An authorized officer shall be responsible for ensuring compliance with this Act.

Roles of authorized officers.

31. (1) An authorized officer may enter any premises licensed under this Act or carrying out any trade or business, whether such premises are licensed or not for the purposes of carrying out inspections in compliance with this Act.

Inspections.

(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 the certificate issued to him under section 32 (2).

(3) An inspection carried out under this Act may be scheduled or nonscheduled and shall be in accordance with the prescribed procedure.

32. 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.

33. A person who refuses to produce information as required by an authorized officer under section 39 commits an offence and is liable to a fine not exceeding hundred thousand Kenya shillings.

Failure to produce information

PART IV—GENERAL PROVISIONS

34. (1) The Executive Member may make Regulations generally for the better carrying out of the objects of this Act.

Regulations

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

- (a) prescribe the forms;
- (b) prescribe matters related to compliance with written laws in regard to application for license;
- (c) prescribe the form of certificate for authorized officers;
- (d) prescribe the procedures for carrying out inspections.
- (e) prescribe application fee;
- (f) electronic application for a license

(3) The Regulations must comply with objectives of this Act.

35. 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.

MEMORANDUM OF OBJECTS AND REASONS

Firstly, this Bill seeks to partly implement section 7 of Part 2 of the Fourth Schedule to the Constitution on trade development and regulation of trade.

Secondly, the Bill seeks to provide for a framework for licensing trade and businesses.

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

PART II of the Bill provides for administration matters. The Part establishes a licensing unit responsible for issuing licenses, advising the Executive Member on classification of businesses and ensuring implementation of the Act among others. The Part also provides for the office of the Chief Licensing Officer.

PART III of the Bill provides for enforcement provisions. It provides for the principles to be adopted in enforcing the law, for appointment of authorized officers and the process of carrying out inspections.

PART IV of the Bill provides for general provisions. It provides for the powers of the Executive Member to make Regulations and provides for savings provision on the licences and permits issued prior to the coming into force of the Act.

Dated the 20th June, 2016.

SULEIMAN KHALIF,
Leader of Majority.