

SPECIAL ISSUE

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REPUBLIC OF KENYA

MOMBASA COUNTY GAZETTE SUPPLEMENT

BILLS, 2015

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**THE MOMBASA COUNTY TRADE, MARKETS CONTROL AND
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**THE MOMBASA COUNTY TRADE, MARKETS
CONTROL AND LICENSING BILL, 2015****A Bill for**

**AN ACT of the County Assembly of Mombasa 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 Mombasa, as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Mombasa Trade, Markets Control and Licensing Act, 2015. Short title.

2. This Act shall come into operation upon publication. Commencement.

3. In this Act, unless the context so otherwise requires— Interpretation.

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

“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;

“chief licensing officer” means the licensing officer appointed under the Mombasa County Trade License Act, 2015;

“county” means the County Government of Mombasa;

“defective goods” means goods that—

(a) are in the particular circumstances, unfit for use or are dangerous; or

(b) do not comply with safety or quality standards.

“directorate” means the directorate of Trade established under section 5 of this Act;

“Executive Member” means the County Executive Committee Member for the time being in charge of trade;

“Fees and charges” shall be the latest at any point in time provided by the county;

“marketable commodities” means any authorized commodity offered for sale in the market;

“officer” means an authorized officer appointed in writing by the Directorate to assist in the better carrying out of the functions of this Act;

“public market” means a public market established under this Act;

“prohibited goods” means any goods prohibited by any written Law and as may be prescribed by the Executive member;

“Regular trader” means a trader who has been permitted to use a particular trading space on a particular day at a particular market site;

“slaughter-house” means any premises used in connection with the slaughtering of animals whose meat is intended for human consumption;

“Stall” means any moveable structure used for the purpose of trading;

“Store” means an indoor enclosure in a market;

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

“Trade market” means open yard or built-up premises set aside for the purposes of buying and selling horticultural produce, food, farm produce or such other things as may be specified by the county from time to time.

4. The object of this Act is to provide commercially viable trade facility for the efficient distribution of fresh produce and other market products, control, maintain and manage trade markets and uphold the observance of acceptable hygiene standards. Object of the Act.

PART II—ADMINISTRATION AND MANAGEMENT OF MARKETS

5. There is established a Directorate of Trade and Markets. Establishment of the
Directorate of
Trade.

6. (1) The Directorate shall be headed by a Director of Trade and Markets. Director of Trade.

(2) The Director shall be appointed by the County Public Service Board.

7. The County Public Service Board may appoint such deputies and other officers and assistants as may be necessary for the effective functioning of the Directorate. Deputy Director and other Officers.

8. The functions of the directorate are to—

Functions and Powers of the Directorate.

- (a) advise the Chief officer on all matters affecting the development of county trading relationships with other counties;
- (b) represent the county when appropriate and considered necessary by the Chief officer at meetings, conferences or similar gatherings where matters of trade affecting the county are discussed or considered;
- (c) negotiate trade agreements for and on behalf of the county chief officer;
- (d) encourage and assist in the promotion of the county's produce and products, either on its own or in co-operation with any organisation involved in exporting, including exhibiting at trade fairs;
- (e) advice on the commodities pricing and marketing information within the County;
- (f) facilitate sourcing of funds for the purpose of trade development and promotion, including discussion and negotiation with donors;
- (g) advise the chief officer on all matters affecting the growth and development of industry, commerce and trade in the county;
- (h) advise the County Executive Committee, through the chief officer, on the criteria for the development of industry and commerce to be applied in evaluating approvals under any legislation which promotes trade, for the time being in force in the county;
- (i) administer laws relating to fair trading and consumer protection;

- (j) promote the development of small businesses, to disseminate knowledge of sound business and commercial practice to the county;
- (k) 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;
- (l) evaluate trade proposals suitable for funding by the Government or donors;
- (m) to otherwise act in the promotion of trade in the county;
- (n) to purchase out of public funds, all such measures, scales and weights, furnishings and appliances as shall be necessary for the public market or slaughterhouse;
- (o) to make or cause to be made and paid for out of public funds all such repairs, alterations, improvements and additions to the public market as may be considered necessary;
- (p) to grant permits for the sale of fish, poultry, wild fowl, eggs, grain, vegetables, fruit and other products of the County, whether natural or manufactured, in the public market; and
- (q) to revoke any licence or permit for improper conduct; or for infringement of this Act.

9. (1) The Executive member may create divisions within the Directorate as and when necessary for the better carrying out of the functions of this Act.

Power to create Divisions and Allocations Committee.

(2) The chief officer shall constitute a stalls, shops and stores allocation committee of not more than five members with powers to—

- (a) receive and consider stalls, shops and stores applications;
- (b) consider repossession of stalls, shops and stores if the terms and conditions of allocation are defaulted.

10. (1) An officer may, at any reasonable time, enter any place that they believe on reasonable grounds to be a

Inspection by Authorized Officers.

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) seize and detain any item of food or produce that he suspects to be contaminated, unwholesome or otherwise unfit for human consumption and is offered or exposed for sale in the trade market and he shall hand over any such item of food to the medical officer of health for destruction.
- (c) make inquiries of any person employed at that place or who has responsibility over that place; or
- (d) 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.

(2) Without derogating from any power conferred by sub-section (1), the officer 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.

(3) The County shall not be liable to compensate the holder in respect of any item of food which is detained in accordance with section 1 (b).

11. (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.

12. (1) The directorate shall, within three months after the end of each financial year, or within such longer period as the Chief officer 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 chief officer 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 Executive member.

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

13. The directorate shall establish, maintain, manage and regulate public markets for the sale of marketable commodities therein and provide all such things as may be necessary for the convenient use of such markets. Establishment and Control of Markets.

14. Trade markets shall be opened on such days and during such hours as the Executive Member shall from time to time determine for the sale of horticultural produce, cereals or any other foodstuff as may from time to time be authorized by the County. Time of Operation of Markets.

15. No person shall be allowed to remain in a market during the hours in which the market is closed save with the prior written authority of the County. Off-Market Hours.

16. No fire shall be lit in any market without written permission of the Executive Member or someone authorised by him. Lighting of Fire.

17. Any unauthorised person that connects, uses or in any other way tampers with or handles electricity from the power meters within a market is guilty of an offence. Tampering with Power Meters within the Market.

18. No person shall wash or clean any vegetables, meat, fish or other produce in the Trade Market anywhere except in such basin, sinks or other receptacles as may be provided for such purposes. Washing and Cleaning Products in the Market.

19. No person suffering from any infectious, contagious or venereal disease shall be employed or engaged in the Trade Market.

Hygiene in the Market.

20. (1) A person shall not hold any public market for the sale of marketable commodities in any place not being a public market established under this Act, unless licensed by the directorate.

Public Markets and Private Markets to be held only on appointed places.

(2) The directorate may grant to any person a licence to establish and use at any place a market for the sale of marketable commodities and such licence may be granted upon such terms and conditions as may be prescribed.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment of not more than six months, or to both.

21. (1) The directorate may charge any person for—

Power to Charge for use of Stalls, Stores and Market Places.

- (a) occupying or using any stall or place in any public market;
- (b) bringing into any such market any marketable commodities or anything which the County executive committee member may permit to be sold therein; or
- (c) using any weighing or measuring instrument provided and kept in any such market.

(2) Stallages and charges payable in respect of any public market or weighing or measuring instruments shall be paid at such times and in such manner as may be prescribed.

(3) Where any person liable for the payment of any stallage or charge does not pay on demand to a person authorised to receive the payment, the amount due may be—

- (a) recovered by distress and sale of a sufficient part of any marketable commodities in the market which belong to the person liable to pay stallage or charge; or
- (b) recovered as a debt.

(4) For the purpose of recovering any sum due under this section, any action or other proceeding shall be by public auction.

22. (1) A regular trader, who wants to carry out any commercial activity from an open-air market must obtain a licence or, in the case of a casual trader, pay such fee as may be prescribed. Regular Trader.

(2) A licence issued under subsection (1) shall not entitle the regular trader to carry out such activity unless, in relation to a specific open-air market, the regular trader has been given the authorization by the Directorate:

(3) A regular trader shall not possess than one authorization for a space in a market that operates in the same day and time.

23. (1) A street hawker may carry out their commercial activity from any designated place. Street Hawking.

(2) A street hawker may hawk from a vehicle, carry out their commercial activity by parking their vehicle according to the traffic regulations in any designated street.

24. (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—

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

25. 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: For such purpose, a fixed kiosk is considered to be a commercial premises;

- (c) 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;
- (d) that no objects are placed on the pavement; and
- (e) that no nuisance or inconvenience is caused to the neighbours or passers by in the street.

26. A person who assaults or obstructs an officer, whether a public officer or otherwise, or other person duly 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, whilst in the execution of their duty, is liable on conviction to a fine of fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

Assaulting or
Obstructing Officer
collecting Dues.

27. Any person who in a public market behaves in a disorderly or offensive manner or who misconducts himself, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to a term of imprisonment for not exceeding six months, or to both.

Disorderly
Behaviour in Public
Market.

28. No person in the Trade market shall—

Offences in the
Market.

- (a) commit any nuisance within the Trade market;
- (b) hawk any goods within the Trade market;
- (c) interfere with or molest any other person or tout, shout or call out for customers;
- (d) cause any disturbances or use any offensive, obscene, injurious or unbecoming language;
- (e) damage, foul, misuse or interfere with any fittings and equipment;
- (f) deposit or throw on the floor or ground any refuse, fruit peel or vegetable remains as to cause any area of the Trade market to be littered;
- (g) play games or loiter within the precincts of the Trade Market;
- (h) attempt to procure customers by means other than display.

29. The directorate or officer-in-charge of any public market may arrest or remove any person who behaves in a disorderly or offensive manner in the market.

Power of Removal
or Arrest.

30. (1) No market operator shall operate a public market to sell or offer for sale prohibited goods.

Prohibited Goods.

(2) No trader shall sell or offer for sale any prohibited goods at a public market.

31. (1) No trader shall sell or offer for sale at a public market prescribed goods unless information with respect to the goods is maintained by the vendor in accordance with this Section.

Duty to Maintain and Provide Information.

(2) A trader shall maintain with respect to the prescribed goods sold or offered for sale by the vendor the information prescribed by the regulations.

(3) Before a trader sells or offers for sale prescribed goods at a public market the trader shall provide to the operator of the public market the information required to be maintained pursuant to subsection (2).

(4) No market operator shall operate a public market at which prescribed goods are sold or offered for sale unless the information required to be maintained by a trader pursuant to this section has been provided to the operator.

(5) No trader or market operator shall falsify, obliterate or destroy the information required to be maintained pursuant to this Section.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand or imprisonment to a term not exceeding six months.

32. A trader shall, upon request, produce prescribed goods or provide access to prescribed goods to an officer of the directorate.

Access to Prescribed Goods.

33. (1) Where an officer, finds goods at a public market and the officer is satisfied, on reasonable grounds, that the goods are prohibited, the officer may without laying any information or obtaining any warrant, seize and remove those goods.

Seizure of Prohibited Goods.

(2) Any goods seized under subsection (1) above shall be disposed of or destroyed in accordance with any written law.

PART III—SALE OF MEATS

34. (1) No person shall sell any meat except in a public market or in such shops as are licensed by chief licensing officer.

Fresh Meat to be
Sold only in Market
or Licensed
Premises.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for not more than six months or both.

(3) No slaughter house shall be licensed to sell meat.

(4) Any person who contravenes subsection (3) above commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for not more than three months or both.

35. (1) A person who in a public market—

(a) sells meat of any animal that is not slaughtered in a public slaughter-house or in a licensed slaughter-house; or

(b) sells meat of any animal that is not examined and passed as fit for human consumption by public health or veterinary officer.

Selling in the Public
Market meat not
slaughtered in a
Public or licensed
Slaughterhouse or
not examined.

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.

(2) Subsection (1) does not apply to imported meat.

PART IV—MISCELLANEOUS

36. A county public medical officer or other competent officer or 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.

37. (1) A stall or block in the portion of a public market may be leased by the directorate to a person for a period not exceeding three years.

Renting of Stalls for
Sale.

(2) All tenancies and leases existing prior to the enactment of this Act shall upon expiry of three years from the date of commencement of this Act, be deemed to have automatically extinguished and the tenant shall apply for consideration on fresh terms and conditions as may be deemed appropriate.

(3) Subject to successful application and grant of a leasehold pursuant to subsection (2) above—

- (a) no person shall lease more than two stalls at the same time in one market; or
- (b) no lessee shall assign the lease to any other person or permit the use of any stall by any other person without the written permission of the chief officer.

38. Any person who commits an offence under this Act not otherwise expressly provided for shall be guilty of an offence and liable on conviction to a fine not exceeding Kenya Shillings fifty thousand or imprisonment for three months or both. General Penalty.

39. All markets established under, or before the coming into operation of this Act are deemed to have been established under this Act, and all rules and byelaws made under the Local Government Authority Act and in force at the time of the commencement of this Act shall be deemed to have been made under this Act and shall remain in force until other provisions are made in accordance with this Act. Saving.

40. The County Executive Committee Member may make regulations for the better carrying out of the provisions of this Act, or for prescribing anything which is required to be prescribed under this Act. Regulations.

MEMORANDUM OF REASONS AND OBJECTS

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa Trade, Markets Control and Licensing Bill, 2015 and its direction that the Bill be published for introduction in the County Assembly.

The Fourth Schedule part 2, paragraph 7 (a) of the Constitution of Kenya, 2010 devolves trade development and regulation including markets. County Assembly of Mombasa therefore has the mandate to pass a law in regard to markets for better management and control of the markets within the county.

Part I of this Bill names the proposed Act, defines words and expressions used in the Bill. It also provides for the commencement date and the main objectives of the Act.

Part II of this Bill provides for the management and control of Trade markets. It among others establishes the Directorate of Trade, expounds on the functions of the Directorate. It also provides for hygiene that needs to be maintained in the market. It also contains provisions on operation time of markets, offences that can be committed in a market, hygiene observance, and power to seize prohibited goods.

Part III of this Bill deals with the sale of meat. It regulates the sale of meat in markets.

Part IV of this Bill provides for miscellaneous aspect which gives provisions for offences and penalties in this Act. It also empowers the Executive Member to draft regulations for the better carrying out of the provisions of the proposed legislation.

RECOMMENDATIONS

The Assembly is requested to—

- (a) note the contents of this Memorandum;
- (b) approve the Mombasa Trade, Markets Control and Licensing Bill, 2015 annexed to this Memorandum.

MOHAMED HATIMY,

Chairperson, Committee on Finance and Economic Planning.

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