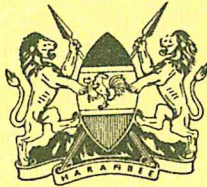
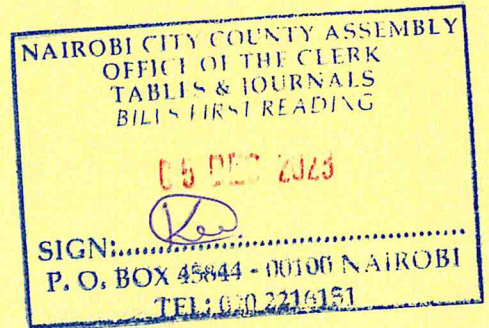


SPECIAL ISSUE

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REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY BILLS, 2023

NAIROBI, 31st October, 2023

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**THE NAIROBI CITY COUNTY FOOD SAFETY AND
FORTIFICATION BILL, 2023**

A Bill for

AN ACT of the Nairobi City County Assembly to give effect to Article 43, 46, 185 schedule 4 section 2(2) of the Constitution, The County Government Act 2012, and for connected purposes;

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

PART I—PRELIMINARY

CITATION

Short title and commencement

1. This Act may be cited as the Nairobi City County Food Safety and Fortification Act, 2023 and shall come into force on such date as the Nairobi City County Executive Committee member responsible for health may, by notification in the Gazette, appoint.

Interpretation

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

“Article” includes—

- (a) any food, device or chemical substance and any labeling or advertising materials in respect thereof; and
- (b) anything used for the preparation, preservation, packing or storing of any food, drug, cosmetic, device or chemical substance.

“authorized officer” means the chief officer, Director Health Services, Public Health Officer, Public Health Technician and any other person(s) authorized in writing by chief officer;

“committee” means committee established under this Act;

“constitution” means the Constitution of Kenya, 2010;

“county” means, The Nairobi City County;

“deception” means the act of labeling, packaging, treating, processing, selling or advertising any food in contravention of any regulations made under this Act, or in a manner that is false, or misleading as regards to its character, nature, value, substance, quality, composition, merit or safety.

“department” means the County Government Department responsible for Public Health;

“director” means the Director Health Services;

“directorate” means the County Government Directorate responsible for Public Health;

“disposal” means removal and destruction of food articles that don’t comply with this Act;

“device” means any equipment, instrument, apparatus or contrivance, including components, parts and accessories thereof, manufactured, sold or represented for use in food safety and fortification and may include technology;

“executive committee member” means the County Executive Committee Member for the time being responsible for Health;

“food” means; any article manufactured, sold or represented for use as food or drink for human consumption, chewing gum, food supplement and any ingredient of such food; and

“food safety” means the practice that preserves the quality of food to prevent contamination and food-borne illnesses;

“fortification” the practice of deliberately increasing the content of an essential micronutrient, i.e. vitamins and minerals (including trace elements) in a food, to improve the nutritional quality of the food and provide a public health benefit with minimal risk to health;

“food analysis” means a process used to check that a food is safe and that it does not contain harmful contaminants, or that it contains only permitted ingredients and additives at acceptable levels and its label declarations are correct, or to know the levels of nutrients present;

“fortification Standardization Logo” means a mark which has been specified and approved by Kenya Bureau of Standards;

“fortification standards” specification for the amount of micronutrient that will be safe and nutritious to consume;

“insanitary conditions” means such conditions or circumstances as might contaminate food, a drug or a cosmetic with dirt or filth or might render the same injurious or dangerous to health;

“label” means any tag, brand or mark, and any statement or pictorial or other descriptive matter written, printed, stenciled, marked, embossed or impressed on, or attached to or included in, or belonging to, used with, or displayed in connection with or accompanying any food or any package of food;

“mass fortification” the addition of one or more micronutrients to edible products that are consumed regularly by the general public, such as

cereals, vegetable oils and fats, salt, milk, and condiments, among others. It is usually initiated, legislated and regulated by government. It is also referred to as universal fortification;

“micronutrient” a chemical substance, such as a vitamin or mineral, that is essential in minute amounts for the proper growth and metabolism of a human being;

“premix” mixture of a micronutrient(s) and another ingredient (often the same food that is to be fortified) that is added to the food vehicle to improve the distribution of the micronutrient mix within the food matrix and to reduce the separation (segregation) between the food and micronutrient particles;

“package” includes anything in which any food, food product or device is wholly or partly placed or packed;

“premises” means any building or tent or other structure, permanent or temporary, the land on which it is situated, and any adjoining land used in connection with—

- (a) any vehicle or vessel; and
- (b) any place, including a street, open space, or place of public resort, used in the preparation, preservation, packaging or storage of any article.

“preparation” includes manufactured and any form of treatment on food, food product or device;

“public analyst” means a person appointed by the cabinet secretary, or by county government with the approval of the cabinet secretary, to act as a public analyst for the purposes of this Act;

“sell” includes offer, advertise, keep, store, expose, transmit, convey, deliver or prepare for sale or exchange, dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;

“sample” means a small part of a food article, intended to show the quality, safety, or nature of the whole lot or batch;

“sampling” means the operations designed to select a portion of a food article, for a defined purpose;

“owner” includes any person, other than the government, receiving the rent or profits of any lands or premises from any tenant or occupier therefore or who would receive such rent or profits if such land or premises were let whether on his own account or as an agent for any person, other than the Government, entitled thereto or interested therein;

the term includes any lessee or licensee from the government and any superintendent, overseer or manager of such lessee or licensee residing on the holding;

“waste” for the purpose of this Act is any food, part of or byproduct which is discarded after primary use, defective and of no use and includes non-compliant Food articles and devices;

“waste generator” means anyone or any process whose activities produce food waste or who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of such food waste.

Objectives of the Act

3. The object of this Act is to—
 - (a) provide for safe production, storage, distribution, consumption of food articles and enabling environment for food safety and fortification;
 - (b) strengthen regulatory monitoring for compliance on food safety and fortification under this act;
 - (c) increase demand and consumption of safe and adequately fortified foods;
 - (d) monitor and evaluate food safety and food fortification performance at the industry, market and household levels; and
 - (e) provide a framework for resource mobilization, financing and performance management for food safety and fortification.

General principles;

4. The interpretation, application and administration of this Act shall be guided by the following principles—
 - (a) the national values and principles of governance under Article 10 of the Constitution;
 - (b) creation of an enabling environment and appropriate incentives to ensure equitable, accessible, reliable, affordable and sustainable safe and nutritious food products;
 - (c) The allocation of financial and administrative resources to match annual work plan and budget for sustainability;
 - (d) public participation by users, beneficiaries and other stakeholders on food Safety and fortification; and

- (e) promotion of fair administrative operation by all relevant stakeholder to improve service delivery to the beneficiary in food safety and fortification.

PART II— ADMINISTRATION AND CO-ORDINATION

Functions of the County Executive Committee Member

5. (1) The functions of the County Executive Committee member responsible for Health in connection with the administration of this Act shall be to—

- (a) further the objects of this Act by taking action to preserve, protect and promote food safety and fortification for improved health within the county;
- (b) promote national standards for food safety and fortification within the county and to ensure compliance with this Act;
- (c) develop policies and guidelines that are relevant to—
 - (i) identifying risks/barriers to food safety and fortification; and
 - (ii) improving quality management system at production, storage and distribution of safe and fortified foods.
- (d) to the extent that may be necessary, practicable or desirable, to co-operate and co-ordinate with national or international actors consistent with the objects of this Act;
- (e) be a primary source of advice to the County Government about on food safety and fortification; and
- (f) any other functions assigned to the County Executive Committee member by this Act.

(2) The County Executive Committee Member may develop or adopt procedures for the provision of advice to the Government—

- (a) to ensure the promotion or implementation of policies or measures that are designed to enhance the health of individuals and communities; and
- (b) to ensure that the County Executive Committee member is consulted or involved in the development of policies or measures that may have a significant impact on food safety and fortification.

(3) In addition, the Executive Member has the power to do anything necessary, expedient or incidental to—

- (a) performing the functions of the County Executive Committee member under this Act;
- (b) administering of this Act; and
- (c) further the objects of this Act.

(4) The Executive Member, acting in accordance with the advice of the County Cabinet, may make regulations prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act.

(5) In making regulations, the Executive Member responsible for health services shall consider the desirability of—

- (a) restricting the use of food having no or very little nutritional value as food; and
- (b) providing necessary food fortification and dietary supplements for better nutrition.

(6) The Chief Officer Health is the accounting officer with delegated power from the County Executive Member.

(7) The Executive Member may cause to be made such inquiries as he or she may see fit in relation to any matters concerning food safety and fortification within Nairobi.

(8) Subject to any other written law, the Executive member may require any authority to provide a report on any matter relevant to the Administration or operation of this Act.

(9) A requirement under Sub-section (2) may be provided—

- (a) on a periodic basis specified by the Executive Member;
- (b) on occurrence of an act or event specified by the Executive Member; or
- (c) the authority may provide the report in accordance with the requirements of the Executive member.

Functions of the Director Health

6. (1) The Director Health in connection with the administration of this Act shall—

- (a) oversee the development and implement strategies to protect and promote food safety and fortification;
- (b) issue licenses or permits for food safety and fortification under this Act; and
- (c) be the accountable officer.

(2) Where the Director becomes aware of the existence of or potential for the occurrence of a situation putting a section of the county, community or a group of individuals at an increased risk of avoidable mortality or morbidity due to food safety and fortification, the Director may request the participation of any public authority within the county whose intervention may be useful in identifying or producing a response to the circumstances being faced.

(3) A public authority that receives a request under Subsection (2) must consider the request and then respond to the Director within a reasonable time.

(4) A response under Subsection (2) shall include details about—

- (a) any steps already being taken by the public authority that may be relevant in the circumstances;
- (b) any plans that the public authority may have that may be relevant in the circumstances;
- (c) any steps that the public authority is willing to take in the circumstances; and
- (d) any other matter relating to the public authority that appears to be relevant.

Functions of an Authorized Officer

7. (1) The Authorized Officer shall be responsible for the following functions—

- (a) undertake the promotion and preservation of food safety and fortification activities;
- (b) monitor food safety and fortification within the jurisdiction of the county;
- (c) co-ordinates multi sectoral stakeholders aimed at food safety and fortification compliance;
- (d) issue licenses or permits for food safety and fortification where the powers are vested in;
- (e) order immediate restoration, restitution, improvement or remediation or prohibition notices or orders on grounds of contravention of this Act;
- (f) educate and inform the public on food safety and fortification; and
- (g) perform such other functions as may be provided by this Act.

(2) In the performance of functions in Sub-section (1) above the authorized officer shall have due regard to the collective interests of the people of the county and the nation

Establishment of County Multi-sectoral Coordination Committee.

8. (1) The County Executive Members shall establish an unincorporated body to be known as the County Multi-sectoral Committee on food safety and sortification.

(2) The Committee shall be composed of—

- (a) the County Executive Committee Member responsible Health;
- (b) the County Executive Committee Member responsible for Environment and Natural resources;
- (c) the County Executive Committee Member in responsible for Education;
- (d) the County Executive Committee Member responsible for trade affairs;
- (e) the County Executive Committee Member responsible for agriculture and veterinary services;
- (f) the representative nominated by Academia and research institution;
- (g) a representative nominated by key civil society and private sector stakeholder bodies in the County;
- (h) a representative nominated by consumer organizations; and
- (i) a representative nominated by the Business community.

PART III—INFORMATION, EDUCATION AND COMMUNICATION

Information, education and communication

9. (1) The County Government shall promote public awareness on food safety and fortification and the health consequences as a result of contravention of this Act through a comprehensive county-wide education and information campaign conducted by the County through the relevant sectors, departments, sections, units and other regulatory agencies.

(2) The information, education and communication referred to in Subsection (1) shall target the producers, distributors, retailers, consumers, also including institutions and vulnerable groups.

(3) The County shall provide training, sensitization and awareness programmes on food safety and fortification for producers, distributors, retailers and consumers and regulatory authorities.

(4) In conducting the information, education and communication campaign referred to in this section, the County shall ensure the involvement and participation of stakeholders in food safety and fortification.

Dissemination of information

10. (1) Information, education and communication dissemination on Food safety and fortification shall form part of health care services.

(2) For the purposes of Sub-section (1), the County shall provide training for the healthcare providers to acquire skills for proper information, education and communication dissemination on food safety and fortification.

PART IV – FOOD SAFETY AND FORTIFICATION REQUIREMENTS, PROHIBITION AND PENALTIES

Production of food

11. (1) Every person who owns, operates or is in charge of the production of food articles shall ensure that such operations are conducted under clean and sanitary conditions.

(2) It shall be the duty of the person who owns, operates or is in charge of food production to ensure the right technical and infrastructural capacity to manufacture or produce fortified food articles intended for sale.

Sale of unwholesome food articles prohibited

12. (1) No person shall sell, prepare, manufacture, store, transmit, or otherwise offer for sale any food article for human consumption which is—

- (a) rotten, stale or unwholesome foods;
- (b) contains poisonous or harmful substances;
- (c) contaminated by microbes;
- (d) adulterated; or
- (e) damaged or deformed food articles.

(2) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

- (i) in case of a first offender a fine not more than two hundred thousand Kenya Shillings or imprisonment of a term not exceeding 12 months or both; or
- (ii) in case of a subsequent offender a fine not more than five hundred thousand Kenya Shillings or imprisonment of a term not exceeding 24 months or both.

Premises not to be used unless licensed

13. (1) No person shall sell, prepare, package, store, distribute or display any food for sale in a food premise or public park, market, streets or similar places or events unless the person is licensed under this Act;

(2) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

- (i) in case of a first offender, to a fine not exceeding two hundred thousand Kenya Shillings or imprisonment to a term not exceeding 12 months or to both such fine and imprisonment; or
- (ii) in case of a subsequent offender, to a fine not more than five hundred thousand Kenya Shillings or imprisonment of a term not exceeding 24 months or to both such fine and imprisonment.

Medical examination of food handler

14. (1) No person shall prepare, sell or handle food for sale without a valid food handler's medical certificate issued by the County Government department responsible for Health Services.

(2) Any person who contravenes the requirements of this sub section shall be guilty of an offence and punishable—

- (i) in case of a first offender, to a fine not exceeding fifty thousand Kenya Shillings or imprisonment to a term not exceeding 6 months or to both such fine and imprisonment; or
- (ii) in case of a subsequent offender, to a fine not more than one hundred thousand Kenya Shillings or imprisonment of a term not exceeding 12 months or to both such fine and imprisonment.

(3) Any operator or owner of a food premise who employs or engages food handlers who do not have valid food handler's medical certificate commit an offence—

- (i) in case of a first offender, to a fine not exceeding two hundred thousand Kenya Shillings or imprisonment to a term not exceeding 12 months or to both such fine and imprisonment; or

- (ii) in case of a subsequent offender, to a fine not more than five hundred thousand Kenya Shillings or imprisonment of a term not exceeding 24 months or to both such fine and imprisonment.

Deception prohibited

15. (1) Any person who labels, packages, treats, processes, sells or advertises any food in contravention of this act or any of its regulations or in a manner that is false, misleading or deceptive as regards to its character, nature, value, substance, quality, composition, merit or safety, shall be guilty of an offence.

(2) An authorized officer may issue a notice prohibiting the sale, preparation, packaging, display or distribution of food in which the officer believes contravenes this act or any of its regulations.

(3) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

- (i) in the case of a first offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; or
- (ii) in the case of a subsequent offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

Standards of foods

16. (1) where a standard has been prescribed for any food article, any person who labels, packages, sells or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, shall be guilty of an offence.

(2) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

- (i) in the case of a first offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two year, or to both such fine and imprisonment; or
- (ii) in the case of a subsequent offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Preparation of food under insanitary conditions

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

(2) Any person who contravenes the requirements of this subsection shall be guilty of an offence and punishable—

- (i) In the case of a first offence, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment; or
- (ii) In the case of a subsequent offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Label on food article

18. (1) Any information appearing on a label of any food article as per this Act, shall be—

- (a) Clearly and prominently displayed on the label; and
- (b) Readily discernible to the purchaser or consumer
- (c) English, Kiswahili or both.

(2) For the purposes of this Act, the expiry date shall include date, month and year of expiry.

(3) All mandatory fortified foods shall bear the fortification logo and bear the word fortified food.

(4) Any person who marks any article or takes any other action so as to make labeling of food article not easily visible or obliterates alteration commits an offence.

(5) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

- (i) in the case of a first offence, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment; or
- (ii) in the case of a subsequent offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Prohibition of Sale of Unfortified Foods

19. (1) No person shall sell, display or advertise fortified foods without fortification standardization logo mark.

(2) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

(i) first offender a fine not more than 50,000 Kenya Shillings for retailers; 1,000,000 Kenya shillings for wholesalers, 2,000,000 shillings for producers or imprisonment of a term not exceeding 12 months or both; or

(ii) subsequent offenders a fine not more than 100,000 Kenya Shillings for retailers; 2,000,000 Kenya shillings for wholesalers, 4,000,000 shillings for producers or imprisonment of a term not exceeding 24 months or both.

Imported fortified foods

20. (1) No person shall import into the County any foods specified as mandatory fortified unless they comply with the specifications in this Act;

(2) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

(i) In case of a first offender a fine not more than 1,000,000 Kenya Shillings per food item or imprisonment of a term not exceeding 12 months or both; or

(ii) In case of a subsequent offender a fine not more than 2,000,000 Kenya Shillings or imprisonment of a term not exceeding 24 months or both.

Export of food

21. (1) No person shall export out of Kenya any food, drug, cosmetic or chemicals, unless an export health certificate in such form as may be prescribed is issued by an authorized officer.

(2) An authorized officer may require—

(a) Any food, drug, cosmetic, device or chemical substance to be examined and analyzed in accordance with this Act;

(b) Any other relevant information, before issuing an export health certificate.

(3) A fee of shall be payable for every Export Health Certificate issued under this Act.

Prohibited sale of devices

22. (1) Any person who sells any device that, when used according to directions on the label or contained in a separate document delivered with the device or under such conditions as are customary or usual, may cause injury to the health of the purchaser or user thereof shall be guilty of an offence punishable—

- (a) In the case of a first offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two year, or to both such fine and imprisonment; or
- (b) In the case of a subsequent offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Deception

23. (1) Any person, who labels, packages, treats, processes, sells or advertises any device in contravention of any regulations made under this Act, or in a manner that is false, misleading or deceptive as regards its character, value, composition, meritor safety, shall be guilty of an offence.

(2) Where a standard has been prescribed for a device, any person who labels, packages, sells or advertises any article in such a manner that it is likely to be mistaken for that device shall be guilty of an offence unless the article complies with the prescribed standard.

(3) Preparation of device under insanitary conditions Any person who sells, prepares, preserves, packages, stores or conveys for sale any device under insanitary conditions shall be guilty of an offence—

- (a) In the case of a first offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two year, or to both such fine and imprisonment; or
- (b) In the case of a subsequent offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Powers of authorized officers to detain, seize articles

24. (1) An authorized officer under this Act shall have the powers to—

- (a) at all reasonable hours to enter any premises used for the production, preparation, processing, storage, sale or distribution of food for the purpose of ascertaining whether there is any evidence of any contravention of the requirements of this part or orders made under this Act;

- (b) to inspect and examine, detain, seize or remove for the purpose of examination any article of food in any premise or place where such food is sold, prepared, processed, packaged, stored, or displayed;
- (c) where he or she is of the opinion that any food article(s) is unfit for human consumption, to order it to be treated, disposed of, or destroyed.
- (d) prevent the sale or distribution where it is found, or there is reason to believe, that such food is unfit for human consumption; and
- (e) an authorized officer shall take the necessary action and issue necessary orders or guidance to the owner, operator or person in charge of food premises.

(2) An authorized officer may order the destruction of goods detained under this Act, if the following conditions are satisfied—

- (a) testing indicates that the goods do not meet the relevant Kenya standard; and/or
- (b) are in a dangerous state or injurious to health.

(3) The authorized officer may require the owner to pay the costs of the destruction of the goods including the costs of transportation and storage before destruction.

Conditional release of seized articles

25. (1) An authorized officer may order a conditional release of goods to a manufacturer, importer, possessor, dealer or seller or his agent when the testing of the samples of goods determine they comply with this Act.

(2) Where the goods fail to comply with the relevant Kenya Standard, they shall be destroyed in accordance with this Act.

(3) Any person who removes, sells, uses, disposes of, re-exports, damages, wastes, or destroys seized articles before the release of the results shall be guilty of an offence.

Obstruction of authorized officers

26. (1) Any person who—

- (a) fails to give or refuses access to any authorized officer under this Act, if he requests entrance on any land or premises, or obstructs or hinders him in the execution of his duties under this Act, or who fails or refuses to give information that he may

lawfully be required to give to such officer, or who gives to such officer false or misleading information knowing it to be false or misleading;

- (b) uses force or violence against, intimidates, impedes or attempts to obstruct or to impede an authorized officer in the performance of his or her functions under this Act; or
- (c) gives, procures, offers or promises any bribe, recompense or reward to influence any authorized officer in the performance of his or her functions under this Act commits an offence.

(2) Any person who contravenes the requirements of this section shall be guilty of an offence and punishable—

- (a) first offender a fine not more than 200,000 Kenya Shillings or imprisonment of a term not exceeding 6 months or both; and
- (b) subsequent offender a fine not more than 500,000 Kenya Shillings or imprisonment of a term not exceeding 12 months or both.

Penalties

27. A person who is guilty of an offence under this Act for where no special penalty is provided shall be liable—

- (i) in the case of a first offence, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment; or
- (ii) in the case of a subsequent offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Establishment of a County Food Safety and Nutrition Laboratory

28. (1) There shall be established a County Food Safety and Nutrition Laboratory under this Act.

(2) The County shall ensure that the laboratory is fully functional and has—

- (a) the recommended premises in terms of infrastructure, design, location and space;
- (b) the adequately staffed with competent personnel; and

(c) the adequate equipment and facilities;

(3) The applicable payment or fee shall be in accordance to the finance Act.

Procedure for taking samples and form of certificate of analysis

29. (1) Where an authorized officer takes a sample pursuant to this Act, the officer shall notify the owner thereof or the person from whom the sample was obtained of intention to submit the sample to the public analyst for analysis or examination.

(2) Where it is the opinion of the authorized officer that division of the procured quantity of the sample would not interfere with the analysis or examination the officer shall—

- (i) divide the quantity into two parts;
- (ii) identify the two parts as the owner's portion and the sample and where only one part bears the label, that part shall be identified as the sample;
- (iii) seal each part in such a manner that it cannot be opened without breaking the seal; and
- (iv) deliver the part identified as the owner's portion to the owner or the person from whom the sample was obtained and forward the sample to the public analyst for analysis or examination.

(3) Where in the opinion of the authorized officer division of the procured quantity of the sample would interfere with analysis or examination, the officer shall—

- (i) identify the entire quantity as the sample;
- (ii) Seal the sample in such manner that it cannot be opened without breaking the seal; and
- (iii) Forward the sample to the public analyst for analysis or examination.

(4) The public analyst shall issue a certificate in a form set out in regulations to this Act specifying the results of the analysis or examination of samples.

Certificates of analysis and presumptions

30. (1) In any proceedings under this Act a certificate of analysis purporting to be signed by a public analyst shall be accepted as *prima facie* evidence of the facts stated therein, provided that—

- (i) the party against whom it is produced may require the attendance of the public analyst for the purposes of cross examination; and
- (ii) no such certificate of a public analyst shall be received in evidence unless the party intending to produce it has, before the trial given to the party against whom it is intended to be produced, reasonable notice of such intention together with a copy of the certificate;

(2) Where there is evidence that a package containing any article to which this Act or any regulations made thereunder apply bears a name, address or registered mark of the person by whom it was manufactured or packed, the evidence shall be *prima facie* evidence that such article was manufactured or packed, as the case may be, by that person.

(3) Any substance commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption.

(4) Any substance commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that substance and any substance commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale for human consumption.

(5) any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall, until the contrary is proved, be presumed to be intended for such use.

PART V—MISCELLANEOUS PROVISIONS

Financial provision

31. The funds for financing the implementation of this Act shall consist of—

- (a) such monies as shall be appropriated by the County Assembly in each financial year;
- (b) such grants or transfers as may be received from any lawful source;
- (c) grants and donations received from development partners; or
- (d) such other monies received from national government as conditional or non-conditional grants, for services rendered to clients in accordance with the established system.

Regulations

32. The Executive Committee Member may make regulations for the better carrying out of the provisions of this Act.

Liability

33. No authorized officer or public analyst shall be liable for any actions taken while executing his or her duties under this Act, unless he or she has acted in bad faith or without reasonable care.

Prosecution

34. (1) An authorized officer may take out proceedings for an offence under this Act or the regulations before any magistrate having jurisdiction in the place where any article sold was actually delivered to the purchaser or where the sample was taken.

(2) In any proceedings under this Act, the contents of any container appearing to be intact and in the original state of packing by the manufacturer thereof shall be deemed, unless the contrary is proved, to be an article of the description specified on the label.

(3) When sentencing a person convicted of an offence under this Act the court in addition to imposing any other penalty, may order that—

- (a) any article seized be destroyed and disposed of by an Authorized Officer;
- (b) the person convicted pay the reasonable costs incurred in the destruction and disposal of any such article; and
- (c) the person convicted shall pay the costs of any analysis conducted in the course of the investigation.

(4) If a body corporate commits an offence under this Act, each director or other persons concerned in the management of the body corporate is guilty thereof and is liable to the penalty provided for that offence unless the director or such other person proves that they exercised reasonable diligence to prevent the commission of the offence.

Saving of Cap 242 and 254

35. The provisions of this Act shall be in addition to and not in derogation of the provisions of the Public Health Act (Cap. 242) and the Food, Drugs and Chemical Substances Act (Cap. 254)

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to provide for safe production, storage, distribution, consumption of food articles and enabling environment for food safety and fortification.

PART I of the Bill provides for preliminary matters including objects and principles guiding the Bill.

PART II of the Bill provides for Administration and Coordination including functions of the CECM Health, Director Health and establishment of the County Multi-Sectoral Coordination Committee.

PART III of the Bill provides for information, communication, and education on matters food safety and fortification.

PART IV of the Bill provides for food safety and fortification requirements, prohibition and penalties.

PART V of the Bill provides for the general and miscellaneous provisions including financial provisions and prosecution.

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

Dated the 4th October, 2023

ELIJAH STAZO,
Member of the County Assembly.

