

SPECIAL ISSUE

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REPUBLIC OF KENYA

**MACHAKOS COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

NAIROBI, 17th October, 2014

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THE MACHAKOS COUNTY TRADE LICENCE

BILL, 2014

A Bill for

AN ACT of the Machakos County Assembly to provide for the grant of trade licences, and for connected purposes

Enacted by the County Assembly of Machakos as follows—

PART I – PRELIMINARY

1. (1) This Act may be cited as the Machakos County Trade Licence Act, 2014.

Short title and commencement.

(2) This Act comes into operation on such date as the County executive member by notice in the *Gazette* appoint.

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

Interpretation

“approved form” means a form set out in schedule 2 or approved by the chief licensing officer;

“authorized officer” has the meaning given under clause 12;

“business” includes a profession, trade or occupation, other than a prescribed business;

“chief licensing officer” means the chief licensing officer appointed under clause 3;

“county public officer” has the same meaning as in the County Government’s Act of 2012.

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

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

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

“receiver of revenue” has the same meaning as in the (county name) county revenue administration act,(year);

“trade licence”, in relation to a business, means a licence granted under this act to conduct the business.

3. (1) The county executive committee member responsible for trade shall appoint an officer of the county government as the chief licensing officer. Chief licensing officer.

(2) The chief licensing officer has the functions and powers provided for by or under this Act.

(3) The chief licensing officer, may approve forms for the purpose of this Act and amend the forms in schedule 2.

(4) The chief licensing officer may, by instrument in writing, delegate all or any of his or her functions or powers under this Act to a county public officer, except this power of delegation.

4. (1) A person may not conduct a business within the County, unless the person is a holder of a trade licence for that business. Requirement for a trade licence.

(2) If a person contravenes subclause (1), the person is guilty of an offence punishable on conviction by a fine not exceeding 500,000 shillings.

5. (1) An application for grant of a trade licence shall— Application for licence.

- (a) be lodged with the chief licensing officer;
- (b) be in the approved form;
- (c) contain such information and be accompanied by such documents as are required by the approved form;
- (d) be signed in manner specified in the approved form; and
- (e) be accompanied by the prescribed application fee (if any).

(2) In application may be made in an electronic format approved by the chief licensing officer.

(3) The chief licensing officer may, before determining an application, require the applicant to provide to the chief licensing officer such additional information or documents as it is necessary to enable the application to be determined.

(4) The application fee (if any) is not refundable.

6. (1) The chief licensing officer shall grant an application for a trade licence if—

- (a) the chief licensing officer is satisfied that the applicant has complied or will comply with all laws relating to health, hygiene and safety applicable to the trade licence applied for: and
- (b) the licence fee has been paid to the receiver of the revenue.

(2) A trade licence is to be in the approved Form and is granted subject to such Conditions if any as are specified in the Trade licence.

(3) Subject to section 8 the initial term of a trade licence starts on the date on which the trade licence is granted and ends on 31 December of that year.

(4) The licence fee for the grant of a trade licence is to be calculated on a prorata basis having regard to the initial term of the trade licence.

7. (1) The holder of a trade licence may, before the expiry of the trade licence or such other prescribed date, apply in the prescribed form for the renewal of the trade licence.

Renewal of licence.

(2) The chief licensing officer shall grant an application for the renewal of a trade licence if—

- (a) the chief licensing officer is satisfied that the applicant has complied with all laws relating to health, hygiene and safety applicable to the trader licence: and
- (b) the licence fee payable for the renewal of the trade licence has been paid to the receiver of the revenue.

(3) The chief licensing officer may before determining an application for renewal, require the applicant to provide the chief licensing officer such additional information or documents as is necessary to enable the application to be determined.

(4) Subject to section 8, a trade licence is to be renewed for a calendar year.

8. (1) The chief licensing officer may suspend for a specified period or cancel a trade licence if he or she is satisfied that—

Cancellation or suspension of licence.

- (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

(2) If the chief licensing officer cancels or suspends a trade licence (or revokes any such suspension), the chief licensing officer shall give the holder of the licence written notice of the cancellation or suspension, including the period of the suspension, revocation, together with a statement of the reasons of the decisions.

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

(4) If a person contravenes subsection (3), the person is guilty of an offence punishable on conviction by a fine not exceeding 500,000 shillings.

(5) If the chief licensing officer revokes the suspension of a trade licence, the holder of the licence may resume conducting the business.

9. The holder of a trade licence may the licence by returning licence to the chief licensing officer, but no refund of the licence fee is payable.

Surrender of licence.

10. The holder of a trade licence may transfer or assign the licence and shall give the chief licensing officer written notice in the approved form of any transfer or assignment.

Transfer or assignment of licence.

11. (1) A person aggrieved by decisions of the chief licensing officer may appeal to the County Executive Committee Member responsible for trade against the decision.

Appeals.

(2) The County Executive Committee Member responsible for trade 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.

(3) The chief licensing officer shall comply with any direction given under sub section (1).

12. (1) The county executive committee member responsible for trade 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.

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

Register.

(2) The register shall contain such information as is determined in writing by the chief licensing officer, but shall not include commercial-in-confidence information.

14. (1) No person shall make a statement which the person knows to be false or misleading—

Offence-false or misleading statements.

- (a) in connection with an application for the grant or renewal of a trade licence; or
- (b) when providing information required under this Act.

(2) A person who contravenes sub section (1), is guilty of an offence punishable on conviction by a fine not exceeding 250,000 shillings.

15. The licence fees that are payable for grant or renewal of trade licenses including any additional fees for the non-payment or late payment of such licence fees, are to be determined each year by the county assembly in the County Finance Bill.

County assembly to determine licence fees and additional fees.

16. (1) The County Executive Committee Member responsible for trade may make rules generally for the better carrying out of the provisions and purposes of this Act.

Power to make rules.

(2) Without limiting sub section (1), rules may be made for the following purposes—

- (a) the payment of licence fees, including additional fees for non-payment or late payment;
- (b) the exemption, waiver or reduction of licence

fees;

- (c) prescribing fees for services;
- (d) prescribing forms;
- (e) publication and service of notices and other documents;
- (f) the transfer or assignment of trade licences; and
- (g) different categories of trade licences.

17. (1) Despite the repeal of the Local Governments Act (CAP 265) and the County Governments Public Finance Management Transitional Act 2013, any single business permit issued by a local authority under section 163A of the Local Government Act (CAP265) that was in force on 30th September 2013 is deemed to have continued in force, subject to sub section (2), on and after that date as if it were a trade licence granted under this Act and fees or charges payable to a local authority in respect of the single business permit shall be payable to the county government.

Savings and
transitional.

(2) The single business permit referred to in sub section (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, whichever occurs first.

FIRST SCHEDULE**(S. 12)****POWERS OF AUTHORIZED OFFICERS**

1. An authorized officer may—
 - (a) enter any premises for the purposes of—
 - (i) granting or renewing a trade licence; or
 - (ii) finding out whether the holder of a trade 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; and
 - (c) inspect or examine anything in or on the premises; and
 - (d) seize anything that may afford evidence of the commission of an offence against this act; and
 - (e) take extracts from, and take copies of, any documents in or on the premises; and
 - (f) take into or onto the premises such persons, equipment or materials as the authorized officer reasonably requires 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. However, an authorized officer shall 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 trade licence, or this Act or the rules made this Act.

SECONDE SCHEDULE

(S. 2)

APPROVED FORMS

Part A

APPLICATION FORM

MACHAKOS COUNTY TRADE LICENCE ACT, 2014

**APPLICATION FOR THE GRANT/ RENEWAL* OF A TRADE
LICENCE**

Note: The term "business" shall be construed in 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 P. O. Box 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 : (insert additional information required)
12. Please provide the following additional documents: (insert additional documents required)

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

MACHAKOS COUNTY TRADE LICENCE ACT, 2014

TRADE LICENCE

Note: The term "business" shall be construed in its ordinary meaning, and includes a profession (excluding regulation of the profession), trade or occupation.

A trade licence to conduct (insert business, trade, profession or occupation to be conducted) at the premises at (insert location of the premises to which licence applies) is granted for..... the period starting on (insert initial date of grant of the trade licence) and ending on 31 December (insert Year) * or is renewed for the period from 1 January to 31 December (insert Year)

The holder of the licence is (insert name of person to whom the trade licence is granted or for whom it is renewed).

The licence is granted or renewed* subject to the (insert name of County) Trade Licence Act (Year) and the rules made under that Act, and the conditions set out below:

[Insert conditions relating to the particular business, trade, profession or occupation to which the licence relates]

Granted by the [Insert name of County] chief licensing officer under the [Insert name of County] Trade Licence Act [Insert Year]

DATE

Chief licensing officer

*delete if it does not apply

MEMORANDUM OF OBJECTS AND REASONS

Article 209(4) of the constitution 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 licenced activities. Examples include the power to licence undertakings that sell food (item 2(d) and to issue trade and liquor licences (items 7(b) and 4 (c). These licensing powers are not taxing powers, but are power to charge fees for services.

The Bill provides for the grant of trade licences by county governments to conduct businesses in the county in accordance with the powers mentioned above in part 2 of the fourth schedule of the constitution.

The structure of the Bill is as follows:

Part I (clauses 1–2) of the Bill contains preliminary provisions. These include the title of the Bill, and interpretation of terms as used in the bill.

Part II (clauses 3-10) of the Bill contains trade licence provisions. Clause 3 provides that the County Executive Committee member responsible for Trade shall appoint an officer to be the Chief Licensing Officer. Clause 4 sets out the requirements for a trade licence. Clause 5 provide for the Application for licence as clause 6 is on grant of licence. Clause 7 provides for renewal of licences, Clause 8 contains provisions on cancellation or suspension of licence. Clause 9 is on surrender of licence while clause 10 is on transfer or assignment of license.

Part III (clauses 11-17) this part deals with general provisions. Clause 11 provides for appeals of a person aggrieved by decisions of the chief licensing officer may appeal to the county executive committee member responsible for trade against the decision. Clause 12 provides that the county executive committee member responsible for trade may appoint persons as authorized officers whose powers are spelt out in schedule 1. Clause 13 requires the Chief Licensing Officer to establish and maintain a register of trade licences, which should be available for inspection by the public during usual government office hours. Clause 14 makes it an offence for anybody to makes false or misleading statements. Clause 15 gives the County assembly the duty to determine licence fees and additional fees. Clause 16 is on the county executive committee member responsible for trade power to make rules while clause 17 contains savings and transitional provisions.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

Dated the 24th September, 2014.

SAMMY NDUVA,
Member of the County Assembly.