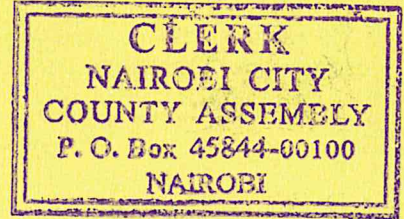


**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 15 (Nairobi City County Bills No. 9)*



REPUBLIC OF KENYA



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***KENYA GAZETTE SUPPLEMENT***

**NAIROBI CITY COUNTY ASSEMBLY BILLS, 2018**

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**NAIROBI, 16th November, 2018**

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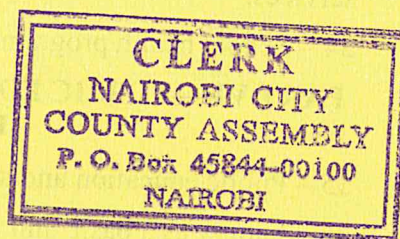
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**THE NAIROBI CITY COUNTY TOBACCO CONTROL  
BILL, 2018**

**A Bill for**

**AN ACT of Nairobi City County assembly to provide for the application and implementation of Article 43 of the Constitution, section 2 (c), 3, 7(b), 8 (a) of Part 2 of the Fourth Schedule to the Constitution in relation to tobacco control and for connected purposes**

**ENACTED** by the Nairobi City County assembly, as follows—

**PART I— PRELIMINARY**

1. This Act shall be cited as the Nairobi City County Tobacco Control Act, 2018. Citation.

2. In this Act— Interpretation.

“cigarette” means any product which consists wholly or partly of cut, shredded or manufactured tobacco, or of any tobacco derivative or substitute rolled up in paper or any other material and capable of being used immediately for smoking;

“committee” means the tobacco control committee established under section 5;

“county executive member” means the county executive committee member for the time being responsible for health;

“Department” means the county department responsible for health as established by the county executive committee;

“in door” means any enclosed premises or part of the premises whether wholly or partially enclosed and includes corridor, veranda, balcony, terrace, and space covered by a roof or enclosed by one or more walls or slides, regardless of whether the structure is permanent or temporary;

“public place” means any outdoor or indoor area whether enclosed or partially enclosed which is open to the public or any part of the public or to which members of the public ordinarily have access to, and includes a public street, public park or recreation facility, restaurants, bars, a work place, factories, bus parks, hospitals and any public conveyance;

“retailer” means a person who is engaged in a business of selling any tobacco product to consumers;

“sell” include—

- (a) barter or exchange;
- (b) offer or exposure for sale, barter or exchange;
- (c) supply, or offer to supply, in circumstances in which the supplier derives or would derive a direct or indirect pecuniary benefit; or
- (d) supply or offer to supply, gratuitously but with a view of gaining or maintaining customer, or otherwise with a view for commercial gain;

“smoking” means inhaling or exhaling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product or device containing an ignited tobacco product;

“specially designated smoking area” means any area specially designated as a smoking area under section 29;

“second-hand smoking” means the smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with the smoke exhaled by the smoker;

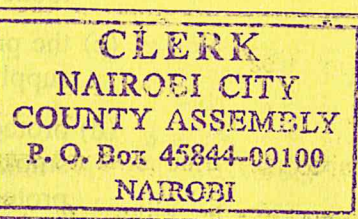
“tobacco” means the tobacco plant, including its seeds and leaves;

“tobacco industry” means tobacco manufacturers, wholesalers, distributors, importers, industry lobbyists or person working to further the tobacco industry's agenda.

“tobacco product” means a product composed, in whole or in part, of tobacco, including tobacco leaves and any extract of tobacco leaves intended for use by smoking, inhalation, chewing, sniffing or sucking and includes cigarette paper, cigars, tubes and filters.

3. The purpose and objects of this Act is to provide for a legal framework for the—

- (a) protection of the health of the individual from the harmful effects of tobacco production and use;
- (b) protection of the health of persons under the age of



Purpose and  
objects of the Act.

- eighteen years by preventing their access to tobacco products;
- (c) the promotion reduction of demand and control of supply of tobacco and tobacco products;
  - (d) protection and promotion of the right of non-smokers to live in smoke free environment by protecting them from second hand smoking;
  - (e) mitigation of health, social and economic impact associated with tobacco use;
  - (f) promotion and facilitation of access to health services for rehabilitation and cessation from tobacco use by persons addicted or dependent to tobacco use;
  - (g) provision and facilitation of education and public awareness on the harmful health, social and economic effects of tobacco production and use; and
  - (h) promotion of research, surveillance, monitoring and dissemination of information related to tobacco products.

## **PART II—ADMINISTRATION**

4. (1) The department shall be responsible for the implementation of this Act.

Duties of the department.

(2) In implementing subsection (1), the department shall—

- (a) in collaboration with other county and national government departments and non-state actors, develop and implement or coordinate the implementation of policies, laws, plans, strategies and programmes for the purposes of implementation of this Act or any matter related to tobacco control;
- (b) ensure effective and comprehensive implementation of this Act;
- (c) issue licences to retailers of tobacco products;
- (d) advise the county executive committee on matters related to tobacco control;



- (e) enforce or ensure the enforcement of this Act;
- (f) provide and facilitate access to cessation and rehabilitation services
- (g) carry out research, monitoring and evaluation of the Act as well as matters related to tobacco control;
- (h) act as the repository of data, statistics and information related to tobacco control;
- (i) in collaboration with other stakeholders carry out public education, information dissemination and awareness in relation to tobacco control; and
- (j) carry out any other activity in furtherance to the purpose of this Act.

5. (1) There is established a committee to be known as Tobacco control committee. the county tobacco control advisory committee.

(2) The committee shall consist of—

- (a) the chairperson who shall be a professional qualified in matters related to health appointed by the county executive member with the approval by the county executive committee;
- (b) the officer in the department who is in charge of public health who shall be the secretary;
- (c) the officer in the county department of education who is responsible for education matters;
- (d) the officer in the county department on economic planning who is responsible for economic planning;
- (e) one person representing the faith based organizations nominated by the faith based organizations in the county and appointed by the county executive member with the approval by the county executive committee;
- (f) one person appointed from among the non-governmental organizations or community based organizations involved in tobacco control or involved in health related matters appointed by the county executive member with the approval by the county executive committee;

- (g) one youth appointed from among the youth organizations promotion of health related matters among the youth appointed by the county executive member with the approval by the county executive committee; and
- (h) one woman appointed from among the women organizations involved in health related matters appointed by the county executive member with the approval by the county executive committee;
- (i) one health professional who is experienced in matters related to tobacco control appointed by the county executive member with the approval by the county executive committee.

(3) For a person to qualify for appointment as a member of the committee, the person must –

- (a) be a holder of at least a diploma from a recognized institution;
- (b) a resident in the county;
- (c) not be associated in any way with tobacco industry whether as a grower, manufacturer, a distributor, a seller or an employee or agent of the tobacco industry.

(4) The term of service for members of the committee appointed under subsection (2) (a), (e), (f), (g), (h) and (i) shall be three years and may be renewed for one and final term of three years.

(5) A person appointed under subsection (2) (a), (e), (f), (g), (h) and (i) may cease from holding office by—

- (a) resigning through issuing a notice of not less than three months to the county executive member;
- (b) being removed by county executive member for—

- (i) serious violation of the Constitution, this Act or any other written law;
- (ii) becoming associated in any way with tobacco industry whether as a grower, manufacturer, a distributor, a seller or an employee or agent of the tobacco industry;
- (iii) gross misconduct, whether in the performance

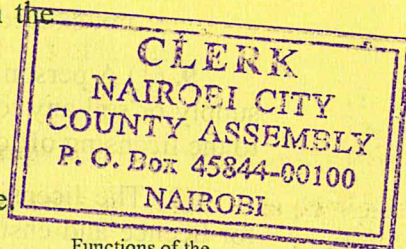
of the functions of the office or otherwise;

- (iv) physical or mental incapacity to perform the functions of office;
- (v) incompetence; or
- (vi) bankruptcy.

(5) The Committee shall regulate its own procedure.

6. The Committee shall be responsible for—

- (a) advising the county executive member and the county executive committee on policies, laws, plans, strategies and measures to be adopted for tobacco control;
- (b) providing a platform for government and non-state actors consultation, collaboration and stakeholder mobilization in tobacco control;
- (c) reviewing the progress made in the implementation of this Act and advising on appropriate measures to be adopted in dealing with challenges;
- (d) where appropriate facilitating the implementation of this Act; and
- (e) carrying out any other activity as may be assigned under this Act.



Functions of the tobacco control committee.

### PART III— LICENSING

7. (1) The county executive member shall designate in writing such public health officers to be licensing officers for the purposes issuing licenses and carrying out any other functions related to the licences.

Licensing officers.

8. (1) A person shall not manufacture, distribute, supply or sell any tobacco product except under and in accordance with a licence issued under this Act.

Requirement for licence.

(2) A person who contravenes subsection (1) commits an offence and shall be liable—

- (a) in the case of a manufacturer, wholesaler and distributor, to a fine not exceeding fifty thousand shillings or where applicable to imprisonment for a term not exceeding one month.; and

- (b) in the case of a retailer to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one month..

9. (1) A person who intends to manufacture, distribute, supply or sell any tobacco product shall apply for a licence to the licensing officer in the prescribed form. Application for licence.

(2) The licensing officer shall review the application for licence and ensure that the application conforms to the requirements of this Act.

10. (1) The licensing officer shall, after considering an application made under this section and having been satisfied that the application meets the requirements of this Act, grant a licence applied for upon the applicant paying the licence fees provided under this Act. Grant of licence.

(2) The licensing officer may, where the application does not meet the requirements of this Act reject an application giving reasons to the applicant.

(3) An applicant whose application has been rejected under subsection (2) may re submit the application upon meeting the requirements of this Act.

(4) The licensing officer shall not grant a licence to a person who is not a holder of a business permit or a trade licence in the county.

11. (1) A licence issued under section 10 shall be clearly authenticated by the licensing officer. Licence to be authenticated.

(2) A licence that is not authenticated by the licensing officer shall not be valid.

12. (1) An annual license shall be valid for a period of twelve (12) months from the date of issuance. Validity of the licence.

(2) The license fees payable under this Act shall be as prescribed and shall be payable either annually, quarterly or half yearly.

13. (1) The licenses applicable under this Act shall be as provided under the first schedule. Type of licences.

14. The License fees payable under this Act be as contained in the Nairobi County Acts related to taxes, fees and charges. Licence fees.

15. The licensing officer shall not grant a licence under this Act to a person who is under the age of eighteen years.

Persons not eligible for a licence.

16. Every licence shall be prominently and conspicuously displayed on the premises to which it relates, and any licensee who fails or neglects so to display his licence commits an offence and shall be liable to a fine of two thousand shillings, or to imprisonment for a term not exceeding one month.

Display of the licence.

17. A person shall not manufacture, distribute or sell a tobacco product except in accordance with the conditions stipulated under this Act.

Compliance with conditions under the Act.

18. (1) The licensing officer may withdraw or cancel a licence issued under this Act where the licensee fails to comply with the requirements and conditions of this Act.

Cancellation or withdrawal of licence.

(2) Where a licence is withdrawn or cancelled under this section, the licensing officer shall issue a notice to the holder of the licence which shall contain the reasons for such withdrawal or cancellation.

(3) A person whose licence is cancelled or withdrawn under this section shall not manufacture, distribute or sell a tobacco product during the period in which the licence was valid.

#### **PART IV—SALE AND PROMOTION OF TOBACCO PRODUCTS**

19. (1) No person shall sell, provide or supply a tobacco product to a person under the age of eighteen years.

Sale or supply to young persons.

(2) Subject to subsection (3), a person who contravenes the provisions of subsection (1) commits an offence and shall be liable to a fine not fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

(3) Notwithstanding the provisions of subsection (1), it shall be a defence to an offence under this section if it is established that the accused person attempted to verify that the young person was at least eighteen years of age by asking for and being shown any of the documents specified in subsection (4) for the purpose of verifying the age of the

young person and believed, on reasonable grounds, that the documentation was authentic.

(4) For the purposes of this section, the following documentation may be used to verify a person's age –

- (a) a national identity card issued by the Republic of Kenya;
- (b) a passport issued by the Republic of Kenya or any other country; or
- (c) any other documentation as the Minister may prescribe.

20. (1) A wholesaler, distributor or retailer of a tobacco product or any person dealing with tobacco product shall not employ or permit a person under the age of eighteen years to sell, provide or supply any tobacco product.

Sale or supply by young persons.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one month.

21. (1) No person shall sell or offer to sell a tobacco product in–

Prohibited places for sale.

- (a) a health institution, including a hospital, pharmacy or a health clinic;
- (b) an educational institution including a nursery, primary, secondary, child care facility, college, university or any institution of higher learning;
- (c) amusement parks, public parks or any public entertainment facility or area which is ordinarily accessed by persons under the age of eighteen years.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one month.

22. (1) In accordance with the Tobacco Control Act, 2007, no person shall sell cigarettes except in a package containing at least ten cigarettes or as prescribed under the Tobacco Control Act, 2007.

Sale of cigarettes in packages.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months.

23. (1) No person shall sell or offer to sell a tobacco product—

Display for sale.

- (a) unless it is hidden from view of the general public at the point of sale; or
- (b) by means of a display that permits a person to handle a tobacco product before paying for it.

(2) A retailer who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one month.

24. (1) Every retailer shall post, signs in a conspicuous place at the counter where sale of a tobacco product is taking place or such place where sale of a tobacco product is taking place that—

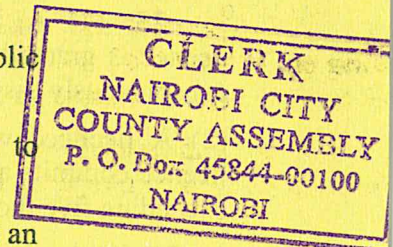
Display of signs.

- (a) inform the public that the sale or the availing of tobacco products to a person under the age of eighteen years is prohibited by law; and
- (b) contain the health messages provided in the second schedule or as may be provided under the national law or under this Act.

(2) A separate sign shall be posted for each requirement stipulated under subsection (1)(a) and (b).

(3) Each sign required to be posted under subsection (1) shall—

- (a) be displayed on a surface measuring not less than 12 inches by 8 inches;
- (b) bear the word “WARNING” in capital letters followed by either of the messages the stipulated under subsection (1) which shall appear in conspicuous and legible type and shall be black on a white background or black on a white background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement; and



(c) be in English and Kiswahili or in the predominant language of the area within which the sign is posted.

(3) A retailer who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one month.

25. (1) A licensee under this Act shall where a licence is granted in respect to premises, prominently and conspicuously display on the premises to which it relates.

Licence to be displayed.

(2) A licensee who fails or neglects so to display the licence commits an offence and shall be liable to a fine not exceeding five thousand shillings.

26. (1) A wholesaler, distributor or retailer of a tobacco product shall not promote a tobacco product by way of painting or displaying on the outside of the business premises any colour or a combination of colours, logo, brand name or brand element of a tobacco product or associated with a specific tobacco product or brand.

Outdoor advertisement.

(2) A person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one month.

(3) Where a person contravenes subsection (1), an authorized officer shall, before commencing a charge against the person issue a written notice to the person requiring the person to remove the promotion colours or materials that contravene with subsection (1) within fourteen days.

(4) A person who complies with the notice issued under subsection (3) shall not be prosecuted for the offence stipulated under subsection (2).

(5) A person who fails to comply with the notice issued under subsection (3) shall have charges preferred against the person for the offence stipulated under subsection (2).

#### **PART V—SECOND-HAND SMOKING**

27. (1) Every person has a right to a clean and healthy environment and the right to be protected from exposure to second-hand smoke.

Right to smoke free environment.



(2) Every person has a duty to observe measures to safeguard the health of non-smokers.

(3) A person in whose custody or guardianship a person under the age of eighteen years is living shall ensure that the environment in which the person is living in is free from second-hand smoke.

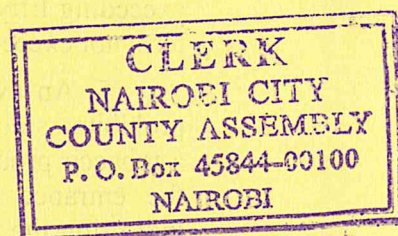
(4) No person shall smoke in a private vehicle where children are on board.

28. (1) No person shall smoke or hold a lighted tobacco product in any enclosed or indoor areas or any public place.

Prohibited smoking areas.

(2) Notwithstanding the generality of subsection (1), no person shall smoke or hold a lighted tobacco product in—

- (a) offices and workplaces, including corridors, lounges, eating areas, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries, amenity areas of such places;
- (b) court buildings;
- (c) factories;
- (d) cinema halls, theatres, video houses, such other halls or places of performance, disco halls or any other entertainment facilities at any time during which it is open to the public;
- (e) hospitals, clinics and other health institutions;
- (f) public street;
- (g) restaurants, hotels, bars, restaurants or other eateries;
- (h) children homes and child care facilities;
- (i) residential houses and such other premises where children are taken care for;
- (j) places of worship;
- (k) police stations and cells;
- (l) fuel stations;
- (m) public service vehicles;
- (n) education facilities;
- (o) public transport terminals and bus parks;
- (p) markets, shopping malls and retail and wholesale



establishments;

- (q) stadia and sports facilities;
- (r) recreational facilities, public parks and amusement parks;
- (s) public buildings; and
- (t) any other place as may be prescribed under this Act.

(3) A person shall not place an ashtray or any other related object for collecting tobacco ash and cigarette butts in a prohibited smoking area.

(4) A person who smokes, holds a lighted tobacco product or places an ashtray in a prohibited smoking area commits an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months.

(5) An owner, manager or a person in charge of any prohibited smoking area may order any person who smokes a tobacco product within the area or within the vicinity of the entrance to the area to cease smoking forthwith, indicating the penalty therefor and may require any person failing, refusing or neglecting to comply with such order to leave the area.

(6) A person who hinders, obstructs, threatens or abuses or assaults a manager or owner or person in charge of a prohibited smoking area, in the execution of powers conferred by this section commits an offence and may be ordered to leave the place or premises or may be forcefully ejected from the premises.

(7) A person who commits an offence under subsection (6) shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months.

29. Notwithstanding subsection (2) the owner, manager, the person or officer in charge of a place described under subsection (2) (d), (f), (g), (p) and (q) may provide a specially designated smoking area within such a place:

Designated  
smoking areas.

Provided that any designated smoking area shall be a room—

- (a) that is ventilated in such a manner as to ensure that air from the area is directly sucked in or exhausted to the outside and does not re-circulate or drift to other areas within the public facility or area;
- (b) which is separate, enclosed and sealed from the floor to the roof with a door;
- (c) in which non-smoking individuals do not have to enter the area for any purpose while smoking is occurring; and
- (d) that is cleaned or maintained only when smoking is not occurring in the area.

**30.** (1) The owner, manager or the person in charge of a prohibited smoking area shall cause to be displayed therein, clear and prominent notices in both English and Kiswahili, stating that smoking is prohibited and the prescribed penalty thereof. Display of notices.

(2) Every notice under subsection (1) shall be in the form stipulated under section 20.

(3) A owner, manager or the person in charge of a prohibited smoking area who contravenes this section commits an offence shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months.

## PART VI— HEALTHCARE SERVICES

**31.** (1) The department shall provide treatment and rehabilitation services to persons addicted to tobacco products which shall include and not limited to cessation services. Provision of treatment and rehabilitation health services.

(2) The cessation services stipulated under subsection (1) shall be integrated with other health services and shall be provided in each health facility in the county.

**32.** The Department shall provide and facilitate specialized training and capacity development to healthcare professionals on matters related to the health risks and harmful effects of tobacco use and the consequent disease and disability. Training of healthcare professionals.

**33.** Each health facility shall provide education and disseminate information on tobacco control as part of healthcare services. Dissemination of tobacco control information as part of healthcare services.

34. The department shall in collaboration with the national government ministry responsible for education and other stakeholders develop, initiate and facilitate health programmes on tobacco control targeting children in preprimary, primary and secondary schools.

School health programmes.

#### **PART VII— PUBLIC EDUCATION, COMMUNITY AND FAMILY EMPOWERMENT**

35. The department shall, in collaboration with other stakeholders provide and facilitate the provision of public education and awareness on health risks and harmful effects of tobacco use and the consequent disease and disability and the rehabilitation for persons addicted to tobacco products.

Public education and awareness.

36. (1) In accordance with Article 45 of the Constitution, the department shall, in collaboration with other stakeholders initiate and facilitate tobacco control programmes targeting the family unit as the fundamental unit of society and the necessary basis of social order.

Family as a basic unit of empowerment.

(2) The programmes described in subsection (1) shall focus among others on the protection and empowerment of households from second-hand smoking, protection of children from access to tobacco products as well as harmful health, social and economic effects of tobacco use.

37. (1) The department shall, in collaboration with other stakeholders initiate and facilitate community based programmes on tobacco control.

Community programmes.

(2) The programmes described in subsection (1) shall among others target the vulnerable members of the community such as children and the youth.

#### **PART VIII—RESEARCH, STATISTICS AND REPORTING**

38. (1) The department shall, in collaboration with other stakeholders carry out research on matters related to tobacco control

Research.

(2) The department shall publish, publicize and disseminate research reports and related information.

39. (1) The department shall maintain all relevant data, statistics and indicators related to tobacco control in the county.

Maintenance of data, statistics and indicators.

(2) The county executive member shall, in collaboration with other stakeholders develop the form of statistics and data and the indicators to be maintained under this section.

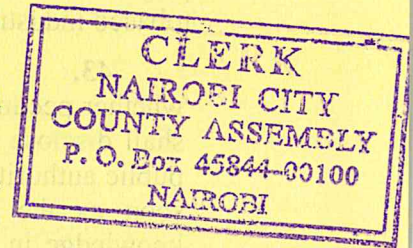
40. (1) The county executive member shall cause to be prepared an annual report of the implementation of this Act

Annual report.

(2) The report described under subsection (1) shall provide among others for—

- (a) data on status of use of tobacco products disaggregated in terms of gender, age and ward;
- (b) measures adopted to ensure effective and comprehensive implementation of this Act;
- (c) measures adopted to reduce the demand for tobacco products;
- (d) data on the level of access and use of treatment and rehabilitation services in each ward;
- (e) challenges faced in the implementation of the Act and proposed measures to address the problems; and
- (f) any other relevant matter related to the objects and purpose of this Act.

(3) The county executive member shall submit the report to the county executive committee and thereafter to the county assembly for consideration.



### **PART IX—PUBLIC-TOBACCO INDUSTRY INTERACTIONS**

41. This Part shall apply to all interactions between public authorities and the tobacco industry.

Application of Part

42. (1) Any interactions between public authorities or public officer and the tobacco industry shall be limited to the extent strictly necessary for effective tobacco control and enforcement of relevant laws.

Limitation on interaction

(2) A minimum of two public officers shall be present in any interactions with the tobacco industry.

(3) Before commencing any interaction with the tobacco industry, the public officers shall state, in writing, that the interaction does not imply an endorsement of

tobacco industry practices and that no relationship, collaboration or Partnership shall be construed whatsoever from the interaction.

(4) Any public officer participating in any interaction with tobacco industry shall prepare a formal record of the interaction and submit to the relevant public authorities including the county committee executive member on request.

(5) Interactions with the tobacco industry shall not take place within offices or other facilities of the tobacco industry except in the course of enforcing or ensuring compliance with the Law.

(6) A public authority or a public officer shall not accept any offers of hospitality from the tobacco industry or its affiliates

(7) A public authority shall not accept any direct or indirect funding from the tobacco industry or endorse projects which are funded directly or indirectly by the tobacco industry

**43.** (1) A public officer who has any interest whether pecuniary or business interest in tobacco industry shall disclose the nature of the interests to the respective public authority, on commencement of employment and as soon as the relevant facts have come to his or her knowledge in accordance with the Public Officers Ethics Act, 2003.

Disclosure No. 4  
of 2003

(2) A disclosure of interest under paragraph (1) shall be recorded by every public authority.

(3) A public officer having made such disclosure shall subject to section 12 of the public officers Ethics Act, 2003, not under any circumstances—

- (a) be present during any interactions of the public authority with the tobacco industry;
- (b) take part in the decision making of the public authority relating to the tobacco industry;
- (c) be present during the deliberations of any public authority for the making of the determination; and
- (d) influence directly or indirectly any other member or decision making of the public authority.

(4) A person who contravenes this section commits an offence.

44. The member of the County Executive Committee shall prescribe a code of conduct prescribing standards for any public officer including service providers, contractors and consultants involved in setting or implementing public health policies for tobacco control.

Code of Conduct

#### PART X— ENFORCEMENT

45. (1) The county executive member shall, by notice in the *Gazette* appoint such officers to be authorised officers for purposes of this Act.

Authorised officers.

(2) The county executive members shall issue a certificate of appointment in the prescribed form to every person appointed under this section.

(3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorised officers for the purposes of this Act—

- (a) public health officers appointed under the Public Health Act ; and
- (b) any other person upon whom any written law vests functions of the maintenance of law and order.

46. (1) For the purposes of ensuring compliance with this Act, an authorised officer may, at any reasonable time, enter any place in which the officer for the purposes of ensuring compliance with this Act.

Places authorized officers may enter.

(2) An authorised 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 section 26(2).

47. In carrying out an inspection in any place pursuant to section 27, an authorised officer may—

Powers of officers.

- (a) examine a tobacco product or 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 tobacco product or thing;

- (c) open or require any person in the place to open any container or package found in the place that the officer believes on reasonable grounds contains tobacco product or 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.

48. In carrying out an inspection in a place, an authorised officer may— Use of records.

- (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; and
- (d) scrutinize any other record system in use in that place.

49. An authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 31. Entry of dwelling place.

50. (1) Upon an *ex-parte* application, a magistrate or judge of the High Court, may issue a warrant authorising 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— Court to issue warrant.

- (a) the dwelling place is a place referred to in section 30;
- (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.

(2) 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.

51. An authorised officer executing the warrant issued under section 31 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

Use of force.

52. An authorised officer who has analyzed or examined a tobacco product or thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination.

Certificate of analysis.

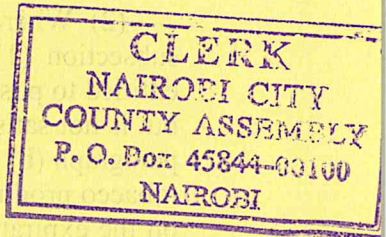
53. (1) The owner or manager of a place inspected by an authorised officer under this Act or the person in charge of the place and every person found in the place shall —

Assistance of officers.

(a) provide all reasonable assistance to enable the authorised officer to carry out his duties under this Act;

(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 subsection (1) shall issue the respective inspection completion and certification certificate once satisfied with the inspection



54. 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.

Obstruction.

55. (1) During an inspection under this Act, an authorised officer may seize any tobacco product or 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 in the prescribed form thereof shall be made at the time of such seizure by the officer.

Seizure.

(2) The authorised officer may direct that any tobacco product or 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, no person shall remove, alter or interfere in any manner with any tobacco product or other thing seized.

(4) Any person from whom a tobacco product or thing was seized may, within thirty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the county executive member within the prescribed time and in the prescribed manner.

**56.** (1) The High Court may order that the tobacco product or thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that-

Order for restoration.

- (a) the applicant is entitled to possession of the tobacco product or thing seized; and
- (b) the tobacco product or 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 tobacco product or thing seized but is not satisfied with respect to the matters mentioned in paragraph (b) of subsection (1), the court may order that the tobacco product or thing seized be restored to the applicant on the expiration of one hundred and eighty days from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before that time.

**57.** Where—

Forfeiture.

- (a) no application has been made under section 37, or an application has been made but on the hearing of such application no order for restoration is made;
- (b) a person has been convicted of an offence under this Act in respect of which tobacco or tobacco product has been seized under this Act;
- (c) an officer has seized tobacco or tobacco product and the owner or the person in whose possession it was at the time of seizure consents in writing to its forfeiture,

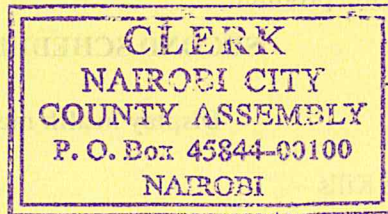
the tobacco or tobacco product shall be forfeited to the State and shall be destroyed or disposed in public as the county executive member may direct.

## PART XII— GENERAL PROVISIONS

58. (1) The county executive member may make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe the application form for licence;
- (b) prescribe the certificate of appointment for authorized officers; and
- (c) prescribe the seizure inventory form.



**FIRST SCHEDULE****(s.13)****Types of Licences**

The following licences may be granted under this Act

**1. Wholesale/depot Licence.**

A wholesale licence authorizes the licensee to sell a tobacco product at the premises at wholesale or to store the tobacco product in the depot.

**2. Retail Licence**

A retail licence authorizes the licensee to sell a tobacco product to consumers.

**3. Distributor's/ Licence**

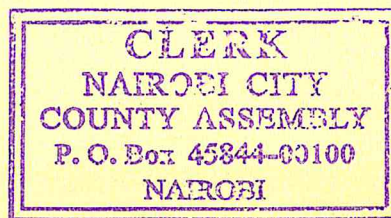
A distributor's licence authorizes the licensee to distribute or supply a tobacco product within the county subject to such other conditions as are specified in the licence:

Provided that a distributor of a tobacco product in the county shall establish a depot in the county and possess a licence for the depot and for distributing the product.

**SECOND SCHEDULE****(S. 24)****Display health messages**

Tobacco Use Kills

Tobacco use is addictive



## **MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to provide for the application and implementation of Article 43 of the Constitution, section 2 (c), 3, 7(b), 8 (a) of Part 2 of the Fourth Schedule to the Constitution in relation to tobacco control and for connected purposes.

**PART I** of the Bill deals with preliminary matters. Clause 1 sets out the short title of the proposed law. Clause 2 deals with interpretation of the terms used in the Bill while Clause 3 sets out the purpose and objects of the proposed law which is intended to complement legislative measures provided in the national tobacco control law by providing additional measures in line with county obligations defined in the constitution of Kenya.

**PART II** provides for administration of the proposed Law by defining the roles of the responsible Department of the County Government of Nairobi, establishes and sets out the terms and functions of the Tobacco Control Committee; a multi- sectoral committee charged with advising the relevant department on matters of tobacco control and specifically on the implementation of the proposed law.

**PART III** deals with Licencing. It designates public health officers to provide licencing and related services, sets categories of licences (wholesale/ depot, distributor and retail) and establishes requirements for their issuance, display, compliance to terms of issuance and procedures for cancelling/ withdrawal. The part also establishes the age at which one becomes ineligible to be issued with a licence

**PART IV** sets conditions for the sale and promotion of tobacco products. It prohibits supply to and by persons under the age of 18 years. It also sets places where sale of tobacco products is prohibited; including hospitals, educational institutions, amusement parks and other public places. The part prohibits the sale of cigarettes in single sticks and regulates the display of tobacco products at point of sale. Under this part, retailers are required to post, signs in conspicuous places informing the public of the prohibition of supply to and by minors and provide prescribed health messages to the public. Product promotion by way of painting or displaying on the outside of the business premises any colour or a combination of colours, logo, brand name or brand element of a tobacco product or associated with a specific tobacco product or brand is also prohibited

**PART V** deals with exposure to second hand smoking. It affirms the constitutional right to a clean and healthy environment and seeks to protect children and young people under the age of 18 by prohibiting smoking around them and obligating parents and guardians to protect their

rights. The part sets out prohibited smoking areas and obligates owners and managers of these areas to take action to enforce the law. Designated smoking areas are allowed for owners and managers who may wish to provide them and comprehensive specifications are provided in this part for the designated areas.

**PART VI** seeks to enshrine tobacco control into Healthcare services provided by the County. It provides for provision of treatment and rehabilitation health services, Training of healthcare professionals, Dissemination of tobacco control information as part of healthcare services and School health programmes

**PART VII** provides for public education, community and family empowerment through support for public awareness on the harms of tobacco use, empowering the family and community through targeted programmes to address tobacco use at their specific units.

**PART VIII** seeks to address Research, Statistics and Reporting gaps by obligating the relevant department in collaboration with other stakeholders, to maintain relevant data, statistics and indicators related to tobacco control in the county and to keep annual reports of the implementation of the proposed law.

**PART IX** of the Bill seeks to protect Public health policies from the commercial and other vested interests of the tobacco industry. The Bill proposes limiting interaction between public officers of the County and the tobacco industry, disclosure of any interest in line with the Public Officers Ethics Act, 2003 and the implementation of a code of conduct prescribing standards for any public officer involved in setting or implementing public health policies for tobacco control.

**PART X** of the Bill sets out the Tobacco Control Fund, managed by the County Executive Committee member responsible for health for purposes of facilitating the implementation of the Act; and specifically supporting activities related to research, providing rehabilitation services for tobacco users who want to quit and supporting the operations of the proposed Nairobi county tobacco control committee.

**PART XI** addressed Enforcement of the proposed law. It recommends authorized officers and gives them powers to enable effective enforcement of the proposed measures.

**Part XII** under General Provisions the county executive member is empowered to make Regulations for the better carrying out of the objects of the proposed law; including on licencing and appointment of authorized officers

The enactment of this Bill shall occasion additional expenditure of public funds which - shall be catered through the estimates.

Dated the 29th October, 2018

CHARLES THUO WAKARINDI,  
*Member of the County Assembly.*

