

SPECIAL ISSUE

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THARAKA NITHI COUNTY GAZETTE SUPPLEMENT

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Bill for Introduction into the County Assembly of Tharaka Nithi —

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**THE THARAKA NITHI COUNTY TRADE
LICENSING BILL, 2016**

A Bill for

**AN ACT of the County Assembly of Tharaka Nithi
to provide for the granting of trade licenses and
for connected purposes**

ENACTED by the County Assembly of Tharaka Nithi as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Tharaka Nithi County Trade Licensing Act, 2016. Short title.

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

“approved form” means a form prescribed under section 17 (2) (d) or such other form as may be approved under this Act;

“authorized officer” means any person appointed as an authorised officer by the County Executive Committee Member under this Act;

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

“Chief Licensing Officer” means the Chief Licensing Officer appointed under this Act;

“County Executive Committee Member” means the Executive Committee Member responsible for matters relating to trade;

“County Public Officer” means any person appointed by the county government and holding or acting in any county public office whether paid, unpaid, or on contractual or permanent terms but does not include a person engaged on a part-time basis in a county public body paid at an hourly or daily rate;

“holder” in relation to a trade licence, means a 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;

“person” means natural or legal persons;

“trade licence”, in relation to a business, means a licence granted under this Act to allow a person to conduct the type of business for which it relates;

“year” means a calendar year which commences on 1st January and ends on 31st December of every year.

PART II—TRADE LICENSE PROVISIONS

3. (1) The Executive Committee Member shall designate an officer of the County Government of Tharaka Nithi to serve as the Chief Licensing Officer under this Act.

Chief Licensing
Officer

(2) The Chief Licensing Officer shall exercise powers and perform such functions as are provided for under this Act.

(3) The Chief Licensing Officer may approve all forms required for the implementation of this Act and amend the contents of the prescribed forms provided under the Schedule to this Act.

(4) The Chief Licensing Officer may, in writing, delegate all or any of his or her functions or powers under this Act to a County Public Officer.

Provided that the Chief Licensing Officer’s power to delegate his functions and powers under this Act shall not include the power of delegation.

4. (1) A person shall not conduct any business within the County of Tharaka Nithi unless the person is a holder of the relevant trade licence for that business.

Requirements for a
license

(2) A person who contravenes subsection (1) above commits an offence and shall, upon, conviction be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one month or both.

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

Application for
License

- (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.

Provided that nothing shall preclude the Chief Licensing Officer from requesting any additional information and/ or documents from the applicant if the same is necessary in order to enable the application to be determined.

(2) An application fee paid pursuant to subsection (1) (e) above will not be refundable.

(3) An application shall be made in any format as may be approved by the Chief Licensing Officer.

6. (1) The Chief Licensing Officer shall issue an applicant with a trade licence if—

Grant of trade
license

(a) the 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 applicant has paid for the requisite licence fee(s).

(2) A trade licence shall be in the approved form and shall be granted subject to such conditions as may be specified in the licence.

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

(4) The holder of every license shall require to renew such license by every 31st day of March of the year immediately following the expiration of that license's validity.

(5) The licence fee payable for a trade licence issued to anew applicant after March shall be prorated having regard to the duration of the license's validity before expiry.

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 a trade
license

(2) The Chief Licensing Officer shall grant an

application for the renewal of a trade licence if s/he is satisfied that the application satisfies the conditions set out in section 6(1) of this Act.

(3) An applicant seeking the renewal of a trade license may be required to furnish the Chief Licensing Officer with such additional information or documents as may be necessary to enable the determination of such application.

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

8. (1) The Chief Licensing Officer may revoke, suspend for a specified period, or cancel a trade licence if the officer is satisfied that-

Revocation and
suspension of a
licence

(a) the conduct of the business is endangering the health or safety of persons who either work in the business establishment or who live in the neighborhood of the premises from which the business is conducted; or

(b) the holder of the trade licence has breached a condition precedent to the grant of the licence.

(2) If the Chief Licensing Officer revokes or suspends a licence, the officer shall give the holder of the licence a written notice of the revocation or suspension, including the period of the suspension, revocation, together with a statement of the reasons for the decision(s) taken against the affected person.

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

(4) A person who contravenes subsection (1), commits an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding four weeks or to both.

(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 surrender the licence by returning licence to the Chief Licensing Officer, but no refund of the licence fee is payable.

Surrender of
licence

10. (1) The holder of a trade licence may transfer or assign the licence and shall give the Chief Licensing Officer written notice in the prescribed form of any transfer or assignment.

(2) The Chief Licensing Officer may require the transferee of such trade licence to pay the prescribed fees prorated for the period remaining before end of the year.

PART III— GENERAL PROVISIONS

11. (1) Any person affected by and aggrieved by a decision of the Chief Licensing Officer shall appeal such an impugned decision to the Executive Committee Member.

(2) The Executive Committee Member may affirm, 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(s) given under sub section (1).

12. A person aggrieved with the decision of the County Executive Committee Member may invoke the court of appropriate jurisdiction for appropriate remedies.

13. (1) The County Executive Committee Member may appoint persons as authorised officers for the purposes of this Act.

(2) 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 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).
- (3) An authorized officer shall not enter premises unless-
- (a) the owner or occupier of the premises consents to the entry;
 - (b) the entry is made when the premises are open for the conduct of business or otherwise open for entry;
 - (c) the officer suspects, on reasonable grounds, that the holder of a trade licence is using it contrary to this Act or any other written law; or,
 - (d) there is a court order to that effect.

14. (1) The Chief Licensing Officer shall establish and maintain a register of trade licenses which shall be available for inspection by the public during official government working office hours.

Register of trade
licences

(2) The register shall contain such information as the Chief Licensing Officer may determine, but shall not include confidential commercial information

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

Offences

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

(2) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding four weeks or both.

16. (1) The licence fees payable for grant or renewal of trade license, 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.

(2) If the County Assembly does not set the fees contemplated in subsection (1) above, the fees payable shall be those which had been in operation in the year immediately preceding the relevant question.

17. (1) The County Executive Committee Member may, with the approval of the County Assembly, make Regulations generally for the better carrying out of the provisions and purposes of this Act.

(2) Without limiting the generality of sub section (1) above, the Regulations contemplated in this section 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 licenses; and,
- (g) different categories of trade licenses.

18. (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 (Cap 265 repealed) that was in force on 30th September 2013 shall be 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 of Tharaka Nithi.

(2) The single business permit referred to in sub section(1) shall continue in force-

- (a) until the expiry date of such permit; 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.

SCHEDULE-CONTENT OF APPROVED FORMS

Part A

APPLICATION FORM

THARAKA NITHI COUNTY TRADE LICENCING ACT, 2016

**BASIC REQUIREMENTS FOR AN APPLICATION FOR
THE GRANT OR RENEWAL OF A TRADE LICENCE**

The form prescribed under section 17 (2) (d) shall contain the following information;

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. 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

Part B

THARAKA NITHI COUNTY TRADE LICENCING ACT, 2016
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 theday of(month)(insert year) and ending on 31st December (insert Year) * or is renewed for the period from 1st January to 31st 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 **Tharaka Nithi County Trade Licensing Act 2016** 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 Tharaka Nithi County Government’s Chief Licensing Officer under the Tharaka Nithi Trade Licensing Act, 2016

Date.....

Chief Licensing Officer.....

*delete if it does not apply

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide for the granting of trade licenses and for connected purposes.

PART I – Provides for the Short title and Interpretation of the bill.

PART II — Provides for the Chief Licensing Officer, Requirements for a licence, Application for licence, Grant of licence, Renewal of licence, Revocation and suspension of licence, Surrender of licence and Transfer or assignment of licence

PART III – Provides for the, Reviews, Jurisdiction of courts, Authorised officers, Register of Licences, Offences, Determining licensing fees, Regulations, Savings and transitional provisions.

ALBANO MUGAMBI KIANIA,

Chair Person, Committee on Planning, Trade and Co-operatives.

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