

THE SAMBURU COUNTY TRADE ACT, 2018

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THE SAMBURU COUNTY TRADE ACT, 2018

AN ACT of County Assembly of Samburu to provide for the promotion, development and regulation of trade and for connected purposes –

ENACTED by the County Assembly of Samburu as follows –

PART I-PRELIMINARY

Short title

1. This Act may be cited as the Samburu County Trade Act, 2018.

Interpretation

2. In this Act, unless the context otherwise requires:–

“**Business climate**” means the general economic development within the society of business enterprises and includes the attitude and practice of government, political leadership, labor organizations and financial institutions toward businesses and business activity, the taxation regime and other economic indicators affecting business enterprises;

“**Department**” means the county department responsible for trade as established by the County Executive Committee;

“**Executive Member**” means the County Executive Committee Member responsible for trade;

“**License**” means a license issued under this Act for the purposes of carrying out trade or business;

“**Street trading**” means sale of goods or services in a street; and

“**Town**” has the same meaning assigned under the Urban Areas and Cities Act, 2011.

Purpose of the Act 3. The purpose of this Act is to provide for the Implementation of section 7 of Part 2 of the fourth schedule to the Constitution and to provide for –

- (a) Promotion of development of trade;
- (b) Regulation of trade;
- (c) Promotion of local economic development; and
- (d) Promotion of private sector development.

PART II-ADMINISTRATION

Functions of the Department. 4. The Department shall be responsible for–

- (a) Promoting development of trade
- (b) Regulating trade;
- (c) Issuing trade licenses;
- (d) Facilitating private sector development;
- (e) In collaboration with other stakeholders, facilitating the development of policies, strategies and plans for trade promotion and development;
- (f) Promoting and facilitating access to markets;
- (g) Promoting and facilitating development and access to trade related infrastructure;
- (h) Facilitating acquisition, adoption and utilization of technology
- (i) Carrying out research and maintaining such trade data and statistics;
- (j) Facilitating public-private engagement;
- (k) Advising the Executive Member on the appropriate policy for promoting conducive business climate;

- (l) Review policies, systems, procedures
- (m) Monitoring and evaluating the implementation of this Bill; and
- (n) Carrying out any other functions as may be assigned by the Executive Member

Staff **5.** The County Public Service Board shall, in consultation with the Executive Member, establish offices and appoint such staff under the Department, in accordance with the County Governments Act, 2012.

Trade status report **6.(1)** The Department shall, within three Months after the end of each financial year, prepare and submit to the Executive Member a trade status report for the immediate preceding year which shall consist of:

- (a) The status of the implementation of the Act;
 - (b) the growth of the number of new businesses established in the county disaggregated according to geographical areas, age and gender of persons who established the businesses and sectors in which the businesses were established among others;
 - (c) Challenges faced in implementing this Act;
 - (d) Overall status of trade development in the county;
 - (e) Measures taken or adopted to promote business and trade development;
 - (f) Growth of existing businesses and any relevant projections for the following year;
 - (g) Measures taken to promote an enabling business climate and facilitate trade;
 - (h) Consultations or initiatives undertaken for dialogue with the private sector; and
 - (i) Any other matter as the Executive Member may require.
- (2) The Executive Member shall, within fourteen days of receiving the report submit it to the County Executive Committee for consideration and adoption

- (3) The Department shall–
- (a) Publish the report prepared under Subsection (1);
 - (b) Publicize the report to the private sector and residents in the county; and
 - (c) Facilitate the collation of views and feedback from county residents in relation to the report.

PART III- TRADE PROMOTION AND DEVELOPMENT

Trade promotion and

7. (1) The Department shall promote and facilitate trade development through-

Development

- (a) Providing business support and advisory services;
- (b) Carrying out regular assessment on business climate;
- (c) Reviewing policies and practices that affect business climate and advising the County Executive Committee on appropriate measures to be adopted for promoting trade development;
- (d) facilitating access to markets for goods and services produced in the county;
- (e) facilitating and promoting cross border trade with other neighboring counties;
- (f) in collaboration with other stake holders organizing trade and market fairs for promoting products;
- (g) providing sectoral and inter-sectoral linkages among private sector players within and outside the county; and

(h) Carrying out any other function as may be assigned by the Executive Member

8. (1) There is established the Interdepartmental Trade Development Committee.

(2)The Interdepartmental Committee shall consist of:–

- (a) all chief officers responsible for administering policy matters affecting trade as designated by the County Executive Committee; and
- (b) Any officer responsible for a department of national Government in the county that is responsible for policy matters affecting trade in the county.

Interdepartmental Trade Development Committee

(3) The Chief Officer responsible for trade shall be the chairperson of the Inter departmental Committee and the county officer in charge of trade in the department shall be the Secretary.

(4)The Interdepartmental Committee shall be responsible for:-

- (a) Coordinating implementation of inter-sectoral policies and programs related to trade;
- (b) developing of common strategy for trade development;
- (c) advising the County Executive Committee on appropriate policies and programs for promoting and facilitating trade development;
- (d) coordinating implementation of inter-sectoral policies and programs related to trade;
- (e) facilitating collaboration with national government on trade development; and
- (f) Carrying any other function as may be assigned by the County Executive

Committee.

5 The Department shall provide the secretariat services to the Interdepartmental Committee.

6 The Interdepartmental Committee shall submit quarterly progress reports of its operations to the County Executive Committee.

9. (1) There is established the County Public-Private Trade Sector Committee.

(2) The County Public-Private Trade Sector Committee shall consist of –

County Public-Private Trade Sector Committee

(a) Three persons, one from each sub county appointed by the Executive Member in consultation with the Governor to represent the private sector;

(b) The Chief Officer responsible for trade who shall be an *ex-officio* member and the secretary to the Committee;

(c) one person representing micro and small enterprises appointed by the Executive Member in consultation with the Governor; and

(d) Not more than two Executive Members designated by the County Executive Committee as *ex officio* members.

(3).A person shall not be appointed under–

(a) (Subsection (2)(a), unless the person–

i. Posses a degree from a recognized university; and

ii. Operates a business or a trade in the county or is an officer or

manager of a business.

(b) Subsection (2) (b) and (d) unless the person:–

- i. Possess a secondary education certificate; and
- ii. Operates a business or a trade in the county or is an officer or manager of a business.

(4)The County Public-Private Trade Sector Committee shall be responsible for-

- (a) Facilitating collaboration and partnership between the County Government and the private sector in the county on trade development.
- (b) Collating issues affecting the private sector in the county that require to be addressed by the county government;
- (c) Advising the County Executive Committee on appropriate measures to be adopted in promoting private sector development as well as trade development;
- (d) Facilitating implementation of county policies and programs related to trade and private sector development;
- (e) Facilitating the planning of county public-private sector consultative forums;
- (f) Addressing conflicts or challenges affecting the private sector in the county; and
- (g) Carrying out any other function as may be assigned by the Executive Member.

(5) A member of the Committee may-

- (a) at any time resign from office by issuing notice of not less than three months in writing to the chairperson of the Committee;
- (b) Be removed from office by the executive member, for-
 - i. Serious violation of the Constitution or any other written law;
 - ii. Gross misconduct, whether in the performance of the functions of the office or otherwise;
 - iii. Physical or mental incapacity to perform the functions of office;
 - iv. Incompetence; or
 - v. Bankruptcy

Town Public-Private Sector Committees.
Trade

10. (1) The Executive Member may establish in each town the Public-Private Trade Sector Committee.

(2)The Executive Member shall prescribe the procedure of establishment of the town committee.

(3)The functions of a town Committee shall be similar to the functions of the County Public-Private Sector Committee with the necessary modifications

County public-private forum.
sector

11. (1) There is established the county public- Private sector consultative forum.

(2)The Governor shall be the convener of the forum.

(3)The county public-private sector forum shall-

- (a) Be an avenue for consultation and dialogue between the county government and the private sector on matters affecting the private sector;
- (b) provide the platform for the county executive committee to-
 - i. Articulate the county agenda, policies and programs being planned or implemented in order to promote private sector development;
 - ii. report on the progress of addressing matters raised by the private sector related to trade and private sector development; and
- (c) Provide a platform for-
 - i. Mobilizing the private sector to participate in county development programs; and
 - ii. Consultation with the private sector on matters related to compliance with county and national laws.

Business and industrial parks or centers **12.** (1) There shall be established in each town such business and industrial parks or centers/areas are necessary to facilitating trade development in the county.

(2) The business and industrial parks or centers established under this section may include-

- (a) Technology parks;
- (b) Business incubation parks;
- (c) Special economic zones which may target general business processes or specific manufacturing sectors; and

(d) Special services zones.

(3)The County Executive Committee shall in each year prioritize the essential infrastructure to be developed for the financial year.

**Infrastructure
Development**

13. The County Assembly shall in each year appropriate such funds as shall be appropriate for providing essential infrastructure described under this section.

**Micro and small
enterprises
Development.**

14. The Executive Member shall in collaboration With other public and private stakeholders develop and implement policies and programs for the development of micro and small enterprises in all sectors.

PART IV: ESTABLISHMENT AND MANAGEMENT OF MARKETS

**Establishment
and Control of
Markets**

15. (1) The executive committee member may establish and maintain markets and shall control and manage such markets or shall vest their control and management in such person or committee as it may deem fit.

PART V-TRADE REGULATION

**Establishment
Of trading
Centers**

1) **16.** (1) Subject to the constitution, the county executive committee member responsible for trade may with the approval of the county assembly, by statutory order-

(a) declare any specified area in the county, other than an area declared a trading Centre by an Act of parliament, to be a trading Centre for the purposes of this Bill;

(b) assign a name to the trading Centre ;

(c) define the boundaries of the trading Centre ;

(d) alter the boundaries of any trading Centre ;

(e) declare that any trading Centre shall cease to be a trading Centre .

(2) Any trading Centre declared as such pursuant to an Act of parliament before the coming into operation of this Act which has not ceased to be a trading Centre shall be deemed to be a trading Centre for the purposes of this Bill.

(3) Subject to subsection (4), no person may erect any shop or carry on any trade in a shop in any area within a radius of two miles outside the boundary of any trading Centre.

(4) The prohibition contained in subsection (3) shall not apply –

(a) To any shop or store which at the commencement of this Act is situated in any area within a radius of two miles outside the boundary of any trading Centre.

Regulation

17. (1) The executive committee member may, make regulations:-

- (a) Prescribing the forms to be used under this Act
- (b) For the classification of any trade or class of trade in relation to any license to be granted under this Act;
- (c) Regulating the use of markets and market building, and keeping order, preventing obstructions, and maintaining cleanliness in them or in the approaches to them;
- (d) Prescribing the goods which may be sold in any markets;
- (e) Prohibiting, or requiring vendors to obtain permits for, the sale of-
 - i. Any specified kind of livestock within any specified area surrounding a market lawfully established not exceeding twenty miles from the boundary of the market;
 - ii. Any specified kind of goods within any specified area

surrounding a market lawfully established not exceeding three miles from the boundary of the market, but no rules which have been made in this paragraph shall apply to the sale of goods-

- iii. In a store in respect of which a trading license has been issued under the trade (licensing) Act;
 - (a) Requiring goods brought into the markets for sale to be sold by public auction, and imposing and providing for the collection of a fee payable on the amount realized;
 - (b) Imposing stall ages, rents or tolls and fixing the amount and providing for the collection thereof;
 - (c) Fixing the days and the hours during each day on which a market may be held and preventing the sale and purchase of goods in the markets on any days or any hours except those fixed;
 - (d) Prescribing the weights, scales and measures to be used in the scale of any particular produce and regulating the use of them;
 - (e) Requiring the demolition, reconstruction, closing or moving of markets;
 - (f) Examination of produce or articles of food;
 - (g) Providing for the appointment of inspector, market-masters, and other officials, and regulating their powers and duties;
 - (h) Generally for carrying into effect the purposes of this Bill

(2) a market committee, authority or another person to whom the control and Management of the market is vested may make bylaws which shall not be

Inconsistent with any rules made by the executive committee member under Subsection (1) for any of the purposes therein mentioned and the bylaws made by any committee, authority or person shall not come to force until they have been approved by the county executive committee member

Classification of trades and businesses. 18. (1) The Executive Member shall, with the Approval of the County Executive Committee classifies trades and business for the purposes of administration of this Act and any other written law or matter that requires classification of businesses.

(2) The classification under subsection (1) shall be in accordance with the established standard or practice in the classification of businesses.

Designation of trading areas. 19. (1) The Executive Member shall, with the Approval of the County Executive Committee shall prescribe the specific trading areas designated for each classification of trade or business.

(2)The designation of the trading areas shall accord with the spatial plan adopted for the specific area taking into consideration public health, environmental health, public order, safety and security matters

(3)The Executive Member may specify the days or hours of operation for a class of business in the respective trading area.

(4) The Executive Member shall while designating trading areas take into consideration the welfare of persons with disabilities who are carrying out trade or business which shall include special and preferential treatment.

Street trading 20 .(1)A person may carry out a trade or business in a designated street as may be prescribed.

(2) A person shall not carry out any trade or business in a non designated street or sell any goods or supply services that are prohibited to be sold or supplied in a street.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding five thousand.

Public markets 21. (1) There shall be such public markets in each Urban area or such areas as the Executive Member may designate for the purposes of facilitating trade for the prescribed goods and services.

(2)The Executive Member shall classify the markets on the basis of geographical position, type of goods or services traded, whether permanent or occasional.

Market days. 22. The Executive Member may designate certain Days to be market days for markets established under this Bill.

Market management committee. 23. (1) Each public market established under this Act shall be managed by a management committee which shall be appointed in accordance with the prescribed procedure.

(2)The market management committee shall be responsible for-

- (a) assigning trading space or market stalls to traders operating in the market;
- (b) coordinating the operations of the market;
- (c) providing liaison between the traders and the Department;
- (d) Managing disputes between traders operating in the market; and
- (e) Carrying out any other function as may be assigned by the Executive Member

Allocation of trading space within market. 24. (1) the Executive Member shall prescribe the Guidelines for managing the allocation of trading space or operating area within a market.

(2)The guidelines shall ensure that-

- (a) Only persons operating trade in the market are allocated trading space;

- (b) allocation of trading space is conducted in transparent manner
- (c) That persons with disabilities are accorded preferential treatment; and
- (d) There is gender balance in allocation of trading space.

3) The allocation of trading space shall not promote anti-competitive behavior or tendencies in the market.

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Compliance with public and environmental health requirements. 25. The Department shall ensure that each public Market complies with public health and environmental health requirements.

Collaboration on compliance with standards and anti-counterfeit requirements 26. The Department shall collaborate with national Government entities responsible for standardization, quality control and counterfeit control.

PART VII-ENFORCEMENT

Principles of enforcement. 27. The enforcement of this Act shall be carried out in a manner that-

- a) Recognizes and requires the private nature of persons or businesses licensed under this Bill;
- b) Supports and encourages compliance with the Bill;
- c) Promotes trade and business operations; and
- d) Respect and observes rule of law and fundamental rights.

Authorized officers. 28. (1) the Executive Member shall appoint such Persons to be authorized officers for the purposes of this Bill.

2) The Executive Member shall issue a certificate of appointment to a person appointed under this section in the prescribed form.

3) Notwithstanding the provisions of this section, the county public health officers shall be authorized officers for the purposes of this Act.

Roles of authorized officers. 29. An authorized officer shall be responsible for ensuring compliance with this Bill.

Inspections. 30. (1) An authorized officer may enter any Premises licensed under this Act or carrying out any trade or business, whether such premises are licensed or not for the purposes of carrying out inspections in compliance with this Bill.

2) An authorized officer entering any premises for the purposes of carrying out an inspection under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 40(2).

Powers of an authorized officer. 31. In carrying out an inspection under this Act, an authorized officer shall have power to-

- (a) Enter any premises licensed under the Samburu County Government trade licensing Act or carrying out any trade or business whether such premises are licensed or not;
- (b) Carry out an inspection of the premises or any documentation required under paragraph (c);
or
- (c) Require any person in such place to produce for inspection any document or information related to compliance with the Act.

Forms of inspections. **32.** The inspections carried out under this Act may be scheduled or none scheduled.

Failure to produce information. **33.** A person who refuses to produce information as required by an authorized officer under section 31 commits an offence and is liable to a fine not exceeding five thousand shillings.

PART VIII- GENERAL PROVISIONS

Regulations. **34.** (1) The Executive Member may make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may-

- a) Prescribe the establishment of town public-private sector town committees;
- b) Prescribe the license fees;
- c) prescribe the forms;
- d) Prescribe matters related to compliance with written laws in regard to application for license;
- e) Prescribe the classification of trades and businesses;
- f) Prescribe the designation of trading areas;
- g) Prescribe matters related to street trading;
- h) Prescribe the goods and services to be traded in a public market;
- i) Prescribe the appointment procedure for Public market's management committees,
- j) prescribe the guidelines for allocation of trading space in public markets; and
- k) Prescribe the form of certificate for authorized officers.

Savings **35.** This section applies to any Acts of parliament and /or any by-laws relating to trade and business permits made by a local authority within the county if those Acts or by-laws were in force immediately before the

commencement of this Act.

(2) Despite the repeal of the Local Government Act (CAP 265) and the County Government Public Finance Management Transition Act 2013,

- a) Any trading center established or deemed to have been established under the repealed Local Government Act (CAP 265), and which has not ceased to be trading center immediately before the commencement of this Act, shall be deemed to have been established under the corresponding provisions of this Act.
- b) Any rules, appointments, directions or other statutory instruments and Acts, lawfully done under that Act and in force immediately before the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall, to the extent that they are not inconsistent with such provisions, continue to have effect.

(2) On and after the commencement of this Bill, the by-laws continue in force as if:

- a) they had been made by the county government; and
- b) a reference in the by-laws to a local authority were a reference to the county government; and
- c) a reference in the by-laws to clerk, however described, were a reference to the licensing authority (County Director of trade); and
- d) Any fees or charges payable to the local authority were payable to the county government.

(3) A business permit issued under the by-laws continues in force as if it were a trade license granted under this Act by the county government.

MEMORANDUM OF OBJECTS AND REASONS

Firstly, this Act seeks to implement section 7 of Part 2 of the Fourth Schedule to the Constitution on trade development and regulation of trade.

Secondly, this Act seeks to provide for a frame work for developing and promoting trade and local economic development.

PART I of the Act provides for preliminary matters such as interpretation and the object of the Bill.

PART II of the Act provides for administration matters. The Part assigns functions to the Department responsible for trade which include promoting development to trade, regulating and issuing licenses, facilitating private sector development, facilitating public-private sector engagement and facilitating acquisition of technology as well as carrying out research and data collection.

The Part provides for the preparation of annual trade status report, which will cover matters related to trade development and growth during the year.

PART III of the Act provides for trade promotion and development. The Part obligates the Department responsible for trade to promote and facilitate trade development through matters such as providing business support and advisory services, carrying out regular assessment on business climate and facilitating access to markets for goods and services produced in the county.

The Part provides for establishment of the Inter-departmental Trade Development Coordinating Committee which consists of all Chief Officers who are responsible for administering policy matters affecting trade and any officer of national government responsible matters related to trade in the county. The Committee is obligated to coordinate implementation of inter sectoral policies related to trade as well as coordinating program implementation.

The Part provides for establishment of the County Public-Private Trade Sector Committee, which consists of members drawn from public and private sector. The Committee is responsible for coordination collaboration between County Government and the private sector and facilitating implementation of the policies and programs.

The Part also provides for establishment town public-private sector trade committees, the county public-private sector forum, and development of industrial and business parks, trade supportive infrastructure and development of micro and small enterprises.

PART VII of the Act provides for general provisions. It provides for the powers of the Executive Member to make Regulations and provides for savings provision prior to the coming into force of the Bill.

Dated 4th January, 2018

HON. BENJAMIN LEITORE
CHAIRPERSON, COMMITTEE ON TOURISM, TRADE AND INVEST AND
COOPERATIVE DEVELOPMENT