

SPECIAL ISSUE

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REPUBLIC OF KENYA

**ELGEYO/MARAKWET COUNTY
GAZETTE SUPPLEMENT**

BILLS, 2016

NAIROBI, 11th March, 2016

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THE ELGEYO/MARAKWET COUNTY TRADE (LICENSING) AND MARKETS BILL, 2016

A Bill for

AN ACT of the Elgeyo/Marakwet County Assembly to provide for the grant of trade licences, establishment of markets and for connected 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 (Licensing) and Markets Act, 2016, and shall come into operation on the date of publication in the County and Kenya *Gazette*.

Short title and
commencement

2. In this Act, unless the context otherwise requires:

Interpretation

“approved form” means a form approved by the licensing authority;

“authorized officer” has the meaning given by section 5;

“business” means a profession, trade or occupation;

“executive committee member” means the County Executive member responsible for trade.

“Finance Act” refers to the Finance Act of the respective year in which it was passed;

“general business area” means an area of any urban area or town declared under section 5 to be a general business area for the purposes of this Act;

“hawker” means a person who, whether on his or her own account or as the servant of another person, sells goods by retail other than in trading premises or in a market established under this Act;

“holder”, in relation to a trade licence, means the person to whom the licence is granted;

“licence fee” means the fee payable for the grant or renewal of a trade licence;

“licensing authority” means an officer of the county

government appointed under section 5;

“owner” includes occupier;

“prescribed” means prescribed by the rules made under this Act;

“receiver of revenue” has the same meaning assigned by the Public Finance Management Act, 2012;

“sell”, with its grammatical variants and cognate expressions, includes to offer for sale and to expose for sale and their grammatical variants and cognate expressions;

“sell goods wholesale” means to sell goods to a person or the servant of the person who is reasonably believed by the seller to intend to resell the goods by retail;

“trade” or “trading” means the selling of goods for which a licence under this Act is required, in any trading premises, whether by retail or wholesale;

“trading premises” includes any structure attached to the land, whether of a permanent or temporary nature, except a market established under this Act, in which trade is carried on;

“travelling wholesaler” means a person who, whether on his or her own account or as the servant of another person, sells goods by wholesale other than in trading premises.

“trade licence” means a licence granted to conduct a business.

3. (1) Subject to the Constitution, the county executive committee member responsible for trade may with the approval of the county assembly, by statutory order—

Establishment of
Trading Centres

- (a) declare any specified area in the county, other than an area declared a trading centre by an Act of Parliament, to be a trading centre for the purposes of this Act;
- (b) assign a name to the trading centre;
- (c) define the boundaries of the trading centre;
- (d) alter the boundaries of any trading centre;
- (e) declare that any trading centre shall cease to be a trading centre.

(2) Any trading centre declared as such pursuant to an Act of Parliament before the coming into operation of this Act which has not ceased to be a trading centre shall be deemed to be a trading for the purposes of this Act.

(3) Subject to subsection (4), no person may erect any shop or carry on any trade in a shop in any area within a radius of two miles outside the boundary of any trading centre.

(4) The prohibition contained in subsection (3) shall not apply—

- (a) to any shop or store which at the commencement of this Act is situated in any area within a radius of two miles outside the boundary of any trading centre.

4. (1) Subject to subsection (2), no person shall trade in any goods or carry on any business specified in the Finance Act unless he or she is in possession of a trading licence granted to him or her for that purpose under this Act.

Trading prohibited
without a trading
licence

(2) No trading licence shall be required in any event for—

- (a) the trade of a planter, farmer, gardener, dairyperson or agriculturist in respect of the sale of his or her own dairy or agricultural produce;
- (b) the trade of a person in respect of goods bona fide made by him or her by his or her handicraft in or on any premises where he or she normally resides, or by the handicraft of persons normally residing with him or her or who are his or her employees or members of his or her family;
- (c) the trade carried on in any market established under this Act;
- (d) the sale of tobacco, cigarettes, newspapers, books, non intoxicating liquor or playing cards by the management of a proprietary or members club to its members in the club premises;
- (e) any other trade which the county executive committee member may, by statutory instrument,

declare to be a trade for which no trading licence is required under this Act.

5. For the purposes of granting a trading licence or hawkers licence under this Act—

Licensing Authority

- (a) the licensing authority shall be such person as may be appointed for that purpose by the executive committee member responsible for trade.

6. (1) An application for a trading licence shall be made, on such form as may be prescribed, to the appropriate licensing authority.

Application for trading licence

(2) Any person who makes any statement in his or her application for a trading licence which is to his or her knowledge untrue commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding six months or to both.

(3) Where a person is convicted of an offence under this section, the court by or before which he or she is convicted may, in addition to any penalty that it may impose, order that the trading licence of that person shall be revoked or that the person shall be disqualified from holding any trading licence under this Act for such period as the court may specify in the order.

7. (1) Subject to this Act, a licensing authority may, on application made to it in the prescribed manner and on payment of the appropriate fee specified in the Finance Act, grant to the applicant a trading licence.

Grant of trading licence

(2) A trading licence—

- (a) shall be in the prescribed form;
- (b) shall be granted subject to such conditions as may be prescribed; and
- (c) shall specify the premises in respect of which it is granted.

(3) The licensing authority may refuse to grant a trading licence under this section without assigning any reason for the refusal, and may revoke any licence granted under this section if it is satisfied that any of the terms and conditions upon which the licence was granted has been contravened.

(4) Any applicant who is aggrieved by the refusal of the licensing authority to grant him or her a trading licence may appeal to the executive committee member.

(5) The executive committee member may confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the licensing authority as may be necessary to give effect to his or her decision.

8. (1) The licensing authority may cancel or suspend a trade licence if it is satisfied that—

Cancellation or
suspension of
licences

- (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 trade licence has breached a condition of the trade licence.

(2) Where a licensing authority cancels or suspends a trade licence (or revokes any such suspension), the authority shall give the holder of the licence written notice of the cancellation or suspension, including the period of the suspension, or revocation, together with a statement of the reasons for the decision.

(3) Where a trade licence is cancelled or suspended, the holder of the licence must immediately cease to conduct the business.

(4) A person who contravenes the provisions of subsection 3 (1) above shall be liable to a fine not exceeding Kenya Shillings One Hundred Thousand Shillings Only.

(5) Where the licensing authority revokes the suspension of a trade licence, the holder of the licence may resume conducting the business.

9. Unless earlier revoked, a trading licence granted under this Act in respect of any year shall expire on the thirty-first day of December of that year.

Duration of trading
licence

10. (1) Every holder of a trading licence shall keep his or her licence exhibited in a conspicuous place of his or her trading premises.

Exhibition of trading
licence

11. (1) Any authorized officer, police officer, licensing authority, or any person authorised in writing by the licensing authority, may at all reasonable times enter—

Inspection of trading
licence

- (a) any trading premises in respect of which a trading licence has been granted for the purpose of inspecting the trading licence and of satisfying himself or herself that the provisions of this Act are being complied with; or
- (b) any premises in respect of which a trading licence has not been granted under this Act but in which he or she has reasonable grounds to believe there is carried on a trade for which a trading licence is required under this Act, and may require the owner of the premises to furnish him or her with any information he or she may deem necessary.

(2) The owner of any premises to which subsection (1) applies shall provide all necessary assistance and furnish all necessary information as any authorized officer, police officer, licensing authority or a person authorized in writing by the licensing authority may deem necessary for the discharge of his or her duties under that subsection.

(3) Any person who obstructs or hinders, or knowingly makes a false declaration or gives any false information to any authorized officer, police officer, licensing authority or a person authorised in writing by the licensing authority in the performance of his or her duties under 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.

12. (1) The licensing authority shall establish and maintain a register of trade licences which is to be available for inspection by the public during usual government office hours.

Register

(2) The register shall contain such information as is prescribed, but must not include information that is commercial-in-confidence information.

PART II— HAWKERS LICENCE

13. (1) No person shall act as a hawker unless he or

Grant of hawkers
licence

she is in possession of a valid hawkers licence granted to him or her for that purpose by the licensing authority.

(2) A licensing authority may, on application made to it in the prescribed manner and on payment of the appropriate fee specified in the Finance Act, grant to the applicant a hawkers licence.

(3) A hawkers licence shall be in such form as may be prescribed and shall be granted subject to such conditions as to—

- (a) the kind of goods which may be hawked;
- (b) the prescribed badge and/or mark of identification;
- (c) the area within which the hawking shall be restricted; and
- (d) the hours during which the goods may be hawked, and such other conditions as the licensing authority may think fit to impose.

(4) Where any person employs a servant to hawk goods on his or her behalf, he or she shall take out, in his or her own name, a licence to be carried by the servant when so employed; and where it is desired that more servants than one shall be so employed, an additional licence shall be taken out in respect of each additional servant.

(5) Except as provided for by law, no hawkers licence shall be required in respect of any person who acts as a hawker of—

- (a) agricultural produce including fish, poultry, vegetables, eggs, fruit, victuals, firewood or newspapers;
- (b) any goods bona fide made by his or her handicraft in or on any premises where he or she normally resides or by the handicraft of persons residing with him or her or who are his or her employees or members of his or her family;
- (c) any other goods which the county executive committee member may, by statutory instrument, declare to be goods which may be hawked without a hawkers licence under this Act.

(6) A licensing authority may refuse to grant a hawkers licence under this section without assigning any reason for the refusal, and may revoke any hawkers licence granted under this section if it is satisfied that any of the terms and conditions upon which the hawkers licence was granted has been contravened.

(7) Any applicant who is aggrieved by the refusal of the licensing authority to grant him or her a hawkers licence may appeal to the executive committee member

(8) The executive committee member may confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the licensing authority as may be necessary to give effect to his or her decision.

14. Unless earlier revoked, a hawkers licence granted under this Act in respect of any year shall expire on the thirty-first day of December of that year.

Duration of hawkers licence

15. A hawkers licence granted under this Act shall be personal to the holder of the licence and shall not be transferable.

Hawkers licence not transferable

16. Every person who holds a hawkers licence granted to him or her under this Act shall carry his or her licence with him or her at all times while he or she is acting as a hawker, and shall produce the licence for inspection on the demand of any administrative officer, police officer or any person authorized in writing by the licensing authority.

Production of hawkers licence on demand

PART III—TRAVELLING WHOLESALERS LICENCE

17. (1) No person shall act as a travelling wholesaler unless he or she is in possession of a travelling wholesalers licence granted to him or her for that purpose under this Act.

Travelling wholesalers licence

(2) For the purpose of granting a travelling wholesalers licence, the licensing authority shall be such person as the county executive committee member may, by statutory instrument, appoint.

(3) The licensing authority may, on application made to it in the prescribed manner and on payment of the appropriate fee specified in the Finance Act, grant to the applicant a travelling wholesalers licence.

(4) A travelling wholesalers licence shall be in such form as may be prescribed and shall be granted subject to such conditions as the licensing authority may deem fit to impose.

(5) In addition to any condition which the licensing authority may impose under subsection (4), every travelling wholesalers licence shall be subject to the condition that the holder of the licence shall not sell, or permit the sale of goods by retail.

(6) The licensing authority may issue a travelling wholesalers licence either generally, or in respect of any part of the county.

(7) A travelling wholesalers licence granted under this Act shall be personal to the holder of the licence and shall not be transferable.

(8) The licensing authority may refuse to grant a travelling wholesalers licence under this section without assigning any reason for the refusal, and may revoke any travelling wholesalers licence granted under this section if it is satisfied that any of the terms and conditions upon which the travelling wholesalers licence was granted has been contravened.

(9) Any applicant who is aggrieved by the refusal of the licensing authority to grant him or her a travelling wholesalers licence may appeal to the executive committee member.

(10) The executive committee member may confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the licensing authority as may be necessary to give effect to his or her decision

18. Unless earlier revoked, a travelling wholesalers licence granted in respect of any year shall expire on the 31st day of December of that year.

Duration of
travelling
wholesalers licence

19. Where a person holding a travelling wholesalers licence employs a servant to act as a travelling wholesaler on his or her behalf, he or she shall take out, in his or her own name, a licence to be carried by the servant when acting as a travelling wholesaler and, when it is desired that more servants than one shall be so employed an additional

Travelling
wholesalers servant

licence shall be taken out in respect of each additional servant.

20. Every person who holds a travelling wholesalers licence, including every servant of that person, shall carry his or her licence with him or her at all times while he or she is acting as a travelling wholesaler, and shall produce the licence for inspection on the demand of any administrative officer, police officer or any person duly authorised in writing by the licensing authority.

Production of
travelling
wholesalers licence
on demand

21. Where a licensing authority is satisfied that any licence granted under this Act has been lost or destroyed, the licensing authority which granted the licence shall, on application made to it and on payment of the fee prescribed in the Finance Act, issue a duplicate of the licence to the applicant

Issue of duplicate
licence

22. (1) Subject to this Act, any holder of a licence granted under this Act, except a hawkers or travelling wholesalers licence, may make an application for the transfer of his or her licence; and, on payment of the appropriate fee specified in the Finance Act, the licensing authority may transfer the licence to any other fit and proper person—

Transfer of licence

(a) in respect of the same trade; or

(b) in respect of a trade different from that in respect of which it was originally granted, and shall endorse the particulars of any such transfer on the licence.

(2) Notwithstanding subsection (1), the licensing authority may refuse to transfer a licence under this section without assigning any reason for the refusal.

(3) Any applicant who is aggrieved by the refusal of the licensing authority to transfer his or her licence may appeal to the executive committee member.

(4) The executive committee member may confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the licensing authority as may be necessary to give effect to his or her decision.

PART IV—ESTABLISHMENT AND MANAGEMENT OF MARKETS

23. The executive committee member may establish and maintain markets and shall control and manage such markets or shall vest their control and management in such person or committee as it may deem fit.

Establishment and control of markets

PART V— MISCELLANEOUS

24. (1) The fees specified in Finance Act shall be payable on the issue of a licence in respect of the various trades specified.

Licence fees, market charges etc

(2) No fees and charges will be based on a range which is higher than that specified for in the Finance Act.

(3) The licensing authority may select the appropriate range of fees to impose on business within the jurisdiction of the county depending on the class under which it falls as indicated in the Finance Act.

(4) The licensing authority shall, upon selecting a range of fees and charges impose fees and charges in amounts only within that range.

(5) The selection of a range of fees and charges shall be preceded by consultations held by the county with the business community and other stakeholders within the area of jurisdiction.

(6) Where the Licensing Authority intends to adopt or change a range of fees and charges, it shall publish a notice of the intention to do so—

- (a) in a newspaper of wide circulation in its area of jurisdiction;
- (b) on a conspicuous part of the county notice boards; and
- (c) in any other manner so as to bring it to the attention of the business community and stakeholders.
- (d) The notice under subsection (1) above shall contain—
 - (i) the proposed fees and charges and their likely

effect on business;

- (ii) an invitation to stakeholders to forward their comments and recommendations; and
- (iii) the date, venue and time of a consultative forum which shall be held to discuss the proposed fees and charges.

(7) (a) The Licensing Authority shall forward its proposed new fees and charges to the Executive Committee for approval after the conclusion of the consultative process.

(b) The Executive Committee Member shall forward the proposed new fees and charges to the County Assembly for approval before implementation.

(c) Notwithstanding any other provision of this Act, the Executive Committee Member shall hold consultative meetings with the business community and representatives of stakeholder organizations within the county once in every quarter.

(8) The executive committee member may, in respect of any person, reduce any fee or market charge payable under this Act if, in his or her opinion, the reduction is desirable for any reason which may seem to the executive committee member to be sufficient.

(9) Any fees or charges collected in respect of—

- (a) trading licences, hawkers licences, transfers and duplicates of those licences, use of markets or market buildings shall, be deposited into the county revenue fund.

25. The executive committee member may, by a statutory order, and subject to such conditions, if any, as may be specified in the order, exempt any trade or class of trades or any person or class of persons either generally or in respect of any area, from the operation of all or any of the provisions of this Act.

Exemption

26. Nothing in this Act shall be construed so as to entitle the holder of any licence granted under this Act to sell any article or substance for the sale of which a separate

Licences required under other Acts

licence is required by any written law for the time being in force.

27. A holder of any licence granted by the licensing authority of any other county shall unless otherwise provided by law be valid for purposes of distribution of goods or provision of services for the purposes of this Act.

Distribution of goods; provision of services across counties

28. Any person who violates any provision of this Act, a revenue law or any regulation thereunder for which no penalty is otherwise provided, is guilty of an offence and is liable on conviction to a fine of not less than ten thousand shillings and not more than one hundred thousand shillings.

General clause for offences and penalties

29. (1) Despite the repeal of the Local Government Act (Cap. 265) and the County Governments Public Finance Management Transition Act 2013—

Savings

- (a) any trading centre established or deemed to have been established under the repealed Local Government Act (Cap. 265), and which has not ceased to be a trading centre immediately before the commencement of this Act, shall be deemed to have been established under the corresponding provisions of this Act;
- (b) any rules, appointments, directions or other statutory instruments and acts lawfully done under that Act and in force immediately before the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall, to the extent that they are not inconsistent with such provisions, continue to have effect.
- (c) any single business permit issued by a local authority under section 163A of the Local Government Act (Cap. 265) that was in force on 30th September, 2013 is deemed to have continued in force after that date as if it were a trade licence granted under this Act and any fees or charges payable to a local authority in respect of the single business permit were payable to the county government.

- (2) The single business permit referred to in

subsection (1) continues in force—

- (a) for 3 months from the date of commencement of this Act; or
- (b) if the holder of the single business permit applies for a trade licence under this Act within that period, until the licence is granted or refused or the application is withdrawn.

30. (1) The executive committee member may, make Regulations—

- (a) prescribing the forms to be used under this Act;
- (b) for the classification of any trade or class of trade in relation to any licence to be granted under this Act;
- (c) regulating the use of markets and market buildings, and keeping order, preventing obstructions, and maintaining cleanliness in them or in the approaches to them;
- (d) prescribing the goods which may be sold in any markets;
- (e) prohibiting, or requiring vendors to obtain permits for, the sale of—
 - (i) any specified kind of livestock within any specified area surrounding a market lawfully established not exceeding twenty miles from the boundary of the market;
 - (ii) any specified kind of goods within any specified area surrounding a market lawfully established not exceeding three miles from the boundary of the market, but no rules which have been or are hereafter made for the purposes described in this paragraph shall apply to the sale of goods—
 - (iii) in a store in respect of which a trading licence has been issued under the Trade (Licensing) Act;
 - (iv) requiring goods brought into markets for sale to be sold by public auction, and

imposing and providing for the collection of a fee payable on the amount realised;

- (v) imposing stallages, rents or tolls and fixing the amount and providing for the collection thereof;
- (f) fixing the days and the hours during each day on which a market may be held and preventing the sale and purchase of goods in the markets on any days or at any hours except those fixed;
- (g) prescribing the weights, scales and measures to be used in the sale of any particular produce and regulating the use of them;
- (h) requiring the demolition, reconstruction, closing or moving of markets;
- (i) the examination of produce or articles of food;
- (j) providing for the appointment of inspectors, market-masters, and other officials, and regulating their powers and duties;
- (k) prescribing the procedure and condition for the transfer of a license; and
- (l) generally for carrying into effect the purposes of this Act.

(2) A market committee, authority or any other person to whom the control and management of a market is vested may make by-laws which shall not be inconsistent with any rules made by the executive committee member under subsection (1) for any of the purposes therein mentioned and the by-laws made by any such committee, authority or person shall not come to force until they have been approved by the county executive committee member.

MEMORANDUM OF OBJECTS AND REASONS

Article 209 (4) together with Part 2 of the Fourth Schedule of the Constitution gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed activities.

Article 209 (5) of the Constitution requires that taxation and other revenue-raising powers of a county be exercised in a way not prejudicial to national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

This Bill provides for the grant of trade licences and the establishment and use of markets and market buildings by the County Government to conduct businesses in the county in accordance with the powers stated in Part 2 of the Fourth Schedule of the Constitution of Kenya 2010.

The enactment of this Bill into law does not occasion additional expenditure of public funds.

FAITH CHEPKAIROR,
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