



Report from Stakeholders Dialogue on Nairobi City County Unified Trade License meeting

28th April 2017

Six eight Hotel, Nairobi

Background

Division of functions between National and the County Governments is pegged on Article 186(1) of the constitution 2010 that states; except as otherwise provided by the constitution, the functions and powers of the national government and the county governments, respectively, are as set out in the Fourth schedule.

Under the fourth schedule, the county functions and powers include; Function 2(d), licensing and control of undertakings that sell food to the public, Function 3, control of air pollution, noise pollution, other public nuisance and outdoor advertising. Function 4, cultural activities, public entertainment and public amenities including: (a) Betting casinos and other forms of gambling (c) Liquor license, (d) Cinemas.

Additionally, Function 7 assigns the county to undertake Trade development and regulations including; (a) Markets, (b) Trade licenses (excluding regulation of professions), (c) Fair trading practice and lastly function 14, assigns counties with ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for effective exercise of functions and powers and participation in governance at the local level

In the months of February and March 2017, TISA convened community ward forums in four sub-counties of; Embakasi East, Westlands, Kibra and Dagoretti North, with a purpose of enhancing public participation and subsequently to effective service delivery goals for the county, through formation of ward sectors committees in the selected/target areas. During the forums, members of the public identified various issues affecting effective service delivery in the target areas, from the trade committees, it was pointed that the County was implementing a unified trade license to all

business operators in Nairobi City County and this was noted to be a challenge especially for the small-scale traders across all the wards.

It is against this backdrop, that the Institute for Social Accountability (TISA) in collaboration with County Budget and Economic Forum Non –State Actors organised a stakeholder forum to discuss key concerns pertaining the unified trade license in Nairobi City County and subsequently generate recommendations to be shared with the relevant authorities in the county.

The meeting therefore, brought together participants drawn from licensing department of Nairobi City County, Sub-County Administrators, ward administrators and representatives from interim public participation trade committees established by TISA and NCC from target areas of Embakasi, Westlands , Kibra and Dagoretti North, County Budget and Economic Forum non state actors (CBEF), Commission on revenue allocation

1. Introduction

Ms. Wanjiru Gikonyo, National Coordinator, The Institute for Social Accountability, did context setting. Ms. Gikonyo noted that the forum was a follow up on the previously meetings held during the establishment of the interim public participation ward sector committees

The objectives of the forum were:

- I. To addressing trade licensing concerns on transparency and equity
- II. To Understand Nairobi City County revenue potential
- III. To understand Tax equity

1.1. Participant’s expectations from the half-day meeting included:

1. **Traders:** The county should address/find a lasting solution to the high cost of obtaining the single business permit
2. **Traders:** Forum should generate measures to address Poor service delivery across various sectors in the county including garbage collection, water and electricity among other.
3. **Traders:** County should ensure the cost of service delivery is commensurate with actual services provided by the county
4. **Traders:** The County should address concern on Sexual harassment of especially female traders by city Askaris and sensitize the small-scale traders on their rights.
5. **Traders:** Enlighten the small scale/informal traders on unified trade license acquisition process
6. **County Government:** Call upon traders/ business operators to pay their license fee to enable the county provide/deliver enhanced services
7. **County Government:** Consider a Memorandum of Understanding (MoU) between the county and business operators to fully adopted/operationalize devolution of trade licensing

2. In put into the unified trade license for Nairobi City County

Mr. Gabriel Kivuti, County Budget and Economic Forum member, representing National Council of Churches of Kenya (NCKK) exposition on unified trade license for Nairobi City County regarding on the *practicability* and *equitability* of having a single business permit.

Mr. Kivuti in his discussion proposed that, the county should consider the use of digital platforms to ascertain the beneficiaries of the service or to pay for the license. He further noted that digital platform are the best devises to ascertain the actual target population to pay for a particular license, and urged the data officers to ensure risk disaggregation during data collection in order to determine equity. In his concluding remarks, Mr. Kivuti pointed out that equity and service demand are integral, and that traders should ensure the county provides all the services paid for.

3. Nairobi City County license department presentation on unified trade license

Mr. Koros, Director, license department, kick stated his presentation by noting that the county embraced the move by Nairobi City County towards the end of 2016 after an internal county discussion. The move by county was purposely to reduce the cost of doing business in the county and to enable the ease of paying license fee. Currently, the county government is not in a position to determine the turnover of particular businesses and proposed a need for consultation between the county assembly and the executive in order to establish strategic parameters to ascertain the same moving forward. Additionally, there is variance between the charges levied on both up and low markets, with the low markets paying lesser charges in form of CESS collection as compared to the up markets that pay single business permits. CESS collection was an innovation from the defunct city council that was designed for small-scale traders who were unable to pay for the business licenses. However, it was worth noting that the small-scale traders are overcharged as compared to their counterparts in the up markets. An in-depth analysis on how much small-scale traders were paying inform of CESS range between Kshs 7,300 – Kshs 18,250 turnover.

In his proposal, Mr Koros indicated that CESS collection was not pegged on any legislation, hence the need to amend the law by the county assembly to address the menace ring fenced on CESS collection.

Expounding on Single business permit, Mr Koros, indicated that there were five licenses merged together to form the unified trade license, these include; single business permit, fire clearance certificate, advertising signage, health certificate and food hygiene. He clarified the myths surrounding unified trade license noting that, health license applies to all businesses; food hygiene license applies specifically to inspection of premises undertaking food and beverage businesses and for employees in food industries and advertisement applies to signage. He reiterated that the turnover on businesses in the county was not yet established and that the license charges are based on the size of the businesses ranging from Kshs 4,000 to Kshs 25,000

4. Commission on Revenue Allocation presentation on unified trade licensing

4.1 Background on Unified trade license in Nairobi City County

Mr. Mose, Senior Research Analyst, Commission on Revenue Allocation hinted that his discussion /Presentation was encircled on Nairobi City County revenue potential, tax equity and unified trade license. Referring to the constitution of Kenya, Article 209, on powers to impose taxes and charges by both the national and county governments, Mr. Mose pointed out that as the county levies charges, it should not prejudice economic activity, mobility of goods and services, capital and labor. Further, he recommended that the county should consider staggering of the licensing cost across the year to enable the traders pay their dues in order to address / fulfill the article 209 of the constitution on economic prejudice.

According to Mr. Mose, the question begs as to whether the county engaged the public in consultations to adopt the unified trade license.

5. Nairobi City County Revenue Potential

The county revenue performance based on the past three financial years' trends on actual revenue target, revealed over projections on internal revenue streams targets, that had continuously indicated shortfalls hence compelling the county to seek alternative measures for increasing its revenues. Among measures adopted by the county to elevate, its internal revenue is over charging on trade license especially CESS collection on small scale-traders.

The presenter applauded the county Government for embracing unified trade license. However, the county was urged to adopt right mechanisms/modalities to illustrate on procedures for the consolidation including (The pricing should enable the county have sustainability) and borrow from Kiambu County tax mechanism which is effective and efficient and has translated to quality performance of own source revenue.

The following questions were posed to the County Government:

- I. How will the county ensure it meets revenue targets
- II. How is revenue potential and actual collection related in terms of levying rates
- III. Are the charges for instance fire charges commensurate with the services provided by the county
- IV. How does the county assist small traders benefit from the county incentive rather than going for the daily rates (CESS).

5.1. Concerns to the objectivity of unified trade licensing?

1. The risk of unified trade license if not well thought out and might negatively affect investment decision. this can be gauged through pre and post unified collection figures
2. Unified trade license might act as a barrier to new business and limited expansion to the existing ones

6. Concern and Recommendations

1. **Concern:** Despite the devolution of license department to sub-county and ward level, collection of rates is still centralized and undertaken by officers based at city hall as opposed to the existing devolved structures. This has in turn led to lose of revenue due transparency issues.

Recommendations:

- a. Establish a card based system at sub-county level that shall be subject to renewable every quarter to avoid linkages.
 - b. Register all traders and attach the rates they should remit in a bid to eliminate cartels in CESS business collection
 - c. License department should engage license officers at both the sub-county and fully embracing the existing structures
2. **Concern:** there has been noticed operations of imposters from the defunct City Council who have continuously swindled traders into paying non-existent levies/charges

Recommendations: There is need to introduce identification cards by the Nairobi City County license department to its officers, cards of which should be produced prior to undertaking any exercise

3. **Concern:** There was an issue with the chairperson of the liquor license board being non-official, noting that the move has escalated crimes such as corruption in license issuing. The participants therefore, advocated for the county to appoint the sub-county administrators to the position of chairpersons in the board.

Response: The essence of non-official as chairperson was in order to safeguard the interests of the residents. However, this is not the case. The county should therefore consider addressing the concerns to the same

4. **Concern:** The aspect of geographical variance on position of various business capacities especially for small traders should be considered by the county in addressing equity

Recommendation: As is, there is no data disaggregation on geographical business positions, therefore, the county assembly should define the terms and pass a law to address the same.

5. **Concern:** Is there a regulation to guide the operation of bars in residential areas

Recommendation: In each sub-county, there is established a liquor board that visit and inspect that is mandated with ensuring one meets the threshold to be issued with a liquor license. According to the county, one is required to advertise in the newspaper their intention to convert the residential premise to commercial, two weeks prior to the move and urged residents to look out for the advertisement period, which serves as the best opportunity to address any concern/challenge by the move.

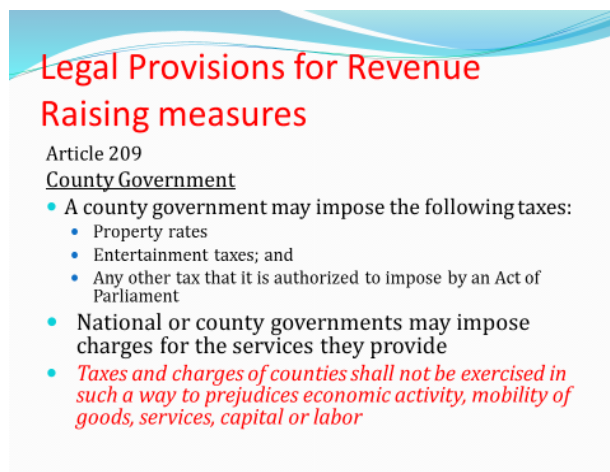
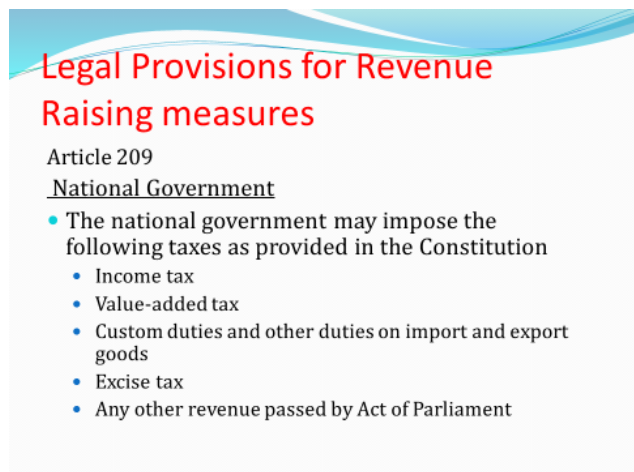
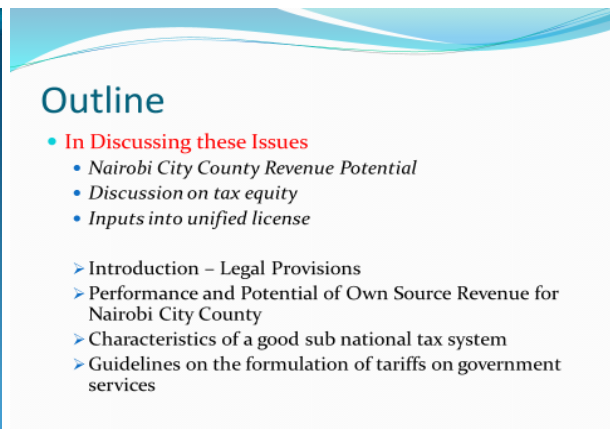
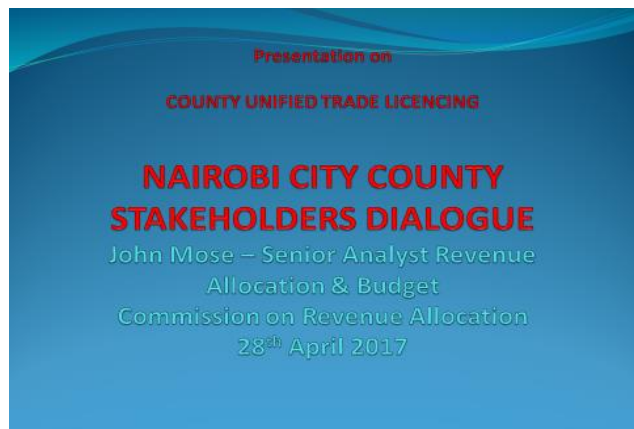
There are in place gadgets to measure the amount of noise hence action may be taken to the offender based on the same. It was noted that county sub-county administration in collaboration with residents are doing their best to redress the challenge

6. **Concern:** What is the criteria used to determine the rates paid by small-scale trade areas considering that there is variance in nature and time of business operation?)

Response: The small-scale traders pay CESS that is not undertaken on a daily basis

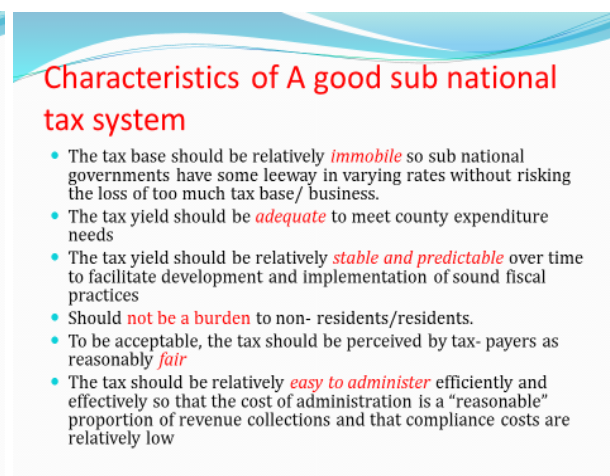
Appendices

Annex A: Commission on Revenue Allocation Presentation



Nairobi City County Revenue performance and potential

County	Target			Actual Collections		
	2013/14	2014/15	2015/16	2013/14	2014/15	2015/16
FY						
Amount in (M)	15,448	17,763	17,528	10,026	11,500	11,710
Performance (%)				65%	65%	67%
Revenue Potential (Estimation by KIPRA, 2015)					15,291	



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Guidelines on the formulation of tariffs on government services (Achieving Tax Equity)

- Shall **prepare and adopt** and implement a tariffs and pricing policy for the provision of public services
- Users of county services should be **treated equitably** in the application of **tariffs, fees, levies or charges**
- The amount individual users pay for services should generally be **in proportion to their use of that service**;
- Poor households shall have access to at least basic services through—
 - Tariffs that cover only operating and maintenance costs;
 - Special tariffs or lifeline tariffs for low levels of use or consumption of services or for basic levels of service; or
 - Any other direct or indirect method of subsidies of tariffs for poor households

Guidelines on the formulation of tariffs on government services

- Tariffs shall reflect the costs reasonably associated with rendering the service, **including capital, operating, maintenance, administration and replacement costs, and interest charges**;
- Tariffs shall be set at levels that facilitate the **financial sustainability of the service**, taking into account subsidy from sources other than the service concerned;
- Provision may be made in appropriate circumstances for a surcharge on the tariff for a service;

Guidelines on the formulation of tariffs on government services

- Provision may be made for the promotion of local economic development through special tariffs **for categories** of commercial and industrial users;
- Promotion of the economic, efficient, effective and sustainable use of resources, the recycling of waste and other appropriate environmental objectives; and
- Full disclosure of the subsidies on **tariffs for poor households** and **other categories of users**

Guidelines on the formulation of tariffs on government services

- A tariff policy may **differentiate** between different **categories of users, debtors, service providers, services, service standards, geographical areas** and other matters as long as the differentiation does not amount to **unfair discrimination**
- A county government may make laws and regulations to give effect to the implementation and enforcement of tariff policies.

Unified License

- *Basis of unification-is the county minimizing administration costs or promoting ease of doing business or just increasing own revenues ?*
- *Risks on Pricing*
 - *Distorts investment Decisions*
 - *Barriers to new firms and expansion of small ones*
 - *Tax evasion or avoidance*
- **Public participation and consultation**
- **Differentiate business taxes, fees and charges**
- **Price should be guided by the benefits principle, ability to pay on taxation**

Appendix B: Participant List

NO	NAME	ORGANIZATION	EMAIL
1	Kennedy Mogaka Anyoni	Bar Business	
2	Samuel Kingori	Markets	
3	Bonface Amayaya	B.T Supplies ltd	
4	Patrick Orega Angasa	NCCG	patrickangasa@gmail.com
5	Kenneth Jumba	Market	
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19	Russell Kiaye		Russelkiaye@gmail.com
20	Gabriel Kivute	CBEF	gabrielkivute@yahoo.com
21	Thomas Koros	Nairobi County	tkoros@nairobi.go.ke
22	Margaret Kariuki	Mt. View ward	
23	Grace Karen Akinyi	Chiyowi Youth Group	

24	Beth Mwai	Kilimani	Mwai.shiru@gmail.com
25	Jane Nyokabi	Kilimani	
26	Susan Mugambi	Embakasi	
27	Raphael Kinyungu	NCC	kimwelik@yahoo.com
28	Jeniffer Kaburaa	Kawangware	
29	Patrick Mwaniki	NCCG	Mwaniki.ncc2011@gmail.com
30	Joseph Ndugu	Embakasi	jngithi@yahoo.com
31	Abdall Mohamed	CBEF	battawi@gmail.com
32	Margaret Wambui	Gatina	
33	Saul Omukati Peter	Gatina	somukato@yahoo.com
34	Hosea Febians	Kibera	Tsongaphebbians2gmail.com
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46	Charles Mabonga	NCCG	Cmambonga@gmail.com

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48	Lina Ohoko	NCCG	linaohoko@gmail.com
49	Gladys Wairimu	NCCG	
50	Victor Nyongesa	TISA	Victor.nyongesa@tisa.or.ke
51	Daniel Jabuya	NCCG	otienojabuya@gmail.com
52	Job Moku		