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THE NAKURU COUNTY FLOWER SERVICE CHARGE BILL,
2020

A Bill for

AN ACT of the County Assembly of Nakuru County to provide for
the imposition of Charge on flower service within the County
and for connected purposes

ENACTED by the County Assembly of Nakuru County as follows—

PART I — PRELIMINARY

Short Title and Commencement

1 This Act may be cited as the Nakuru County Flower Service
Charge Act, 2020 and shall come into operation upon publication

Interpretation

2 In this Act, unless the context otherwise requires—

"Authorized officer" means any person prescribed and authorized in
writing by the Executive Committee Member to act as an authorized
officer under this Act

"County Government" means the County Government of Nakuru,

"Executive Committee Member" means the Executive Committee
Member responsible for agriculture,

"Flower producer/seller" means a producer of flower service and
includes any marketing organization acting on behalf of producers,

"Flower Service charge(charge)" means charges imposed under this
Act and payable to the county government,

"Processing plant(plant)" means premises where flower service is
processed mainly by machines,

Object and Purpose of the Act

3 The object and purpose of this Act is to impose charges on flower
service grown in the county pursuant to the provisions of Article 209 (3)
of the Constitution of Kenya, 2010

PART II — FLOWER SERVICE CHARGES

Flower Service Charges

4 (1) The County Government shall collect charge of 1% of gross
sale on flower service within the County,

(2) The proceeds of the charge collected will be used for
infrastructural development of the area collected
(3) The proceeds of the charge may however be used for any other lawful purpose as would be approved by the Executive Committee Member provided that such other purpose would be for the benefit of the flower producer/seller and if the County Government using other resources would have addressed or managed the infrastructure mentioned in subsection (2) above

PART III—FLOWER SERVICE CHARGE COMMITTEE

Establishment and Composition of the Flower Service Charge Committee

5 (1) There is established a Flower Service Charge Committee

(2) The committee shall be composed of the following, provided that the number shall not exceed seven (7),

(a) A chairperson from among the processing plant board of directors,

(b) Four (4) members of the plant board of directors,

(c) A representative of the Nakuru County Executive appointed by the County Executive Member who shall be the secretary,

(d) The County Director of Agriculture who shall be the ex-official member

(3) The committee members shall appoint a Vice-Chairperson from amongst their number and who will deputize the chairperson in his absence. Provided that the chairperson and the vice-chairperson shall be elected from the plant board of directors

(4) A member of the committee who through a legally acceptable process loses his/her position in his/her nominating institution, shall lose his/her position on the committee and the committee shall nominate another person, to conclude the unconcluded term of the departed member

(5) Affirmative action in line with the constitution of Kenya, shall be considered in the setup of the Committee

Functions of the Committee

6 The functions of the committee are—

(a) To advice the County Executive Member on collection of the Flower Service Charge,

(b) To manage the collection of the Charge,
(c) The committee shall deliberate on the projects to which the Charge funds will be applied, as stipulated in this Act,

(d) Any other function as may be assigned in relation to this Act by the County Executive Member

Conduct of the Meetings

7 (1) The committee shall sit at least three times and not more than six times a year and shall cause minutes and records of deliberations to be maintained

(2) Meetings of the committee shall be held within the boundaries of the processing plant catchment area

(3) The committee shall be free to regulate its own procedure

Quorum of meetings

8 The quorum of the committee meetings shall be 2/3 of the membership

Annual Report

9 (1) The committee shall, within three months after the end of each financial year, prepare and submit to the County Executive Member a report of the operations of the committee for the immediate preceding year

(2) The report referred to in subsection (1) shall contain among others—

(a) the Charge collected by the committee during that financial year,

(b) data itemizing the application of the Charge,

(c) the annual audited accounts of the Charge,

(d) challenges faced in the implementation of the Act,

(e) and any other matter relevant to the implementation of the Act

(3) The County Executive Member shall, within twenty-one days of receiving the annual reports, consolidate the reports into one report and submit it to the County Executive Committee

(4) The County Executive Member shall within fourteen days transmit the report to the Clerk of the County Assembly for purposes of Tabling and consideration by the County Assembly
PART IV—PAYMENT OF CHARGE

Payment of charge

10 The charge imposed under this Act shall be payable by the flower producer/seller to the county government through the processing plant at the time when the plant takes delivery of the produce.

(2) Any person whether within or outside the county who buys or markets on behalf of a flower producer/seller, flowers on which charge is payable and on which no charge has been paid shall deduct from the money payable to the flower producer/seller an amount equal to the charge payable on the produce and remit the amount to the county government.

(3) The processing plant shall ensure that all the amounts deducted as charge are remitted to the County Government by the 20th day of the next month.

(4) The County Government may deploy inspectors to processing plants and barriers to ensure compliance with provisions of this Act.

(5) In any proceedings it shall be presumed, where flower service on which charge is brought in regard to failure to pay or remit charge, that no charge has been paid on that produce until the contrary is proved.

(6) Any processing plant which fails to comply with the provisions of sub-section (3) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

(7) Notwithstanding the provisions of sub-section (6) the County Government may impose a penalty for late remittance of the charge due and owing.

(8) The County government shall recover charge remittable by the plant whether or not the plant collected the charge from the flower producer/seller and the charge owing shall be a civil debt recoverable summarily.

Obligation to keep records

11 (1) The processing plant shall make and keep such up to date books, accounts and records as are reasonably necessary to determine the mass of flowers supplied to it and charge deductions made thereof for a period of at least seven years after the completion of the transactions to which they relate.

(2) The County Government may by notice in writing given to the processing plant, direct the plant as to the books, accounts and records the processing plant is required to make and keep.
(3) An authorized officer shall be allowed access, within working hours to the records referred to in subsection (1)

(4) Any processing plant which fails to comply with the requirements of this section commits an offence and shall on conviction be liable to a fine not exceeding Three million shillings

**Charge on flowers on transit**

12 The authorized officer shall ensure that charge on flower service from the county on transit to other counties is collected at barriers set up at the points of entry as per Regulations made by the Executive Committee Member and shall ensure that all the amounts collected are accounted for and remitted to the County government

**PART V— MISCELLANEOUS**

**Offences by an authorized officer**

13 An authorized officer having a duty to perform under this Act and who—

(a) interferes with any process or person under this Act, so as to defeat the provisions, requirements or purposes of this Act,

(b) where required under this Act to do anything, or to give effect to the provisions of this Act, fails to do such thing,

(c) without reasonable cause omits to do something in breach of his or her duty under this Act

(d) willfully contravenes the provisions of this Act to give undue advantage or favor to another person,

(e) fails to prevent or report to the County Government or any other relevant authority, the commission of an offence committed under this Act,

commits an offence and shall be liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or both

**Variation of charge**

14 (1) The Executive Committee Member may from time to time vary charge payable under this Act

(2) The variation of charge shall be in writing and published in the Gazette
Regulations

15 The Executive Committee Member may make Regulations for the better carrying out of the purposes and provisions of this Act

Personal liability

16 Neither the Executive Committee Member nor any other person shall be personally liable to any action or proceedings for or in respect of any act or thing done or omitted to be done in good faith in the performance or exercise or intended performance or exercise of any duty or power imposed or conferred by or under this Act

Saving close

17 Nothing contained in this Act or any rules or regulations made pursuant thereto shall prejudice or affect collection of charge under the previous by-laws of the defunct local authority of the county, and where anything in this Act or any rule is inconsistent with any such provision of the by-law, the provisions of this Act shall prevail

Past Directions, Resolutions, Orders and Authorizations

18 All directions, resolutions, orders and authorizations given by laws made and licenses, receipts or permits issued by local authorities for payment of charge within the county under the Local Governments Act (now repealed) and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made under this Act

Offence and Penalty

19 Every person who fails to comply with the provisions of this Act would be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment not exceeding six months or both

Special prosecutor

20 The county government shall liaise with the Director of Public Prosecutions for the appointment of a special prosecutor for purposes of offences committed under this Act
MEMORANDUM OF OBJECTS AND REASONS

The principle object of this Bill is to establish and to regulate the collection of a flower charge in Nakuru County. The aim of the Bill is to establish and set a charge for the enterprise of flowers within Nakuru County and to further set requisite regulations and institutions to govern this process. To this regard the Bill establishes a committee whose functions revolve around the collection of the charge and the uses of the money collected.

PART I of the Bill contains preliminary provisions,

PART II of the Bill establishes the Flower Service Charge,

PART III of the Bill establishes the Flower Service Charge Committee, its composition, the conduct of the committee’s meetings, its quorum and matters around its reporting,

PART IV of the Bill speaks to the detail of who receives the paid charge. It also speaks to the keeping of the records of the charge and,

PART V of the Bill contains the miscellaneous provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions that delegate any powers, neither does it limit any fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill is a county Bill that draws validity from county functions as elucidated in the part II of the fourth schedule of the Constitution of Kenya, 2010.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 16th July, 2020

KIBET KURGAT,
Member of County Assembly