

SPECIAL ISSUE

Kenya Gazette Supplement No 22 (Kakamega County Bills No 16)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

KAKAMEGA COUNTY BILLS, 2017

NAIROBI, 29th September, 2017

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THE KAKAMEGA COUNTY TRADE LICENSING BILL, 2017

A Bill for

AN ACT of the County Assembly of Kakamega County to establish a framework and provide a mechanism for the imposition of certain charges, fees and for the grant of trade licenses for all businesses and trade within the county and for connected matters and incidental purposes

ENACTED by the County Assembly of Kakamega as follows—

PART I—PRELIMINARY

Short Title and Commencement

1 This Act may be cited as the Kakamega County Trade Licensing Act, 2017, and shall come into force upon publication

Interpretation

2 In this Act, unless the context otherwise requires—

“approved form” means a form approved by the licensing Authority or form set out in the First Schedule,

“authorized officer” has the meaning given under section 6,

“business” includes a professional practice, trade or occupation,

“county” means Kakamega County,

“county assembly” means Kakamega County Assembly,

“county government” means the County Government of Kakamega

“executive committee member” means the Executive Committee Member responsible for trade in the county,

“holder” in relation to a trade license, means the person to whom the license is granted or to whom a trade license is transferred or assigned to,

“license fee” means the fee payable for the grant or renewal of a trade license as prescribed in the Second Schedule of this Act,

“licensing authority” means an officer of the County Government appointed under section 4

“premises” means any structure, whether of a permanent or temporary nature, in which trade is carried on and includes a motor vehicle if trade is carried on it,

“receiver of revenue” means the Kakamega County Revenue Agency established under section 4 of the Kakamega County Revenue Administration and Management Act,

“trade license” means a license granted under this Act or any other law to conduct a business within the county and shall be in the prescribed form in the Third Schedule

Object and Purpose

3 The Object and Purpose of this Act is to—

- (a) provide a framework within which the County Government may perform its functions and exercise its powers under the Constitution to license certain business activities,
- (b) establish a framework for the conduct and regulation of business in the county, and
- (c) establish a mechanism to reliably raise revenue in the county to enable the County Government to deliver services effectively

PART II—ADMINISTRATION

Designation of the Licensing Authority

4 (1) The chief officer responsible for trade shall be the licensing Authority for purposes of this Act

(2) The licensing Authority may designate or appoint a county public officer in writing as a licensing officer in every county department or as he or she may deem necessary

Role and Functions of the Licensing Authority

5 (1) Without prejudice to the generality of section 4, the licensing Authority shall be responsible for granting of trading licenses in the county and shall—

- (a) grant and issue licenses under this Act and any other applicable law,
- (b) be an authorized officer under this Act for the purposes of the Kakamega County Revenue Administration and Management Act., and
- (c) perform such other functions as may be delegated by the county receiver of revenue

(2) The licensing Authority may, whenever necessary, delegate any of his or her functions other than a function under subsection (1)(c) to any other person or institution appointed pursuant to section 6 of this Act

Power of Licensing Authority to Appoint Authorized Officers

6 (1) The licensing Authority may appoint in writing a county public officer to be an authorised officer for purposes of this Act

(2) The licensing Authority shall issue County Identification Cards to appointed officers

Power of Entry

7 (1) The licensing Authority or an authorized officer may enter any premises for the purposes of—

- (a) granting or renewing a trade license,
- (b) finding out whether the holder of a trade license is complying with the license or this Act,
- (c) searching the premises or any part thereof in exercise of functions under this Act,
- (d) inspecting or examining anything in or on the premises,
- (e) seizing anything that may afford evidence of the commission of an offence under this Act,
- (f) taking extracts from, and take copies of, any documents in or on the premises, and
- (g) taking into or onto the premises such persons, equipment and materials as the authorized officer reasonably requires for the purpose of exercising any of the powers under this Act

(2) Nothing contained in subsection (1) shall permit the licensing Authority or an authorized officer to enter the premises unless it is during the normal working hours of the business

PART III—LICENSING PROCEDURE

Businesses to be Licensed

8 (1) Save and except as may be provided in any other written law, any person intending to carry on or conduct any business or trade in the county shall first apply and obtain a license as provided in this Act or other written law of the county

(2) Every person carrying on or conducting a business or trade in the county shall take out a trade license in respect thereof which shall be renewable every year on such terms and conditions as may be prescribed

(3) No person shall conduct a business or carry on a business or trade within the county, unless the person is the holder of a valid trade license in accordance with this Act or other county law

(4) A distributor who is delivering goods to retailers within the county shall not be required to hold a trade license unless the distributor has premises within the county or directly sells goods to consumers within the county

Form of Application for a License

9 (1) An application under section 8 for a grant of a trade license shall—

- (a) be in the approved form set out in the First Schedule of this Act,
- (b) contain such information and accompanied by such documents as may be required by the approved form,
- (c) be signed in a manner specified in approved form,
- (d) be lodged with the licensing Authority, and
- (e) be accompanied by the prescribed application fee

(2) It shall be lawful for an application to be made in an electronic format approved by the licensing Authority

(3) A fee paid as prescribed application fee shall not be refundable

Approval and Grant of License

10 (1) On consideration of the application, the licensing Authority may approve and grant the license applied for if satisfied that—

- (a) the applicant has complied with the requirements for a grant of the license, including any requirements as to health, hygiene and safety applicable to the trade license applied for, and
- (b) the license fee has been paid to the receiver of revenue

(2) A trade license granted under this section shall be in the form approved by the licensing authority and shall be granted subject to such conditions as may be specified therein

(3) A trade license shall itemize the nature and kind of business or businesses which the holder is allowed to undertake, premises and location where the business is located

(4) A trade license may be granted for several related businesses being undertaken within the same premises provided that they are owned by the same proprietor and provided the owner has met all the conditions required for the conduct of the businesses under the relevant laws

Renewal of Licenses

11 (1) A holder of a trade license who wishes to continue to carry on, conduct the same business or trade in the county shall, before the expiry of his or her trade license, apply in the prescribed form for the renewal of the license

(2) Upon consideration of the application under subsection (1), the licensing Authority may grant the application for the renewal if—

- (a) the applicant has complied with all laws relating to health, hygiene and safety applicable to the trade license,
- (b) the applicant has not been in breach of the conditions or any of the conditions in the expiring license,
- (c) the application fees has been paid to the receiver of revenue, and
- (d) the license fees payable for the renewal of the trade license has been paid to the receiver of revenue

Inspection of License and Business Premises

12 (1) The licensing Authority or authorized officers appointed under section 6 may enter into any business premises for purposes of inspecting whether a trader has a valid trade license and whether the conditions of the license are complied with by the holder, provided that the officer shall enter the premises during working hours of the business

(2) The officer undertaking the inspection shall at all times have a county identification card appointing him or her as an authorised officer and shall produce the identification card as proof of authorization to the business owner

(3) The officer undertaking inspection shall, at the conclusion of inspection, complete the form prescribed under the Fourth Schedule of this Act for every business whose license and compliance is inspected

(4) The holder of a trading license or his agent present at the time of inspection shall sign at the prescribed place on the inspection form and a copy of the duly completed form shall be left with the holder or duly appointed agent present during inspection provided that where the holder or agent refuses to sign, the officer shall indicate so

Cancellation of a License

13 (1) The licensing Authority may cancel or suspend a business or trade license granted under this Act if satisfied that—

- (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 license has breached a condition of the license

Provided that the licensing Authority shall give the holder of a trade license notice not exceeding fourteen days of its intended cancellation or suspension within which the holder of the license may make representation to the licensing Authority

(2) Where the Authority cancels or suspends a license, the licensing Authority shall give the holder of the license a written notice of the cancellation, suspension or revocation, together with a statement of the reasons for the decision

(3) On the suspension, cancellation or revocation of a trade license, the holder thereof shall immediately cease to conduct business in respect whereof shall have been suspended or cancelled

(4) If the licensing authority lifts the suspension of a license, the holder of the license shall be at liberty to resume the business in respect thereof upon compliance with the requirements of issuing the license

Surrender and Transfer of License

14 A holder of a trade license may, after giving a written notice to the licensing Authority surrender the license by returning it to the licensing Authority, provided that the surrender shall not entitle the holder to a refund of any fees or part fees paid in respect thereof

Register of Licenses

15 (1) The licensing Authority shall, in consultation with the county receiver of revenue, establish and maintain a register of trade licenses or a separate register in respect of each type of trade license issued in the county containing information as may be prescribed

(2) Every trade license granted in the county shall be entered in the register or the separate register in respect of the trade and which shall, at a reasonable fee, be available for public inspection during usual Government office hours

Appeals Against Decision

16 A person aggrieved by any decision of the licensing Authority may appeal against the decision to the Kakamega County Revenue Appeals Tribunal

PART IV—OFFENCES

Penalty for Offence Under Part III

17 (1) Any person who gives any statement in relation to a trade license or other matter under this Act, which the person knows to be false or misleading to the licensing Authority or authorized officer commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both

(2) A public officer who aids or abets the commission of an offence under this Act commits an offence and is liable, upon conviction, to the same fine or term of imprisonment as the principal offender

General Offences

18 Where a person contravenes or fails to comply with any provision of this Act and a penalty there-of is not expressly provided by this Act, that person shall, upon conviction, be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or both

PART V—MISCELLANEOUS

County Assembly to Determine Fees Payable

19 (1) The County Assembly shall through the Finance Bill determine the license fees payable each year for the grant or renewal of a trade license or trade licenses, including any penalties payable for the late payment of such license fees

(2) Where the County Assembly does not determine the fee payable for a particular year in accordance with subsection (1), the fee payable for that year shall be deemed to be the fee that was applicable in the preceding year

Regulations

20 The Executive Committee Member may make Regulations generally for the better carrying out of the provisions and purposes of this Act

Savings

21 (1) Notwithstanding the repeal of the County Revenue Administration and Collection Act, 2014 any business permit that was issued by a licensing Authority under the County Revenue Administration and Collection Act, 2014 is deemed to have been issued under this Act

(2) The single business permit referred to in subsection (1) shall continue in force—

- (a) for remainder of the license period from the date of commencement of this Act, or
- (b) if the holder of the single business permit applies for trade license under this Act within that period, until the license is granted

FIRST SCHEDULE

(S 2)

KAKAMEGA COUNTY

TRADE LICENSE REGISTRATION FORM

SERIAL No

Before completing the form, please read carefully the attached instructions. Complete the form in BLOCK LETTERS with indelible ink. Please note that giving false information is an offence liable for a fine of up to KSh 50,000 or to imprisonment for a term not exceeding six months or to both.

PIN No	Business Name

Postal Address	Postal Code	Town

Title No /LR No /Plot No	Name of Building Floor No and RM/Door No	Street

Business Telephone No	Mobile No	Email Address

Activity Code	Business Activity Description

M ²				
Total Area of Premises	No of Employees	No of Directors	No of Students/Interns	No of Vehicles (if Transport Company)

No of Rooms	No of Machines	No of Pumps	No of Beds/ Room Capacity
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Name of Applicant	ID No / Passport No	PIN No	Designation
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I, _____, the applicant herein, certify that the information provided in this form is true and accurate to the best of my knowledge

Name and Designation of Applicant

Signature

Date

I, _____, the licensing officer, certify that the information provided in this form reflect the true position of the business mentioned above

Name of Licensing Officer

Stamp and Signature

Date

Approved

☐

Not approved

☐

Licence No

Date

Receipt No

Amount Paid KSh

SECOND SCHEDULE
COUNTY GOVERNMENT OF KAKAMEGA
KAKAMEGA COUNTY TRADE LICENSING ACT
TRADE LICENCE

Licence No

Issued To *(Name of Business)*

A Trade Licence to Conduct *(Nature of Business)*

At the Premises *(Physical Location)*

Is granted for the period starting _____ and ending on
31st December _____ or is renewed for the period from 1st January
to 31st December _____

The licence is granted or renewed subject to the Kakamega County Trade Licensing Act and the rules made thereunder and the conditions set out below

Conditions *(set out the conditions relating to the particular business/trade)*

Granted by the Licensing Authority under the Kakamega County Trade Licensing Act, 2017

Date

Licensing Authority

Stamp and Signature

THIRD SCHEDULE
COUNTY GOVERNMENT OF KAKAMEGA
INSPECTION FORM

(S 2)

Date

- 1 Officer's name
- 2 County officer's identification No
- 3 Business name
- 4 Business registration number
- 5 Does the business/trade have a valid license

YES

☐

NO

☐

If YES, license number

- 6 Is the holder conducting the business(es) for which it was licensed?

YES

☐

NO

☐

If NO, which other business is conducted that is not licensed

- 7 Is the holder complying with all the other conditions in the license?

YES

☐

NO

☐

If NO, state the conditions not complied with

- 8 Any other findings/comments

9 Recommendations and reasons for the recommendations

Signed by Inspecting Officer

(name and signature of officer)

Signed and Stamped by the Holder/Agent

(include the name of person signing)

Indicate if Holder or Agent Refuses to Sign

MEMORANDUM OF OBJECTS AND REASONS

Article 175 of the Constitution of Kenya requires county governments established there-under to reflect the principles of devolved Government that include the principle that they shall have reliable sources of revenue to enable them to govern and deliver services effectively. A major and principle source of Government revenue is taxation and levying of fees and charges for the services delivered.

Article 209 (4) of the Constitution of Kenya read together with Part II of the Fourth Schedule thereto gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed activities including power to —

- (a) license undertakings that sell food,
- (b) issue trade and liquor licenses, and
- (c) license dogs,

Though these licensing powers are not taxing powers, they are powers to charge fees for services that will regulate these services and at the same time constitute a reliable and sustainable way to raise county revenue.

This Bill provides for the grant of trade licenses by the County Government to conduct business in the county in accordance with the powers mentioned above in Part II of the Fourth Schedule of the Constitution.

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

BERNARD OMBOKO,
Chairperson, Trade, Industrialization and Tourism Committee