

SPECIAL ISSUE

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SUPPLEMENT***

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THE EMBU COUNTY CHILDCARE FACILITIES ACT, 2016

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**THE EMBU COUNTY CHILDCARE FACILITIES
ACT, 2016**

AN ACT of the County Assembly of Embu to provide for the management, licensing and inspection of childcare facilities in Embu County and for connected purposes

ENACTED by the County Assembly of Embu as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Embu County Childcare Facilities Act, 2016 and shall come into operation upon publication in the *gazette*.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“applicant” means an individual applying for a license under this Act;

“child” means an individual who has not attained the age of eighteen years;

“childcare” means the temporary care and supervision of a child and may also include the provision of a children's program, protection, training and rehabilitation of a child;

“Department” means the County government Department responsible for matters relating to children and social services;

“Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters related to Children and social services;

“facility” means any place in which childcare is offered at any time to more than five children all of whom are less than eighteen years of age;

“Inspector” means a person deployed by the County Public Service Board as an Inspector under this Act and includes a health inspector;

“licence” means a licence issued by the Department under this Act, to operate a facility and includes a provisional licence;

“licensee” means an individual who holds a license issued under this Act;

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“Program” means the activities planned to help the children's physical, social, emotional and learning development;

“Supervisor” means a person who is responsible for the management of a facility and its programs; and

“Chief Officer” means the officer responsible for matters related to children's services.

Objects and Purpose

3. The Object and Purpose of this Act is to;

- (a) streamline the administration of childcare licensing and thereby increase efficiency and effectiveness of the system;
- (b) enhance Consumer awareness of licensing requirements and the benefits of licensed childcare;
- (c) develop and implement the policy on childcare facilities;
- (d) develop standards for childcare facilities; and
- (e) Develop mechanisms for inspection and reporting of childcare facilities.

4. (1) Subject to subsection (2) this Act shall apply to all childcare facilities within the county.

Application of the Act

(2) This Act shall not apply to—

- (a) Childcare provided by persons to their own children, grandchildren, brothers, sisters, nieces or nephews;
- (b) Childcare provided by hospitals to children who are patients in the hospitals;
- (c) Childcare provided by a church during its service or as part of religious instruction which does not exceed five hours per week;
- (d) Childcare provided to children in camps operated for seasonal or holiday periods where the children stay overnight;
- (e) childcare provided to children as part of the regular activities of community sports or recreation programs which are operated or funded locally; and

(f) Such other facilities as the Executive Committee Member may determine by public notice.

PART II—ADMINISTRATION

5. The Department shall—

- (a) regulate and license childcare facilities within the county;
- (b) receive and investigate complaints on childcare facilities;
- (c) develop policies on child care facilities for consideration and implementation by the County Executive;
- (d) develop standards and guidelines for childcare facilities;
- (e) protect children in the childcare facilities; and
- (f) Carry out any other activity relating to childcare facilities that may be necessary or assigned to it by any national or county legislation.

Functions of the Department

6. The Department shall have all the necessary powers for the execution of its functions under this Act.

Powers of the Department

7. The County Public Service Board, in consultation with the Executive Committee Member shall appoint such staff as may be necessary for the administration of this Act.

Staffing

PART III—REGISTRATION AND LICENSING OF CHILDCARE FACILITIES

8. (1) A person shall not operate a childcare facility unless it is registered and licensed in accordance with this Act.

Requirement to register a childcare facility

(2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding one year or both.

9. An applicant seeking to operate a facility shall apply to the Department in writing in the prescribed form and shall furnish any information as may be required and such application shall be accompanied by the prescribed fee.

Application for a License

(2) The Department may, on application;

- (a) issue a license to operate a facility, to an applicant if it is satisfied that—
 - (i) the applicant and the facility comply with all prescribed requirements;
 - (ii) the facility complies with all pertinent county and national laws;
 - (iii) The applicant has paid the prescribed fee; and
 - (iv) A health inspector has inspected the childcare facility and certified that the childcare facility is in compliance with the law relating to public health.
- (b) refuse to issue the licence on any ground which may appear to the Department to be sufficient and inform the applicant, in writing, the reasons;
- (c) cancel, vary or suspend any licence if, in the finding of the Department, the licensee is found to have contravened the Act for the operation of the facility; or
- (d) Impose conditions on a licence.

10. (1) A License may be issued subject to such lawful terms and conditions as the Department may determine, and different categories of licenses may be established for different types of facilities.

Issue of Licenses

(2) Every licence shall specify the premises upon which the business specified in the licence may be carried on.

(3) The Department, after consultation with the Executive Committee Member for Finance, shall prescribe the fees payable for the issue of licences under this Act.

(4) The Department shall, at least thirty days before granting a licence under this Act, give notice of the proposed grant in the County Gazette or in such other manner as it may determine.

(5) The notice referred to in subsection (4) shall—

(a) specify the name or other particulars of the person or class of persons to whom the licence is to be granted;

(b) state the purpose for the proposed licence and indicate the date such licence is proposed to be issued to the successful applicant; and

(c) Invite objections to the proposed grant of licence and direct that such objections be lodged with the Department within fourteen days following the date of the notice.

(6) The Department may after considering the objections, if any, made under this section, grant the licence applied for, subject to such terms and conditions as may be specified in the licence.

(7) The issuance of a licence to an applicant under this Act shall not be withheld without reasonable cause.

(8) A licence issued under this Act is not transferable and shall cease to have effect if;

(a) The ownership of the facility changes; or

(b) The responsibility for the management of the facility changes to a person other than the licensee.

(9) The Department shall ensure that an updated register is kept and maintained for all licences issued pursuant to this part.

11. A licensee shall notify the Department in writing prior to any significant change in any physical or operating aspect of the facility.

Notification by licensee

12. The Department shall require a licensee to apply for a new license as a result of the changes referred to in section 11.

New license requirement

13. (1) A license issued under this Act shall be valid for one year.

Validity and Renewal of license

(2) A licensee seeking to renew a license to operate a facility shall apply to the Department not later than the last day of the month in which the current license is due to expire and such application shall be in the prescribed manner.

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(3) Despite subsection (2), a late application may be made upon payment of a late application fee as may be prescribed by the Department in consultation with the Executive Committee member for Finance.

14. (1) The holder of a licence which is revoked shall immediately surrender it to the Department.

Surrender of licence

(2) A licence holder may, at any time, surrender the licence to the Department and the licence shall cease to have effect forthwith.

15. The Department may issue an order to the supervisor of a facility directing him or her to cease operating the facility or otherwise to comply with the conditions of the Department within such time as may be specified in the order.

Order for closure

16. Where an order has been made under section 15 directing that a facility cease to operate, the Department may inform the public of that order in such manner as the Department considers necessary under the circumstances.

Publication of order

17. The applicant or licensee aggrieved by the decision of the Department under this Act may appeal, within fourteen days from the date of being notified of the decision in writing to the Executive committee member and the Executive Committee Member may confirm, disallow or vary any act or decision of the Department or may direct the Department to act in such manner as the county executive committee member shall deem fit under the circumstances.

Appeals

PART IV—INSPECTION

18. The Executive Committee member may appoint a public officer working in the county to inspect a facility operating under this Act.

Appointment of Inspectors

(2) A person is qualified for appointment as an inspector under this Act if that person;

- (a) Is a citizen of Kenya;
- (b) Holds at least Diploma in a relevant field from an institution recognised in Kenya;
- (c) Has at least three years relevant work experience; and

(d) Meets the requirements of Chapter six of the Constitution.

19. An inspector appointed under this Act shall—

- (a) Regularly inspect childcare facilities to ensure compliance with the applicable laws;
- (b) Assess facilities in respect of which an application for a license is made;
- (c) conduct research and disseminate the information;
- (d) write reports to advise the Department on matters relating to childcare facilities; and
- (e) Carry out any other function as may be assigned to him under this Act or other relevant Law.

20. (1) An inspector shall have all powers necessary for the proper performance of his functions under this Act.

(2) Without prejudice to the generality of subsection (1), an Inspector shall have power to—

- (a) Enter any childcare facility and carry out an inspection in respect of any premises where the Department has reasonable grounds to believe that a facility is being operated as childcare facility.
- (b) Make enquiries of any person employed at a childcare facility or who has responsibility over that childcare facility;
- (c) Inspect and take copies of records required to be kept under this Act or any other law relating to childcare facilities;
- (d) Carry out investigations in respect of any premises where the Department has reasonable grounds to believe that a facility is being operated as a childcare facility in contravention of this Act; and
- (e) Undertake any activity necessary for the fulfilment of any of the functions of an inspector under this Act.

(3) Despite subsection (1), the inspector shall produce

Duties of an Inspector

Powers of an inspector

a valid identification document issued by the Department before entering any premises.

21. (1) An inspection shall be carried out in every childcare facility at least four times in every financial year and not more than four months shall lapse between the date of one inspection and the date of the next inspection.

Inspections to be carried out regularly

(2) The inspections referred to under subsection (1) shall include inspections by health inspectors.

PART V — MISCELLANEOUS PROVISIONS

22. The County government shall progressively establish and maintain in each sub-county the following facilities—

Obligations of the county government

- (a) a childcare facility for children who are orphans;
- (b) a childcare facility for children who have been removed from their homes for various reasons;
- (c) a childcare facility for children who are required to undergo rehabilitation and
- (d) a childcare facility to provide daily custodial services at a fee to be prescribed by the Executive Member for Finance

23. No action or omission by an authorised person carrying out a function under this Act shall, if the act was done in good faith for the purpose of carrying out the provision of this Act or any other law, subject the person to any liability, action, claim or demand.

Protection from personal liability

24. A person who—

Offences

- (a) operates a facility without a license;
- (b) fails to observe any terms and conditions imposed on the issue of a license; or
- (c) contravenes an order under section 15, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand or imprisonment for a term not exceeding six months or to both.

25. (1) The Executive Committee Member may make regulations for the better carrying out into effect of any provision of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), such regulations may prescribe anything required under this Act to be prescribed and provide for—

- (a) the minimum size of the facility;
- (b) maximum number of children in a childcare facility;
- (c) the standards to be observed;
- (d) procedure for an appeal to the Executive Committee Member;
- (e) the investigation of complaints; and
- (f) Any other matter the Executive Committee Member considers necessary for the proper administration of this Act.

26. Any license issued to a childcare facility under any relevant law shall remain valid until the lapse of such law or the enactment of this law whichever comes first.

Savings