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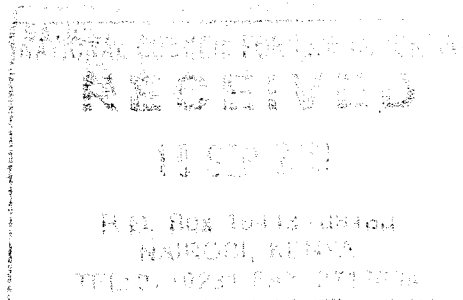
SENATE BILLS, 2019

NAIROBI, 24th May, 2019

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THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL, 2019

A Bill for

AN ACT of Parliament to provide a legal framework for the recognition, protection and regulation of street vending in Kenya, the identification of minimum standards for street vending; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I — PRELIMINARY

1. This Act may be cited as the Street Vendors (Protection of Livelihood) Bill, 2019.

Short title.

2. In this Act,—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to trade;

“committee” means a committee of the County Assembly mandated to consider matters related to trade within the County;

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

“essential facilities” includes clean water, lighting, security, waste disposal, shades, warehousing and storage, awnings, paved roads and vehicle parking spaces where necessary;

“harassment” means conduct, or action, which is usually repeated or persistent, that, being directed at a street vendor, alarms, causes substantial emotional distress in that person, damages goods or property and serves no legitimate purpose;

“informal trader” means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public in a street, lane, sidewalk, footpath, pavement, public park or any other public place or private area, from a temporary built-up structure, and includes a hawker, peddler and all synonymous terms of the word;

“market” means a place where sellers and buyers have traditionally congregated for the sale and purchase of goods

and services and has been determined as such by the relevant county government;

“Ministry” means the Ministry responsible for matters related to trade;

“mobile vendor” means a street vendor who carries out vending activities in a vending area by moving from one place to another place vending their goods, services or a combination thereof;

“national registry” means the national registry established under section 14;

“stationary vendor” means a street vendor who carries out street vending activities on a regular basis at a specific location;

“Unit” means the national street vendors unit established under section 4 of this Act;

“vending zone” means an area, place or location designated as such by the relevant county government on the recommendation of the committee for the specific use by street vendors for street vending and includes a footpath, sidewalk, pavement, embankment, portions of a street, or any such place considered suitable for vending activities and providing services to the general public.

3. The objects and purpose of this Act are to provide a standard framework =

- (a) to entrench the right to informal trading;
- (b) for the regulation of informal trading including areas for the conduct of such trade and licensing by counties;
- (c) for the designation and use of public space for informal trading;
- (d) for the effective organization and regulation of informal traders; and
- (e) for public participation in the designation of vending zones and regulation of informal traders.

Object and purposes.

PART II – REGULATION OF STREET VENDORS

4. (1) The Cabinet Secretary shall, by notice in the *Gazette*, designate a section or department within the Ministry responsible for matters relating to street vending as a street vendors unit for purposes of this Act.

Street Vending Unit.

- (2) The functions of the Unit shall be to —
- (a) maintain, in collaboration with county governments a national registry of street vendors in Kenya ;
 - (b) prescribe, in consultation with county governments and relevant stakeholders, the minimum standards for the conduct of street vending and regulation of street vendors in Kenya;
 - (c) collect and utilize data relating to street vending and street vendors in Kenya for planning and efficient management of street vendors;
 - (d) prescribe fees and other charges payable for the registration of street vendors under this Act;
 - (e) liaise with all relevant bodies responsible for planning and infrastructure for the proper planning and design of street vending zones within major infrastructure areas in the country;
 - (f) advise the Cabinet Secretary on matters relating to street vending in Kenya; and
 - (g) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or regulations made under the Act.

5. (1) The headquarters of the Unit shall be in Nairobi.

Headquarters of the Unit.

(2) The Cabinet Secretary may establish such other offices of the unit anywhere in Kenya as may be necessary for the discharge of the provisions of this Act.

6. The Unit shall be headed by the Director responsible for trade within the Ministry.

Director.

7. The Cabinet Secretary shall designate such public officers, from within the Ministry as are necessary to serve in the Unit for the proper and efficient discharge of the functions of the Unit under this Act.

Staff of the Unit.

PART III –VENDING ZONES

8. (1) Each county executive committee member shall, by notice in the county *Gazette*, demarcate and designate the county into vending zones as follows —

Designation of vending zones.

- (a) restriction-free vending zones;
- (b) restricted vending zones; or
- (c) no-vending zones.

(2) A restriction-free vending zone shall be an area in which a validly licenced street vendor may conduct vending activities.

(3) A restricted vending zone shall be a zone in which a validly licensed street vendor may conduct vending activities subject to special permission granted by the county government pursuant to applicable county laws.

(4) A no-vending zones shall be a zone in which vending activities are prohibited.

(5) The county executive committee member shall not designate a market as a no-vending zone.

(6) A person who conducts vending activities in in a restricted vending zone without a special permit or in a no-vending zone commits an offence.

9. (1) The county executive committee member shall be responsible for the effective management of street vending activities within the respective county.

Vending zones
plan.

(2) For purposes of subsection (1) the county executive committee member shall develop a county vending zone plan setting out information on the matters specified in the Schedule and taking into account the results of the survey carried out under subsection (3).

(3) The county executive committee member shall, within twelve months of the commencement of this Act, conduct a survey of all existing street vendors and potential vending zones within the area under its jurisdiction and subsequent surveys shall be carried out at least once in every three years.

(4) The county executive committee member shall, within nine months of the conduct of the survey under subsection (3), submit the results analysis and recommendations with respect to the survey and the vending zone plan to the county assembly for approval.

(5) In considering the vending zone plan under subsection (4), the county assembly shall conduct public participation.

(6) Upon approval of the plan the county executive committee member shall —

(a) publish the details of the county vending zone plan in the county *Gazette* and at least one newspaper of wide circulation within the county; and

(b) submit a copy of the plan to the Cabinet Secretary.

10. (1) Each county government shall progressively provide for the construction and maintenance of vending centres to enable the carrying out of street vending activities in a fair, transparent and safe manner.

Vending centres.

(2) The county vending plan shall set out the location and optimal structure of vending centres to accommodate street vendors in the respective county.

(3) The relevant State agencies shall take into account the adequate provision for vending zones and vending centres as proposed or identified in a county vending plan in the enactment of any physical planning legislation at county or national level.

11. (1) A county executive committee member may designate a specific street, building or zone to be a vending zone for a specified period not exceeding five days.

Periodic markets.

(2) The county government shall essential facilities prior to the designation of periodic market under subsection (1), including but not limited to security, solid waste disposal, water, lighting and parking facilities where necessary.

12. (1) A county government may, upon the recommendation of the county executive committee member, declare a zone or part of a zone to be a no-vending zone for any public purpose and relocate any street vendors vending in that area.

Relocation or eviction of street vendors.

(2) The county government shall evict any street vendor whose vending licence has been revoked under section 19 or who does not have a vending licence and carries out vending activities without such licence.

(3) No licenced street vendor shall be evicted or relocated from the location specified in their licence unless the street vendor has been given thirty days' notice of such eviction in such manner as shall be prescribed by the relevant county government.

(4) A street vendor shall be relocated or evicted by the county government in such manner as may be prescribed by county legislation after the street vendor has failed to vacate the place specified in their vending licence after the expiry of the notice period under subsection (3).

(5) Relocation under this section shall not take place unless the county government has installed or provided essential facilities including water, lighting, security and waste disposal facilities in the area to which the vendor is to be relocated.

(6) A street vendor who, after the expiry of the specified notice period, fails to relocate or vacate the place specified in the vending licence, shall be liable to pay for every day of default, a fine not exceeding ten thousand shillings, as may be determined by the county government, but shall not be more than the value of the goods seized from the street vendor provided that such confiscation is conducted in accordance with this Act.

13. The county executive committee member shall within twelve months of the commencement of this Act —

Obligations of county executive committee member.

- (a) enact such county legislation as may be necessary for the implementation of this Act and the effective regulation of street vendors in the county;
- (b) monitor the implementation of this Act and any relevant county legislation on county vending;
- (c) periodically survey and assess the street vending activities in the county for policy-making purposes;
- (d) formulate and implement the county vending plan; and
- (e) designate vending zones and periodic markets within the county, subject to the provisions of this Act, the regulations hereunder and any applicable county legislation.

PART IV – REGISTRATION AND LICENSING OF STREET VENDORS

14. (1) The county executive committee member shall be responsible for the registration of validly licenced vendors within the respective county.

Register of street vendors.

(2) For purposes of subsection (1) the county executive committee member shall-

- (a) maintain an up to date register of all validly licenced street vendors in the county; and
- (b) submit to the Unit an up to-date list of all street vendors holding a valid licence in the respective county every three months.

(2) The Director shall collate the lists received under subsection (1)(b) into a national register of licenced street vendors;

(3) The Director shall be the Registrar for the purpose of maintenance of the national registry of street vendors.

(4) The Cabinet Secretary may make regulations to govern the day-to-day operations of the national registry.

15. (1) A person conducting street vending activities in any place in Kenya shall register as a street vendor with the respective county executive committee member.

Registration of street vendors.

(2) A certificate of registration signed by the county executive committee member shall be conclusive evidence of registration as a street vendor.

16. (1) A person shall not engage street vending activities unless they are registered as a street vendor and in possession of a valid vending licence from the relevant county.

Licencing of street vendors.

(2) A county government shall grant a vending licence to a street vendor upon payment of the prescribed fees and satisfaction of any prescribed requirements.

(3) A vending licence under this Act shall classify a street vendor as —

- (a) a stationary vendor;
- (b) a mobile vendor; or
- (c) any other category as may be specified by the county executive committee member.

(4) A vending licence issued under this section shall include the following particulars —

- (a) name of applicant;
- (b) type of licence;
- (c) vending location;

- (d) contact details of the applicant;
- (e) type of goods or services to be sold;
- (f) time and date of vending activities, where applicable;
- (g) type and registration number of vehicle, where applicable; and
- (h) any other details as prescribed by the county government.

17. (1) A stationary street vendor shall not sub-let, transfer, assign or otherwise alienate any vending space, stall or property allocated to them for the purpose of carrying out vending activities under this Act.

Terms and conditions of licence.

(2) A county government may levy an annual vending licence fee in processing the licence.

(3) A vending licence issued under this Act shall be valid from the date it is issued and shall expire on such a date as may be specified in the licence.

(4) A licenced street vendor shall not transfer or assign any rights accruing to them in a valid licence issued under this Act unless the vendor has applied for, and obtained the approval of the county executive committee member.

(5) A street vendor may, when applying for a vending licence under this Act, designate such number of persons as the county legislation may specify to enjoy rights enjoyed by the licenced street vendor under the issued licence.

18. (1) Upon expiry, a vending licence may be renewed for such further period not exceeding one year.

Renewal of a licence.

(2) A registered street vendor issued with a vending licence may apply for renewal of the licence in the prescribed manner at least thirty days before the date of expiry of the licence.

(3) The county government may extend the period within which an application for the renewal of a licence may be made, whether or not the period has ended or the licence has expired.

19. (1) The county government shall have the power to renew any vending licence and may decline to renew,

Revocation of a licence.

revoke or suspend a licence for a period not exceeding twelve months if it is satisfied that the street vendor is in breach of any provisions of this Act or any other written law.

(2) Before declining to renew, revoke or suspend a licence under subsection (3), the county government shall notify the holder of the licence to show cause, within fourteen days, why such licence should not be revoked, suspended or denied renewal.

(3) The county government shall consider the application under subsection (4) within seven days and inform the holder of the licence of the county government's decision in writing and shall give reasons for the revocation or suspension.

(4) A street vendor aggrieved by the decision of the county government in the exercise of its powers under subsection (5) may appeal to the relevant county tribunal against the decision within thirty days of receipt of the decision.

20. (1) Any licensed street vendor and all persons working for the street vendor who are involved in handling of food shall —

Handling of food.

- (a) ensure that the food offered for sale is clean and safe to eat and drink;
- (b) use tongs, scoops, plastic gloves and other suitable utensils for food preparation;
- (c) not use their fingers to touch any other part of their body during food preparation;
- (d) not wipe their hands with their clothing or any other means other than with a clean towel, cloth, antiseptic wipe or other hand sanitiser;
- (e) not cough or sneeze recklessly near any food;
- (f) not smoke while preparing food;
- (g) keep themselves and their clothes in a clean condition and shall at all times wear an apron, hairnet and such other sanitary clothing as may be prescribed from time to time;
- (h) ensure that any cuts or skin abrasions on their hands or fingers are treated and covered; and

(i) adhere to the requirements set out under any other law on the handling of food.

(2) The county executive committee member may from time to time, prescribe regulations relating to the proper handling of food by hawkers and street vendors.

PART V – RIGHTS AND OBLIGATIONS OF STREET VENDORS

21. (1) Every registered and licenced street vendor has the right to carry on the business of street vending activities in accordance with the terms and conditions specified in their vending licence.

Right to carry on business of street vending.

(2) Despite the provisions of subsection (1), a street vendor shall not carry on any vending activities in an area designated as a no-vending zone.

22. (1) Every street vendor has the right, within vending zones and adjacent areas, to access essential facilities of reasonable quality including but not limited to security, lighting, sanitation services and parking facilities where necessary.

Right to adequate facilities.

(2) Each county government shall provide essential facilities for the carrying out of vending activities taking into consideration —

- (a) the vending activity being conducted in a specific vending zone;
- (b) applicable health and safety standards;
- (c) the public interest; and
- (d) any applicable county legislation.

23. (1) Every registered and licensed street vendor has the right to quiet possession of their goods, subject to the provisions of this Act and the terms and conditions of their vending licence.

Right to quiet possession of goods.

(2) Where a street vendor's goods or assets utilised for their street vending activities are confiscated under this Act, the officer confiscating the goods shall issue the street vendor with a receipt detailing —

- (a) the specific goods confiscated;
- (b) the location from which the goods may be recovered;

- (c) the time within which the confiscated goods must be recovered; and
- (d) such other information as may be prescribed by county legislation.

24. No office of the national or respective county government shall harass a street vendor in the course of conducting their vending activity

Protection from harassment.

25. (1) Every street vendor has the right to be a member of an association of street vendors in the respective county in which the street vendor is licensed to conduct the business of street vending business.

Right to association.

(2) It shall not be mandatory for a street vendor to be a member of any vendors association under this Act.

26. (1) Every street vendor shall maintain the cleanliness and public hygiene of vending zones and adjoining areas.

Public hygiene.

(2) An individual stationary street vendor shall continue to maintain their allocated space in a clean and hygienic condition as a condition of their vending licence.

(3) All mobile street vendors shall be required to dispose of their waste responsibly.

(4) Each street vendors' association shall, in collaboration with the county authorities be responsible for the maintenance of the general cleanliness and public hygiene of their respective vending zones.

27. (1) A street vendor shall conduct vending activities in a manner that does not unreasonably impede the public's right of way.

Access to public utilities.

(2) Notwithstanding the generality of subsection (1), a street vendor shall not conduct street vending activities in a manner that is likely to impede access to fire hydrants, building entrances, bus stops, roads or other public amenities is prohibited.

PART VI – MISCELLANEOUS PROVISIONS

28. (1) A county government may enact county specific legislation generally for the better carrying out of the purposes and provisions of this Act.

County legislation.

(2) The legislation enacted by a county assembly under subsection (1) shall set out-

- (a) the terms and conditions for the issuance of vending licences;
- (b) the conditions for the maintenance of the register of street vendors in the county;
- (c) criteria for the registration of a children's home within the respective county;
- (d) process of determination of an application for a street vending licence;
- (e) the conditions for the issuance or renewal of a licence under this Act;
- (f) process of application for the renewal of licences, de-registration and revocation of a licence issued to an applicant under this Act; and
- (g) such other matters that may be necessary for the effective management of street vending activities in the county.

(3) Legislation enacted pursuant to the provisions of subsection (1) shall conform to the provisions of this Act.

29. The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Regulations.

SCHEDULE

(s.9(2))

**CRITERIA FOR THE FORMULATION OF THE COUNTY
VENDING PLAN**

1. The vending zones plan shall —
 - (a) ensure that any public right of way is not impeded;
 - (b) ensure that the provisions of space or area for street vending is reasonable and consistent with existing natural markets;
 - (c) take into account the civic facilities for the appropriate use of identified spaces or areas as vending zones;
 - (d) promote convenient, efficient and cost effective distribution of goods and provision of services;
 - (e) ensure a balance between the interests of formal retailers and other stakeholders in the private sector to promote coexistence of hawkers and street vendors; and
 - (f) such other matters as may be specified in county legislation to give effect to the street vending plan.
2. The vending plan shall contain —
 - (a) determination of spatial planning norms for street vending;
 - (b) designation of space or areas as vending zones
 - (c) classification of vending zones as non-vending, restricted and restriction-free vending zones
 - (d) making of spatial plans adequately conducive for the number of hawkers and street vendors in the county and accounting for future population growth or other norms as may be necessary;
 - (e) consequential changes needed in the physical planning of the urban area or city to accommodate hawkers and street vendors in the designated vending zones.
3. Declaration of a no-vending zone shall be designated in the vending plan, subject to the following principles —
 - (a) any existing market or a natural market as identified in the survey shall not be declared as a no-vending zone;
 - (b) declaration of a no-vending zone shall be done in a manner which displaces the minimum percentage of hawkers and street vendors;
 - (c) overcrowding of any place shall not be a basis for declaring any area as a no-vending zone provided that restrictions may be placed on the issuance of vending licences in such areas;

- (d) sanitary concerns shall not be the basis for declaring any area as a no-vending zone unless such concerns can solely be attributed to street vendors and cannot be resolved through appropriate action by the county government;
- (e) until such time as the results of the survey have been derived, and the county vending plan formulated, no zone shall be declared as a no-vending zone.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide a framework to regulate the business of street vending in the country. Small scale trade contributes significantly to the growth of trade in the country. Currently, there is no legal framework governing the business of street vending thus the challenges being experience by the both the street vendors and the county governments in the undertaking of the business.

The regulation of the trade will therefore ensure that street vendors are able to transact business in favourable conditions.

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

Clause 29 of the Bill delegates legislative powers to the Cabinet Secretary for the purpose of giving effect to the provisions of the Act. The Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Part 2 of the Fourth Schedule to the Constitution designates trade development and regulation as one of the functional areas of the county government. The Bill affects the powers and functions of the county government and it is therefore a Bill that concerns counties in terms of Article 110(1)(a) of the Constitution.

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

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

Dated the 20th March, 2019.

R. C. KIBIRU,
Chairperson,
Standing Committee on Tourism, Trade and Industrialization.