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FIRST AND SECOND SCHEDULES

THE MANDERA COUNTY TRADE LICENCE BILL, 2015**A Bill for****AN ACT of the County Assembly of Mandera to provide for the grant of trade licences, and for connected purposes**

ENACTED by the County Assembly of Mandera as follows—

Short title and commencement

1. (1) This Act may be cited as the Mandera County Trade Licence Transition Act, 2015.

(2) This Act shall come into operation upon assent by Mandera Governor.

Interpretation

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

“approved form” means a form approved by the licensing Authority;
“business” includes a profession, trade or occupation;

“county revenue collector” has the same meaning as in the Mandera County Revenue Administration Bill, 2015;

“holder”, in relation to a trade licence, means the person to whom the licence is granted;

“licence fee” means the fee payable for the grant or renewal of a trade licence; “licensing Authority” means the County Government;

“licensing officer” has the meaning given by section 12; “prescribed” means prescribed by the rules made under this Act; “trade licence” means a licence granted to conduct a business.

Requirement for a trade licence

3. (1) A person must not conduct a business within the county, unless the person is the holder of a trade licence for that business.

Penalty: A fine not exceeding 100,000 shillings.

(2) For the purposes of subsection (1), if a person is granted a trade licence to conduct a business within the county of Mandera, that trade licence is valid for conducting that business within any other county.

County Assembly to determine licence fees

4. (1) The County Assembly is to determine the licence fees payable for the grant or renewal of trade licences, and may determine the penalties payable for the late payment of licence fees.

(2) The licence fees and penalties (if any) may be determined by the Act providing for annual county finances or in such other Act as the County Assembly determines.

Application for licence

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

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

(2) An application may be made in an electronic format approved by the licensing Authority.

(3) The licensing Authority may, before dealing with an application, require the applicant to furnish to the licensing Authority such additional information or documents as is necessary to enable the application to be dealt with.

(4) The prescribed application fee is not refundable.

Grant of licence

6. (1) The licensing authority may grant to an applicant for a trade licence such kind of trade licence as the licensing Authority considers appropriate.

(2) A trade licence is granted subject to the conditions specified in Schedule 1.

(3) The licence fee for the grant of a trade licence—

- (a) must be paid to the county revenue collector on or before the date of on which the trade licence is granted; and
- (b) is to be calculated by the county revenue collector on a pro rata basis having regard to the period remaining in a calendar year after the date on which the trade licence was granted, unless it was granted on the first day of that calendar year.

(4) A trade licence is granted for the period remaining in a calendar year from the date of its grant, unless the trade licence was granted on the first day of that calendar year in which case it is granted for the whole of that calendar year.

Renewal of a licence

7. (1) A trade licence is deemed to be renewed if—

- (a) the licence fee is paid to the county revenue collector for its renewal on or before 31st December of the current calendar year; and
- (b) the holder of the trade licence provides to the licensing Authority the information (if any) requested by the licensing Authority about the business conducted under the trade licence.

(2) A trade licence is deemed to be renewed for a calendar year.

Cancellation or suspension of licences

8. (1) The licensing authority may cancel or suspend a trade licence if it is satisfied that—

- (a) the conduct of the business is endangering the health or safety of persons who live or work in the neighbourhood of the premises from which the business is conducted; or
- (b) the holder of the trade licence has breached a condition of the licence set out in First Schedule .

(2) If a licensing Authority cancels or suspends a trade licence (or revokes any such suspension), the Authority must give the holder of the licence written notice of the cancellation or suspension, including the period of the suspension, together with a statement of the reasons for the decision.

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

Penalty: A fine not exceeding 100,000 shillings.

(4) If the licensing Authority revokes the suspension of a trade licence, the holder of the licence may resume conducting the business.

Surrender of licence

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

Transfer of licences

10. The holder of a trade licence must give the licensing Authority written notice of any transfer or assignment of the licence.

Appeal against the decision

11. (1) A person aggrieved by a decision of the licensing Authority may appeal to a court of competent jurisdiction against the decision.

(2) The court may confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the licensing Authority as may be necessary to give effect to the court's decision.

Licensing officers

12. (1) The licensing Authority may appoint persons as licensing officers for the purposes of this Act.

(2) An licensing officer has the powers set out in Schedule 2.

Register

13. (1) The licensing authority must establish and maintain a register of trade licences which is to be available for inspection by the public during usual Government office hours.

(2) The register must contain such information as is prescribed, but must not include information that is commercial-in-confidence information.

Offence—false or misleading statements

14. A person must not make a statement which the person knows to be false or misleading—

(a) in or in connection with an application for a trade licence; or

(b) when furnishing information required under this Act. Penalty: A fine not exceeding 50,000 shillings.

General penalty

15. If a person contravenes or fails to comply with any provision of this Act, the person commits an offence against this Act and, unless another penalty is expressly provided by this Act for that offence, the person is liable on conviction to a fine not exceeding 10,000 shillings.

Power to make rules

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

Savings

17. (1) This section applies to any by-law relating to business permits made by a Local Authority within the county if that by-law was in force immediately before the commencement of this Act.

(2) On and after the commencement of this Act, the by-law continues in force as if—

- (a) it had been made by the County Government; and
- (b) a reference in the by-law to a Local Authority were a reference to the County Government; and
- (c) a reference in the by-law to clerk, however described, were a reference to the licensing Authority; and
- (d) any fees or charges payable to the Local Authority were payable to the County Government.

(3) A business permit issued under the by-law continues in force as if it were a trade licence granted under this Act by the County Government.

FIRST SCHEDULE—

CONDITIONS OF A TRADE LICENCE

Section 6

A trade licence is subject to the following conditions—

- (a) the holder of the licence must not contravene a provision of this Act or the rules made under this Act; and
- (b) the holder of the licence must comply with any law administered by the County Government relating to health, hygiene or safety.

SECOND SCHEDULE—**POWERS OF LICENSING OFFICERS****Section 12****1. An licensing 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 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 any thing in or on the premises; and
- (d) seize any thing 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 and materials as the inspector reasonably requires for the purpose of exercising any of the powers mentioned in paragraphs (a) to (e); and
- (g) require the holder of the licence, or any person in or on the premises to give to the inspector reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (f).

2. However, an licensing officer must not enter premises unless:

- (a) the owner or occupier 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 licensing officer suspects on reasonable grounds that an offence is being committed against this Act in or on the premises.

MEMORANDUM OF OBJECTS AND REASONS

Article 209 (4) of the Constitution of Kenya, 2010 together with Part II of the Fourth Schedule of the Constitution of Kenya gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed 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 a 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 II of the Fourth Schedule of the Constitution.

The structure of the Bill is as follows:

PART I—(clauses 1-3) of the Bill contains preliminary provisions. These include the title of the Bill, interpretation of terms as used in the Bill and purpose of the Act. The purpose of the Act is to provide specifically for the trade licensing process.

PART II—clauses 4-8) Provides for administration matters. The part establishes a licencing unit responsible for issuing licences and it is functions. The part also provides that the County Public Service Board shall appoint the Chief Licencing Officer in consultation with the Executive Committee Member responsible for trade.

PART III—(clauses 9-30) of the Bill contains trade licence provisions. It provides for appointment of licencing officers as well as their powers and duties. The part also provides for application and grant of trade licences and consequential matters.

PART IV—(clauses 31-36) of the Bill provides for the enforcement provisions. The part sets out for the principles to be adopted in enforcing the law. The part also provides provisions for appointment of authorized officers and their roles and powers.

PART V—(clauses 37-38) deals with general provisions. It provides for the powers of the Executive Member to make Regulations and it also provides for savings provisions on the licences and permits issued prior to the coming into force of the Act.

Dated the 14th August, 2015.

HADI MADEY,
Chairperson,
ICT, Trade, Industrialization, Tourism,
Wildlife and Co-operative Development Committee.