

SPECIAL ISSUE

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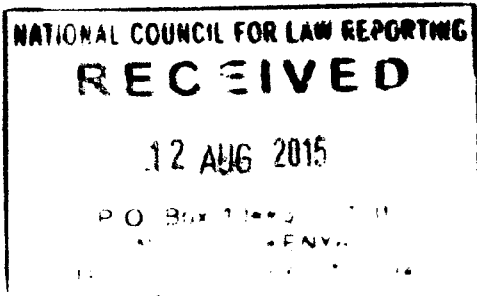
KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2015

NAIROBI, 10th July, 2015

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**THE COUNTY OUTDOOR ADVERTISING
CONTROL BILL, 2015**

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THE COUNTY OUTDOOR ADVERTISING CONTROL BILL, 2015

A Bill for

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

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the County Outdoor Advertising Control Act, 2015.

Short title.

2. In this Act—

Interpretation.

“advertisement” means any word, letter, devise, model, sign, placard, board, notice or representation, whether illuminated or not, in the nature of and employed wholly or partly for the purposes of drawing the attention of the public to or promoting any-

- (a) product, service, business or commercial enterprise, trade, person;
- (b) election or candidature in an election;
- (c) entertainment;
- (d) function or meeting; or
- (e) any other similar service or event;

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

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

“committee” means the county outdoor advertising committee established under section 4;

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

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

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

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

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

3. (1) This Act applies to all advertisements but does not apply to any advertising display used exclusively for any of the following purposes—

Application.

- (a) to provide directions to property for sale, lease, or exchange where the display is not visible from a highway;
- (b) to designate the name of the owner or occupant of a premises or to identify a premises;
- (c) anything employed wholly as a memorial, railway or road signal or a placard or other object borne by an individual;
- (d) an advertisement—
 - (i) displayed on enclosed land and not readily visible from outside the enclosure or from any part of it over which the public have a right of access;
 - (ii) relating to religious, educational, cultural, recreational or medical institutions or institutions of similar character;
 - (iii) incorporated in the fabric of a building but not including an advertisement fixed to or painted on a building;
 - (iv) displayed inside a building, and not within one metre of any external door, window, or other opening through which it is visible from outside the building;

- (v) displayed on or in any vehicle normally employed as a moving vehicle;
- (e) notices or signs displayed on any premises in order to advertise the fact that a person, partnership or company is carrying out a profession, business or trade at those premises;
- (f) notices or signs displayed on buildings or land as means of identification, direction or warning; and
- (g) to advertise products, goods, or services sold by persons on the premises of a sports, cultural or social arena on a regular basis, or to advertise any products, goods, or services marketed or promoted on the premises of an arena pursuant to a sponsorship marketing plan.

PART II—OUTDOOR ADVERTISING LICENSE

4. (1) There is established the county outdoor advertising licensing committee comprising of –

County outdoor
advertising
committee.

- (a) the county executive committee member responsible for matters relating to outdoor advertising or an alternate appointed in writing;
- (b) the county executive committee member responsible for matters relating to the environment or an alternate appointed in writing;
- (c) one man and one woman representing the business community in the county appointed by the governor; and
- (d) one public officer serving in the county public service appointed by the governor who shall be the secretary to the committee and an *ex officio* member.

(2) The committee shall be a committee within the department of the county executive committee member responsible for matters relating to outdoor advertising.

(3) The members of the committee shall be paid such allowances as the county executive committee member responsible for matters relating to finance may, in consultation with the Salaries and Remuneration Commission, determine.

5. (1) A person who wishes to engage in outdoor advertising shall make an application for a license to the committee.

Application for
license.

(2) An application for registration shall be in the prescribed form and shall be accompanied by—

- (a) the prescribed fee;
- (b) the written consent of—
 - (i) the owner of the site or any other person with an interest in the site entitled to give consent; and
 - (ii) the Kenya National Highway Authority if the advertisement is displayed on highway land;
- (c) a copy of the title deed or any other document evidencing ownership of the property upon which the proposed advertisement is to be displayed;
- (d) a locality plan indicating the proposed position of the advertising sign;
- (e) a block plan of the property upon which an advertising sign is to be erected, drawn to a scale acceptable to the committee—
 - (i) showing every building line and servitude on the site;
 - (ii) the position and dimensions of the advertising sign in relation to the two boundaries of the property closest to the proposed advertising sign; and
 - (iii) the location of any public street or any building on a property adjacent to the property upon which such sign is to be erected;
- (f) an artistic impression showing all the detail, location and measurements of the proposed advertising sign;
- (g) a diagram of the property indicating the position of the proposed advertisement in relation to other free-standing advertisements and the closest two boundaries of the property; and

- (h) any other information which the committee may require.

6. In considering an application for a license under section 5, the committee shall take into account the following matters-

Consideration of application.

- (a) the effect the advertisement will have on the general characteristics of the area, including its effect on any features of historic, archaeological, architectural, landscape, cultural or other characteristics;
- (b) whether the proposed advertisement shall—
 - (i) endanger or obscure anyone using any highway, railway, waterway, dock, harbour or aerodrome;
 - (ii) hinder the reading or interpretation of any traffic sign, railway signal or aid to navigation by water or air;
 - (iii) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle;
 - (iv) be so distracting or confusing that it would create a hazard to drivers, cyclists or pedestrians in the vicinity of the advertisement; or
 - (v) obscure any existing and legally erected advertisement;
- (c) the position of the advertisement on the host building and its scale, size dominance and sitting in relation to that building and characteristics of the surrounding area;
- (d) the cumulative effect of the proposed advertisement when read with other advertisements on the building or in the surrounding area and whether the proposal will result in clutter;
- (e) the design and materials of the advertisement or the structure containing the advertisement and its impact on the appearance of the building on which it is to be attached;

- (f) the advertisement's effect upon the safe use and operation of any form of transport on land including the safety of pedestrians;
- (g) in the case of a freestanding sign, the design and materials of the structure and its impact on the appearance and character of the area where it is to be located; and
- (h) the impact of the advertisement, including its size, scale and levels of illumination, on the amenities of people living nearby and the potential for light pollution.

7. (1) The committee shall, within fourteen days of receipt of an application under section 5, consider the application and may—

Powers with respect to licensing.

- (a) approve the application without amendment;
- (b) approve the application subject to amendments or additional conditions; or
- (c) reject the application.

(2) The committee shall notify the applicant in writing of any decision made under subsection (1) within fourteen days of the decision being made.

(3) Where an application under section 5 is rejected no further application may be made in respect of the same property for a period of six months.

(4) An approval under subsection (1) shall lapse if the advertisement is not erected within six months of the approval.

8. The committee shall, where appropriate, consult other relevant public bodies that have an interest in the safe display of advertisements including the offices responsible for planning, environment, management, transport and roads.

Consultation.

9. An outdoor advertising license—

Duration of license.

- (a) comes into force on the date stated in the license or, if no date is stated, the date on which it is issued; and
- (b) remains in force for the period stated in the license.

10. An advertisement displayed with the approval of the committee in terms of section 5 shall not 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 county executive committee member.

Advertisement not to be altered, removed, etc

11. (1) The holder of an outdoor advertising license may, one month before the licence is due to expire, apply to the committee for the renewal of the licence.

Renewal of license.

(2) The committee 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.

(3) A person making an application under this section shall make the application in the prescribed form and shall pay the prescribed fee.

12. (1) The committee may revoke an approval given pursuant to section 5 or amend or impose a further condition in respect of that approval where the advertisement design—

Revocation and amendment of license.

- (a) has become detrimental to the area in which it is located;
- (b) constitutes or has become a danger to any person or property; or
- (c) is obscuring any other advertising sign, natural feature, architectural feature or visual line of civic, architectural, historical or heritage of significance.

(2) The committee shall notify the owner of the advertisement of the proposed decision under subsection (1) in writing and the owner may within twenty-one days of the notice make written representations concerning the proposed decision.

(4) The committee shall serve a notice of revocation on the owner and occupier of the site on which the advertisement is displayed and on the person who undertakes or maintains the advertisement display.

(5) A revocation or amendment notice issued under subsection (1) shall specify the period within which the display or the use of the site shall be discontinued.

13. (1) Any person aggrieved by the decision of the committee under this Act may make an application for review to the committee within fourteen days.

Review.

(2) The committee shall render a decision on an application for review within thirty days of the application.

PART III—MISCELLANEOUS PROVISIONS

14. The owner of an advertisement shall ensure that—

Maintenance of signs and costs.

- (a) the site used for the display of an advertisement is maintained in a reasonably clean and tidy condition;
- (b) any structure or hoarding used for the display of advertisements shall be maintained in a safe condition that does not endanger the public;
- (c) upon the removal of an advertisement the site will be left in a safe condition that does not endanger the public and in a reasonably clean and tidy condition so that it does not impair the site's visual amenity; and
- (d) all costs arising from the maintenance or removal of an advertisement are met.

15. (1) The committee shall cause a notice of an application made under section 4 to be published in at least two newspapers in circulation in the county.

Public participation.

(2) The notice referred to in subsection (1) shall invite any interested members of the public to submit comments or representations on the application.

(3) The committee shall consider all comments or representations before taking a decision on the application.

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

Inspections.

(2) An authorized officer under subsection (1) shall—

- (a) before the commencement of an inspection produce written confirmation of the officer's authorization to the owner of the property on which an advertisement is displayed; and

- (b) carry out the inspection with due regard to decency, orderliness and the right to property under Article 40 of the Constitution.

17. A person who contravenes any provision of this Act commits an offence and be liable upon conviction to a term of imprisonment not exceeding six months or to a fine of two hundred thousand shillings or to both.

General penalty.

18. (1) The county executive committee member may, with the approval of the county assembly, make regulations generally for the better carrying out of the purposes of this Act.

Regulations.

(2) Without prejudice to the generality of the foregoing, Regulations made under this section may provide for—

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

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

Savings and transitions.

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

20. Section 2 of the Physical Planning Act is amended by—

Consequential amendment.

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

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

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

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

This Bill therefore seeks to provide a legal framework for the control of outdoor advertising in order to achieve a balance between the need to advertise and the protection of amenity and public safety. The Bill proposes to establish a county outdoor advertising committee that would be responsible for the issuance of advertising licenses. The Bill also provides for the procedure for the application for advertising licenses.

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

Clause 18 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 limits fundamental rights and freedoms only to the extent of the provision of the powers of entry and inspection under clause 16.

Statement on how the Bill concerns county governments

Paragraph 3 of Part 2 of the Fourth Schedule to the Constitution provides for outdoor advertising as one of the functional areas of county governments. The Bill 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 proposes to establish a framework for the control of outdoor advertisement through the issuance of licences by the county outdoor advertising licensing committee member for the time being responsible for matters related to information and communication. Any costs, which would be nominal, would be defrayed from the funds allocated by the county assembly to the county executive in each year.

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

Dated the 13th May, 2015.

MUTULA KILONZO JR.,
*Vice-Chairperson,
Committee on Information and Technology.*

