

SPECIAL ISSUE

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REPUBLIC OF KENYA

**ELGEYO/MARAKWET COUNTY
GAZETTE SUPPLEMENT**

BILLS, 2014

NAIROBI, 17th October, 2014

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P. O. Box 73552 - 00200,
NAIROBI, KENYA

**THE ELGEYO MARAKWET COUNTY TRADE AND MARKETS
BILL, 2014**



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**THE ELGEYO MARAKWET COUNTY TRADE AND
MARKETS BILL, 2014**

COUNTY ASSEMBLIES FORUM (CAF)
P.O. Box 73552 - 00200,
NAIROBI, KENYA

A Bill for

**AN ACT of the County Assembly of Elgeyo/
Marakwet to provide for; the regulation of trade
and other business activities; the establishment
of the Directorate of Trade; the establishment
and management of markets; and for related
purposes**

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

PART I —PRELIMINARY

1. This Act may be cited as the Elgeyo/ Marakwet
County Trade and Markets Act, 2014.

Short title.

2. In this Act,—

Interpretation.

“butcher’s meat” include beef, mutton, veal, lamb, kid
or the meat of any other animal slaughtered for the purpose
of sale;

“busker” means any person who performs the activity
of busking;

“busking” includes any activity of sounding or
playing a musical instrument, singing, reciting or
performing conjuring, juggling, puppetry, miming, dancing
or other entertainment or doing any of those things
concurrently;

“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 use or
are dangerous; or
- (b) do not comply with a product safety or quality
standard;

“directorate” means the directorate of Trade
established in section 3;

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- (i) promote the development of small businesses, to disseminate knowledge of sound business and commercial practice to the county;
- (j) 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;
- (k) evaluate investment proposals suitable for funding by the Government or donors; and
- (l) to otherwise act in the promotion of investment in the county.

7. (1) Any officer authorised under this act shall have the power to inspect any premises or place in which he reasonably believes to be maintained in contravention of the provisions of this act.

Inspection powers
of officer.

(2) Before starting to inspect or search the premises, an inspector who is not a member of the police force must, if it is practicable to do so identify themselves to an occupier of the premises by producing their identity card for inspection by the occupier.

(4) An officer may, at any reasonable time, enter any place that they believe 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 considers to be necessary;
- (b) take any goods or partly manufactured goods for which he pays a fair price;
- (c) take a sample of anything from which goods are manufactured or produced at that place;
- (d) make inquiries of any person employed at that place or who has responsibility over that place; or
- (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.

(4) without derogating from any power conferred by subsection (3), the directorate may 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.

8. (1) An officer who divulges confidential information obtained during the course of an investigation conducted under this Act or any other law commits an offence.

Confidential information.

(2) 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 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.

(3) A person who commits an offence under this section 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.

9. There shall be within the directorate such divisions as may be required for the effective performance of the functions of the directorate.

Divisions of the directorate.

10. (1) The directorate shall, within three months after the end of each financial year, or within such longer period as the County Executive Committee Member may in special circumstances allow, cause to be made and transmitted to the County Executive Committee Member a report dealing generally with the activities of the directorate during the preceding financial year.

Reports.

(2) The director may from time to time furnish to the County Executive Committee Member a report relating to any particular matter or matters investigated, or being investigated which, in the opinion of the director, require the special attention of the Governor.

(3) The County Executive Member shall cause a copy of a report submitted under this section to be laid before the County Assembly.

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- (4) (a) A regular trader using a motor vehicle to carry on their commercial activity shall have premises available where to garage the motor vehicle and store their goods.
- (b) The address of the premises used for this purpose must be clearly indicated on the application for the issuing of a licence.
- (c) Any change in the vehicle or garage must be notified to the directorate within ten working days after the change occurs.
- (d) No application shall be accepted and processed by the directorate if the address of the garage or any other address for the store where goods are to be stored are not given.
- (e) The directorate shall have the right to inspect such premises and to demand any documentation that proves the ownership of the premises when the application indicates the use of such premises by more than one licensee.
- (f) The directorate may refuse to issue a licence if it decides that such premises are not used as a store or garage by the applicant.
- (g) The licence issued by the directorate must indicate the regular trader as a non-food licence trader or as a food related items licence trader.
- (h) In the case that this activity 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 a 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.

(i) Likewise with reference to non-food related items the directorate may issue an order to the licensee to restrict the selling of any item that may be causing an infringement of public order.

17.(1) A street hawker may carry out their commercial activity from designated place or street by moving from place to place.

Definition of
street hawker.

(2) A street hawker may hawk from a vehicle and may carry out their commercial activity by parking their vehicle according to the traffic regulations in any street where they stop to sell till they serve their customers and then after serving their customers move to another place.

18. (1) A person who organizes a car boot sale, selling items, in any public or private place must obtain a licence from the directorate.

Car boot sales.

(2) An application for a licence under this section shall contain the following information the;

- (a) name of the applicant;
- (b) the designated area where the car boot sale will be held;
- (c) date when the car boot sale will be held.

19. Selling by busking is permitted and subject to the following conditions:

Buskers.

- (a) that an application by any busker who, in any street, produces on site and sells a work of art on site, is filed on the appropriate form with the directorate;
- (b) that the place where the busker stops to sell their goods is at least five metres of walking distance away from the entrance of any commercial premises;
- (c) for purpose of subsection (b), a fixed kiosk is considered to be a commercial premises;
- (d) that no selling by busking can be performed in the precincts of any hotel or any shopping complex if not by written permission from the management;
- (e) that no objects are placed on the pavement; and
- (f) that no nuisance or inconvenience is caused to the neighbours or passers by in the street.

20. A person who assaults or obstructs an officer, whether a public officer or otherwise, or other person authorised to receive any stallage or charge payable in respect of a public market or any person employed to superintend such market or to keep order therein, while executing their duty, is liable on conviction to a fine of fifty

Assaulting or obstructing the officer collecting dues.

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commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(2) The licensing authority may grant a licence to any person to sell meat in a public market upon payment of prescribed fees.

30. No person should be allowed to sell meat unless he meets the standards provided for in the public health act.

Meat standard.

Section G—Regulation of Sale of Marketable Commodities and Other Goods

31. (1) Subject to section 32, no person shall sell any marketable commodities in the entrance to any building or on the pavements of any road which is situate within the limits of a prescribed area for the purposes of this section.

Selling marketable commodities and other goods within prescribed areas.

(2) Subject to subsection (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 subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six (6) months.

32. (1) Section 31 does not apply to the carrying of any marketable commodities from place to place for the purpose of sale within a prescribed area.

Certain sales excluded from the operation of section 31.

(2) Section 31 does not apply to the sale—

- (a) in accordance with the provisions of any law relating to hawkers of any marketable commodities at any building situate within any area prescribed for the purposes of that section;
- (b) of any marketable commodities in any shop or in any public market held for public purposes within any area prescribed for the purposes of that section;
- (c) of any marketable commodities in the entrance to any building situate within any area prescribed for the purposes of that section in any case where the vendor first obtains the permission of the owner or occupier of such building to sell and so conducts their business so as not to cause obstruction to any person lawfully using such road; or

- (d) of any marketable commodities as defined in section 32, in any part of any public place or within any area prescribed for the purposes of section 31, by any person to whom a permit is issued in accordance with section 32 and who sells at the place and in accordance with the terms and conditions specified in the permit issued.

33. (1) Every person desirous of being issued a permit authorising the person to sell in any part of a public place or within an area prescribed for the purposes of section 31, any permitted marketable commodities shall make an application to the directorate and must produce evidence to the satisfaction of the directorate as to their good character.

Power to issue permits allowing the sale of goods within prescribed areas.

(2) A permit under subsection (1) must be issued by the licensing Authority upon payment of the prescribed fee and is valid for such period as may be specified not exceeding one year from the date of issue:

(3) Before issuing any permit mentioned in subsection (1) the directorate shall cause the particular part of the public place to which it is proposed that the permit shall on issue relate to be defined by lines painted on the ground or by studs embedded in the ground or in such other manner as he thinks fit and a number or letter to be marked within such place in such manner as he thinks fit.

(4) Every person to whom a permit is issued under subsection (2) must display the permit in a conspicuous place and produce their permit when required so to do by the directorate or any officer authorised by the directorate.

(5) An applicant for a permit mentioned in subsection (1) who is dissatisfied by a refusal of the directorate to grant the permit may appeal to the magistrates court.

Section H—Miscellaneous

34. A county public medical officer or other competent officer of the County Health Directorate shall carry out all inspections of animals and articles of food at the public market in accordance with regulations made under this Act.

Officers of health directorate to carry out inspection.

35. (1) Several stalls or blocks in the portion of a public market used for the sale of meat may be leased by

Renting of stalls for sale of meat.

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- (i) prescribing the conditions subject to which the several stalls or places in any public market may be held, occupied or used by persons having or using the same;
- (j) 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;
- (k) for maintaining order and preventing disturbances in a public market;
- (l) for excluding or removing from public markets any person suffering from any infectious or contagious disease; and
- (m) for prescribing any area within which section 31 shall, subject to section 32, apply.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Trade and Markets Bill, 2014

The main object of this Bill is to provide for the Regulation of trade and other business activities, establishment of the Directorate of Trade and the Management of Markets in Elgeyo/Marakwet County.

Part I gives the short title and the interpretation of words.

Part II establishes the directorate of trade with clause 6 giving the functions and powers of the directorate. Clause 7 gives the inspection powers of an officer in the directorate while clause 8 makes information gained under mandate given by this Act confidential. Clause 9 allows the directorate to create divisions and clause 10 require directorate to submit reports to the CEC concerned.

Part III deals with public markets. It establishes the market division and regulates the sale of meat. It also regulates the sale of marketable commodities and other goods. Section H gives miscellaneous provisions including requiring the health inspector to carry out inspections and creating offences under this Bill.

Statement on the Delegation of Powers and Limitation of Rights and Freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill Concerns the County Government

The Bill concerns the County Government in terms of the Fourth Schedule of the Constitution.

Statement that the Bill is not a Money Bill Within the Meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 24th, September, 2014.

ANNE KIBOSIA,
CEC, Tourism, Trade and Industry.

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