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CONTENT

Bill for Introduction into the County Assembly of Embu—	PAGE
The Embu County Trade Licence Bill, 2015	1

THE EMBU COUNTY TRADE LICENCE BILL 2015**ARRANGEMENT OF CLAUSES****PART I—PRELIMINARY***Clause*

1—Short title and commencement.

2—Interpretation.

PART II—GENERAL ADMINISTRATION

3—Licensing authority.

4—Requirement for a trade licence.

5—Application for licence.

6—Grant of licence.

7—Renewal of a licence.

8—Cancellation or suspension of licences.

9—Transfer of licences.

10—Appeal against the decision.

11—Authorized officers.

12—Register.

PART III—MISCELLANEOUS

13—False or misleading statements.

14—Offences and penalties.

15—Licence fees and other charges.

17—Power to make rules.

18—Saving.

THE EMBU COUNTY TRADE LICENCE BILL, 2015

A Bill for

AN Act of the County Assembly of Embu to provide for the grant of trade licences, and for connected purposes

ENACTED by the County Assembly of Embu, as follows—

PART I—PRELIMINARY

1. (1) This Act may be cited as the Embu County Trade Licence Act, 2015 and shall come into operation upon publication in the gazette.

Short title and commencement.

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

Interpretation.

“application form” means form approved by the licensing authority officer;

“authorized officer” has the meaning given by section 11;

“business” includes profession, trade or occupation;

“county executive member” means county executive member responsible for trade

“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 officer” means an officer of the county government appointed under section 3;

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

“prohibited activity” means an activity prohibited in conformity with the

national laws;

“receiver of revenue” has the meaning assigned to it under the law governing in the Embu County Revenue Administration;

“trade licence” means a licence granted to conduct a

business.

PART II—GENERAL ADMINISTRATION

3. (1) The county executive member responsible for finance shall appoint and designate an officer of the county government as the licensing authority officer.

Licensing authority officer.

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

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

Requirement for a trade licence.

(2) Any person who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings or a jail term not exceeding six months or both.

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

Application for licence.

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

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

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

(4) The licensing authority officer may, before determining an application, require the applicant to furnish to the licensing officer such additional information or documents as is necessary to enable the application to be determined.

(5) If an application fee has been paid, the application fee shall not be refundable.

6. (1) The licensing authority officer shall grant a trade

Grant of licence.

licence if—

- (a) the licensing authority officer is satisfied that the applicant has complied with all requirement 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 revenue.

(2). No licence shall be granted if the requirements set out in the application form have not been satisfied.

(3).The licence fee for the grant of a trade licence shall be on calendar year basis irrespective of the time of the year the application for the trade licence is made.

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

Renewal of licence..

(2) The licensing authority officer shall grant a renewal of a trade licence if:

- (a) the applicant has complied with all requirements relating to health, hygiene and safety applicable to the trade licence; and
- (b) the licence fee payable for the renewal of the trade licence has been paid to the receiver of revenue.

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

(4) A trade licence shall be renewed for a calendar year, subject to section 8.

(5) all trade licences shall be prominently displayed where it can be easily viewed on inspection.

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

Cancellation or suspension of licences.

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

- (b) the holder of the trade licence has breached a condition of the trade licence;
- (c) 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;
- (d) the licensee carries on a prohibited activity; and
- (e) the licensee is convicted of an offence under this Act.

(2) If the licensing authority officer cancels or suspends a trade licence, the officer shall give the holder of the licence written notice of the cancellation or suspension, including the period of the suspension, or cancellation, 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.

(4) If the licensing authority officer revokes the cancellation or suspension of a trade licence, the holder of the licence may resume conducting the business.

9. A trade licence issued under this Act is not transferable.

Licence not transferable.

10. (1) A person aggrieved by a decision of the licensing officer may appeal to the county executive member against the decision.

Appeal against the decision.

(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) The county executive member may confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the licensing authority officer as maybe necessary to give effect to his or her decision.

11. (1) The county executive member may appoint persons as authorized officers for the purposes of this Act.

Authorised officer.

(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,
 - (b) search the premises or any part of the premises;
 - (c) inspect or examine anything in or on the premises;
 - (d) Seize anything that may afford evidence of the commission of an offence against this Act;
 - (e) take extracts from, and take copies of, any documents in or on the premises;
 - (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); or
 - (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).
- (3) The authorized officer shall not enter premises unless—
- (a) the entry is made when the premises are open for the conduct of business or otherwise open for entry; or
 - (b) the authorized officer suspects on reasonable grounds that an offence is being committed on the premises in relation to this Act.

12. (1) The licensing authority officer shall establish and maintain a register of trade licences which is to be available for inspection by the public during usual working hours.

Register.

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

PART III—MISCELLANEOUS

13. (1) A person shall not make a statement which the

False or misleading statements.

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.

Offences and penalties.

(2) Any person who contravenes this section commits an offence and is upon conviction liable to a fine not exceeding fifty thousand shillings or three months imprisonment or both.

14. (1) Any person who carries on a business activity without a valid business licence commits an offence, and is liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding twelve months.

(2) A person who contravenes or fails to comply with any provision of this Act for which no penalty is provided commits an offence and is upon conviction, liable to a fine not exceeding one million shillings or two years of imprisonment or to both.

15. (1) The County Annual Finance Act shall provide for such licence fees, penalty and other charges as may be applicable.

Licence fees and other charges.

(2) The county executive member for finance may, once in a year propose to the County Assembly through the budget statement any revisions in revenue raising measures and such proposals shall be construed to be legislative proposals for the amendment of the Finance Act.

16. (1) The County Executive Committee member responsible for finance may make rules generally for the better carrying out of the financial provisions and purposes of this Act and different rules may be made in respect of different forms of rating or different rating areas.

Powers to make rules.

(2) without prejudice to the generality of subsection (1) the rules may be made for the following purposes—

- (a) the collection of trade licence fees;
- (b) to prescribe procedures for remitting trade licence fees;
- (c) to prescribe cases in which trade licence fees may be varied or exempted for any person class of

persons;

- (d) to prescribe the cases or circumstances in which the county government is or may grant exemption from the payment of trade licence fees or of any licence or class of licence and the persons and classes of persons who may be exempted;
- (e) prescribing the extent to which any trade is to be exempted from the payment of licence fees;
- (f) prescribing fees;
- (g) prescribing or prohibiting any other thing required in this act /to be prescribed or prohibited; and
- (h) different forms of rating or different rating areas.

Savings.

17 (1) A licence issued under the repealed Act and by-laws shall be valid until 31st December of the year in which this Act comes into force.

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

(3) Any rules, in force immediately before the coming into operation of this Act, that apply to any form or method of licensing which is continued under subsection (1) are deemed to have been made under section 19 and are, except to the extent of any inconsistency with the provisions or requirements of this Act, to continue in force in respect of such form or method of rating until rules are made under this Act to replace them.

(4) Any rules, in force immediately before the coming into operation of this Act, that exempt any charitable institution from the payment of licences in respect of any area in the county are deemed to have been made under section 19 and are, except to the extent of any inconsistency with the provisions or requirements of this Act, to continue in force until rules are made under this Act to replace them.

(4) Any rules and regulation or supplementary rules and regulation that, but for the operation of fees and charges would have been in force immediately before the coming in to operation of this Act in respect of an area of the county is deemed to be in force for the purpose of this act until amended

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 licensed activities.

The Bill provides for the grant of trade licences by the County Government of Embu to conduct businesses in the County in accordance with the functions mentioned above in Part 2 of the Fourth Schedule of the Constitution.

The enactment of this Bill into law does not occasion additional expenditure of public funds.

Dated the 17th February, 2015.

KANJOGU NJIRU MUGO,
Chairperson, Finance and Economic Planning Committee.