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The Narok County Trade Licensing Bill 2021

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THE NAROK COUNTY TRADE LICENSING BILL, 2021

A Bill for

AN ACT of the County Assembly of Narok to establish a framework and provide a mechanism for grant of trade licenses within Narok County and for connected matters

ENACTED by the County Assembly of Narok as follows—

PART I—PRELIMINARY

Short title and commencement

1 This Act may be cited as the Narok County Trade Licensing Act, 2021 and shall come into force upon publication in the Kenya Gazette

Interpretation

2 In this Act, unless the context otherwise requires—

“approved form” means a form approved by the licensing authority,

“licensing officer” has the meaning assigned to it under section 20,

“business” includes a trade or occupation

“county” means Narok County,

“county assembly” means Narok County Assembly,

“county government” means the County Government of Narok

“executive committee member” means the Executive Committee Member responsible for trade in the County,

“holder” in relation to a trade license, means the person to whom the license is granted or to whom a trade license is transferred or assigned to

“license fee” means the fee payable for the grant or renewal of a trade license as prescribed in the Second Schedule of this Act

“licensing authority” means an officer of the county government appointed under section 4,

“premises” means any structure, whether of a permanent or temporary nature in which trade is carried on and includes a motor vehicle if trade is carried on it,

“system” means the trade licensing system or portal,

“trade license” means a license granted under this Act or any other law to conduct a business within the County and shall be in the prescribed form,
"user" means a person who does the filing or lodging of any document with the licensing authority using the system, or does making of any application submission or request in the system under the Act

Object and Purpose

3 The object and purpose of this Act is to provide for the implementation of paragraph 7 of Part 2 of the Fourth Schedule to the Constitution and specifically—

(a) provide a framework within which the County Government may perform its functions and exercise its powers under the Constitution to license certain business activities,

(b) establish a framework for the conduct and regulation of business in the County, and

(c) establish a mechanism to reliably raise revenue in the County to enable the County Government to deliver services effectively

PART II—ADMINISTRATION

Designation of the licensing authority

4 (1) The Chief Officer responsible for trade shall be the licensing authority for purposes of this Act

(2) The licensing authority may designate or appoint a County Public Officers in writing as a licensing officers in every county department or as he or she may deem necessary

Responsibilities of the licensing authority

5 (1) Without prejudice to the generality of section 4, the licensing authority shall be responsible for granting trading licenses in the County and shall—

(a) grant and issue licenses under this Act and any other applicable law,

(b) withdraw or cancel a license issued under this Act,

(c) impose such conditions on a license issued under this Act,

(d) be an authorized officer under this Act, and

(e) perform such other functions as may be delegated by the County Treasury and/or the Executive Committee Member

(2) The licensing authority may, whenever necessary delegate any of his or her functions other than a function under sub section (1) (e) to any other person or institution appointed pursuant to section 6 of this Act
PART III—TRADE LICENSING

Application for Trade License

6 (1) Save and except as may be provided in any other written law, any person intending to carry on or conduct any business or trade in the County shall first apply and obtain a valid trade license as provided in this Act or other written law of the County.

(2) Every person carrying on or conducting a business or trade in the County shall take out a valid trade license in respect thereof which shall be renewable every year on such terms and conditions as may be prescribed.

(3) No person shall conduct a business or carry on a business or trade within the County unless the person is the holder of a valid trade license in accordance with this Act or other County law.

(4) A distributor who is delivering goods to retailers within the county shall not be required to hold a trade license unless the distributor has premises within the county or directly sells goods to consumers within the county but shall hold other applicable licenses.

(5) The application shall contain—

(a) a confirmation that the applicant has complied with all the requisite regulatory requirements pertaining to the business or trade in respect of which the application is made and obtained all the certificates in respect thereof, and

(b) an undertaking that business or trade in respect of which it is made shall be carried out only in a designated trading area.

Businesses to be licensed

7 (1) An application under section 6 for a grant of a trade license shall—

(a) be made through the system by filling all the required entries,

(b) contain such information and accompanied by such documents as may be required and

(c) be accompanied by the prescribed application fee.

(2) A fee paid prescribed as application fee shall not be refundable.
Late Application

8  (1) An application for a license by a holder of a license in the immediate preceding year shall be made not later than the 31st day of March in each year

(2) An application described under subsection (1) which is made after 31st of March shall be subject to a penalty of an amount stipulated by the County Assembly

Approval and grant of license

9  (1) On consideration of the application, the licensing authority may approve and grant the license applied for if satisfied that—

(a) the applicant has complied with the requirements for a grant of the license, including any requirements as to health, hygiene and safety applicable to the trade license applied for, and

(b) the license fee has been paid to the County Treasury

(2) A trade license granted under this section shall be granted subject to such conditions as may be specified therein

(3) Where the licensing authority is not satisfied that the application meets the requirements of this Act the officer shall reject the application and shall within fourteen days of such rejection and shall communicate to the applicant giving reasons for the rejection of the application

(4) An applicant whose application for a license is rejected under subsection (3) may re-submit an application upon complying with the reasons for rejection

(5) A trade license shall itemize the nature and kind of business or businesses which the holder is allowed to undertake, premises and location where the business is located

(6) Except as otherwise provided in the Regulations, a person to whom a license has been issued shall be authorized to only engage in the trade and carry out the business of the class specified in the license and at the premises indicated and not any other place

Interim license

10  Where an application for a license is awaiting verification and approval an interim license is generated with an expiry date of 31st March of the year to enable the licensing officer process the license
Renewal of licenses

11 (1) A holder of a trade license who wishes to continue to carry on conduct the same business or trade in the County shall before the expiry of his or her trade license, apply for the renewal of the license

(2) Upon consideration of the application under subsection (1), the licensing authority may grant the application for the renewal if—

(a) the applicant has complied with all laws relating to health, hygiene and safety applicable to the trade license,

(b) the applicant has not been in breach of the conditions or any of the conditions in the expiring license,

(c) the application fees has been paid to the County Treasury and

(d) the license fees payable for the renewal of the trade license has been paid to the County Treasury

(3) A trade license is deemed to be renewed for a calendar year

Validity of a license

12 (1) A license issued under this Act shall expire on the thirty-first day of December in each year

(2) Notwithstanding subsection (1), the Executive Committee Member shall classify the licenses to be valid for one day, one week one month, six months or one year depending on the nature of business or trade

(3) Every license shall be authenticated by the licensing authority or such other officer as the licensing authority may designate

Cancellation or suspension of a license

13 (1) The licensing authority may cancel or suspend a business or trade license granted under this Act if satisfied that—

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

(b) the holder of the trade license has breached a condition of the license

Provided that the licensing authority shall give the holder of a trade license notice not exceeding fourteen days of its intended cancellation or suspension within which the holder of the license may make representation to the licensing authority
(2) Where the authority cancels or suspends a license, the licensing authority shall give the holder of the license a written notice of the cancellation, suspension or revocation together with a statement of the reasons for the decision.

(3) Upon the lapse of the fourteen day notices under subsection (2) above, the suspension, cancellation or revocation of the license shall commence.

(4) Upon the suspension, cancellation or revocation of a trade license, the holder thereof shall immediately cease to conduct business, which would have been suspended or cancelled.

(5) If the licensing authority lifts the suspension, cancellation or revocation of a license, the holder of the license shall be at liberty to resume the business in respect thereof upon compliance with the requirements of issuing the license.

Surrender of license

14 A holder of a trade license may, after giving a written notice to the licensing authority, surrender the license by returning it to the licensing authority, provided that the surrender shall not entitle the holder to a refund of any fees or part fees paid in respect thereof.

Transfer of place business

15 (1) No person may carry on a business or undertake a trade in any place other than the place designated in the license.

(2) Without prejudice to the foregoing, a person to whom a license has been issued for the business of the class or the premises specified may, and upon payment of the fees prescribed therefore, apply to the licensing authority to transfer or vary the place of business but not the type or class of business.

(3) Where the licensing authority approves the application for transfer or variation of a designated area of trade or business, he or she shall, on payment of the fee prescribed, issue to the applicant a certificate of transfer.

Register of licenses

16 (1) The licensing authority shall, in consultation with the County Treasury, establish and maintain a register of trade licenses or a separate register in respect of each type of trade license issued in the County containing information as may be prescribed.

(2) Every trade license granted in the County shall be entered and maintained in the register or the separate register in respect of the trade.
and which shall, at a reasonable fee, be available for public inspection during usual government office hours

**Display and inspection of trading licenses**

17 A license issued in accordance with this Act shall be prominently and conspicuously displayed in the place of business and shall be open to inspection by a licensing officer at any time when the business is in operation

**Collaboration with other government agencies**

18 The Department shall collaborate with national government entities responsible for standardization quality control and counterfeit control in the implementation of this Act

**Reporting**

19 (1) The licensing authority shall, not later than three months after the end each calendar year cause to be prepared an annual report in respect to each financial year which shall consist of among others—

(a) the number and type of licenses issued during the year classified under—
   (i) each sub county and wards, and
   (ii) each town or urban area

(b) the challenges faced in the implementation of this Act, and

(c) the proposed measures for redress of the challenges in the implementation of this Act

(2) the annual report shall be generated from the system for clause (2) (a) above

(3) the annual report shall be submitted to the County Assembly and uploaded in the county government's official website for access by members of the public

**PART IV—ELECTRONIC TRADE LICENSING SYSTEM**

**Electronic system**

20 (1) The Executive Committee Member shall adopt such appropriate electronic system for the purposes of implementing this Act

(2) Any transaction under this Act carried out through the electronic system shall have legal effect
Transactions

21 (1) All trade licensing transactions under the Act shall be carried out through the electronic system.

(2) Notwithstanding paragraph (1), where a transaction cannot be carried out using the electronic system, the person seeking to carry out the transaction shall carry out the transaction through such other means as the licensing authority may determine.

(3) The licensing authority may refuse to process a transaction if the person seeking to carry out the transaction under paragraph (1) —

(a) fails to properly complete the prescribed form in accordance with the instructions contained in the form;

(b) fails to attach a document or provide the information in a prescribed form, or

(c) fails to pay the prescribed fee.

Obligation of users

22 (1) A user shall —

(a) carry out authorized transactions;

(b) complete such formalities as are required to become a registered user before accessing the system;

(c) meet the eligibility criteria at all times;

(d) be responsible for the security of his or her login credentials and for any access made using the login credentials.

Lodging of documents electronically for purpose of registration

23 (1) A user may lodge documents electronically for the purposes of registration.

(2) A document or instrument lodged electronically for the purpose of registration electronically has the same effect as if the document or instrument was lodged in the form of a paper document.

Payment

24 A user shall make payments in respect of processes under this Act through the existing payment platforms.

Processing of applications

25 (1) The licensing authority shall define the scope of activities of each designated licensing officer by a predefined role, responsibility or jurisdiction matrix within the system.
(2) A licensing officer shall, upon logging into the system have access to applications within the jurisdiction predefined in paragraph (1).

(3) A licensing officer shall be required to process all applications within the predefined jurisdiction within the period specified.

(4) A licensing officer shall, for the purposes of processing the applications, rely on the documentation and data available within the system and may, where necessary, refer to the backup of manual records.

(5) The verification of information provided by the user would be conducted to ascertain accuracy to inform additional charges if any.

(6) Upon completion of processing, the licensing authority shall make available to applicants the results of their applications electronically within the dashboards of the applicants and by the e-mail address provided while ensuring confidentiality and protection of privacy of the applicants.

(7) All electronic documents submitted to the licensing authority for processing shall be stored within a secure document management system and made available for reference within the system for future reference.

PART IV—INSPECTION AND ENFORCEMENT

Principles of enforcement

26 The enforcement of this Act shall be carried out in a manner that—

(a) recognizes and respects the private nature of persons or businesses licensed under this Act,

(b) supports and encourages compliance with this Act,

(c) promotes trade and business operations, and

(d) respects and observes the rule of law and fundamental rights.

Power of licensing authority to appoint licensing officers

27 (1) The Licensing authority may appoint in writing and in the Kenya Gazette licensing officers being County Public Officers for purposes of this Act.

(2) The Licensing authority shall issue badges and county identification cards to officers appointed as licensing officers.

(3) The licensing officer shall be required to produce the badges and county identification cards upon demand.

(4) The licensing officer shall be responsible for ensuring compliance with this Act and any other relevant law while enforcing this Act.
Power of entry

28 (1) The licensing authority or a licensing officer may enter any premises for the purpose of—

(a) Ascertaining whether the trader obtained or renewed a trade license,

(b) finding out whether the holder of a trade license is in compliance with a trade license or this Act,

(c) searching the premises or any part thereof in exercise of functions under this Act,

(d) inspecting or examining anything in or on the premises in relation to a condition in the trade license

(e) seizing anything that may afford evidence of the commission of an offence under this Act,

(f) taking extracts from, and taking copies of any documents in or on the premises in relation to a condition in the trade license or this Act and

(g) taking into or onto the premises such persons equipment and materials as the licensing officer reasonably requires for the purpose of exercising any of the powers under this Act

(2) Nothing contained in sub-section (1) shall permit the licensing authority or a licensing officer to enter the premises unless it is during the normal working hours of the business

(3) A licensing officer is authorized to enter a business premises on any of the following grounds—

(a) the owner or occupier is informed of the entry

(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 there is a contravention of any of the provisions of this Act in the business premises

(4) The officer undertaking inspection shall, at the conclusion of inspection complete the form prescribed under Regulations for every business whose license and compliance is inspected or entry made
Licences not to be granted for business situated in unauthorized places

29 A license shall not be granted to any class of business on a road reserve sewer line riparian land drainage systems and/or public parks and such other places that are not legally authorized to set up a business

PART V—OFFENCES

Penalty for offence under part III

30 (1) A person who —
(a) trades in a public market or any designated trading area without a license
(b) forges or alters a license without authority,
(c) who declares or gives any statement in relation to a trade license or other matter under this Act, which the person knows to be false or misleading to the licensing authority or licensing officer
(d) obstructs or opposes any officer in the execution of their duty or
Commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both

(2) A public officer who aids or abets the commission of an offence under this Act commits an offence and is liable upon conviction, to the same fine or term of imprisonment as the principal offender

General Offences

31 Where a person contravenes or fails to comply with any provision of this Act and a penalty thereof is not expressly provided by this Act, that person shall on conviction be liable to a fine not exceeding Kenya Shillings twenty thousand or to imprisonment for a term not exceeding three months or both

PART VI—MISCELLANEOUS

County assembly to determine fees payable

32 (1) The county assembly shall determine the license fees payable for the grant or renewal of a trade license, including any penalties payable for the late payment of such trade license fees

(2) Where the county assembly does not determine the fee payable for a particular year in accordance with subsection (1), the fee payable for that year shall be deemed to be the fee that was applicable in the preceding year
Right of appeal

Any person desirous of appealing against the decision of a licensing authority shall appeal to the Executive Committee Member by lodging an appeal in that regard in writing in the English or Kiswahili language within seven days of the decision of the licensing authority.

Content of the appeal

(1) The appeal shall concisely state—
   (a) the grievance against the decision of the licensing authority,
   (b) the capacity or legal status upon which the grievance is made,
   (c) the relief sought, and
   (d) the concise reasons upon which the appeal is made.

(2) On lodging the appeal, the appellant shall at the same time pay the fees prescribed in respect of the appeal.

Time of hearing the appeal

On receipt of the appeal, the Executive Committee Member shall set a date for a hearing of the appeal which shall not be later than forty-five days after receipt of the appeal.

Decision of the Executive Member

The Executive Member or relevant Executive Member as the case may be, shall hear and determine the appeal—

(a) in accordance with substantial justice without due regard to technicalities,

(b) make a decision thereon, and

(c) notify the appellant of the decision within seven days of the hearing.

Reference to the High Court

A person dissatisfied with the decision of the Executive Member or relevant Executive Member with regard to any matter under this Act or the Regulations may within twenty-one days appeal to the High Court.

Regulations

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

39 A trade license issued and Savings is valid prior to the coming into force of this Act, shall have effect at the coming into force of this Act as if granted under this Act and on such terms and conditions applicable at the time of issuing the trade license
MEMORANDUM OF OBJECTS AND REASONS

This Bill is intended to establish a framework and provide a mechanism for grant of trade licences within Narok County.

The structure of the Bill is as follows:

**Part I** contains preliminary clauses.

**Part II** contains clauses for designation and responsibilities of licensing authority.

**Part III** sets out procedures for application and approval of trade licences.

**Part IV** contains clauses on electronic trade licensing system.

**Part V** prescribes the various penalties for offences under the Act.

**Part VI** has miscellaneous provisions.

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

Dated the 23rd February 2021

KIROKORR TIPAPA,
Chairperson, Committee on Planning,
Trade Tourism and Co-operatives Development