

SPECIAL ISSUE

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

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REPUBLIC OF KENYA

***KISII COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2015

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COUNTY ASSEMBLIES FORUM (CAF)
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THE KISII COUNTY BUSINESS LICENCING ACT, 2015

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THE KISII COUNTY BUSINESS LICENCING BILL, 2015

A Bill for

AN ACT of the County Assembly of Kisii to provide for licensing of business and trade activities and for related purposes.

ENACTED by the County Assembly of Kisii as follows—

1. This Act may be cited as the Kisii County Business Licensing Act, 2014 Short title.

2. In this Act— Interpretation.

“business activity” means any activity carried on by a business person but does not include the hawking or selling of —

- (a) fish;
- (b) agricultural produce;
- (c) local articles,

which are the produce of, or articles of the County.

“business licence” means a business licence issued under section 8;

“Business Licensing Officer” includes a person delegated by the Secretary under section 5 to act as such;

“Business Licence Register” means the register of business licences

established under section 19;

“business person” means a person carrying on any business activity for the purpose of generating revenue in trade, commerce or industry, and includes any trade, profession or calling;

“foreign investment registration certificate” means a foreign investment registration certificate issued by the Cabinet Secretary under any National Legislation relating to Foreign Investment;

“licensee” means the holder of a business licence issued under section 8;

“Executive Member” means the County Executive Committee Member responsible for matters of trade, Commerce and Industries;

“principal place of business” means the full postal and geographic address specified by a licensee or applicant in his application under section 14;

“prohibited activity” means an activity prohibited by Regulations;

“Secretary” means the County Secretary; and

“trade” means carrying on the business of selling goods or services.

3. Subject to this Act, every business person in the County carrying on a business activity shall hold a valid business licence.

Business person to hold a Licence.

4. A business licence shall not be issued to—

When business licence shall not be issued

- (a) a person carrying on a prohibited activity;
- (b) an individual under eighteen years of age;
- (c) a partnership where one of the partners is under eighteen years of age; or
- (d) a foreign investor who does not hold a valid foreign investment certificate or residential permit.

5.(1) The County Secretary shall appoint and designate an officer as the Chief Business Licensing Officer responsible for the issuing of business licenses under this Act.

Chief Business Licensing Officer.

(2) The Chief Licensing Officer may delegate, in writing, any of the powers under this Act to one or more public officers in the County, except this power of delegation.

(3) The Chief Licensing Officer may approve forms for the purpose of this Act and amend the forms in schedule 2.

6.(1) A business person who applies for a business licence shall do so in the prescribed form in the Regulations.

Application for business licence

(2) Every application shall be accompanied by the fee prescribed in the Regulations.

(3) Every application by a foreign investor shall be accompanied by a valid foreign investment registration certificate.

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

(5) The Chief Licensing Officer may, before determining an application, require the applicant to provide such additional information or documents as may be necessary for approval of the application.

(6) The application fee once paid is not refundable.

7. (1) The Business Licensing Officer shall consider each application made under section 6 provided that it does not contravene section 4, and issue a business licence to the applicant as soon as practicable.

Issue or refusal of business licence.

(2) A business licence is under this Act shall be in the prescribed Format.

8. A business licence shall be issued —

Licence conditions

- (a) for the category or categories of business activity specified in the licence;
- (b) subject to the regulations and any conditions endorsed on the licence; and
- (c) the business licencing officer may also require the applicant to satisfy that the applicant has complied or will comply with all laws relating to health, hygiene and safety applicable to the business licence applied for.

9. (1) A business licence shall be valid for the period ending on 31st December next following the date of its issue unless renewed.

Duration of licence.

(2) If a licensee complies with the conditions endorsed on the business licence under section 8(b) and pays the prescribed fee for renewal the business licence shall be valid until 31st December of the year next following the renewal date.

10. A business licence may be cancelled by the Business Licensing Officer under any of the following conditions, if —

Cancellation of business licence.

- (a) the application form contains any material misrepresentation or false statement;
- (b) any information given in the application for the business licence was materially incorrect so as to

create a false impression of the ownership of the business or the nature of its business activity;

- (c) the licensee carries on a prohibited activity;
- (d) a condition imposed under section 8(b) is breached; or
- (e) the licensee is convicted of an offence under this Act.

11. (1) Any holder of a cancelled business licence shall have the right to appeal the decision made under section 10, to the County Executive Member.

Appeals.

(2) All appeals shall be filed within fourteen days of the decision.

(3) Any person appealing under this section shall have the right to be heard by the County Executive Member.

(4) After hearing the appeal, the County Executive Member may confirm, reverse or modify the decision appealed against, and give such directions to the chief licensing officer as may be necessary to give effect to the member's decision.

12. A business licence is not transferable.

Licence not transferable.

13. (1) Subject to this Act, a business licence may be amended on written application to the Business Licensing Officer.

Licence may be amended.

(2) The licensee shall inform the Business Licensing Officer in writing of any changes within 30 days.

(3) If a licensee fails to inform the Business Licensing Officer under subsection (2), the Business Licensing Officer may impose a penalty

14. (1) If a business licence does not specify a place or premises at which the licensee shall carry on the business activity, the licensee may carry on the business activity in any part of the County.

Location of business activity.

(2) If a business licence specifies a place or premises at which the licensee shall carry on the business activity, the licensee shall carry on the business activity at that place or those premises.

15. A business licence shall be displayed in a conspicuous place in or at the licensee's principal place of business.

be displayed

16. (1) The County Executive Member may appoint persons as authorized officers for the purposes of this Act.

Authorized officers

(2) An Authorized Officer has the Powers set out in schedule 1

17. The Business Licensing Officer, Authorised Officer, any Police Officer or any Administrator who has reason to believe that a business person is required to hold a business licence may demand from the person carrying on the business activity the production of a business licence.

Production of licence.

18. (1) Any person who carries on a business activity without a business licence commits an offence, and is liable upon conviction to a fine not exceeding one hundred thousands shillings and in default of payment to imprisonment for a period not exceeding eighteen months.

Offences and penalties

(2) If a person who has been required under section 16 to produce for a business licence for inspection does not —

- (a) produce a business licence within two working days; or
- (b) permit the officer to read and examine the business licence when produced,

the person commits an offence, and is liable on conviction to a fine not exceeding shillings one hundred thousand and in default of payment to imprisonment for a period not exceeding eighteen months.

(3) Any person who makes statement which the person knows to be false or misleading in connection with an applicant for the grant or renewal of a business licence; or in respect of any information required under this Act licence commits an offence, and is liable upon conviction to a fine not exceeding shillings one hundred thousand or in the alternative to imprisonment for a period not exceeding eighteen months.

19. (1) All offences against this Act shall be prosecuted before the Magistrate's Court in the judicial administrative area where the offence occurs.

Legal proceedings.

(2) In a prosecution under this Act for an offence under section 17(1), the charge is deemed proved if it is

shown to the satisfaction of the Magistrate that the accused person did carry on the business without a business licence, unless the accused person produces the business licence to the Court or shows to the satisfaction of the Magistrate that a business licence has been issued to that person by the Business Licensing Officer

20. (1) The Chief Business Licensing Officer shall be responsible for establishing and maintaining in accordance with this Act and the Regulations, a register of business licences.

Business Licence
Register

(2) The Business Licence Register shall be available for inspection by the public during business hours and copies of entries shall be provided, upon payment of the prescribed fee.

(3) The Business Licensing Officer shall within seven days record any amendments or changes made under section 12 on the register

20. All the fees that are payable for grant or renewal of any business licence including any additional fees for the non-payment or late payment of such licence fees shall be determined each year by the County Assembly through the County Finance Bill.

County assembly
to determine
licence Fees and
additional fees

21. (1) The County Executive Member may, make regulations for the proper and efficient administration of this Act.

Regulations.

(2) Without limiting the power in subsection (1), regulations may be made under this section for the following purposes —

- (a) forms used under this Act;
- (b) fees or charges payable under this Act not prescribed in the Finance Act or which the Finance Act expressly mandates the Executive Member to prescribe;
- (c) the business activities for which a business licence may be issued subject to conditions; and
- (d) the establishment and maintenance of the Business Licence Register

22. (1) A license issued under the repealed Act and by-laws shall be valid until 31st December of the year in

Savings.

which this Act commences.

(2) Subject to subsection (2) the provisions of this Act apply to the holder of a licence issued under the repealed Act and bye-laws as if the holder were a licensee under this Act.

SCHEDULE I—POWERS OF AUTHORIZED OFFICERS

1. an authorized officer may:

- a) enter any premises for the purposes of:
 - (i) granting or renewing a business licence; or
 - (ii) finding out whether the holder of a business licence is complying with the conditions of the licence, or this Act or the rules made under this Act; and
- b) search the premises or any part of the premises;
- c) inspect or examine anything in or around the premises;
- d) seize anything that may afford evidence of the commission of an offence against this Act;
- e) take extracts from, or take copies of any documents in or on the premises;
- f) take into or onto the premises such persons, equipment or materials as the authorized officer may reasonably require for the purposes of exercising any of the powers mentioned in paragraph (a) to (e); and
- g) require the holder of the licence, or any person in or on the premises, to give to the authorized officer reasonable assistance in relation to the exercise of any of the powers mentioned in paragraphs (a) to (f).

2. An authorized officer must not enter premises unless:

- a) the owner or occupier of the premises consents to the entry; or
- b) the entry is made when the premises are open for the conduct of business or otherwise open for entry; or
- c) the authorized officer suspects on reasonable grounds that the holder of a business licence has committed an offence under this Act or the rules or regulations made under this Act.

APPROVED FORMS**SCHEDULE II****PART A****APPLICATION FORM****APPLICATION FOR THE GRANT/ RENEWAL* OF A
BUSINESS LICENCE**

Note: business has its ordinary meaning, and includes a profession (excluding regulation of the profession), trade or occupation.

1. Applicant's name and description of business, profession, trade or occupation to be conducted
2. Name under which business, profession, trade or occupation, is or is to be carried on
3. If business is a partnership, give full names and addresses of all partners
4. Give any registration details of business, profession, trade or occupation
5. Address at which business, profession, trade or occupation is or is to be carried on
6. List postal address of the business, profession, trade or occupation, and email or telephone contacts
7. Provide a description of the premises including address to which the licence is to apply
8. Is the applicant a resident of Kenya?
9. Is the applicant an undischarged bankrupt?
10. State the date on which it is desired to begin conducting the business, profession, trade or occupation* or the number of the previous licence
11. Please provide the following additional information
.....
12. Please provide the following additional documents:.....
13. Application fee is attached* or no application fee applies

I certify that the particulars given above are true and correct.

Date.....Signature of applicant.....

*(delete if it does not apply)

Part B**THE KISII COUNTY BUSINESS LICENCING ACT, 2015****TRADE / BUSINESS LICENCE**

Note: business has its ordinary meaning and includes a profession (excluding) regulation of the profession), trade or occupation

A trade licence to conduct (.....)

at the premises at(.....) is granted for (.....)
the period starting on (.....} and ending on 31st
December (.....)* or is renewed for the
period from 1st January to 31st December
(.....)

The holder of the licence is

(.....)

The licence is granted or renewed* subject to the (.....)The
Kisii county Business Licencing Act (.....)
and the rules made under that Act, and the conditions set out below:

(.....
..)

Granted by the (.....) chief licensing officer under
the

(.....)

The Kisii county Business Licencing Act

(.....)

Chief Licensing Officer

**delete if it does not apply*

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objectives of this Bill is to provide for licensing of business and trade activities and for related purposes.

Part I of the Bill provides for preliminary matters including the short title to the Bill, and the interpretation of words and expressions used in the Bill.

Part II of the Bill provides for duty to business person to hold a licence, refusal to issue license, Chief Licensing officer and other business licensing officers, conditions for grant of license, duration and cancellation of licence

Part III of the Bill contains general provisions and provides for appeals, amendment of license, location of business activity, display and production of licence, offences and penalties, legal process, Business Licence Register, Regulations and Savings.

The enactment of this Bill will not occasion any additional expenditure of public funds.

Statement on Delegated Powers to Legislate

The Executive Committee member responsible for culture is empowered make necessary regulations for the better functioning of various provisions of the Act.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution of Kenya 2010.

Dated the 27th November, 2014.

SAMUEL OSORO.

*Executive Committee Member,
Trade, Tourism And Industries.*

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