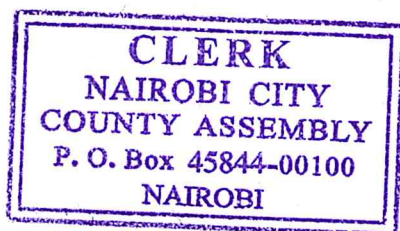


SPECIAL ISSUE

Kenya Gazette Supplement No. 14 (Nairobi City County Acts No. 4)



REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY ACTS, 2021

NAIROBI, 20th August, 2021

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THE NAIROBI CITY COUNTY PUBLIC NUISANCE ACT, 2021

No. 4 of 2021

Date of Assent: 19th August, 2021

Date of Commencement: 20th August, 2021

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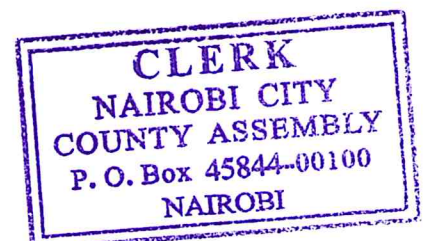
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THE NAIROBI CITY COUNTY PUBLIC NUISANCE ACT, 2021

AN ACT of the Nairobi City County to give effect to the Fourth Schedule of the Constitution to control public nuisances and for connected purposes.

ENACTED by the Assembly of Nairobi City County, as follows—

PART I—PRELIMINARY**Short title**

1. This Act may be cited as the Nairobi City County Public Nuisance Act, 2021.

Interpretation

2. In this Act—

“Authorized officer” means an authorized officer appointed under section 5 of this Act;

“County” means Nairobi City County”;

“Department” means the Nairobi City County departments responsible for matters relating to public nuisance;

“County Executive Committee Member” means the Member of the Nairobi City County Executive Committee responsible for matters relating to environment;

“County Gazette” means a gazette published by the authority of a county government or a supplement to such gazette”;

“County Secretary” means the person for the time being holding the office of the County Secretary, his or her deputy and any other officer of the County authorized by him or her in writing for the purposes of this Act;

“permit” means a document issued by the county to an entity to conduct business within Nairobi City County;

“permit holder” means a business entity authorized to conduct business within Nairobi City County;

“protected area” means an area declared by the Nairobi City County government to be a protected area;

“public place” means any square, building, park, recreation ground or open space, public roads and any open space to which the public has access to which—

(a) is vested in the Nairobi City County Government;

- (b) the public has the right to use; or
- (c) is shown as a public place on the general plan of the Nairobi City County filed in the lands registry,
and it includes a workplace and a public conveyance;

“Public Nuisance” means any act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public place.”;

“Public Road” means any roads, street or thoroughfare or any other place which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes:

- (a) the verge of any such road street or thoroughfare;
- (b) any bridge, ferry or drift traversed by such road street or thoroughfare; or
- (c) any other object forming part of or connected with or belonging to such road street or thoroughfare.

Object of the Act

3. The objective of this Act is to provide for the control of public nuisance and empower the county to take all lawful, necessary and reasonably practicable measures for—

- (a) the maintenance of the county, at all times in a clean and sanitary condition;
- (b) the abatement and prevention of public nuisances;
- (c) the remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health, or which has been declared to be a public nuisance under this Act.

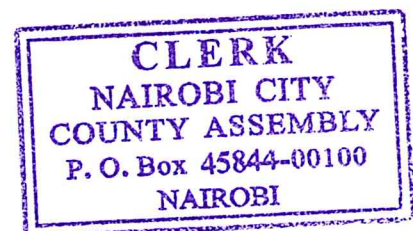
Application of related laws

4. The provisions of this Act shall be in addition to the Environmental Management and Coordination Act Cap. 387, the Public Health Act Cap. 242, The Foods and Chemical Substances Act Cap. 254, the Tobacco Control Act Cap. 254A, the Physical Planning Act and any other law dealing with public nuisance.

PART II – ADMINISTRATIVE PROVISION

Administration of this Act

5. (1) This Act shall be administered by the departments responsible for matters relating to environment and public nuisances.



(2) The member of the County Executive Committee shall by notification in the Kenya Gazette appoint such number and cadre of officers to be authorized officers for the purposes of this Act, as may be necessary.

Powers and functions of County Secretary and departments responsible

6. (1) The county secretary may through a gazette notice the declare an act to be a nuisance.

(2) It is the responsibility of the departments responsible to implement the objectives of this Act and to this end the County shall—

- (a) formulate the County policy and legislation on public nuisances;
- (b) prescribe measures for the control of public nuisance;
- (c) subject to relevant legislation, receive any grant or donation;
- (d) issue, suspend or revoke licenses and permits;
- (e) impose fines for breach of any conditions imposed in any license or permit issued under this Act;
- (f) charge fees for any services the county may render under this Act;
- (g) monitor the abatement of nuisance within the County;
- (h) take all measures possible to ensure that activities within the county conform with the legislation on health, safety and environmental standards;
- (i) perform any other function as may be directed by the county secretary and departments for the effective implementation of this Act.

(3) The county secretary shall make regulations on any nuisances that may be declared under subsection (1).

Functions of the department responsible for control of public nuisance

7. (1) The Department shall—

- (a) compel occupiers or, in the case of vacant premises, owners, to keep their premises free from offensive or unwholesome matter;
- (b) monitor the keeping of animals, birds and bees at their premises by any owner or occupier, so that their keeping or the premises are not constructed, situated, used or kept in such manner as to

be a public nuisance, or otherwise offensive, or injurious to public health;

- (c) take such steps and measures as may be necessary for securing the prevention and destruction of insects, fungi and any other pests which attack timber in buildings and felled timber, and for preventing and eradicating the infestation of any such timber;
- (d) take measures for the destruction and suppression of rats and vermin within the Nairobi City County, and to set traps or take other measures necessary for the purpose on any land whether within or, with the consent of the government of the Nairobi City County concerned, without its area;
- (e) establish and maintain sanitary services for the removal and destruction of, or otherwise dealing with, all kinds of refuse and effluent;
- (f) take such measures as may be necessary for preventing or stemming the flow of any noxious matter or waste water flowing or discharged from any premises, into the street, any water course, irrigation canal or other places not approved for the reception of such discharge; and
- (g) take other necessary steps under the Act.

(2) The Department shall, if satisfied that a public nuisance exists, serve a notice on the owner, or, if the owner cannot be found, on the occupier of the premises where the nuisance exists, requiring such owner or occupier, as the case may be, to remove the nuisance within the period specified in the notice.

(3) The Department may further instruct the owner or occupier under sub-section (2) to take additional measures in order to prevent a recurrence of the nuisance.

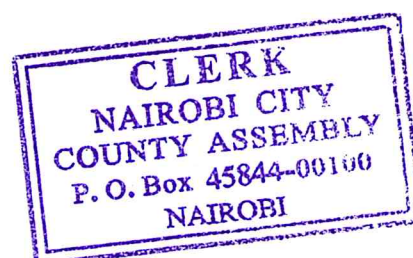
(4) A person who fails to comply with a notice issued under subsection (2) to remove the nuisance within the period specified in the notice commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding KSh. 10,000 or both.

(5) The County Assembly shall play an oversight role over the administrative provisions and functions of this Act.

PART III— GENERAL PUBLIC NUISANCE

Public nuisance relating to public roads and street offence

8. (1) Any person who on any street or public road—



- (a) plays any game in such a manner as to cause damage to property or cause injury to any person;
- (b) rides a motorcycle or drives a vehicle on a footpath;
- (c) spits on any footpath or blows his or her nose otherwise than into a suitable cloth or tissue;
- (d) while being in charge of any dog, allows such dog to foul such street without cleaning up after the dog;
- (e) without the consent of the county secretary, lights any fire;
- (f) defecates or urinates on the street or any open space;
- (g) smokes cigarettes in public places;
- (h) touts for passengers; commits an offence under this Act, commits an offence.

(2) Any person who commits an offence under this section is liable, upon conviction to imprisonment for a term not exceeding 6 months or to a fine of not more than ten thousand shillings or both.

Public nuisance in relation to encroachment

9. (1) Where any hedge, tree or other growth is so placed or in such conditions as—

- (a) to be a danger to a person or vehicle using a street; or
- (b) to interfere with;
 - (i) the view along any street or from one street into another; or
 - (ii) the use of the street by pedestrian or vehicular traffic; the county secretary may serve a notice on the owner or occupier of the land on which such hedge, tree or other growth is situated requiring such owner or occupier within such period of time, not being less than 14 days as shall be specified in such notice to cause the hedge, tree or other growth to be chopped, trimmed or removed.

(2) Any person who fails to comply with the requirements of a notice served in accordance with subsection (1) above is guilty of an offence.

(3) Any person who commits an offence against any provision of this part or of regulations made thereunder for which no penalty is specifically provided is liable upon conviction to imprisonment for term

not exceeding six months or to a fine not exceeding ten thousand shillings or both

(4) The county may on expiry of the period of time specified in a notice served execute any of the work specified in the same notice and any expenses incurred by the county in so doing shall be recoverable from the said person as a civil debt.

Public nuisance in relation to encroachment

10. (1) No person shall attach, erect or permit the erection of any object from or alongside any street in such a manner so as to protrude over or into a street without a permit from the County.

(2) The authorized officer may serve a notice to the owner or occupier of any premises from or alongside an object has been attached, hung or erected in contravention of subsection (1).

(3) The provisions of this Act shall not apply to an advertisement permitted under any Act of the County for the time being in force or to any structure approved by the County under any such Act;

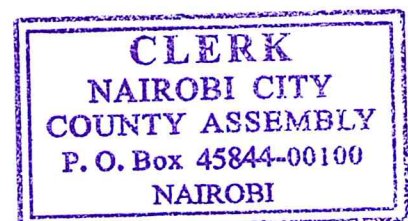
(4) Any person who contravenes or fails to comply with the notice issued under sub-section (2) is guilty of an offence and shall upon conviction be liable to imprisonment for term not exceeding six months or to a fine not exceeding ten thousand shillings or both.

(5) Any person who commits an offence against any provision of this section liable upon conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding fifty thousand shillings or both.

Public nuisance relating to obstruction and damages

11. (1) Any person who—

- (a) in any way wilfully obstructs the free passage of a public street;
- (b) wilfully or negligently damages or destroys the surface of any public street;
- (c) destroys, displaces or removes any property of the county near a street;
- (d) damages or destroys any tree, shrub, flower, plant or grass on land forming part of a public street;
- (e) damages or destroys any barrier, fence, lamp, stone or other material place on a street or by fitting attached thereto;



- (f) willfully or negligently pulls down, damages or destroys any lamp, post or bollard in a street or damages or removes any bulb fitting attached thereto; is guilty of an offence and shall upon conviction be liable.
- (2) Any person who commits an offence against any provisions of this section is liable upon conviction to imprisonment for a term not exceeding twelve months or to a fine of not more than fifty thousand shillings or both.
- (3) Any person who without statutory, breaks up surface of a public street without permission of the County secretary is guilty of an offence.
- (4) Any person who places, leaves, allows, causes to be placed or leaves any vehicle, article or material in a street in such a manner that it causes or is likely to cause an obstruction to persons or vehicles using the street is guilty of an offence.
- (5) The County may remove any vehicle, article or material which has been placed or left in a street in contravention of this Act and impound the same.
- (6) (a) Any person who commits an offence against any provision of this section is liable upon conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding fifty thousand shillings or both.
- (b) the owner of a vehicle, article or material removed from a street pursuant to this section shall not be entitled to recover the same until he has paid impounding fee to the county in the case of a motor vehicle; and
- (c) in the case of any article or material as described in the schedule in respect of each 24 hours or part thereof that the vehicle, article or material has been impounded together with in the case of motor vehicle, the towing charges as specified in the schedule of this Act in respect of the expenses incurred by the County in removing and impounding the articles or materials.

Premises not to be used unless licensed

12. (1) No person shall use any premises or being the owner or occupier thereof or allow the premises to be used for purposes of selling, preparing, packaging, storing or displaying for sale any food unless that person is in Possession of a valid food hygiene license.

(2) Any person who contravenes or fails to comply with the section is guilty of an offence.

(3) No license shall be issued unless the health authority is satisfied that the provision of the law has been complied with and the prescribed fee has been paid to the county.

Sanitary facilities and controls

13. (1) No person shall use any premises as a food plant unless—

- (a) adequate sanitary conveniences are provided for use by employees and every premises where food is prepared and served are provided with adequate separate sanitary conveniences for public use;
- (b) the water supply to the premises is derived from an adequate source, sufficient for the intended operations and portable;
- (c) adequate and convenient facilities for hand washing and hand sanitizing provided.

(2) Any person who contravenes or fails to comply with the section is guilty of an offence.

Health measures in a food plant

14. Every person who owns operates or is in charge of a food plant shall take all reasonable measures and precautions to ensure that—

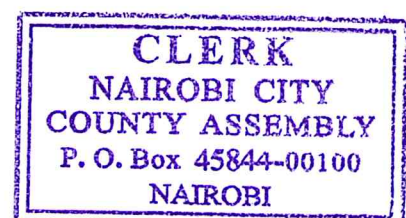
- (a) no person suffering from any disease in a communicable form or having boils, sores or infected wounds works in a food plant in any capacity where there is reasonable possibility of food ingredients becoming contaminated by such person or the disease being transmitted to the other employees;
- (b) thorough medical examination is carried out in a government medical institution and be issued with a valid medical certificate.

(2) Any person who contravenes or fails to comply with the section is guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding twelve months or more.

Prohibition of residing or sleeping in kitchen floors or food stores

15. (1) No person shall reside or sleep in any kitchen or room in which foodstuff are prepared or stored for sale.

Any person who contravenes or fails to comply with this section is guilty of an offence.



Prohibition against sell of unwholesome poisonous, unadulterated food

16. Any person who sells food that—

- (a) has in or upon it any poisonous or harmful substance;
- (b) is unwholesome or unfit for human consumption;
- (c) consists in part or in whole of any filthy, putrid, disgusting, rotten, decomposed or diseased substance or foreign matter; or
- (d) is adulterated, shall be guilty of an offence.

Uninspected meat

17. Any person who has in his possession or under their control for the purpose of sale any meat or poultry which has not been inspected at a designated place as defined by laws or by the medical officer of health or a health inspector and marked as having been so inspected, shall be guilty of an offence.

Insanitary conditions

18. Any person, who sells, prepares packages, conveys, stores or displays for sale any food under insanitary conditions, shall be guilty of an offence.

Offences and penalties

19. Any person who contravenes the provisions of section 13 shall be guilty of an offence and liable—

- (a) in the case of a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment to term not exceeding six months or both; and
- (b) in case of a subsequent offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months or both.

Public nuisance related to noise

20. (1) A person shall not—

- (a) in any street or in any shop, business premises or any other place adjoining any street to which the public are admitted;
- (b) upon other premises play, operate, cause or allow to be played or operated, any musical instrument, wireless, gramophone, amplifier or similar instrument thereby making, causing or authorizing noise to be made to made which is aloud and continuous or repeated as to constitute a nuisance to the occupants or dwellers of any premises in the neighbourhood or to passersby on the street; or

- (c) in any street or designated public service vehicle terminus or stage within the Central Business District hoot a public service vehicle and or *matatu* loudly and continuously as for the hooting to constitute noise.

(2) A person who in connection with building operations, demolitions or road construction or reconstruction works causes or allows noise to be made which is so loud and continuous as to constitute a nuisance to the occupants of any premises in the neighbourhood commit an offence.

(3) Any person who in any part of the jurisdiction of the city county, other than the industrial or light industrial zones as specified in any law of the county for the time being in force in connection with any trade or industrial process causes or allows to be made any noise which is so loud, continuous or repeated as to constitute a nuisance to the occupants of any premises in the neighbourhood commits an offence.

(4) A person who keeps within the City County any animal or poultry which is a nuisance to the residents in the neighbourhood commits an offence.

Offences relating to pollution

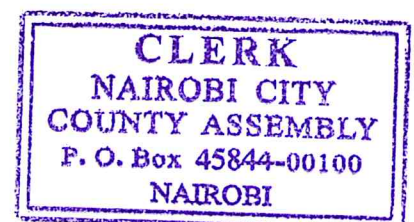
21. (1) Any person who—

- (a) discharges any dangerous materials, substances, oil or oil mixtures into land, water, air, or aquatic environment; or
- (b) discharges any pollutant into the environment contrary to the provisions of this Act commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings.

(2) in addition to any sentence the court may impose upon the offender under subsection (1) of this section, the court may direct the offender to—

- (a) pay the full cost of cleaning up the environment and removing the pollutant; and
- (b) clean up the polluted environment and remove the effects of pollution to the satisfaction of the Authority.

(3) Without prejudice to the provisions of subsection (1) and (2) of this section, the court may direct the offender to meet the costs of the pollution to any third parties through adequate compensation, restoration or restitution.



PART IV—ENFORCEMENT**Authorized officers**

22. (1) The Member of the County Executive Committee may, upon the recommendation of the relevant Department, appoint any person or class of persons to be authorized officers for purposes of this Act.

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

(3) Notwithstanding the provisions of this section, any other person upon whom any written law vests functions of the maintenance of law and order shall be deemed to be an authorized officer for the purposes of this Act.

Places authorized officers may enter

23. (1) For the purposes of ensuring compliance with this Act, an authorized officer may, at any reasonable time, enter any place in which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of this Act.

(2) An authorized officer entering any premises 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 this section.

Powers of officers

24. In carrying out an inspection in any place pursuant to section 10 an authorized officer may—

- (a) examine anything referred to in that section;
- (b) require any person in such place to produce for inspection, in the manner and form requested by the officer, the thing;
- (c) open or require any person in the place to open any place of abode, kennel, container or thing found in the place that the officer believes on reasonable grounds contains the thing;
- (d) conduct any test or analysis or take any measurements; or
- (e) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this Act.

Use of records

25. In carrying out an inspection in a place, an authorized officer may—

- (a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;
- (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;
- (c) use or cause to be used any copying equipment in the place to make copies of any data, record or document; or
- (d) Scrutinize any other record system in use in that place.

Entry of dwelling place

26. (1) An authorized officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under sub-section (2).

(2) Upon an ex-parte application, a magistrate or judge, may issue a warrant authorizing the authorised officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—

- (a) the dwelling place is a place referred to in section 10;
- (b) entry to the dwelling place is necessary for the administration or enforcement of this Act; and
- (c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(3) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

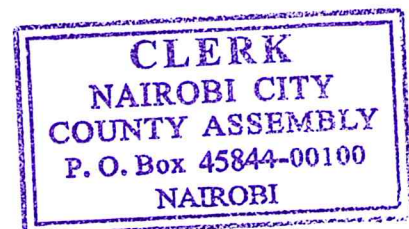
(4) An authorised officer executing the warrant issued under this section shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

Inspection report

27. An authorised officer who carried out an inspection under this Act shall make a preliminary report immediately upon completion of the inspection in a prescribed format, a copy of which shall be retained in the premises.

Assistance of officers

28. (1) The owner of a place inspected by an authorised officer under this Act or the person in charge of the place and every person found in the place shall—



- (a) provide all reasonable assistance to enable the authorised officer to carry out his duties under this Act; and
- (b) furnish the authorised officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

(2) The inspecting agent in sub-section (1) shall issue the respective inspection completion and certification certificate once satisfied with the inspection.

Obstruction

29. (1) No person shall obstruct or hinder, or knowingly make a false or misleading statement to an authorised officer who is carrying out duties under this Act.

(2) A person who contravenes sub-section (1) commits an offence.

Seizure during inspections

30. (1) During an inspection under this Act, an authorised officer may, in addition to the avenues provided for in this Part, seize any thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

(2) The authorised officer may direct that any thing seized be kept or stored in the place where it was seized or that it be removed to another place.

(3) Unless authorised by an officer, any person who removes, alters or interferes in any manner with seized articles shall be guilty of an offence.

(4) Any person from whom thing was seized may, twentyfour hours after the date of seizure, apply to Court for an order of restoration, and shall send notice containing the prescribed information to the relevant Department within the prescribed time and in the prescribed manner.

Order for restoration

31. (1) The Court may order that the thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that—

- (a) the applicant is entitled to possession of the thing seized; and
- (b) the thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

(2) Where upon hearing an application made under subsection (1) the court is satisfied that the applicant is entitled to possession of the thing

seized but is not satisfied with respect to the matters mentioned in paragraph (b) of sub-section (1), the court may order that the thing seized be restored to the applicant on the expiration of twenty-four hours from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before that time.

Offences by partnership or bodies corporate

32. (1) Any act or omission which is an offence under this Act or any rules made hereunder shall, if done by a body corporate, be deemed to be an offence committed by every director, secretary or manager of the body corporate unless proved that the offence was committed without consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

(2) If an offence under this Act or any rules made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence unless there is proof that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

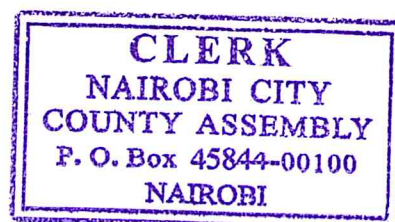
(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.

(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.

Nature of evidence in a proceedings

33. (1) In any prosecution for an offence under this Act, copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall, in the absence of evidence to the contrary, be proof of its contents.

(2) Subject to this Part, a certificate or report purporting to be signed by an officer stating that the officer analyzed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.



(3) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced notice of not less than seven days of that intention together with a copy of the certificate or report.

(4) The party against whom the certificate or report provided for under sub-section (3) is produced may, with leave of the court, require the attendance of the officer for purposes of cross examination.

(5) In a prosecution for a contravention of this Act—

- (a) information on an identification tag indicating that the thing is licensed is, in the absence of evidence to the contrary, proof that the thing is licensed; and
- (b) a name or address on an identification tag purporting to be the name or address of the person who owns the thing is, in the absence of evidence to the contrary, proof that the thing is owned by that person.

Protection of actions taken in good faith

34. No suit, prosecution or other legal proceedings shall lie against the County Government or any officer or other employee of the County Government or any other person or authority authorized by the county Government, for anything, which is done or intended to be done in good faith under this Act or the rules made thereunder.

PART V— DELEGATED POWERS

Rules

35. (1) The Member of the County Executive Committee may make rules for the for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the rules made may provide for—

- (a) the matters specified under Part III;
- (b) the prescribing of anything required to be prescribed in this Act.
- (3) Every rule made under this Act shall be laid before the County Assembly for approval before the rule is gazetted.
- (4) For the purposes of Article 94 (6) of the Constitution—
 - (a) the purpose and objective of the delegation under this section is to enable the Member of the County Executive Committee to make rules for better carrying into effect the provisions of this Act;

- (b) the authority of the Member of the County Executive Committee to make rules under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the delegated power referred to under section 36 are those found in —
 - (i) the Statutory Instruments Act, 2013;
 - (ii) the Interpretation and General Provisions Act;
 - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
 - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

