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NAKURU COUNTY BILLS, 2019

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THE NAKURU-COUNTY CHILD CARE FACILITIES
BILL, 2019

AN ACT of the Nakuru County to provide for the
management, registration, licensing and inspection
of child care facilities in the county and for
connected purposes

ENACTED by the Nakuru County Assembly of Nakuru as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nakuru County Child
Care Facilities Act, 2019 and shall come into force upon
publication in the Kenya Gazette.

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

“Applicant” means any person or Body Corporate or
unincorporated, a religious organisation or a non-
governmental organisation applying for a licence under
this Act;

“Best interests of the child” means the definition
prescribed under section 4 of the Children’s Act No. 8 of
2001, Laws of Kenya;

“Child” for the purposes of this Act means a child of
not more than six years;

“Child care” means the temporary care and
supervision of a child and may also include the provision of
a children’s program;

“Child care facility” means a Licensed institution
under this Act at which for the time being, five or more
children under the age of six years are received and cared
for regularly for reward;

“Child care provider” is any person, their agents or
representatives operating a childcare facility and
responsible for the care and wellbeing of children in all
texts;

“Chief Officer” means an officer appointed under
section 45 of the County Government Act, 2012;

“County” means the Nakuru County as established
under article 176 of the Constitution;
“County Education Board” means a Board established as an agency of the national Government to serve the Nakuru county under section 17 of the Basic Education Act of 2013 Laws of Kenya”

“County Gazette” means a gazette published by the authority of the County government or a supplement to such gazette;

“Department” means the department of education headed by the county executive committee member responsible for education at the county level of government;

“Director” means the head of the Department;

“Disabled child” means a child suffering from a physical or mental handicap which necessitates special care for the child;

“Education Appeals Tribunal” means a tribunal established under section 93 of the Basic Education Act of 2013 Laws of Kenya;

“Executive Committee Member” means the County Executive Committee Member appointed under section 35 of the County Government Act, 2012 and described under Article 179 of the Constitution responsible for matters relating to Education or for the time being entrusted with the Administration of this Act;

“Inspector” means an inspector deployed under section 23.

“License” means a licence issued by the Department under this Act to operate a facility and includes a provisional licence;

“Licensee” means an individual(s) or a body corporate who holds a licence issued under this Act;

“Program” means the activities planned to help the Children’s physical, social, emotional and learning development; and

“Staff” means childcare givers, centre managers and all other employees in the Child Care Facility employed by the Licensee.
3. (1) The Objects and Purpose of this Act is to—

(a) Provide a framework for the establishment of the infrastructure necessary to support the management, registration, licensing and inspection of childcare facilities;

(b) Promote the delivery of quality childcare facilities and provide a framework that enhances the quality and efficiency of childcare facilities in the county;

(c) Streamline the administration of childcare licensing and thereby increase efficiency and effectiveness of the system;

(d) Enhance consumer awareness of licensing requirements and the benefits of licensed childcare;

(e) Allow for periodic inspection of childcare facilities to ensure compliance with provisions of this Act;

(f) Develop and implement the policy on childcare facilities; and

(g) Develop mechanisms for inspection and reporting of childcare facilities.

4. Subject to section 3, this Act shall apply to all childcare facilities within the County and shall not apply to:

(a) Childcare provided by hospitals to children who are patients in the children's facilities.

(b) Childcare provided by persons to their own children, grandchildren, brothers, sisters, nieces, or nephew.

(c) Childcare provided by a church during its service or as part of religious instruction which does not exceed five hours per week.

(d) Childcare provided to children in camps operated for seasonal or holiday periods where the children stay overnight.

(e) Childcare provided to children as part of the regular activities of community, sports, or recreation programs which are operated or funded.
locally; and

(f) Such other facilities as the Executive Committee Member may determine by public notice.

5. All entities in this Act shall, in performing their functions under this Act, be guided by the following principles —

(a) Give effect to Article 53 and the Fourth Schedule part 2 paragraph 9 of the Constitution of Kenya;
(b) Respect the child’s dignity and ensure harmonious development of every child;
(c) Protect the child from unfair discrimination, including discrimination based on the health status or disability of the child or a family member of the child; and
(d) Recognise the child’s need for development, play and recreation noting to respond to the child’s special needs, if that child has a disability.

PART II— ADMINISTRATION

6. The Department shall—

(a) safeguard the welfare of children and shall in particular, assist in the establishment, promotion, coordination and supervision of the Child care Facilities;
(b) regulate and license child care facilities within the county;
(c) maintain an up-to-date database of compliant child care facilities indicating the following—
   (i) The date of issue and expiry of the Licence;
   (ii) Management of the Child care facility;
   (iii) The ratio of child care providers to the children;
   (iv) All education centres whose registration has been cancelled; and
   (v) Such other particulars as the County Education Board may from time to time determine to be necessary.
(d) Develop and implement the policy on child care facilities;

(e) Develop standards for child care facilities;

(f) Supervise all child care facilities and safeguard and promote the welfare of any children admitted therein;

(g) Receive and investigate complaints on child care facilities;

(h) Provide annual reports on the management of child care facilities to the chief officer;

(i) Establish a website of the County Database of licensed Child Care Facilities; and

(j) Carry out any other activity relating to child care facilities that may be necessary or assigned by any national or county legislation.

7. (1) The Department shall have power for the purpose of carrying out its functions, to do all such acts and things as appear to it to be requisite, advantageous or convenient for or in connection with the carrying out of its functions or incidental to their proper discharge for the execution of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Chief Officer with the authority of the Executive Committee Member shall have power to constitute a Division of the child care Facility and Licensing.

PART III—REGISTRATION AND LICENSING OF CHILD CARE FACILITIES

8. (1) A person shall not maintain or operate a Child care facility unless it is registered and licensed in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding two hundred thousand or to imprisonment for a term of one year or both.

9. (1) An Applicant who wishes to operate a Child Care Facility within the County may apply to the Director or anybody to be approved by the Director to be in charge of licensing of Child Care Facility.
(2) An application for a licence under this Part shall be in writing to the Director.

(3) Application forms shall be obtained from the Department and the completed application shall be submitted to the Director for review and approval.

(4) A completed application shall contain the information as prescribed under Schedule 1.

(5) The Director, after consultation with the County Chief Officer and the Executive Committee Member, shall prescribe the fees payable for the issue of licences under this Act.

10. (1) The Director shall—

(a) issue a licence, in accordance with this Act; or

(b) refuse to issue the licence on any ground which may appear to the Director to be sufficient and inform the applicant, in writing, the reasons; or

(c) cancel, vary or suspend any licence if, in the finding of the Director, the licence is found to have contravened the Act for the operation of the facility.

(2) Prior to any Licence being issued, the Director shall nominate an officer to conduct a pre-approval consultation meeting for all applicants to determine eligibility for a license.

(3) This meeting shall be offered to the applicant within thirty (30) days of the receipt of the application.

(4) The Officer will recommend a regular license when the Applicant—

(a) has demonstrated substantial compliance, or

(b) when an existing Applicant with a Regular license relocates their Child Care facility and demonstrates a substantial level of compliance.

(5) The Director shall within sixty (60) days of submission of the application approve or dismiss the same with reasons thereof.

(6) The Director shall ensure that an updated register is kept and maintained for all licences issued pursuant to
11. (1) A Child Care Facility shall be approved if the Director is satisfied by such evidence as he may reasonably require that—

(a) The child care facility has adequate Health and Safety measures to help protect the child from injury, illnesses or spread thereof;

(b) The applicant and staff have a certificate to prove they have skills in Early Childhood Development;

(c) The applicant meets the standard of the child-staff ratio and the number of children allowed in a class (group size);

(d) The Applicant, has, satisfied the Safety and condition of the building such as—

(i) Emergency exits and safety measures,

(ii) Adequate ventilation,

(iii) Lockable doors and windows,

(iv) Ablution blocks suitable for use by children,

(v) Adequate furniture suitable for use by children,

(vi) Age appropriate play equipment

(2) Where the Director approves and accepts the registration of a Child Care Facility, it shall issue a Licence in the prescribed form and shall at the end of the period of twelve months beginning with the date of registration and annually thereafter, review the Licence of the child Care Facility

12. The Director may issue a—

(a) License; or

(b) a provisional license, which shall be valid for a period not exceeding Six (6) months, where the Child care facility is newly opened or has been acquired by new owners whose compliance
history has not been determined.

(c) At the end of the provisional license, the Director may in its discretion—

(i) Issue a regular license

(ii) Revoke the license

(iii) Suspend the license

(iv) Issue a successive provisional license

(2) Every licence shall specify—

(a) the name and address of the facility;

(b) the owner(s)/operator(s) of the Child Care Facility;

(c) the number of children authorized for care at the Child Care Facility;

(d) the expiration of any provisional licenses or Licenses;

(e) the type of care the Child Care Facility will be providing.

(3) The Director shall, at least thirty days before granting a licence under this Act, give notice of the proposed grant in the County Gazette and in such other manner as the Director may determine.

(4) The notice referred to in subsection (3) shall—

(a) specify the name or other particulars of the person or class of persons to whom the licence is to be granted;

(b) state the purpose for the proposed licence and indicate the date such licence is proposed to be issued to the successful applicant; and

(c) invite objections to the proposed grant of licence and direct that such objections be lodged with the Director within fourteen days next following the date of the notice.

(5) (1) The Director may refuse to approve a Child Care Facility under this Part if it appears to him—

(a) the Applicant does not meet the criteria in section 10(1) of this act;
(b) that any person proposed to be employed or
employed by the Child Care Facility for the
purpose of making any arrangements for the Child
care on behalf of the Applicant is not a fit and
proper person to be so employed;
(c) that the number of competent persons proposed to
be employed, or employed, by the Child Care
Facility are insufficient having regard to the extent
of the activities of the Child Care Facility in
connection with that purpose;
(d) that any person taking part in the management or
control of the Child Care Facility or any staff of
the Child Care Facility has been convicted of an
offence under this Act, the sexual offences Act No.3 of 2006, the Penal Code, Cap. 63 or any other
offence prescribed under the Children’s Act No. 8
of 2001 Laws of Kenya;
(e) that it would not be in the public interest to
approve the same having regard to the number of
Child Care Facilities already approved and
functioning in the particular locality, and
(f) on any other ground which may appear to be
sufficient.
(6) Where an application for licensing is dismissed, no
further application for licensing of the child care facility
may be made under this section within a period of six
months beginning with the date when the applicant is
notified of such refusal.
(7) (1) The Chief Officer in consultation with the
County Executive Member may by regulations prescribe
the guidelines that the Director shall follow before
approving or rejecting any application under this Act and
without prejudice to the generality of the foregoing, the
regulations may provide for—
(a) the process of investigation including notification
of affected parties;
(b) hearing of the matter raised by any Objector, and
(c) the criteria to be followed in coming up with the
decision.
(8) The issuance of a licence to an applicant under this Act shall not be withheld without reasonable cause.

13. (1) A licence issued under this Act shall be subject to such conditions as the Director may determine and as are specified in the licence.

(2) A licence issued under this Act is not transferable.

(3) A licensee shall notify the Department in writing prior to any significant change in physical or operating aspect of the facility.

(4) The Director may at any time during the validity of a licence—

(a) vary the conditions of the licence; or

(b) impose conditions or further conditions on the licence.

14. (1) An application for the renewal of a licence under this Act shall be made to the Director not later than one month (30 days) before the date by which the current licence is due to expire.

(2) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the Director.

15. (1) The Director may revoke a licence issued under this Act if—

(a) an offence under this Act or in respect of the licensed activity under any other written law, has been committed by the licence holder or any staff of the licence holder, or

(b) the Child care Facility is not maintaining substantial compliance due to deficiencies which are so numerous, frequent or severe as to potentially jeopardize the health, safety and welfare of the children; or

(c) a condition of the licence has been contravened or not complied with.

(2) The revocation of a license nullifies and cancels the license.

(3) At the time of a final determination of revocation
of the license by the Director shall specify in the revocation letter the terms of the revocation.

(4) The licensee shall not be eligible to reapply for a license for a minimum of one (1) year or longer, as specified in the revocation order.

(2) (a) The Director may suspend a license when it is determined that the Child care facility has minor issue(s) of non-compliance, but the Child care facility would be able to resume normal operations when the issue(s) are rectified.

(b) Upon suspension, the suspension order remains in effect until the order expires or until the Director determines that the problem necessitating the suspension order have been resolved.

(c) The suspension order shall be valid for a period not exceeding twelve (12) months.

(d) If the Director finds that the terms of the suspension order have been met prior to the expiration of the suspension period, the Director retains the discretion to reinstate the license. If the terms of the order have not been met, the Director may revoke the license.

16. (1) The holder of a license which is revoked shall immediately surrender the license to the Director within 30 days of the revocation.

(2) A licence holder may, at any time, surrender the licence to the Director and the licence shall cease to have effect forthwith.

17. Where a revocation or suspension order has been made under Part III directing that a licence be revoked or suspended, the Department shall inform the public of that order through a newspaper(s) circulating within the county and recognized by the County Assembly as a newspaper of recording or in any such other manner as it considers necessary under the circumstances.

18. Any Child Care Facility wishing to be re-licensed must submit a new application for review and approval by the Director before the facility commences operations.

19. (1) An applicant for or the holder of a licence who is aggrieved by a decision of the Director on
(a) the grant, refusal, renewal, variation, suspension or revocation of the Licence; or

(b) the conditions imposed on the licence, renewal or variation, of a licence, may appeal to the County Education Board.

(2) Any person aggrieved by the decision of the County Education Board may further appeal to the Education Appeals Tribunal as prescribed in section 93 of the Basic Education Act, 2013 whose decision will be final.

**PART IV — INSPECTION**

20. (1) The Director may authorise an Inspector to inspect a Child care Facility, or any other premises which he has cause to believe, are being used as a Child care facility within the county.

(2) A person is qualified for appointment as an Inspector under this Act if that person—

(a) is a Kenyan Citizen;

(b) holds at least a Diploma in a relevant field from an institution recognised in Kenya;

(c) has at least 5 years relevant work experience; and

(d) meets the Requirements of Chapter 6 of the Constitution

(3) The functions and powers of the authorised officer appointed under this section shall be supplementary to and not in derogation of the functions and powers conferred to the department and/or director.

21. (1) An inspection shall be carried out in every child care facility at least twice in every financial year.

(2) Any authorised officer acting in accordance with section 22 may at all reasonable times, enter, after producing, if asked to do so, some duly authenticated document showing that he is so authorised to enter, any Child Care Facility or premises aforesaid and shall in particular—

(a) interview any staff or licensee in the premises;

(b) require the production of an annual report and any records required to be kept in accordance with this
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Act;

c) inspect the conditions and facilities provided by the Licensee or staff of the premises;

d) prepare and submit a report to the Director outlining his findings and recommendations.

3. A refusal to allow any authorized officer referred to in subsection (1) to enter a child care facility or such premises as are mentioned in subsection (1) to inspect or interview any person in the facility or premises, shall be deemed to be a reasonable cause to suspect non-compliance with the provisions of this Act.

4. Any person who unlawfully refuses to allow an authorized officer referred to in subsection (1) to enter a child care facility or such premises as are mentioned in subsection (1), or who interferes in any way with the work of such officer or fails to produce any report or records, or conceals any information within such institution or premises, commits an offence and is liable to imprisonment for a term not exceeding three months or to a fine not exceeding Kenya shillings fifty thousand or to both.

22. A parent in a child care facility shall have the following rights—

(a) a right to enter the child care facilities at any time while their child is present therein;
(b) right to know how their child will be disciplined and be given a copy of the discipline policy upon enrolment of the child;
(c) right to see the licence issued to the child care facility displayed at a conspicuous place in the precincts of the facility;
(d) right to provide food for their children if they so wish;
(e) right to know the qualifications of the child care givers in the facility, and
(f) right to know the existing policies and management guidelines in the child care facility.

23. (1) Upon receipt of an inspection report the Director shall report to the chief officer within 30 days and...
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shall, subject to any directions given by the Executive Committee member, take any remedial measures provided for under this Act within 90 days of receipt of the inspection report.

(2) The Director shall, within six months of the submission of the inspection report by the officer, report to the Chief Officer on the action taken to ensure compliance with this Act.

PART V—MISCELLANEOUS PROVISIONS

24. No action or omission by a public officer or any person carrying out a function under this Act shall, if the act was done in good faith for the purpose of carrying out the provision of this Act or any other law, subject the person to any liability, action, claim or demand.

25. (1) Any caregiver who takes advantage of his or her position and induces or seduces a child in their care to have sexual intercourse with him or her or commits any other offence under the Sexual Offences Act 2014, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction to imprisonment for a term of not less than ten (10) years.

(2) A Childcare Provider who has been convicted of a sexual offence and who fails to disclose such conviction when applying for employment in a child care facility is guilty of an offence and liable upon conviction to an imprisonment for a term of not less than three years or to a fine of not less than fifty thousand shillings or both.

(3) A Childcare Provider who shall confirm that a person seeking employment to any position in a Child Care Facility has not been charged or convicted of an offence under the Sexual Offences Act, 2014.

(4) A Childcare Provider who knowingly employs a convicted sexual offender in a Child Care Facility commits an offence and is liable upon conviction to an imprisonment for a term of not exceeding three years or to a fine not exceeding one million or to both.

26. Where any offence under any regulations made under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or
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...to be attributable to any neglect on the part of any director, manager, member of a committee, secretary or other officer of the body, he as well as the body corporate, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

...
SCHEDULE

Checklist for Registration of Child Care Facilities

1. A copy of the Registration of the Child Care Facility's Business Name under the Business names Act or A certified copy of the registration of the organization as a Society or Limited Company and a copy of the Memorandum of Association.

2. A duly completed and signed application form with a designated person who assumes legal responsibility for operation of the child care facility and his or their qualifications.

3. A recent full Child Care Facility inspection report (stamped & signed).


5. Certified copies of professional and academic certificates, Copy of Identity Card, KRA Pin, Passport Photos, Police Clearance Certificates (certificate of good conduct) and contact details of the Directors and all the employees therein.

6. Clear written guidelines of responsibility for Directors, if applicable or the person in charge of the Child Care Facility.

7. Physical address of the child Care Facility.

8. Description of the services that will be provided to the children.

9. A reasonable plan with a proposed budget for the financial support of the Child Care Facility covering costs of staffing, building (including rent or mortgage and repairs), utilities, equipment, safety and nutrition. (This is a one-time only requirement that applies to new applicants for a license.)

10. Single Business Permit and Fire Safety – both which are issued by the county government.

11. A Liability Insurance cover to protect facilities, staff and children.

12. A certificate indicating that all the employees therein have undertaken training in first aid, safety and childcare.
MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to provide for the management, registration, licensing and inspection of child care facilities in the county and for connected purposes.

Part I (Clauses 1-2) contains preliminary matters.

Clauses 1 and 2 provide for the short title of the Bill and interpretation of terms respectively.

Among the terms interpreted in clause 2 is “facility”. This clause also interprets other terms as used in the Bill.

Part II (Clauses 3-5) provides the Establishment, functions and powers of the Department responsible for matters relating to children.

The functions include the regulation of child care facilities within the county and receiving and investigating complaints on child care facilities.

Part III (Clauses 6-16) contains provisions on registration, licensing and inspection of child care facilities.

Clause 6 is on the licensing of child care facilities while clause 7 provides how an application for a licence should be made.

Clause 8 is on how to make applications for renewal of licences while clause 9 lays down the conditions of a licence.

Clause 10 touches on Revocation, alteration or suspension of licences while Clause 11 deals with surrender of a licence.

Clause 12 is on the chain of appeals on any decision made by the Director upwards to the County Education Board.

Clause 13 requires that where a licence is revoked, the Department must inform the public by way of Publication.

Clause 14 provides for inspectors, Clause 15 provides for inspection of facilities and 16 on the power of those inspectors to enter into premises for purposes of inspection where the Department has reasonable grounds to believe that a facility is operated in contravention of this Act.

Part IV (Clauses 17-19) sets out the miscellaneous provisions

Clause 17 provides public officers with protection from personal liability while in office while Clause 18 provides for possible offences and penalties. Finally, Clause 19 gives the Executive Committee Member the power to make regulations.

DOUGLAS K. AYABEI,
Member of the County Assembly.