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CONTENT

Act—

PAGE

The Embu County public Entertainment Licensing Act, 201595



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**THE EMBU COUNTY PUBLIC ENTERTAINMENT LICENSING
ACT, 2015****No. 12 of 2015***Date of Assent: 14th October, 2015**Date of Commencement: 21st October, 2015***ARRANGEMENT OF SECTIONS****PART I—PRELIMINARY***Section*

- 1—Short Title.
- 2—Interpretation.
- 3—Object of the Act.

PART II—ADMINISTRATION

- 4—Establishment of the Committee.
- 5—Functions of the Committee.
- 6—Powers of the Committee.
- 7—Members of the Committee.

PART III—LICENSING

- 8—Application for public entertainment license.
- 9—Conditions for issuance of license.
- 10—Supervision of place of public entertainment.
- 11—License for additional or new parts.
- 12—Submission of description of public entertainment.
- 13—Consideration of application.
- 14—Rejection of application.
- 15—Conditions of license.
- 16—Uniformity of certain conditions.
- 17—Patrons to comply with conditions of license.
- 18—Unlawful use of place of public entertainment.
- 19—Cancellation of license.
- 20—Additions or alterations to place of public entertainment.
- 21—Period and renewal of license.

22—Free license.

23—Duty of owner of public entertainment.

24—Authorised officers.

25—Power of authorized officer.

PART IV— GENERAL PROVISIONS

26—Register of licenses.

27—License for private performance in place of public entertainment.

28—County Executive Committee Member may declare entertainment to be public.

29— Prohibition of certain entertainment.

30— Exits to be free from obstruction.

31—Cruelty to animals.

32—Protection from personal liability.

33—Public participation.

34—Review.

35—Holding public entertainment in unlicensed place.

PART V—MISCELLENEOUS PROVISIONS

36—General Penalty.

37—Offences to be cognizable.

38—Regulations.

39—Savings.

THE EMBU COUNTY PUBLIC ENTERTAINMENT LICENSING ACT, 2015

AN ACT of the County Assembly of Embu to provide for the regulation of public entertainment and for related purposes

ENACTED by the County Assembly of Embu as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Embu County Public Entertainment Licencing Act, 2015 and shall come into operation on the date of publication in the *gazette*.

Interpretation

2. In this Act unless the context otherwise requires—

“amusement machines” includes a device, whether electrical or mechanical, designed and constructed for the amusement of its user through his or her manipulation of the machine or a device associated with the machine, and such other devices as are prescribed;

“approved place” means —

- (a) in the case of any place required to be licensed under any Regulations for the control and supervision of places that may be used for public entertainment made under the provisions of any written law, a place so licensed; and
- (b) in any other case, a building, tent, street or place whether open or enclosed that is approved for the purposes of this Act by the licensing officer; and
- (c) does not include a building or other place in respect of which a liquor license is required under the relevant legislation;

“authorized officer” means the officer appointed under section 24 to inspect a place of public entertainment to ensure it complies with the conditions set out in the public entertainment license and the provisions of this and any other relevant Act;

“county” refers to Embu County.

“Committee ” means the Public Entertainment Licencing Committee established under section 3 of this Act;

“executive member” means the County Executive Committee Member for the time being responsible for social services;

“games of chance” includes casinos, bookmarking, prize

competitions, bingo, lotto, sports pools, sports betting, racing, race betting, game rooms and electronic and mechanical based amusements;

"license" means a Public entertainment license issued in accordance with section 6 of this Act;

"licensee" includes the person, company, corporate body or association owning, leasing or occupying, or for the time being having the superintendence or management of, a place of public entertainment, and also includes the agent, trustee, manager, or committee of any such person, company, corporate body or association;

"public entertainment" includes any;

- (a) concert, recital, animal, circus or puppet performance;
- (b) dancing exhibition, picture or art exhibition;
- (c) games of skill or chance;
- (d) acrobatics or other exhibitions of skill;
- (e) the provision of at least three(3) amusement machines and;
- (f) cinemas and video shows which is open to, or available for use by the public whether the admission or use is procured by the payment of money or otherwise, but shall not include athletic games or sports; and

"place of public entertainment" means any building, tent or other erection of whatever nature, or any premises or land, open to the public gratuitously or otherwise, where any public entertainment is performed or presented.

Object of the Act

3. The Object of the Act is to regulate, protect and promote, for the interest and enjoyment of the community and other persons visiting the county, public entertainment.

PART II — ADMINISTRATION

Establishment of the Committee

4. There is established the Public Entertainment Licencing Committee which shall be responsible for matters relating to public entertainment.

Functions of the Committee

5. The Committee shall be responsible for the management of public entertainment, and to this end shall—

- (a) enforce national and county policies and legislation on public entertainment;

2015

- (b) regulate the establishment of places of public entertainment within the county;
- (c) undertake sensitization of the public within a particular vicinity on the effects of setting up a place of public entertainment within that vicinity;
- (d) ensure the protection of the public, and in particular minors and vulnerable persons, close to and within places of public entertainment; and
- (e) Receive and investigate complaints of corrupt practices within the sector.

Powers of the Committee

6. The Committee has power to—

- (a) liaise with the national and county governments and formulate county policy on public entertainment;
- (b) advise the County Government on initiatives, programs and services geared towards the regulation and promotion of public entertainment in which the county is involved;
- (c) license and set conditions for the licensing of a place of public entertainment;
- (d) determine the class or classes of places of public entertainment;
- (e) determine the age of the patrons of any place of public entertainment and the hours it may operate;
- (f) publish and disseminate information on its activities at least bi-annually;
- (g) inquire into complaints against licensees;
- (h) implement the national policy and legislation on matters relating to public entertainment; and
- (i) Perform any other function that may be assigned by any national or county legislation.

Members of the Committee

7. (1) Members of the Committee shall consist of;

- (a) The Director for the time being responsible for matters relating to gender, culture, children and social services;
- (b) The Director for the time being responsible for matters relating to Finance and economic planning;
- (c) The Director for the time being responsible for matters relating to the environment;

- (d) The Director for the time being responsible for matters relating to public health;
 - (e) The Director for the time being responsible for matters relating to trade and tourism;
 - (f) The Director for the time being responsible for matters relating to administration and public communication; and
 - (g) The Director for the time being responsible for matters relating to sports.
- (2) The Executive Member shall ensure that the Committee has adequate secretariat from within the public service to enable it to carry out the functions assigned to it under this Act.

PART III—LICENSING

Application to hold public entertainment license

8. (1) Any person desiring to open a place for public entertainment shall make an application to the Committee which shall be accompanied by a description of the proposed place of public entertainment and specifying to the satisfaction of the Committee—
- (a) the address of the owner and manager of the place of entertainment;
 - (b) the address of the place of public entertainment;
 - (c) if it is to be held within a building, the dimensions of the hall and the maximum number of persons it may hold;
 - (d) the type of entertainment proposed to be held in it;
 - (e) the method ensuring the safety and security of the patrons;
 - (f) the method of ensuring persons living in the neighbourhood are not unduly inconvenienced by noise and insecurity; and
 - (g) the times the place shall be open to the public;
- (2) The Committee may on receipt of the application under subsection
- (1) request the applicant for any other relevant information.
 - (3) A person who uses, or causes, offers or permits to be used any place of public entertainment for the performance or presentation of any public entertainment without a license previously obtained from the Committee commits an offence.
 - (4) If the Committee considers that—

2015

- (a) the safety, health and convenience of the persons attending the performance or presentation at a place of public entertainment are adequately provided for;
- (b) the structure, equipment and lighting of the place of public entertainment conform with all the rules made under this Act; and
- (c) on payment of the prescribed fees; it shall grant a place of public entertainment license within thirty days of receipt of the application, subject to any conditions it may impose either generally or in respect of any single performance or for such period not exceeding twelve months or as it may deem fit.

(5) The license issued under subsection (4) shall be in such form as the Committee may from time to time determine.

(6) A license issued under subsection (4) may be revoked or suspended if, in the opinion of the Committee, the safety, health or convenience of persons attending the performance is not adequately provided for, or if the structure, equipment or lighting has ceased to conform with the rules made under this Act.

Cap. 222

(7) The Committee may, on the application of any interested person, grant or endorse a license under this Act, authorising the use of a place of public entertainment for the presentation of cinematograph exhibitions in addition to the performance of stage plays and other public entertainment, if the Committee is satisfied that the place of public entertainment also conforms with all the requirements prescribed for a place of public entertainment by the Films and Stage Plays Act and any rules made under that Act or by any enactment amending or replacing it.

Conditions for issuance of license

9. The Committee shall not issue a license under section 8 unless satisfied that there has been made in or about the building or place in respect of which the application is made—

- (a) proper sanitary arrangements;
- (b) proper provision against risk from fire; (c) proper provision for extinguishing fire;
- (d) proper provision for safe exit, and sufficient means to exit, in the case of fire; and
- (e) proper provision for the safety and convenience of the public generally.

Supervision of a place of public entertainment

10. (1) The Committee may grant a place of public entertainment license upon the condition that an approved place shall not be used for the purposes specified in the license except under the superintendence of a specified authorised officer or other person designated in the license, and in that case, at any time, the officer or person so designated may order a stage play or cinematograph exhibition to cease or give any other direction which he or she may think necessary for ensuring the safety of the approved place and of the audience.

(2) Any owner, manager or other person in charge of an approved place who fails to comply with any order given under subsection (1) commits an offence.

License for additional or new parts public entertainment

11. No person shall present, cause, permit or suffer to be presented, or shall take part or assist in any public performance or entertainment in respect of which a license has been granted under this Act if any new part has been added to the performance or entertainment unless a license covering the new part has been previously obtained from the Committee.

Submission of description of public entertainment

12. (1) One copy of every performance or entertainment, and of every new part added to a performance or entertainment for which a license has already been granted, and a full description in writing of any public entertainment intended to be performed in an approved place shall be sent to the Committee.

(2) If any performance or entertainment or any part of the performance or entertainment sent to the Committee is not in the English or Kiswahili languages, the Committee may require, in addition to the original script, a true translation in English or Kiswahili, certified to its satisfaction.

(3) The Committee may, in its discretion, submit the original script to such person or persons as it may appoint for examination and report, and the Committee may act upon a report in the same manner as if the examination of the script had been conducted by the Committee.

Consideration of applications for entertainment license

13. For the purpose of considering any application for an entertainment license, the Committee may permit the applicant to cause the stage play or public entertainment to be performed or presented for its inspection.

2015

Rejection of application

14. (1) Where the Committee refuses to issue a license, it shall communicate the refusal to the applicant in writing within thirty days of receipt of the application and specify the Committee's reasons for refusing to issue a license.

(2) If the reasons the Committee refuses to issue a license relate only to the construction of the place of public entertainment or the matters specified in section 8 (4), the applicant of the place of public entertainment may, subject to subsection (3) of this section, re-apply for a license in respect of the place of public entertainment.

(3) The applicant shall, before re-applying for a license, rectify the matters identified in the notice of refusal as the reasons why the license was refused.

(4) An applicant re-applying for a license, shall be given a reasonable opportunity, after receiving notice of the refusal, to discuss with a suitably qualified person authorised by the Committee, the reasons for the refusal and the appropriate action the applicant should take to rectify the matters identified as the reasons for the refusal.

Conditions of license

15. (1) A license issued under this Act is subject to such conditions, as the Committee may specify in the license including but not limited to—

- (a) the term of the license;
- (b) the days and hours of operation;
- (c) the number and ages of persons who may be admitted;
- (d) the noise and light in and emanating from the place of entertainment; and
- (e) the behaviour not permitted in the place of public entertainment.

(2) A licensee shall cause the license to be displayed in a prominent place in the approved place to which it relates.

(3) A licensee who contravenes or fails to comply with a condition of his license or causes or permits another person to contravene or fail to comply with such a condition, is guilty of an offence.

Uniformity of certain conditions

16. (1) Subject to subsection (2), all licenses issued in respect of the same class of places of public entertainment are to be subject to the same

conditions in relation to the following—

- (a) the days or hours of operation of the places of public entertainment;
- (b) the number and ages of persons who may be admitted to the places of public entertainment.

(2) Subsection (1) does not apply if the Committee is satisfied that it is not appropriate in the circumstances of a particular place of public entertainment for the license issued in respect of it to be subject to the same condition or conditions relating to the days or hours of operation, and the number and ages of persons who may be admitted to it.

Patrons to comply with conditions of license

17. (1) A person on or in the immediate vicinity of a place of public entertainment shall comply with and not contravene—

- (a) the conditions to which a license in respect of an approved place is subject; and
- (b) the reasonable directions of the licensee or his agent or employee apparently in charge of an approved place relating to the behaviour of persons prescribed by a condition to which the license is subject.

(2) A natural person who contravenes or fails to comply with this section or causes or permits another person to contravene this section commits an offence and on conviction shall be liable to a fine of one thousand (1000) shillings, and five hundred (500) shillings for each day the offence continues after the first day on which it is committed.

(3) A body corporate that contravenes or fails to comply with this section commits an offence and on conviction shall be liable to a fine of five thousand (5000) shillings, and one thousand (1000) shillings for each day the offence continues after the first day on which it is committed.

Unlawful use of a place of public entertainment

18. (1) Where in any approved place, a class of public entertainment other than that specified in the license issued in respect of that place is held, the person holding the entertainment, and the holder of the license shall be guilty of an offence.

(2) A natural person who contravenes or fails to comply with this section or causes or permits another person to contravene this section commits an offence and on conviction shall be liable to a fine of one thousand (1000) shillings, and five hundred (500) shillings for each day the offence continues after the first day on which it is committed.

(3) A body corporate that contravenes or fails to comply with this section commits an offence and on conviction shall be liable to a fine of five thousand (5000) shillings, and one thousand (1000) shillings for each day the offence continues after the first day on which it is committed.

Cancellation of license

19. Subject to section 8, the Committee may, in its discretion,

(a) cancel a license if, in its opinion—

- (i) the licensee has contravened or failed to comply with a condition of his license;
- (ii) the continued use of the approved place in respect of which the license is in force would constitute a danger to the public;
- (iii) it is prejudicial to public health;
- (iv) it inconveniences or constitutes a nuisance to persons who normally reside in the vicinity of the approved place; or

(b) vary a condition of a license.

Additions and alterations to approved place

20. A licensee shall seek approval from the Committee before making any addition to, or alteration of, an approved place of public entertainment.

Period and renewal of license

21. (1) A license shall be in force for the period specified in the license but shall not exceed 12 months from the date of its issue or its renewal.

(2) The Committee may, from time to time, renew a license on the application of the licensee of an approved place and on payment of the prescribed fee.

Free license

22. The Committee may direct that a license be issued free of charge where the public entertainment is to be given for any charitable, educational or public purpose.

PART IV — GENERAL PROVISIONS

Duty of owner of place of public entertainment

23. (1) Where the owner of any place of public entertainment has leased the premises to any other person, he or she shall immediately inform the Committee and give the name, address and any other

information the Committee may request, of the person to whom the place has been leased.

(2) If the owner has reason to believe that there is an intention to proceed with any public entertainment in the approved place either without the requisite license or permit, or contrary to any condition specified in such license or permit, the owner shall immediately inform the officer-in-charge of the nearest police station or an authorised officer.

(3) In this section, "owner" includes any sub lessor.

Authorised Officers

24. (1) The County Executive Member shall on the recommendation of the Committee appoint such number of authorised officers from within the County Public Service as it considers necessary for the effective implementation of this Act.

(2) The County Executive member shall issue a certificate of appointment to every person appointed under this section.

(3) Subject to any relevant law, an authorized officer may at all reasonable times enter upon any premises or place in which he or she has reason to believe that any public entertainment is being or is about to be presented with a view to seeing whether the provisions of this Act and the conditions of any license or permit granted under this Act have been complied with.

(4) An authorised officer entering any premises under this section shall if so required, produce for inspection by the person in-charge of the premises proper identification issued under the provisions of this Act.

(5) Any person preventing or obstructing the entry of an authorized officer in terms of subsection (2) commits an offence.

(6) If an authorized officer under subsection (1) is satisfied that a public entertainment is being performed or presented contrary to the provisions of this Act or any license or permit issued under this Act, he or she may order that the public entertainment cease forthwith.

Power of Authorised Officers

25. (1) Where an authorised officer mandated to inspect an approved place is of the opinion that the continued use of a building or place being used in a particular way would constitute a ground for the Committee to exercise its power under section 8 (6), the authorised officer may direct the licensee or his agent or employee in charge of the approved place to take such action as the authorized officer thinks reasonably necessary to remedy the situation.

(2) If the licensee or person so directed under subsection (1) fails to take that action within the time allowed for that purpose by the authorised officer, the authorized officer shall, by notice in writing addressed to the licensee and served personally on the licensee or his agent or employee in charge of the place of public entertainment, close those premises pending the decision of the Committee under section 8, and advise the Committee accordingly.

(3) A license in respect of premises closed under subsection (2) shall be deemed to have been suspended until the Committee has made a decision under section 8.

(4) The Committee shall, within seven days after being advised of the closure of any approved place under subsection (2), consider whether the license in respect of that place should be cancelled or varied.

(5) The Committee shall, in writing and within fourteen days, inform the licensee of its decision.

Register of licenses

26. (1) The Executive member shall cause to be kept a register of licenses issued, renewed, cancelled or varied and any conditions contained in each license.

(2) Any person who desires to examine the Register of Licenses shall make an application to the Committee in the prescribed form and the Committee shall, if satisfied the information shall not be used for ill-intentions, allow the applicant to access the register.

License for private performance in a place of public entertainments

27. No person shall use a place of public entertainment licensed under this Act for the private performance or presentation of any stage play or public entertainment without a license in writing from the Committee.

County executive committee member may declare any entertainment to be public

28. The County Executive Member may by statutory instrument declare any entertainment to which the public are admitted, to be a public entertainment for the purposes of this Act.

Prohibition of certain entertainment

29. (1) The County Executive Committee Member, whenever he or she is of opinion that it is in the public interest so to do, may, notwithstanding the terms of any license, prohibit the holding of a public entertainment.

(2) Any person who holds any public entertainment contrary to any such prohibition, or contrary to any condition, imposed by the County executive committee member in pursuance of subsection (1), shall be guilty of an offence.

Exits to be free from obstructions

30. (1) The licensee of an approved place and the person in charge of a public entertainment shall ensure that the means of exit, staircases, landings, passage ways and gangways are at all times while members of the public are in the approved place, free from any kind of obstruction.

(2) Failure to comply with the requirement under sub-section (1) is an offence.

Prohibition against Cruelty to animals

31. (1) Any person who maltreats any animal taking part in any public entertainment commits an offence.

(2) Maltreatment in this section shall be of such nature, scope and limits as specified under section 3 of the Prevention of cruelty to animals Act Cap 360 of the laws of Kenya.

Protection from personal liability

32. No matter or thing done by the Committee or any other officer, employee or agent of the county shall, if the matter or thing is done *bona-fide* for executing the functions, powers or duties of the Committee, render the member, officer, employee or any person acting under the directions of the Committee or of any such officer, or employee personally liable to any action, claim or demand whatsoever.

Public Participation

33. The Committee shall ensure that all decisions made in the course of administering public entertainment which may affect the community of any particular area, shall be subjected to the widest possible consultation and members of the public are invited to participate.

Review

34. Any person dissatisfied with any act or decision of the Committee done or made or omitted to be done or made by the Committee under this Act, may apply to the county executive committee member for a review and the County Executive Committee Member may confirm, disallow or vary any act or decision of the Committee or may direct the Committee to act in such manner as the County Executive Committee Member shall deem fit.

Holding public entertainment in an unlicensed place

35. Any person who holds a public entertainment in any place not being a place of public entertainment in respect of which a license is in force, shall be guilty of an offence.

Provided that a temporary license may be obtained in accordance with the provisions of Sections 8 and 9

General Penalty

36. (1) Every person who violates or fails to comply with any provision of this Act for which no other penalty is provided, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment of a term not exceeding six months or to both such fine and imprisonment.

Offences to be cognizable

37. (1) Offences under this Act shall be cognizable offences.

(2) Where a corporation, registered society or other similar legal entity commits an offence under this Act, any director or officer of the corporation, society or legal entity who acquiesced in the offence commits an offence and shall on conviction, be liable to the penalty provided for by this Act in respect of the offence committed by the corporation, society or legal entity, whether or not such corporation, society or legal entity has been prosecuted.

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an agent or an employee of the accused.

(4) Any act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the act or omission of the employer, and any proceedings for an offence arising out of such act or omission may be taken against both the employer and the employee.

PART V—MISCELLANEOUS PROVISIONS**Regulations**

38. The Executive Member may on the recommendation of the Committee make Regulations for carrying out or giving effect to this Act and in particular for prescribing matters for or in respect to—

- (a) the licensing of places of public entertainment;
- (b) the conditions subject to which the Committee shall issue licenses including the hours during which places of public entertainment may be open;

- (c) the conditions to be observed in reference to the erection, alteration and equipment of any place of public entertainment including—
 - (i) the mode of lighting generally and fixing the hours during which the lights may be left burning;
 - (ii) what (if any) special lights shall be placed at entrances and exits, how they shall be served, and the times such lights shall be kept burning;
- (d) the conditions to be observed in reference to the safety from fire or otherwise of any approved or proposed place of public entertainment, or for the safety and control of persons attending the place of public entertainment including—
 - (i) the storage of scenery and properties and combustible things;
 - (ii) the keeping of fire watches and the fire drill of employees; (iii) the means of exit, staircases, landings, passages and gangways that shall be provided and the size and construction of such exits, staircases, landings, passages and gangways;
- (e) the imposition of penalties for any breach of the Regulations; (f) Generally for better carrying into effect this Act.

Savings

39. Any license or permit or restriction issued or made under any relevant law shall remain valid until the lapse of such law or the enactment of this law whichever comes first.

