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**THE COUNTY LICENSING (UNIFORM PROCEDURES) BILL, 2019**

**A Bill for**

**AN ACT of Parliament to establish standards uniform procedures for licensing by county governments; and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the County Licensing (Uniform Procedures) Act, 2019 and shall come into operation six months after the date of assent of this Act.

Short title.

2. In this Act—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to licensing and business registration;

“county executive committee member” means the county executive committee member responsible for matters relating to finance in the respective county;

“electronic communication” means any information transmitted, sent, received or stored in magnetic, optical, computer memory, microfilm or similar device;

“licensing authority” means a person authorized by legislation to issue a licence; and

“licensing legislation” means the Act or statutory instrument under which a licence is granted.

**PART II—OBLIGATIONS**

3. A person shall, in the implementation of this Act or enactment of the respective county legislation, take into account—

Guiding principles.

- (a) the need to protect consumers of goods and services and the wider public;
- (b) the need to maintain public confidence in the respective sectors under which the licence is issued and that the imposition of licensing fees is carried out in a manner that does hamper the respective business or industry;

- (c) the need to ensure access to information relating to the conditions for issuance of licences and licensing procedures;
- (d) the need to ensure that the licensing procedures are simple and that licensing services are accessible to a person applying for a license;
- (e) cost effectiveness of the licensing process;
- (f) the importance of declaring and upholding proper standards of conduct by licensees;
- (g) the need to promote efficiency and effectiveness in the administration of the licensing processes; and
- (h) the licensing processes are undertaken in a fair and transparent manner.

4. The relevant licencing authority shall ensure that the process of applying for a licence under this Act is efficient by—

General duty on licensing authority.

- (a) providing for mechanisms for a person to make a simultaneous application for more than one licence;
- (b) preventing multiple licencing procedures;
- (c) ensuring that applicants are given adequate opportunity to make representations on an application for a licence; and
- (d) adhering to timelines relating to the processing of licensing applications as set out in this Act or the relevant licensing legislation.

5. The following principles shall guide the interpretation and application of this Act and any licensing legislation enacted by a county government—

Principles of interpretation and application.

- (a) simplicity of the process of application for a licence;
- (b) ensuring that the licensing framework is consolidated and requires persons to hold a minimum number of licenses and be subject to a minimum number of different licensing processes;

- (c) access to information relating to the licensing requirements and procedures;
- (d) enabling licence holders to respond to changes in the market quickly with minimum regulatory friction; and
- (e) certainty by having in place clear and consistent licensing conditions.

6. A county government shall, in establishing and administering a licensing regime—

Obligations of county governments.

- (a) protect the rights of consumers in the respective county;
- (b) support the regulation of developing markets;
- (c) ensure that the quality of goods produced and services delivered is of a high standard;
- (d) effectively administer control over persons engaged in types of activities that are potentially risky as threatening to the life and health of individuals property, State and public interest, nature and cultural heritage; and
- (e) ensure that the licensing fees imposed with respect to the licence are not prohibitive and do not hamper the business environment.

## PART II—LICENSING PROCEDURE

7. (1) An application for a licence, renewal, transfer or replacement of a licence or a variation of a condition for the issuance of a licence shall—

Application for granting, amendment, renewal restoration and replacement of license.

- (a) be made in writing and in the prescribed form;
- (b) contain such information as is prescribed under the relevant licensing legislation; and
- (c) be signed by the applicant or in the case of an application for transfer of a license shall be signed by both the applicant and the proposed transferee.

(2) A licensing authority may put in place mechanisms to for an application for a licence renewal,

transfer or replacement of a licence or a variation of a condition for the issuance of a licence to be made in electronic form.

(3) A person may make one application to the same licensing authority in relation to more than one licence with respect to goods or services falling within the same sector.

(4) A person shall pay to the relevant licensing authority the application fees payable under the relevant licensing legislation.

**8.** A county government shall, in the enactment of legislation or the administration of the licencing process prescribe for a single application process with respect to an application for more than one licence in such manner as it shall consider appropriate.

Single application process.

**9.**(1) The relevant licensing authority may serve a notice on the applicant requiring the applicant to provide such further information as may be required to determine an application for a licence under the respective licencing legislation.

Notice for further information.

(2) A notice under subsection (1) shall be made within three days of receipt of the application and shall specify the time within which the applicant shall furnish the information requested in the notice and the person to whom such information shall be furnished.

(3) The licensing authority may reject the application without dealing with it any further if the applicant fails to comply with the requirement of a notice under subsection (1).

(4) A person whose application has been rejected under subsection (3) shall forfeit any application fees paid to the respective licencing authority.

**10.** Where a licensing authority intends to vary the conditions of fees payable for the issuance of a licence, the licensing authority shall—

Consultation.

- (a) undertake public participation and consult with stakeholders likely to be affected at the formative stage of the proposal;

- (b) provide sufficient information to members of the public to enable them to make an informed decision;
- (c) allow for adequate time for consideration of proposals by members of the public;
- (d) take into account the comments and proposals submitted under paragraph (c); and
- (e) publicize the final decision taken with respect to the proposals.

**11.** (1) The relevant licensing authority shall publish, in at least one daily newspaper of wide circulation in the county, a notice of an application for licensing, where the relevant legislation requires an application to be advertised.

Advertising of applications.

(2) The notice referred to under subsection (1) shall—

- (a) provide for the submission, to the licensing authority by any person, of relevant information with respect to the application; and
- (b) set out the procedure by which, and the time within which, submissions shall be made to the licensing authority.

(3) The date referred to in subsection 2(b) shall not be earlier than fourteen days and not later than twenty eight days after the date on which notice is first published under this section.

**12.** (1) An applicant may withdraw an application at any time before a licence is issued under section 15.

Withdrawal of application.

(2) A person who withdraws an application under subsection (1) shall forfeit any fees paid in connection with an application made under this Act or the respective county licensing legislation.

(3) Notwithstanding subsection (2), a county government may enact legislation providing for circumstances under which fees paid by an applicant for a licence may be refunded.

**13.** (1) A licensing authority shall be deemed to have allowed an application if the licensing authority fails to determine the application within twenty-eight days after the application is made or within the time prescribed in the relevant licensing legislation, whichever is earlier.

Period of determination of application.

(2) In calculating a period referred to in subsection (1), the following periods shall be excluded—

- (a) any period between the date on which a request for further information or supporting evidence is made under section 9;
- (b) any period between the date on which a notice is published under section 9(2) and the date fixed by the notice as the date by which any submission with respect to the application must be lodged;
- (c) any period, not exceeding fourteen days, between the date on which the authority refers the application to another person and the date on which the authority receives a response to that reference from that other person; or
- (d) any period between the date on which the licensing authority refers the applicant for assessment and the date on which the authority obtains or receives the results of an assessment where the authority has referred the application for assessment in connection with the determination of the application.

**14.** A licensing authority may—

Determination of application.

- (a) grant an application for a licence unconditionally;
- (b) grant the application subject to conditions authorized by the relevant licensing legislation; or
- (c) refuse the application

**15.** (1) A licensing authority shall inform the applicant of its decision under section 14 within seven days of the decision.

Notice of decision on application.

(2) Where an objection has been raised with respect to an application for a licence, the licensing authority shall inform the person objecting to the issuance of a licence of its decision with respect to the objection.

(3) If the decision of a relevant licensing authority is to refuse an application, the authority shall inform the applicant, in writing, of the reasons why the application was refused.

**16.** (1) A licensing authority that grants an application shall issue to the applicant an original or replacement licence, as the case requires.

Issuance of licence.

(2) A licence shall be issued under subsection (1)—

- (a) when the relevant licensing authority informs the applicant of its decision to grant the license; and
- (b) upon the payment of any fee required by the relevant licensing legislation.

(3) A licence issued under this section shall include—

- (a) a unique identifier;
- (b) name of the licensing authority;
- (c) the name of the licensee;
- (d) the kind of licence it is;
- (e) a reference to the provisions of the relevant licensing legislation;
- (f) the authority conferred by the licence;
- (g) conditions to which the licence may be subject;
- (h) the date on which the licence comes into force;
- (i) the date on which the licence expires; and
- (j) such other information that the relevant licensing authority may consider appropriate to include.

**17.** (1) A licence comes into force on the date on which it is issued or on a date specified on the licence.

Duration of licence.

(2) A renewed licence comes into force on the date following the expiry date of the licence it renews and for the period stipulated in the licence.

(3) Subject to the provisions of the relevant licencing legislation, if an application for renewal of a licence is made before the date on which the licence would expire, the licence remains in force until the date on which the applicant is notified of the relevant licensing authority's decision on the application to renew the licence.

**18.** (1) A licensee shall be required to observe the following conditions in addition to those that may be imposed by the licensing authority or under the respective county legislation—

Conditions for issuance of licence.

- (a) to provide the service or carry out the business specified in the licence;
- (b) to comply with all applicable laws and the conditions for issuance of the licence;
- (c) to provide the licensing authority with information with respect to any change in its directorship or shareholding in accordance with section 16;
- (d) to pay such fees as may be prescribed; and
- (e) to maintain, and where required, submit to the licensing authority such information as may be necessary for the continued licensing of the licence holder

(2) A licencing authority shall, unless the circumstances or facts relating to the application vary and the licensing authority considers it proper, impose the same conditions for the issuance of the same type of licence.

**19.** (1) Subject to the provisions of this Act and licensing legislation enacted by a county, a licensing authority may vary a condition attached to a licence.

Variation of conditions of a licence.

(2) Before varying a condition of a licence under subsection (1), the licencing authority shall give notice in writing to the affected licensees and by publication in a newspaper of nationwide circulation.

- (3) A notice under subsection (2) shall—
- (a) specify the variation intended to be made with respect to the licence;
  - (b) set out the reasons for such variance;
  - (c) specify the time within which the variation shall take effect;
  - (d) require the licensee and any other person to submit any representations within thirty days from the date of the notice;
  - (e) specify the place from which information regarding the variation may be obtained; and
  - (f) set out such further information as the licencing authority may consider necessary.
- (4) Where a variation is intended to remedy or prevent an act which may be against public interest, the licencing authority may vary the condition and inform the licensee in writing within one day of such variation and reasons thereof.

- 20.** (1) A licensing authority may cancel a licence if—
- (a) the licensee fails to meet any condition imposed by the licencing authority;
  - (b) fails to comply with the provisions of the licencing legislation; or
  - (c) the licensee surrenders the licence to the relevant licensing authority together with a notice setting out a request that the licence be cancelled.

Cancellation of licence.

- 21.** (1) An applicant who is aggrieved by a decision of the relevant licensing authority to reject an application or grant an application subject to conditions or to cancel a licence may apply for a review of the decision—
- (a) in accordance with the relevant licensing legislation; or
  - (b) to the extent to which the relevant licensing legislation does not provide the applicant with such right, to the county executive committee member responsible for matters relating to the subject of the licence.

Review of decisions.

(2) An objector who is aggrieved by a decision of the relevant licensing authority to grant an application or grant an application unconditionally may apply for a review of the decision—

- (a) to the extent to which the relevant licensing legislation provides the applicant with a right of appeal or review; or
- (b) to the extent to which the relevant licensing legislation does not provide the applicant with such right, to the county executive committee member responsible for matters relating to the subject of the license

### **PART III—ADMINISTRATION OF LICENSING SCHEMES**

**22.** A person who holds a license shall—

Change in particulars.

- (a) notify the relevant licensing authority of any change that occurs in the licensee's name, address or registered particulars, within fourteen days after the change; and
- (b) make a declaration to the relevant licensing authority that the licensee's registered particulars have not changed from the date on which the licence was issued or the date on which the licensee last made a declaration under this section.

**23.** (1) A licencing authority shall keep and maintain a licence register.

Administration of register of licences.

(2) A register under subsection (1) shall contain—

- (a) information contained in a licence and specified under section 16;
- (b) the type of entity for which the licence is issued;
- (c) information with respect to any re-issuance, revocation, suspension, transfer or variation of a licence; and
- (d) such other information as may be prescribed under the respective county legislation.

(3) A licencing authority shall—

- (a) make the register available for inspection by members of the public; and

- (b) provide such information with respect to a licence issued by the authority upon application under the respective licencing legislation.

(4) A licencing authority to which an application for information is made may charge a prescribed fee for the provision of information under subsection (3) and the fee shall not exceed the actual cost of making copies of such information and where applicable, supplying the information to the applicant.

**24.** (1) A licencing authority shall be guided by the following principles in setting the fees for issuance of a licence under the respective county legislation—

Licencing fees.

- (a) authority to set the fees and the setting of fees within the scope of the authority;
- (b) need to ensure efficiency in the delivery of goods and services;
- (c) accountability;
- (d) public participation;
- (e) cross-subsidization where fees collected for providing a category of goods or services covers the costs incurred in providing goods and services in another category in accordance with existing legislation;
- (f) adherence to existing policy on the charging and collection of fees; and
- (g) avoidance of multiple licencing in a specific sector.

(2) The county governments shall establish a licensing fees policy for the imposition of fees within the respective county.

(3) A county government shall, in establishing a fees policy, be guided by the principles set out under this Act.

(4) A licencing authority may charge—

- (a) a licence fee for an application for the grant, transfer or renewal of a licence; and
- (b) an annual licence fee for administering and monitoring a licence.

(5) In determining the fee payable with respect to a licence, a licencing authority—

- (a) shall act in accordance with the fees policy;
- (b) may fix different fees with respect to the different types of licences;
- (c) may waive the requirement for fees;
- (d) shall take into account the costs incurred in administering the licencing scheme; and
- (e) shall ensure that the fees set do not adversely affect competition and investment.

**25.** (1) Where a licensing authority is required to serve a notice on a person under this Act or any other licencing legislation, the Authority shall serve the notice—

Service of notices.

- (a) in the case of an individual by—
  - (i) delivering it personally to the individual;
  - (ii) sending it by registered post, addressed to the individual at the address indicated on the application as the individual's postal address, for service of notices;
  - (iii) leaving it with an authorised person at the individual's place of residence or business; or
  - (iv) sending it by means of electronic communication address to the individual at the address indicated in the application as the individual's address for service for electronic communication; and
- (b) in the case of a company by—
  - (i) delivering it to the person concerned in the company's management and authorized to receive documents on behalf of the company;
  - (ii) sending it by registered post, addressed to the company at the address indicated on the

application as the company's postal address, for service of notices;

(iii) leaving it with a person authorised to accept service on behalf of the company; or

(iv) sending it by means of electronic communication address to the company at the address indicated in the application as the company's address for service for electronic communication.

(2) A notice required to be served on joint applicants or joint licensees shall be deemed to have been served on all of them when it is served on any of them.

**26.** A fee payable with respect to a licence or an application for a licence may be recovered by the relevant licensing authority as a debt in a court of competent jurisdiction

Recovery of unpaid fees.

**27.** The Cabinet Secretary may make Regulations for the better carrying out of this Act.

Regulations.

**28.** (1) A county assembly may enact legislation to give further effect to the provisions of this Act in the respective county.

County legislation.

(2) Notwithstanding the generality of the provisions of subsection (1), a county assembly may enact legislation to provide for—

- (a) singular licence application framework;
- (b) conditions applicable to different categories of licences;
- (c) measures to ensure ease of doing business within the respective county;
- (d) prescribed forms for the application for a licence;
- (e) a fee that may be imposed with respect to an application made under this Act;
- (f) conditions for the refund of any fees paid with respect to an application made under this Act;
- (g) framework for the review of a decision of a licencing authority under this Act; or

- (h) such other matter as the respective county assembly may deem necessary for the better carrying out of the provisions of this Act.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The principal objective of this Bill is to put in place uniform procedures for licensing of various activities by counties. One of the ways in which county governments generate revenue is through the issuance of licenses for activities related to the functions of county governments under Part 2 of the Fourth Schedule to the Constitution. As there are forty-seven county governments, it has become apparent that there are varied procedures in applying for licenses which has had a negative impact on the ease of doing business in the counties. This Bill therefore process to establish uniform procedures for licensing to ensure certainty in the process and ultimately encourage private sector players to do business in the counties.

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

Clause 19 of the Bill provides that the county executive committee member may make Regulations with the approval of the county assembly. The Bill therefore delegates legislative powers to the county executive committee member. The Bill however does not limit fundamental rights and freedoms.

### **Statement on how the Bill concerns county governments**

Part 2 of the Fourth Schedule to the Constitution provides the functions of county governments which necessarily include the licensing of certain types of activities which affect these functions. The Bill therefore concerns county governments in terms of Articles 110(1)(a) of the Constitution in that it contains provisions that affect 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**

This Bill does not propose any additional expenditure of public funds. This Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

MERCY CHEBENI,  
*Senator.*