



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ELGEYO-MARAKWET COUNTY BILLS, 2019

NAIROBI, 31st December, 2019

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**THE ELGEYO/MARAKWET COUNTY OUTDOOR
ADVERTISING BILL, 2019****A Bill For**

AN ACT of the County Assembly to provide for the regulation and management of outdoor advertising and for connected purposes

ENACTED by the County Assembly of Elgeyo-Marakwet as follows—

PART I—PRELIMINARY**Short Title**

1. This Act may be cited as the Elgeyo-Marakwet Outdoor Advertising Act, 2019.

Interpretation

2. In this Act—

“advertising device” includes any board, framework screen, signboard, flag, banner or lamp, neon signs, pamphlets, leaflets, flyers, bulletins, digital displays, murals, vehicles or any other fixture or device used or constructed for the purpose of advertisements;

“County Executive Committee Member” means the County Executive Committee Member responsible for Finance and County Planning;

“department” means the Department of the County Executive that is responsible for matters relating to Finance and County Planning;

“fees and charges” shall be the most recent gazetted at any point of time by the County;

“outdoor advertising” means any advertising done outdoors and publicizes a business product or service;

“owner” means the person in control of a building, premise or site;

“permit” means a permit issued under section 10 of this Act; and

“protected area” means an area declared to be a protected area under section 9 of this Act.

Objective

3. The objective of this Act is to empower the County government through the relevant department to take all lawful, necessary and reasonably practicable measures—

- (a) to eliminate the danger posed to the public through erection of unregulated outdoor advertisements;
- (b) to maintain the county ambience in a safe, clean and pleasant condition at all times;
- (c) to remedy or cause to be remedied, any damage caused through unauthorized outdoor advertising;
- (d) collect revenue from outdoor advertising;
- (e) allow the promotion of information, industry and trade through outdoor advertising; and
- (f) regulate and manage outdoor advertising.

Application

4. This Act shall apply within the geographical boundaries of Elgeyo/Marakwet County and specifically—

- (a) all urban areas, towns and centres within the County; and
- (b) all areas adjacent to any road, railway, aerodrome canal or waterway.

PART II—ADMINISTRATIVE PROVISIONS

Administration of this Act

5. This Act shall be administered by the County Department responsible for matters relating to Finance and County Planning.

Fees and Charges

6. There shall be paid to the County in respect of every permit issued under this Act appropriate fees and charges as may be determined by the County from time to time.

Functions and powers of the Department

7. It is the responsibility of the Department to implement the objectives of this Act and to this end the Department shall—

- (a) formulate county regulations on outdoor advertising;
- (b) subject to relevant legislation, receive any grant or donation;
- (c) issue, renew, suspend or revoke licenses and permits;
- (d) impose fines for breach of any conditions imposed in any license or permit issued under this Act;
- (e) prescribe fees chargeable for any services the county may render under this Act;

- (f) declare any area to be a protected area; and
- (g) perform any other function as may be directed by the County Executive Committee Member, for the effective implementation of this Act.

Department may enter agreements

8. (1) The Department may, on behalf of the County Government, enter into agreements for the mutual benefit of the County with any company on outdoor advertising.

(2) The Department may provide selected infrastructure (street light poles, street/park benches, litter bins etc) to a company in exchange of an investment opportunity.

(3) At the expiry of an agreement under paragraph (2), a company shall surrender the infrastructure provided under subsection (2) to the County Government.

(4) An agreement made under this section shall not exceed one year.

Protected areas

9. (1) The Department may recommend to the County Executive Committee Member places to be declared as protected areas for purposes of this Act.

(2) Without prejudice to the provisions of subsection (1), the following are deemed to be protected areas—

- (a) natural recreational spaces and urban conservation areas;
- (b) cultural and national heritage areas and cites; and
- (c) *Gazetted* buildings and historical monuments.

(3) Outdoor advertising shall not be permitted on areas that have been declared protected under this Act.

PART III—LICENCES AND PERMITS**Application for outdoor advertising licence**

10. (1) Any person desiring to display an outdoor advertisement shall make an application to the Department which shall be accompanied by a plan or sketch showing, to the satisfaction of the Department—

- (a) the dimensions of the intended advertisement;
- (b) the material of which it is to be composed or constructed;
- (c) the position of the proposed advertising device or notice where the advert is intended to be displayed.

- (d) the method of execution;
- (e) its colour;
- (f) a planning brief submitted by a registered physical planner; and
- (g) the period for which the advertisement is intended to be displayed.

(2) The Department may on receipt of the application under subsection (1) request the applicant for any other relevant information.

(3) If the Department is satisfied that the advertisement meets the requirements under this Act and poses no danger or obstruction, within thirty days, it shall issue a permit subject to any conditions it may impose.

(4) If the Department does not approve the application, it shall notify the applicant of its reasons, in writing, within thirty days from the date of receipt of the application.

(5) Notwithstanding the provisions of subsection (3) no advertisement shall be displayed—

- (a) without the consent of the owner of the land or building on which it is proposed to be displayed;
- (b) in a manner that it would endanger anyone using any road, railway, or aerodrome, canal or waterway or any other public amenity;
- (c) in a place or in a manner that would obscure or hinder the ready interpretation of any traffic sign, railway signal, or air navigation aid or other navigation aid;
- (d) in a manner that would hinder the operation of any device used for the purpose of security or surveillance; or
- (e) in a manner that obstructs or interferes with the private use of private property.

(6) The applicant shall, on the expiry of the licence period remove the advertisement and return the site as reasonably close to the condition it was before the advertisement was displayed.

Period and renewal of licences

11. (1) A licence shall be in force for the period specified in the licence but shall not exceed 12 months from the date of its issuance or renewal.

(2) A licence may be renewed from time to time if the Department approves and application for renewal and on payment of the prescribed fee.

Exempted advertisements

12. (1) The advertisements specified in subsection (2) are exempted from the application of this Act.

- (2) An advertisement placed in—
 - (a) the interior of a shopping mall or arcade—
 - (i) an enclosed bus or railway station;
 - (ii) the interior of a sports stadium.
 - (b) a non-illuminated advertisements or sign not exceeding 0.3 meters relating to the premises such as notices or signs to be displayed on building or land as means of identification, direction or warning (e,g shut the gate, beware of dogs);
 - (c) non-illuminated notices or signs not exceeding 0.3m, affixed and indicating the name, address and telephone number of—
 - (i) a security company contracted to protect property;
 - (ii) a landscape company or sponsor contracted to landscape a public open space provided that only one sign per premise shall be permitted and such sign shall be firmly affixed to the boundary wall fence or gates on the street frontage;
 - (d) a non-illuminated advertisement or notice relating to religious activity as follows—
 - (i) one advertisement or notice per premise on a road frontage;
 - (ii) the height at which the advertisement or notice does not exceed 2.0m above ground level;
 - (e) a non-illuminated advertisement or notice relating to foreign diplomatic and political activity including—
 - (i) the national flag of any country or United Nations organizations provided nothing is added to the design of the flag or, if the flag is flown from a flagpole and no advertising material is added to the flagpole;
 - (ii) posters pending civic, parliamentary or presidential election campaigns; and
 - (iii) functions advertisements of government ministries, departments and their agencies, county governments and statutory utility services undertakers.

Illegal Outdoor advertisement

13. Any person who in or in view of any street or public place, erects, fixes, places, maintains, displays or uses or permits to be erected, fixed, placed, maintained displays or uses; any advertisement device without first obtaining a permit, otherwise than in accordance with this Act shall be guilty of an offence.

Prohibited signs

14. No person shall erect or cause or permit to be erected or maintained—

- (a) any advertisement or sign, other than an exempted sign, for which neither a permit nor approval has been obtained or which does not comply with the requirements of, or which is not permitted by this Act, or any other written law;
- (b) any sign suspended across a street unless otherwise approved by the Department;
- (c) any sign which may either obscure a road traffic sign, be mistaken for with or interfere with the functioning of a road traffic sign;
- (d) any sign which may obscure traffic by restricting motorists vision and lines of sight thus endangering motorists' safety;
- (e) any sign which is indecent or suggestive of indecency, prejudicial to public morals or is reasonably objectionable;
- (f) any sign which will obstruct any window or opening provided for the ventilation of a building or which obstructs any stairway or building or other means of exit from a building or which will prevent the movement of persons from one part of a roof to another part thereof;
- (g) any animated or flashing sign which the frequency of the animations or flashes or other intermittent alternations of which disturbs the residents or occupants of any building or is source of nuisance to the public or impairs road traffic safety;
- (h) any illuminated sign, the level of illumination of which unreasonably disturbs the residents or occupants of any building or is a source of nuisance to the public;
- (i) any sign referring to a price or change in price of merchandise except in a shop window, or on the article itself;
- (j) any poster otherwise than on a hoarding legally erected for the purpose of accommodating such poster;

- (k) any sign or signs that total area of which exceeds 30 meters square, painted or fixed on a wall of a building not being a front wall of such building, unless approved in terms of the policy for the promotion of outdoor advertising;
- (l) any sign painted on any fence or boundary wall, not being an approved sign;
- (m) any sign which may obstruct pedestrian or vehicular traffic;
- (n) any transit advertising sign that is parked irrespective of whether it is attached to a vehicle or not;
- (o) any poster or sign attached to a tree;
- (p) any temporary sign for commercial or third-party advertising erected on County land or land vested in the County, unless by prior signed encroachment agreement or contract with the local authority; and
- (q) any sign or poster attached to road traffic sign.

Cancellation of permit

15. The Department may at any time by notice to the holder thereof, cancel a permit for contravention of any of the terms and conditions thereof or any of the provision of this Act or where it is of the opinion that continued display of any advertisement or use of any advertisement device would likely damage the amenities or to deface any neighbourhood or for any reason it may think fit.

Removal of advertising devices

16. The County Executive Committee Member through the Department may without notice cause to be removed or put down and disposed of any advertising device erected, fixed, placed, maintained, displayed or used in contravention of this Act.

PART IV—MISCELLANEOUS PROVISIONS

Public Participation

17. The County Executive Committee Member shall seek approval of the County Assembly when making a decision under section 8 on the declaration of protected areas.

Offences

18. (1) A person who—

- (a) commits a breach of any condition imposed by any licence or permit issued under this Act;
- (b) aids or abets another person to commit a breach of any condition imposed by under any licence or permit issued under this Act;

(c) forges or through fraud obtains any document with intent to have a licence or permit issued or renewed;

(d) erects or attempts to erect an outdoor advertisement contrary to the provisions of this Act;

commits an offence and on conviction shall be liable to a fine of not more than shillings two hundred thousand (200,000) or to imprisonment for a period not exceeding one year or both such fine and imprisonment.

(2) The County Government may, by law, further prescribe that, in addition to any penalty, any expenses incurred by the County—

(a) in consequence of the breach of any law by any person; or

(b) in the execution of any work directed by any such law to be executed by any person and not executed by him:

Shall be paid by the person committing such breach or failing to execute such work.

General Penalty

19. Every person who violates or fails to comply with any provision of this Act for which no other penalty is provided, commits an offence and is liable to conviction to a fine not exceeding fifty thousand shillings or imprisonment of a term not exceeding six months.

Regulations

20. The County Executive Committee Member may make regulations—

(a) to prohibit or regulate the display of advertisements and advertising devices in or in view of any street or other public place or in such places or in such manner or by such means as would, in the opinion of the Department, be likely to affect injuriously the amenities of or to disfigure any neighbourhood;

(b) to regulate the use and passage of advertising vans, sandwich boards, lanterns, flags, screens or other moveable advertising devices;

(c) to regulate the distribution of handbills in or along any street or other public place;

(d) to regulate street decorations;

(e) prohibit or regulate the erection and removal of temporary platforms, seats and other structures for the use of the public at any meeting or entertainment or for the accommodation of spectators at any procession; and

- (f) regulate the shape, form and size of the billboards and the number that may be erected within a specific area; (including tri-vision panels, sky signs, billboards, wall wraps, light emitting diodes(LED) screens).

Saving provisions

21. All licences, permits, certificates and other instruments issued under any other law and or legislation shall continue in operation for the remaining period of their validity and on passing of this Act shall be deemed to have been issued under the County Outdoor Advertising Act.

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to enable and empower the County Government to regulate outdoor advertising so as to maintain the county ambience in a clean, safe pleasant condition.

PART I provides for the Short Title, Interpretation and objectives of the Act.

PART II has the administrative provisions which include functions of the department responsible for outdoor advertising as well as the procedure for declaration of protected areas under the Act.

PART III has provisions on licences and permits under the Act.

PART IV- provides for offences under the Act, penalties as well as saving.

Dated the 2nd October, 2019.

TICH CHEBOI,
Chairperson, Finance and County Planning Committee.

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