

SPECIAL ISSUE

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GARISSA COUNTY ACTS, 2018

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**NATIONAL COUNCIL FOR
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THE GARISSA COUNTY OUTDOOR ADVERTISING ACT, 2018

No. 9 of 2018

Date of Assent: 26th November, 2018

Date of Commencement: See Section 1

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THE GARISSA COUNTY OUTDOOR ADVERTISING ACT, 2018

AN ACT of the County Assembly of Garissa to provide for authorization, approval, regulation and management of outdoor advertisement and for related purposes

ENACTED by the County Assembly of Garissa as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Garissa County Outdoor Advertising Act, 2018 and shall come into force upon publication in the Gazette.

Interpretation.

2. In this Act—

“advertisement” means any representation by a word, or abbreviation thereof, letter, logo, symbol, sign, figure, painting, drawing or other pictorial representation, or light, displayed in or in view of any public place, within the jurisdiction of the County for the purpose of drawing attention of the public to or promoting any product, service, business or commercial enterprise, trade, person, election or candidature in an election, voter registration, entertainment, function, meeting or other event, aspects relating to security and news headlines;

“advertising” means the act or process of displaying an advertisement and “advertise” has a corresponding meaning;

“advertising device” includes any board, framework, screen, signboard, flag, banner, or lamp or neon signs or any other fixture or device used or constructed for the purpose of advertisement;

“department” means the Department of Urban Planning and Development established under this Act;

“permits” means a permit to display an advertising device issued under the provisions of this Act; and

“county executive member” means the County Executive Committee Member for the time being responsible relating for urban planning and development.

Object of the Act

3. The object and purpose of this Act is to—

- (a) eliminate the danger posed to the public through erection of unregulated outdoor advertisement;

- (b) maintain the County ambience in a safe, clean and pleasant condition at all times;
- (c) collect revenue from outdoor advertising;
- (d) allow the promotion of information, industry and trade through outdoor advertising; and
- (e) regulate and manage outdoor advertising.

Application

4. This Act shall apply within the geographical boundaries of Garissa County.

PART II—ADMINISTRATION

Administration of the Act

5. This Act shall be administered by the Department.

Department

6. (1) The Garissa County Department of Urban Planning and Development shall, subject to any applicable law, have the overall responsibility of overseeing the regulation and management of outdoor services in the County.

(2) The County Public Service shall assign such number and designations of public officers as shall be necessary to enable the Department undertake its obligations under this Act.

(3) A power conferred on or function assigned to the Department under this Act shall be deemed to be power or function of the County Executive Member.

(4) The Department shall decentralise its services to the lowest unit of the county's administration to ensure access of its services throughout the County.

Functions of the County Executive Member

7. The County Executive Member shall—

- (a) formulate County policy and legislation on outdoor advertising;
- (b) subject to relevant legislation, receive any grant or donation;
- (c) issue, renew, suspend or revoke licenses and permits;
- (d) impose fines for breach of any conditions imposed in any license or permit issued under this Act;

- (e) charge fees for any services the county may render under this Act;
- (f) with the approval County Executive Committee, declare any area to be a protected area as provided for under this Act;
- (g) enter into agreements, public private partnerships for the purpose of advertising; and
- (h) perform any other function as may be required for the effective implementation of this Act.

Director

8. (1) There shall be appointed by the County Public Service Board a suitably qualified person to serve as the Director.

(2) The Director shall be responsible for the day to day administration of this Act subject to the directions of the County Executive Member.

Staff of Directorate

9. The County Public Service Board shall appoint such number of officers to serve in the Department for effective carrying out of its functions under this Act.

PART III—APPLICATION FOR LICENSES AND PERMITS

Protected area

10. (1) The County Executive Member may in consultation with the County Executive committee declare or undeclare an area to be protected for purposes of this Act and subject to any other applicable law on protected areas.

(2) Without prejudice to subsection (1) the following are deemed to be protected areas—

- (a) natural recreational spaces and urban conservation areas;
- (b) cultural and national heritage areas and sites;
- (c) Gazetted building and historical monuments.

Approval of advertising signs

11. (1) A person shall not erect an advertising sign or use or continue to use an advertising sign or any structure or device as an advertising sign without the approval of, and subsequent issuance of a permit by the Director.

Application for outdoor advertising permit

12. (1) Any person desiring to display an outdoor advertisement shall make an application to the Director which shall be accompanied by a plan or sketch showing to the satisfaction of the department—

- (a) the dimensions of the intended advertisement;
- (b) the material of which it is to be composed or constructed;
- (c) the position of the proposal advertising device or notice where the advert is intended to be displayed;
- (d) the method of execution;
- (e) its colour;
- (f) a planning brief submitted by a registered physical planner; and
- (g) the period for which the advertisement is intended to be displayed.

(2) The Director may on receipt of the application under subsection (1) request the applicant for any other relevant information.

(3) If the Director is satisfied that the advertisement application meets the requirements under this Act and poses no danger or obstruction, within thirty days, it shall issue a permit subject to any conditions it may impose.

(4) The County may decline to issue a permit in any case where, in its opinion, the display of an advertisement or the use of an advertisement device would be likely to inflict injuries to the amenities of, or to disfigure, any neighbourhood or for any other reason it may think proper, or may grant a permit subject to such terms and condition relating to the construction, nature and erection of advertising device as it may think fit.

(5) If the department does not approve the application, it shall notify the applicant of its reasons, in writing, within thirty days from the date of receipt of the application.

(6) Notwithstanding subsection (2) no advertisement shall be displayed—

- (a) without the consent of the owner of the land or building on which it is proposed to be display;
- (b) in a manner that it would endanger anyone using any road, railway or aerodrome, canal or waterway;
- (c) in a place or in a manner that would obscure or hinder the ready interpretation of any traffic sign, railway signal, or air navigation aid or other navigation aid ; or

(d) in a manner that would hinder the operation of any device used for the purpose of security or surveillance.

(7) The applicant shall, on the revocation or expiry of the licensed period remove the advertisement and return the site as reasonably close the condition it was before the advertisement was displayed.

(8) An application for approval envisaged in this section shall be on the prescribed form and accompanied by such fees documentation, information, maps, diagrams and plans as may be prescribed.

Alteration amendment etc

13. (1) No advertising sign erected and displayed may in any way be altered, removed, re-erected or upgraded, other than for maintenance work which may be required for the upkeep of an advertising sign, without prior written approval of the Director and subject to such conditions and requirements as the Director may consider appropriate which may include the submission of proof of compliance in accordance with this Act.

(2) An application envisaged in subsection (1) shall be preceded by a pre-evaluation submission and such submission shall be accompanied by some but not all of the documentation, information, maps, diagrams and plans as set out in First Schedule as determined by the Director.

(3) After the pre-evaluation envisaged in subsection (2), the Director shall give to the applicant an indication in writing whether, if a formal application is to be submitted such application would be in compliance with the provisions of this this Act.

Decline to approve

14. The Director shall refuse to accept an application if—

- (a) requirement stipulated in this Act have not been complied with;
- (b) the advertisement is proposed to be placed in a protected area; or
- (c) the application relates to an advertising sign which is prohibited under any other written law.

Consideration of applications

15. (1) In considering an application submitted pursuant to this Act and any other relevant factor, legislation or policy the Director shall have due regard to the following—

- (a) the compatibility of the proposed advertising sign with the environment and with the amenity of the immediate neighbourhood, urban design and streetscape;

- (b) whether the proposed advertising sign will—
- (i) have a negative visual impact on any property or a property zoned or used for residential purposes under any applicable town-planning or land use scheme;
 - (ii) constitute a danger to any person or property or to motorists or pedestrians or obstruct vehicular or pedestrian traffic or constitute a traffic hazard in general;
 - (iii) in any way impair the visibility of any road traffic sign;
 - (iv) obscure any existing and legally erected advertising sign;
 - (v) obscure any feature which in the opinion of the Director is a natural feature, architectural feature or visual line of civic, architectural, historical or heritage significance; and
 - (vi) in the Director's opinion, be unsightly or objectionable or detrimentally impact on the architectural design of any building on the property concerned or any adjacent or nearby property;
- (c) the number of advertising signs displayed or to be displayed on the property concerned and on any adjacent property and its visibility in the circumstances in which it will be viewed in compliance with the minimum distances as may be prescribed;
- (d) any restrictive or other condition and any existing building line and servitude specified in a title deed, town planning scheme, conditions of establishment or any other law;
- (e) any comments, objections, representations submitted by and conditions determined or prescribed by any statutory authority, in terms of any legislation applicable to outdoor advertising;
- (f) any written representations, objections and comments received from any interested party; and
- (g) compliance with the provisions of this Act.

Refusal of application

16. (1) The Director may decline to approve any application subject to any amendment or condition the Director deems appropriate which may include a condition.

Period and renewal of licences

17. (1) Every permit issued under this Act shall be for a period of one calendar year unless cancelled prior to such expiration.

(2) A licence may be renewed from time to time if the department approves an application for renewal and on payment of the prescribed fee.

Exempted advertisements

18. (1) The following advertisement are exempted from payment of fees chargeable under this Act—

- (a) an advertisement placed in the interior of a shopping mall or arcade;
- (b) an advertisement placed in an enclosed bus or railway station;
- (c) a non-illuminated advertisement or sign not exceeding 0.3m² relating to the premises such as notices or signs to be displayed on buildings or land as means of identification, direction or warning e.g. shut the gate, beware of dogs;
- (d) non-illuminated notices or signs not exceeding 0.3m², affixed and indicating the name, address and telephone number of—
 - (i) security company contracted to protect the property;
 - (ii) a landscape company or sponsor contracted to landscape a public open space provided that only one sign per premises shall be permitted and such sign shall be firmly affixed to the boundary wall fence or gates on the street frontage;
- (e) a non-illuminated advertisement or notice relating to a place of worship, public schools, public hospitals and police stations;
- (f) a non-illuminated advertisement or piece relating to foreign diplomatic and political activity including—
 - (i) the national flag of any county, or a United Nations organization provided nothing is added to the design of the flag or, if the flag is flown from a flagstaff and not advertising material is added to the flagstaff;
 - (ii) posters pending civic parliamentary or presidential election campaigns; and
 - (iii) functional advertisements of government ministries, departments and their agencies, county governments and statutory utility services undertakers.

Prohibited signs

19. No person shall erect or cause or permit to be erected or maintained—

- (a) any advertising device, other than an exempted sign, which is not permitted by this Act or any other written law;
- (b) any sign suspended across a street unless otherwise approval by the County;
- (c) any sign which may either obscure traffic by restricting motorists vision and lines of sight thus endangering motorists safety;
- (d) any sign which may obscure traffic by restricting motorists vision and line of sight thus endangering motorists safety;
- (e) any sign which is indecent or suggestive of indecency, prejudicial to public morals or is reasonably objectionable;
- (f) any advertising device that prevents access or exit from a building;
- (g) any animated or flashing sign the frequency of the animations or flashes or other intermittent alternations of which disturbs the residents or occupants of any building or is a source of nuisance to the public or impairs road traffic safety;
- (h) any poster otherwise than on a hoarding legally erected for the purpose of accommodating such poster;
- (i) any sign or signs the total area of which exceeds 30m² painted or fixed on a wall of a building not being a front wall of such building, unless approved in terms of the policy for the promotion of outdoor advertising;
- (j) any sign painted on any fence or boundary wall, not being an approved sign;
- (k) any sign which may obstruct pedestrian or vehicular traffic;
- (l) any poster or sign attached to a tree; and
- (m) any sign or poster attached to a road traffic sign.

Cancellation of permit

20. The County may at an time by notice to holder thereof, cancel a permit for contravention of any of the terms and conditions thereof or any of the provision of this Act or where it is of the opinion that continued display of any advertisement or use of any advertisement device would likely damage the amenities or to deface any neighbourhood or for any reason it may think fit.

PART IV—OFFENCES AND PENALTIES

Offence

21. Any person who—

- (a) commits a breach of any condition imposed by any licence or permit issued under this Act;
- (b) aids or abets another person to commit a breach of any condition imposed on any licence or permit issued under this Act;
- (c) obtain any document with an intent to have a licence or permit issued or renewed by forgery or fraud;
- (d) erects or attempts to erect an outdoor advertisement contrary to the provisions of this Act; and
- (e) being the holder of a permit fails to maintain in good repair and in a proper and safe condition any advertising device authorised in this Act;

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

22. Any person who commits an offence under this Act for which no other punishment is given is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a period not exceeding two years or to both.

PART V—MISCELLANEOUS PROVISIONS

Removal of advertising devices

23. The County Executive Committee Member may without notice cause to be removed or put down and disposed of any advertising device erected, fixed, placed, maintained, display or used in contravention of this Act.

Regulations

24. The County Executive Committee Member may make regulations not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

Transition

25. Any outdoor advertising permit or license issued at the commencement of this Act, shall be operational for the remaining duration of the permit or license and thereafter, any subsequent application shall be in accordance with the provisions of this Act.