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**COUNTY OUTDOOR ADVERTISING CONTROL
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**THE COUNTY OUTDOOR ADVERTISING
CONTROL BILL, 2018**

A Bill for

AN ACT of Parliament to provide for a legal framework for the regulation of outdoor advertisement in the counties; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the County Outdoor Advertising Control Act, 2018.

Short title.

2. In this Act—

Interpretation.

“advertisement” means any notice or representation employed wholly or partly for the purposes of drawing the attention of the public to or promoting any product or service;

“amenity” means the effect of an advertisement upon the appearance of the building or structure or the immediate neighbourhood where it is displayed, or its impact over long distance views;

“arena” means a venue for indoor or outdoor sports, concerts or other events;

“county executive committee member” means the county executive committee member responsible for matters relating to outdoor advertising;

“hoarding” means a wooden structure surrounding a structure or building;

“licensee” means a person who has been licensed to carry out outdoor advertising under this Act;

“site” includes the land or building on which an advertisement is displayed;

“sponsorship marketing plan” means an agreement between a property owner, facility owner, facility operator, or occupant of the premises of a sports, cultural or social arena and a sponsor pursuant to which the sponsor is allowed to include the sponsor’s logo, slogan or other advertisement on the advertising displays; and

“vehicle” includes any vessel on any inland waterway or on coastal waters, trains and aeroplanes but does not include vehicles used principally for the display of advertisements.

- 3.** (1) This Act does not apply to —
- (a) a notice or display setting out —
 - (i) directions to property for sale, lease, or exchange where the display is not visible from a highway;
 - (ii) the name of the owner or occupant of a premises or to identify a premises;
 - (b) anything employed wholly as a memorial, railway or road signal or a placard or other object borne by an individual;
 - (c) an advertisement —
 - (i) on enclosed land and not easily visible from outside the enclosure or from any part over which the public have a right of access;
 - (ii) relating to the location or direction of a religious institution;
 - (iii) relating to a public education institution or public medical institution;
 - (iv) incorporated in the fabric of a building but not including an advertisement fixed to or painted on a building;
 - (v) displayed inside a building, and not within one metre of any external door, window, or other opening through which it is visible from outside the building; or
 - (vi) displayed on or in any vehicle normally employed as a moving vehicle;
 - (d) a notice or sign displayed on —
 - (i) any premises or land in order to advertise the fact that a person is carrying out a profession, business or trade at those premises; or
 - (ii) a building or land as a means of identification, direction or warning;

Exemption from application of Act.

- (e) an advertisement of a product, goods, or services sold by persons on the premises of a sports, cultural or social arena on a regular basis, or advertisement of any products, goods, or services marketed or promoted on the premises of an arena pursuant to a sponsorship marketing plan.

PART II – OUTDOOR ADVERTISING LICENSE

4. (1) A person who intends to engage in outdoor advertising shall submit an application for an outdoor advertising licence to the respective county executive committee member.

Application for licence.

(2) An application for an outdoor advertising licence shall be in the prescribed form and shall be submitted together with-

- (a) the prescribed application fee;
- (b) the written consent of —
 - (i) the owner of the site or any other person with an interest in the site entitled to give consent; and
 - (ii) the Kenya National Highway Authority, where the advertisement is to be displayed on land situated along a highway land;
- (c) a block plan of the property upon which an advertising sign is to be erected, drawn to a scale specified by the county executive committee member —
 - (i) laying out every building line and servitude on the site;
 - (ii) the position and dimensions of the advertising sign in relation to the two boundaries of the property closest to the proposed advertising sign; and
 - (iii) the location of any public street or any building on a property adjacent to the property upon which such sign is to be erected;
- (d) an artistic impression showing the detail, location and measurements of the proposed advertising sign;

- (e) a diagram of the property laying out the position of the proposed advertisement in relation to other free-standing advertisements and the closest two boundaries of the property; and
- (f) any other information which may be prescribed in the county legislation.

(3) The county executive committee member may extend the period within which an application for a licence in any case may be made and may prescribe such conditions as the committee member may consider necessary for the application of a licence outside the prescribed time.

5. In considering an application for a licence under section 4, the county executive committee member shall take into account —

Consideration of application.

- (a) the effect the advertisement will have on the general characteristics of the area, including its effect on any features of historic, archaeological, architectural, landscape, cultural or other characteristics;
- (b) whether the proposed advertisement will —
 - (i) endanger or obscure anyone using any highway, railway, waterway, dock, harbour or aerodrome;
 - (ii) hinder the reading or interpretation of any traffic sign, railway signal or aid to navigation by water or air;
 - (iii) hinder the operation of any device used for the purpose of security, surveillance or for measuring the speed of any vehicle;
 - (iv) be so distracting or confusing as to pose a hazard to road users in the vicinity of the advertisement; or
 - (v) obscure any existing and legally erected advertisement;
- (c) the position of the advertisement on the host building, its scale, size dominance and sitting in relation to that building and characteristics of the surrounding area;

- (d) the effect of the proposed advertisement when read with other advertisements on the building or in the surrounding area and whether the erection of the advertisement will result in clutter;
- (e) the design and materials of the advertisement or the structure containing the advertisement and its impact on the appearance of the building on which it is to be erected;
- (f) in the case of a freestanding advertisement, the design and materials of the structure and its impact on the appearance and character of the area where it is to be located; and
- (g) the impact of the advertisement, including its size, scale and levels of illumination, on the amenities of people living nearby and the potential for light pollution.

6. (1) The county executive committee member shall, within fourteen days of receipt of an application under section 4, consider the application and may —

Issuance of a license.

- (a) where the applicant meets the requirements of this Act, approve the application and issue a licence to the applicant;
- (b) approve the application subject to such conditions as the county executive member may impose; or
- (c) reject the application.

(2) Where the county executive committee member receives more than one application for the same advertisement space, the county executive committee member shall consider the applications in the order in which the applications were received.

(3) The county executive committee member shall notify the applicant in writing of any decision made under subsection (1) within seven days of the decision being made with reasons therefor where applicable.

(4) An approval shall lapse if the advertisement is not erected within six months of the grant of a licence under section 5.

7. The county executive committee member shall, in considering an application and where appropriate, consult

Consultation.

other relevant public bodies that have an interest in the safe display of advertisements including the county executive committee member responsible for planning, environment, management, transport and roads within the county.

8. An outdoor advertising licence —

Duration of licence.

(a) comes into force on the date specified in the licence or, if no date is specified, the date on which it is issued and upon payment of the prescribed outdoor advertisement fee; and

(b) remains in force for the period specified in the licence.

9. (1) A licensee shall not alter, remove, re-erect or upgrade an advertisement which a licence has been issued unless the licensee has applied for and obtained the approval of the county executive committee member.

Advertisement not to be altered, removed, etc

(2) A licensee shall not be required to obtain approval under subsection (1) for the carrying out of maintenance work with respect to an advertisement for which a licence has been issued.

10. (1) A licensee may at least one month before expiry of the licence, apply to the county executive committee member for the renewal of the licence.

Renewal of licence.

(2) An applicant for the renewal of a licence under subsection (1) shall submit to the county executive committee member —

(a) an application for renewal in the prescribed form;

(b) the written consent of —

(i) the owner of the site or any other person with an interest in the site entitled to give consent; and

(ii) the Kenya National Highway Authority, if the advertisement is displayed on land situated along a highway land;

(c) such other information as the county executive committee member may require.

11. (1) The county executive committee member may revoke or permit the continual licensing of the licensee as issued under section 6 as the member may consider necessary with reasons therefor where the advertisement—

Revocation of licence.

- (a) by its design, prejudices operations to the area in which it is located;
- (b) constitutes or has become a danger to any person or property; or
- (c) obscures any other advertisement, natural feature, architectural feature or visual line of civic, architectural, historical or heritage of significance.

(2) The county executive committee member shall not revoke a licence or impose a condition under subsection (1) unless the county executive committee member—

- (a) issues to the licensee, a notice of at least twenty-one days of the intention to revoke the license or impose a condition for the continued licensing of the licensee; and
- (b) grants the licensee an opportunity to be heard on the revocation or intended conditions.

(3) The county executive committee member shall consider any representation made by a licensee under subsection (2) and shall notify the licensee of the decision with the reason therefor within seven days of making the decision.

(4) A revocation issued under subsection (1) shall specify the date on which the display shall be removed.

12. A person aggrieved by the decision of the county executive committee member under this Act shall apply to a court of law for review of the application within fourteen days.

Review.

13. A licensee shall remove an advertisement within seven days of the revocation or expiry of an outdoor advertising licence.

Removal of advertisement.

PART III – MISCELLANEOUS PROVISIONS

14. A licensee shall —

- (a) maintain the site used for the display of an advertisement in a reasonably clean and tidy condition;
- (b) maintain any structure or hoarding used for the display of advertisements in a safe condition and in a manner that does not endanger the public;

Maintenance of signs and costs.

- (c) upon the removal of an advertisement, restore the site to a safe condition that does not endanger the public and in a reasonably clean and tidy condition so that it does not impair the site's visual amenity; and
- (d) meet all costs arising from the maintenance or removal of the advertisement.

15. (1) The county executive committee member shall cause a notice of an application for the grant or renewal of a licence to be published in the prescribed form on the county website and displayed on notice boards and sites accessible to the public..

Public participation.

(2) The county executive committee member shall, in the notice under subsection (1) invite any interested member of the public to submit comments or representations on the application.

(3)The county executive committee member shall consider all comments or representations received pursuant to a notice under subsection (2) before determining an application under this Act.

16. (1) The authorized officer may, on any day other than a Sunday or public holiday, carry out an inspection of any advertisement.

Inspections.

- (2) An authorized officer under subsection (1) shall —
 - (a) before the commencement of an inspection, produce a written confirmation of the officer's authorization to the owner of the property on which an advertisement is displayed; and
 - (b) carry out the inspection with due regard to decency, orderliness and the right to property under Article 40 of the Constitution.

17. A person who willfully or recklessly destroys or damages any advertisement belonging to another person, commits the offence of vandalism and is liable, upon conviction —

Vandalism of advertisement.

- (a) in the case of a first offence, to imprisonment for a term not exceeding nine months, or to a fine not exceeding two hundred thousand shillings, or to both; and

- (b) for any subsequent offence, to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred thousand shillings, or to both.

18. A person who contravenes any provision of this Act for which no penalty is provided is liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred thousand shillings or to both.

General penalty.

19. (1) A county assembly may enact county specific legislation for the implementation of this Act in the respective county.

County legislation.

(2) Without prejudice to the generality of the foregoing, legislation made under subsection (1) may provide for —

- (a) the service of any notice required under this Act;
- (b) the fees and charges to be paid in respect of any matter required for purposes of this Act;
- (c) the forms of application for outdoor advertising;
- (d) the different classes and duration of an outdoor licence;
- (e) the acceptable size and physical location of outdoor advertisement displays;
- (f) the performance of the functions, the exercise of the powers and discharge of the duties of the committee under this Act; and
- (g) any other matter necessary to give effect to the provisions of this Act.

20. (1) An outdoor advertising licence that is in force immediately before the commencement of this Act shall —

Savings and transitions.

- (a) be deemed to have been issued under this Act; and
- (b) remain in force, subject to the provisions of this Act, for the remainder of the period of the licence.

21. Section 3 of the Physical Planning Act is amended by —

Consequential amendment.

- (a) deleting the definition of the word “advertisement”; and
- (b) deleting paragraph (d) appearing in the second proviso to the definition of the term “development”.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to ensure that outdoor advertisements respect amenity and do not prejudice public safety, including road safety and that the display of outdoor advertisements contributes positively to the appearance of a well-cared for and attractive environment in the counties. Advertising is a rapidly growing industry and now forms part of everyday culture, often adding colour to our streets. It is a valuable source of information and is viewed by many also as a form of entertainment.

Outdoor advertising is a key element of the industry and contributes to the creation of a vibrant and competitive economy. There is however a need to balance the requirements of the industry with the protection and, where possible, enhancement of the character and appearance of our counties. Further there is also a need to ensure that advertisements will not prejudice public safety.

This Bill therefore seeks to provide a legal framework for the control of outdoor advertising in order to achieve a balance between the need to advertise and the protection of amenity and public safety. The Bill proposes to provide for the procedure for the application for and issuance of an outdoor advertising license.

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

The Bill does not delegate legislative powers. However, the Bill limits fundamental rights and freedoms only to the extent of the provision of the powers of entry and inspection under clause 17.

Statement on how the Bill concerns county governments

This Bill seeks to provide a legal framework for the control of outdoor advertising in counties. Paragraph 3 of Part 2 of the Fourth Schedule to the Constitution provides for outdoor advertising as one of the functional areas of county governments. Therefore, the Bill concerns county governments in terms of Articles 110 (1) (a) of the Constitution in that it contains provision that affects the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill proposes to establish a framework for the control of outdoor advertisement through the issuance of licenses by the county executive committee member for the time being responsible for matters related to

advertising. Any costs, which would be nominal, would be defrayed from the funds allocated by the county assembly to the county executive in each year.

This Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 21st June, 2018.

S. L. POGHISIO,
Senator.