BOMET COUNTY GAZETTE SUPPLEMENT

BILLS, 2014

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CONTENT

Bill for introduction into the Bomet County Assembly—The Bomet County Trade Licence Bill, 2014..........................................................3

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THE BOMET COUNTY TRADE LICENCE BILL, 2014

ARRANGEMENT OF CLAUSES

Clause
1.—Short title and commencement.
2.—Interpretation.
3.—Requirement for a trade licence.
4.—County assembly to determine licence fee.
5.—Application for licence.
6.—Grant of licence.
7.—Renewal of a licence.
8.—Cancellation or suspension of licences.
9.—Surrender of licence.
10.—Transfer of licences.
11.—Appeal against the decision.
12.—Licensing officers.
13.—Register.
14.—Offence of giving false or misleading statements.
15.—General penalty for offence.
16.—Power to make rules.
17.—Savings and transitional provisions.

SCHEDULES
FIRST SCHEDULE—Conditions of Trade Licences.............................s.6
SECOND SCHEDULE—Powers of Licensing Officers............................s.12
THE BOMET COUNTY TRADE LICENCE BILL, 2014

A Bill for

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

ENACTED by the County Assembly of Bomet as follows—

Short title and commencement. 1. This Act may be cited as The Bomet County Trade Licence Act, 2014 and shall come into force upon assent by the 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 Bomet County Revenue Collection Act, No. 2014;

“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 shall not operate a business within the County, unless that person is a holder of a trade licence issued by an authorised person of the County Government for that particular business.
(2) A person who operates a business in contravention of this section shall commit an offence and shall, on conviction, be liable to a fine of one hundred thousand shillings.

4. (1) The licence fees payable for the grant or renewal of a trade licence and the penalties payable for the late payment of licence fees (if any) may be determined by an Act of the Assembly.

(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.

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

(a) be lodged with the licensing authority;
(b) be in the approved form;
(c) contain such information and be accompanied by such documents as are required in the approved form;
(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.

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 the First Schedule.
(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 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.

7. (1) A trade licence is deemed to be renewed for a calendar year 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.
Cancellation or suspension of a licence.

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

(a) the operation 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 being operated; or

(b) the holder of the trade licence has breached a condition of the licence set out in the First Schedule.

(2) If a licensing authority cancels or suspends a trade licence (or revokes any such suspension), the licensing 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) A person whose licence has been cancelled or suspended must immediately cease to operate that business.

(4) A person who continues to operate a business whose licence has been cancelled in accordance with this section shall commit an offence and shall, on conviction, be liable to a fine of one hundred thousand shillings.

(5) If the licensing authority 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 it to the licensing authority, but no refund of the licence fee is payable.

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

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

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

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

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

14. (1) A person shall not make a statement which the person knows to be false or misleading—

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

(b) when furnishing information required under this Act.

(2) A person who contravenes this provision shall commit an offence and shall, on conviction, be liable to a fine of fifty thousand shillings.

15. If a person contravenes or fails to comply with any provision of this Act for which no penalty is provided, the person commits an offence and shall, on conviction, be liable to a fine of ten thousand shillings.

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.
17. (1) This section applies to any by-law relating to business permits made by a former 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 to be in force as if—

(a) it had been made by the County Government;

(b) a reference in the by-law to a local authority were a reference to the County Government;

(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.
FIRST SCHEDULE  (S. 6)

Conditions of a Trade Licence

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  (S. 12)

Powers of Licensing Officers

1. A 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;
   (b) search the premises or any part of the premises;
   (c) inspect or examine anything in or on the premises;
   (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, a 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

The Bill provides for the grant of a trade licences to conduct businesses in the County in accordance with Schedule 4 Part 2 of the Constitution. Part 2 of Schedule Four of the Constitution gives counties the power to licence undertakings that sell food (item 2(d)), to issue trade and liquor licences (items 7(b) and 4(c)) and to licence dogs (item 6(a)). These licensing powers are not taxing powers, but are correctly characterised as a power to charge fees.

Previously, business permits were issued in accordance with section 163A of the Local Government Act. Following the repeal of that Act, there is no legislation providing for the issue of new permits (licences) by County Governments. The Bill fills that gap.

The Bill makes it an offence for a person (individual or company) to conduct a business within the County, unless the person is a holder of a trade licence for that business. It is important to note that business has been defined to mean a profession, trade or occupation. This means, therefore, that any person who is operating a business of any kind which brings that person an income is covered within the armpit of this licensing regime.

This is not a money Bill in terms of Article 114 of the Constitution.

Dated this 24th day of November, 2014.

LEAH KIRUI,
Chairperson, Trade, Tourism, Co-operative and Industry