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THARAKA NITHI COUNTY GAZETTE SUPPLEMENT

BILLS, 2016

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THARAKA NITHI COUNTY PUBLIC MARKETS
BILL, 2016

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to
provide for the establishment and management of
markets and the regulation of trade and other
business activities 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 Public Markets Act 2016.

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

“appropriate form” means a form approved by the
County Executive Committee Member in applying for any
license under this Act to enable a person carry out business;

“busker” means a person who sells their wares within a
close range of another business premises in accordance with
this Act;

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

“casual trader” means a person who attends a particular
market with their goods, and may be allocated a trading
position for each day from the vacant positions in the market;

“executive committee member" means the County
Executive Committee Member responsible for matters
relating to trade;

“defective goods” include goods which—
are in the particular circumstances either dangerous or
unfit for use;
do not comply with a product safety or quality
standards;

“hawker” means any person who sells goods that can
easily be transported from place to place;

“marketable commodities” includes poultry, eggs, fresh
meat, fish, ground provisions, vegetables and fruit;

"public market" means a market established under this Act;

"prohibited goods" means goods whose transportation, sale or consumption is illegal under this Act or any other written relevant law;

"prescribed goods" means goods approved for sale under this Act or Regulations made under this Act;

"prescribed areas" means areas set aside for certain types of trade;

"regular trader" means a trader who has been permitted to use a particular trading position 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 or mobile structure used for the purpose of holding a trader's goods in the course of trading;

"street hawker" means any person who carries out any commercial activity from any street other than open air market irrespective of the means by which such activity is carried out;

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

**PART II—PUBLIC MARKETS**

3. (1) There is established the County Division of Public Markets.

(2) The Division shall be headed by a Deputy Licensing Officer who shall be appointed by the Executive Committee Member.

(3) The government shall appoint such other officers and staff as may be necessary for the effective and efficient functioning of the Division.

4. (1) The Division shall be responsible for the following functions—

(a) 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;

(b) 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, within the county's public market;

(c) to revoke any licence or permit for a public market trader's improper conduct, or for infringement of this Act.

(d) to purchase, out of public funds, all such measures, scales and weights, furnishings and appliances, as shall be considered necessary, for the public market or slaughterhouse;

(e) to inspect all butcher's meat, fish, vegetables and all other articles of food offered for sale in the public market and, if in their opinion the same are unfit for human consumption, immediately take corrective action in line with this Act or any other applicable law;

(f) recover all rates and other moneys to be payable under this Act;

(g) keep a detailed cash account book in which entries are made of all moneys received by the division under this Act;

(h) generally to carry out and enforce this Act; and,

(i) to perform any other incidental function as may be directed by the Chief Licensing Officer or Executive Committee Member.

5. (1) The Division shall have the necessary powers to perform its functions and duties under this Act and in particular, it shall—

(a) establish public markets;

(b) maintain the public markets established within the county;

(c) allocate casual traders trading positions within the public markets;
(d) manage and regulate public markets for the sale of marketable commodities therein;

(e) provide all such things as may be necessary for the convenient use of public markets.

6. (1) No person shall hold any public market for the sale of marketable commodities in any place not being a public market established under this Act, unless the person is licensed by the Division.

(2) The Division 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 in regulations made under this Act and/or any other relevant written law operational in the county.

(3) Any person who acts in contravention of subsection (1) above commits an offence and is liable, upon conviction, to a fine not exceeding twenty thousand shillings or to a term of imprisonment of not more than two months, or to both.

7. (1) The Division may require the payment of charges and stallages, as may have been prescribed in regulations under this Act or any other relevant law, from any person—

(a) occupying or using any stall or place in any public market;

(b) bringing marketable commodities or any other thing allowed to be sold into any public market; or

(c) using any weighing or measuring instrument provided and kept in any such market, such stallages and charges as may be prescribed in regulations.

(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 to the supervisor of the market or their agent to receive the same.

(3) Where any person liable for the payment of any stallage or charge fails to make such payment upon demand by the relevant authority, 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) recoverable as a debt.

(4) For the purpose of recovering any sum due under this section, any action or other proceeding may be brought in the name of the office of the Chief Licensing Officer or any other officer of the County Government.

8. (1) Any regular trader who intends to engage in any commercial activity within an open-air market must obtain a licence or, in the case of a casual trader, pay such fee as may be prescribed in Regulations.

(2) A licence issued under subsection (1) shall not entitle such trader to carry out such activity unless, in relation to a specific open-air market, the trader shall have been so authorised by the division.

(3) No double authorization shall be granted by the division to one regular trader for a single market that operates in the same day and time.

(4) A regular trader who uses a motor vehicle to carry out their commercial activities shall have—

(a) premises available where to garage the motor vehicle and store their goods.

(b) the address of the premises used for this purpose must be clearly indicated on the application for the issuing of a licence and any change in the vehicle or garage shall have to be notified to the division within ten working days after the change shall have occurred.

(c) No application shall be accepted and processed by the division if the address of the garage or any other address for the store where goods are to be stored are not given.

(d) The division shall have the right to inspect such premises and to demand any documentation that proves the ownership of the premises when the application indicates the use of such premises by more than one licensee.

(e) The division may refuse to issue a licence if it
decides that such premises are not used as a store or garage by the applicant.

(f) The licence issued by the division must indicate the regular trader as a non-food licence trader or as a food related items licence trader.

(g) In the case that this activity concerns the selling of food items prior approval by the county public health authorities must be obtained;

(h) With respect to non-food related items, the division may issue any legal orders to the licensee to restrict the selling of any item that may be causing an infringement of public order.

Provided that with reference to food related items the division, pursuant to a recommendation by the health authorities, may authorise the licensee to sell or not to sell specific items as ordered by the county public health authorities.

9. (1) A trader may carry out their commercial activities by selling their marketable commodities from one place to another along any street.

(2) Where a street hawker conducts their commercial activities from motorized cycle, vehicle the hawker shall be required to park their motorized cycles or vehicles in accordance with all the traffic rules and regulations applicable for every street where they stop to sell conduct their commercial activities.

10. (1) No car boot sales shall be permitted, whether in public or private place, unless the person who organises such sale is licensed in line with the terms of this Act or any other relevant written law operational in the county.

(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(s) when the car boot sale will beheld.

11. No person shall be permitted to engage in busking unless they comply with the following conditions—

(a) that an application by any busker who, in any street,
produces on site and sells a work of art onsite, is filed on the appropriate form with the division;

(b) that the place where the busker stops to sell their goods is at least five meters of walking distance away from the entrance of any commercial premises, including a fixed kiosk;

(c) that no selling by busking can be performed in the precincts of any hotel or any shopping complex without the written permission of the management;

(d) that no objects are placed on the pavement; and,

(e) that no nuisance or inconvenience is caused to the neighbours or passersby in the street.

12. Any person who either obstructs or assaults a person duly authorized 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, commits an offence and is liable, on conviction, to a fine of twenty thousand shillings or to imprisonment for a term not exceeding four months or to both.

13. Any who, while being in a public market behaves in a disorderly or offensive manner or who misconducts themselves, commits an offence and is liable, upon conviction, to a fine not exceeding Kenya Shillings fifty thousand or to a term of imprisonment not exceeding six months, or to both.

14. The division or other person in charge of any public market or any other person who is duly authorized, may remove from or arrest, any person who behaves in the market in a disorderly or offensive manner or who so misconducts themselves or may arrest such person without a warrant and take them to the nearest police station.

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

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

(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 for the period prescribed by the Regulations.

(3) Any trader who intends to sell prescribed goods at a public shall be required to provide information required to be maintained pursuant to subsection (2) to the operator of the public.

(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 twenty thousand shillings or imprisonment to a term not exceeding three months.

17. A market operator shall maintain the information provided to the operator pursuant to this Act for the period prescribed by Regulations.

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

19. An authorised officer may, without laying any information or obtaining any warrant, seize and remove goods from a public market if the officer is satisfied, on reasonable grounds, that the goods are —

(a) prohibited goods; and

(b) not being sold by an authorized sales representative of the producer, manufacturer, wholesaler, distributor or retailer of the goods.

PART III—SALE OF MEAT

20. (1) No person shall sell any meat otherwise than in a public market or into other premises so authorised for such purposes.

(2) Any person who contravenes subsection (1) commits an offence and, shall on conviction, be liable to a fine not less than Kenya Shillings ten thousand or to a term
of imprisonment for a period not exceeding three months, or to both.

(3) Any person may be granted to any person a licence to sell meat at any premises other than in a public market, and any such licence shall be granted in respect of such premises and upon payment of such sums and upon such terms and conditions as may be prescribed.

(4) No fees is payable for a business licence to sell meat where such premises are licensed as a slaughterhouse.

21. (1) Any person who sells meat at any stall or place in any public market without having a business licence, commits an offence and, on conviction, is liable to a fine not exceeding thirty thousand Kenya shillings or to a term of imprisonment not exceeding three months or to both.

(2) The licensing officer may licence any person to sell meat in a public market upon payment of prescribed fees.

22. (1) Any person who sells meat of any animal that is not examined and passed as fit for human consumption by a duly authorized officer, commits an offence and on conviction, is liable to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding six months, or to both.

(2) The provisions of subsection (1) shall not apply to imported meat.

23. (1) Any person who sells meat of any animal that is not slaughtered in a public slaughter-house or in a licensed slaughter-house commits an offence and on conviction, is liable to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding six months, or to both.

(2) The provisions of subsection (1) shall not apply to imported meat.

24. (1) All stalls or blocks in a public market which are used for the sale of meat or farm produce may be leased to a person for a period not exceeding five years, at any one time;

(2) Subject to subsection (1), no person shall be permitted to lease more than one stall or block at the same time.

(3) The County Executive Committee Member may,
for good cause, and by notice in writing, revoke any lease granted by the division under subsection (1).

Provided that no such revocation shall be done before any person who is to be negatively affected by such revocation is given the right to right to be heard.

25. No lease of any stall or block shall assignable to any other person or permit the use of any stall or block by any other person without the written permission of the division.

PART IV—REGULATION OF SALE OF MARKETABLE COMMODITIES AND OTHER GOODS

26. (1) Subject to section 27, no person shall sell any marketable commodities in the entrance to any building or on the pavements of any road which is situate within the limits of a prescribed area for the purposes of this section.

(2) Subject to subsection (1), no person shall sell any marketable commodities in any part of any public place within the limits of a prescribed area.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Kenya shillings five thousand or to a term of imprisonment not exceeding one month.

27. Section 26 shall not apply to the following types of sales—

(a) carrying of any marketable commodities from place to place for the purpose of sale within a prescribed area;

(b) sale in accordance with the provisions of any law relating to hawkers of any marketable commodities at any building situate within any area prescribed for the purposes of that section;

(c) sale of any marketable commodities in any shop or in any public market held for public purposes within any area prescribed for the purposes of that section;

(d) sale of any marketable commodities in the entrance to any building situate within any area prescribed for the purposes of that section in any case where the vendor first obtains the permission of the
owner or occupier of such building to sell and so conducts their business so as not to cause obstruction to any person lawfully using such road;

(e) sale of any marketable commodities as defined in section 26, in any part of any public place or within any area prescribed for the purposes of section 26, by any person to whom a permit is issued in accordance with section 27 and who sells at the place and in accordance with the terms and conditions specified in the permit issued.

28. (1) Any person who desires to be issued with a permit authorizing them to sell in any part of a public place or within a prescribed area for purposes of 26, any permitted marketable commodities shall apply to the chief licensing officer and they must produce evidence to the satisfaction of the division as to their good character.

(2) Every permit issued pursuant to subsection (1) shall be issued by the division upon payment of a prescribed fee and it shall be valid for such period as may be specified but such period shall not exceed one year from its date of issue.

(3) Before issuing any permit pursuant to subsection (1), the division shall cause the particular part of the public place to which it is proposed that the permit proposed to be issued shall relate, to be defined by lines painted on the ground or by studs embedded in the ground or in such other manner as the authorised officer shall think fit and a number or letter shall be marked within such place in such manner as the officer may think fit.

(4) Every person to whom a permit is issued pursuant to subsection (2) above shall produce their permit whenever required so to do by the authorised officers duly authorised by the division.

(5) where an applicant for a permit issued pursuant to subsection (1) is dissatisfied by a refusal of the division to grant them the same, may seek a review by the Executive Committee member.

PART V—GENERAL PROVISIONS

29. A County public health officer shall conduct inspections for all animals and articles of food at public markets in line with regulations developed under this Act of any other relevant written law applicable in the county.
30. A person who commits an offence under this Act where no specific penalty is provided for shall, upon conviction, be liable to a fine not exceeding Kenya shillings ten thousand or to a term of imprisonment not exceeding one month.

31. The Executive Committee Member may, in consultation with the Executive Committee and approval of the County Assembly, make regulations for the better carrying out of the provisions of this Act.

(2) without prejudice to the generality of subsection (1), the regulations may provide for any of the following—

(a) the use of markets and market buildings;
(b) prescribing, and regulating the pattern, description and use of, weighing or measuring instruments to be used by persons selling marketable commodities in any market;
(c) preventing nuisances and obstructions in markets and for maintaining cleanliness therein, and on the approaches thereto;
(d) prescribing the goods that may be sold in any market;
(e) fixing, regulating and collecting stallages or charges and the payment and collection thereof in any public market;
(f) for the inspection and examination of marketable commodities sold or offered for sale in any market;
(g) fixing the days and hours during which any market may be open to business transactions;
(h) prescribing the conditions subject to which the stalls or places for sale in any public market shall be held, occupied or used;
(i) imposing on any person having or using any stall or place in any market the duty of taking steps and using such means for protecting from contamination any articles of food offered or exposed for sale in any market;
(j) for maintaining order and preventing disturbances in a public market; and
(k) for prescribing any area within which section 26 shall, subject to section 27, apply.
MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide for the establishment and management of markets and the regulation of trade and other business activities and for connected purposes.

PART I Provides for the Short title and Interpretation of the Bill.

PART II Provides for the establishment of markets division, Functions of markets division, Duties and powers of the markets division, Markets to be in designated areas, Enforcement of payment for stallages and charges Regular traders, Street hawking, Licensing for car-boot sales, Busking, Obstructing or assaulting authorised officers, Disorderly behaviour in a public market, Power of removal or arrest, Prohibited goods not to be sold in public markets, Trader to maintain and provide information, Operator to maintain information, Access to prescribed and of prescribed goods.

PART III Provides for Meat to be sold in licensed premises, Licensing of meat salesmen, Sale of unexamined meat, Meat not slaughtered in a licensed slaughterhouse, Renting of stalls and Lease of stall or block not assignable without written permission.

PART III Provides for Selling marketable commodities and other goods in prescribed areas, Sales excluded from operation of section 26 and Permit to sell in prescribed areas.

PART IV Provides for Inspection by public health officers, General penalty and Regulations.

ALBANO MUGAMBI KIANIA
Chairperson, Planning, Trade and Co-operatives Committee.