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BILLS, 2017

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THE NAIROBI CITY COUNTY TOBACCO CONTROL BILL, 2017

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THE NAIROBI CITY COUNTY TOBACCO CONTROL BILL, 2017

A Bill for

AN ACT of the City County Assembly of Nairobi to provide measures additional to those in the national law for the control of the sale, labelling, advertising and promotion of tobacco products; to provide or the control of pollution and the conservation of the environment within the precincts of Nairobi City County pursuant to the Part II of the Fourth Schedule to the Constitution and for connected purposes.

ENACTED by the City County Assembly of Nairobi as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Nairobi City County Tobacco Control Bill, 2017, and shall come into operation upon the expiry of ninety days from the date of its publication.

Interpretation

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

“health warnings and messages” means the health warnings and messages referred to in the national law;

“interactions” means meetings, correspondences and other exchanges between public authorities and the tobacco industry or its affiliates that arise when public authorities meet in a common forum with the tobacco industry or its affiliates whether directly or through third parties;

“member of the county executive committee” means the Member of the County Executive Committee responsible for matters relating to tobacco control;

“national law” means the Tobacco Control Act 2007 and the regulations made thereunder;

“point of sale” means any place where tobacco products are distributed, or sold as wholesale or retail;

“public authority” means a body or legal and natural person in the county whose functions are of a county public nature and any person acting on behalf of a public authority and includes all bodies and person whose ownership, funding and control vests in the county government;

“public officer” has the meaning assigned to it under the Article 260 of the Constitution of Kenya 2010;

“the public” when used in relation to tobacco control in this Act, means—

- (a) the residents of Nairobi City County;
- (b) the rate payers of Nairobi City County;
- (c) any resident tobacco control organization with an interest in the governance of Nairobi City County;
- (d) non-resident persons who because of their temporary presence in Nairobi City County, make use of services or facilities provided by the county;

“tobacco industry” means tobacco manufacturers, wholesale distributors, and importers of tobacco products, tobacco growers and its associations and includes other entities representing them, tobacco industry lobbyists or person working to further the tobacco industry’s agenda.

Application

3. The provisions of this Act shall apply to the county of Nairobi City and shall be in addition to and not in derogation of the provisions of the Tobacco Control Act, 2007 or any other national law on the subject, for the time being in force.

PART II—INFORMATION, EDUCATION AND COMMUNICATION

County Government to undertake Information, Education and Communication

4. (1) The county government shall promote public awareness about the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and the harmful effects of tobacco growing and handling through a comprehensive county-wide education and information campaign conducted by the county government through the relevant departments, authorities and other agencies.

(2) The education and information campaign referred to in subsection (1) shall—

- (a) focus on the family as the basic social unit; and
- (b) be carried out in all schools and other institutions of learning within the jurisdiction of the county government, at all places of work and in all communities throughout the county.

(3) The county government shall provide training, sensitization and awareness programmes on tobacco control for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons for proper information, dissemination and education on tobacco and tobacco products.

(4) In conducting the education and information campaign referred to in this section, the county government shall ensure the involvement and participation of individuals and groups affected by tobacco growing, and the handling and use of tobacco products.

(5) Every town or urban area shall, in collaboration with the civil society and the relevant county government department, conduct education and information campaigns on tobacco within its area of jurisdiction.

Tobacco control education to be integrated into education syllabus

5. (1) The county government department responsible for education shall integrate instruction on the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke in subjects taught in public and private schools at all levels of pre-primary education, village polytechnics, home craft centres and childcare facilities, including informal, non formal and indigenous learning systems.

(2) The county government department responsible for education shall, develop and implement a training curriculum on tobacco control to be integrated into syllabuses to be taught in the institutions specified under subsection (1).

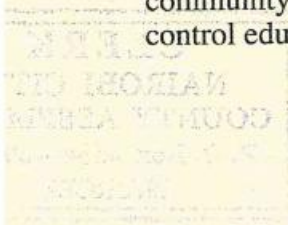
Tobacco control education and dissemination to form part of health care

6. (1) Tobacco control education and information dissemination shall form part of county health care services by county healthcare providers.

(2) For the purposes of subsection (1), the county government shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on tobacco.

Partnership in with private sector

7. (1) Notwithstanding any provision in this Act a county department or agency may enter into partnership with any private sector or community based organization for the purposes of effective tobacco control education and information dissemination.



(2) No provision in the Act precludes the private mobilization for citizens for purposes of tobacco control education and information dissemination.

(3) The county government may work in co-operation with independent citizen forums.

PART III—PACKAGING AND LABELLING

Health warnings and Messages in pictures and Pictograms not to be distorted

8. (1) The manufacturer, seller, distributor or importer of a tobacco product shall ensure that the health warning and message including a pictogram or picture required under the national law is not distorted or likely to be damaged, concealed, obliterated, removed or rendered permanently unreadable when the package on which it is printed is opened in the normal way.

(2) A person who contravenes the provisions of subsection (1) commits an offence.

Prohibition against dealing in devices used to cover, observe health messages

9. (1) No person shall manufacture, sell, distribute or import a tobacco product, device or any other thing that is intended to be used to cover, obscure, mask, alter, or otherwise detract from the display of specified health warnings and message including pictures and pictograms under the national law.

(2) A person shall not design the package or parts of the package, or accessories thereto, with any cover that may obscure the health warnings and messages including pictograms or pictures.

(3) A person who contravenes the provisions of this section commits an offence.

Health message to be on both wrapper and Packer

10. (1) Where the health warnings and messages including pictograms that are required to be printed on packages are likely to be obscured or obliterated by a wrapper on the package, the manufacturer, seller, distributor or importer of the tobacco product shall ensure that the health warnings and messages shall be printed on both the wrapper and the packet.

(2) A person who contravenes the provisions of this section commits an offence.

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Rotation of specified health warnings and Messages

11. (1) The manufacturer, seller, distributor or importer of a tobacco product shall ensure that the specified health warnings and messages including pictograms required under the national law are rotated in accordance with section 21 (3) of the Tobacco Control Act.

(2) When an old set of health warnings and messages including pictures and pictograms are being replaced by a set of new ones, both sets may continue to be used during the transition period.

(3) For the purposes of paragraph (1), the twelve month rotational period referred to in section 21(3) of the Tobacco Control Act shall be a period of twelve months ending on the 31st December in each year.

Prohibition on certain product descriptions

12. (1) A person shall not manufacture, sell, distribute or import a tobacco product, for sale in the county, whose package carries a name, brand name, text, trademark or pictorial or any other representation or sign which suggest that the tobacco product is less harmful to health than other tobacco products.

(2) A person who contravenes the provisions of this section commits an offence.

Production identification markings

13. (1) The package of every tobacco product shall contain a code marking, whether by batch number or otherwise through which the place, the date of manufacture and country of origin may be determined.

(2) A person who contravenes the provisions of this section commits an offence.

Display of signs at point of sale

14. Any sign pursuant to section 16 of the Tobacco Control Act, 2007 shall—

(a) bear the words “The sale of or the availing of a tobacco product to a person under the age of eighteen years is prohibited by law; and

(b) be predominantly displayed at the point above the level of the counter, shelf or container from which these products are stored for sale or sold; and

(c) bear a black border around it.

(3) A person who contravenes the provisions of this section commits an offence.

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PART IV – PROTECTION AGAINST EXPOSURE TO SECOND HAND TOBACCO SMOKE**Prohibition of smoking in private vehicles and near public place**

15. (1) Pursuant to section 32 of the Tobacco Control Act, 2007 and without prejudice to section 33 (1) of that Act on second-hand tobacco smoke, no person shall smoke in—

- (a) a private vehicle where children are on board;
- (b) or streets, walkways, verandas adjacent to a public place.

(2) A person who contravenes the provisions of this section commits an offence.

Notice on prohibited smoking area

16. A notice displayed pursuant to section 34 of the Tobacco Control Act, 2007 shall—

- (a) bear the word “WARNING” in capital letters, in red colour on a white background and in Helvetica type font;
- (b) bear the words ‘it is an offence to smoke in this premises; in black colour on a white background and followed by a no smoking sign composed of a black burning cigarette encircled in red;
- (c) bear the words ‘Penalty, Kshs.50,000/= or imprisonment for a term of 6 months or both’ appearing at the bottom of the notice;
- (d) consist of at least A3 paper size;
- (e) be posted at the main entrance, other entrances and appropriate locations of a prohibited smoking area; and
- (f) have a black boarder around it.

Supervision of non-smoking areas

17. The manager or owner of a prohibited smoking area shall—

- (a) ensure that ash trays and all other accessories used to consume tobacco products are removed from the area;
- (b) supervise observance of a smoke free environment;
- (c) take steps to discourage individuals from smoking on the premises including—
 - (i) require person not to smoke or to stop smoking in the area;
 - (ii) discontinue services to the person smoking in the area;

- (iii) require a person to leave the premises; or
- (iv) contacts a authorized officer or law enforcement officer and authorities to enforce the law if a person refuses to comply.

Certificate of Compliance on designation smoking area

18. The manager or owner of premises who intends to establish a designed smoking area in accordance with section 35 of the Tobacco Control Act shall obtain a certificate of Compliance from the department responsible for medical services in the county.

PART V—PUBLIC TOBACCO INDUSTRY INTERACTIONS

Limitation on interaction

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

(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 Cabinet Secretary 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) 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.

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

(8) 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.

Disclosure No. 4 of 2003

20. (1) A public officer who has any interest whether pecuniary or business interest in tobacco industry shall disclose the nature of the

interest 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.

(2) A disclosure of interest under paragraph 91 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 that 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.

Code of conduct

21. 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.

PART VI—PROVISIONS ON DELEGATED POWERS

General penalty

22. (1) A person who contravenes the provisions of this Act for which no penalty is specified shall be punishable with fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(2) A person who having been convicted of an offence under this Act, is again found guilty and is convicted of an offence under this Act, shall be punishable with double the penalty provided for the offence.

Rules

23. (1) The Member of the County Executive Committee may make rules 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 interaction between the tobacco industry and public officers including providing for additional guidelines;
 - (b) use of media to promote tobacco control information;
 - (c) the criteria and manner of partnerships with civil society;
 - (d) the prescribing of anything required to be prescribed under this Act.
- (3) For the purposes of Article 94 (6) of the Constitution—
- (a) the purpose and objective of delegation under this section is to enable the Member of the County Executive Committee to make rules to provide for the better carrying into effect of the provisions of this Act;
 - (b) the authority of the Member of the County Executive Committee to make rules under the Act will be limited to bringing into effect the provisions of the Act and to fulfill the objectives specified under this section;
 - (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act, and the Statutory Instruments Act, 2013.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide measures additional to those in the national law for the control of the sale, labelling, advertising and promotion of tobacco products so as to provide for the control of pollution and the conservation of the environment within the precincts of Nairobi City County pursuant to the Part II of the Fourth Schedule to the Constitution.

PART I of the Bill deals with preliminary matters

Clause 1 sets out the short title and commencement of the proposed law. Clause 2 deals with interpretation of the terms used in the Bill while Clause 3 sets out the scope of application of the proposed law which shall apply in addition to the existing national law on the subject matter namely the Tobacco Control Act, 2007.

PART II of the Bill deals with information, education and communication

Clause 4 obliges the county government to undertake information, education and communication on tobacco control while Clause 5 requires tobacco control education to be integrated into education syllabus for all institutions under the jurisdiction of the county government. Clause 6 requires tobacco control education and dissemination to form part of health care while Clause 7 encourages partnership in with the private sector in the information and education campaigns.

PART III of the Bill deals with packaging and labelling

Clause 8 requires health warnings and messages in pictures and pictograms not to be distorted while Clause 9 prohibits against dealing in devices used to cover, obscure health messages. Clause 10 requires health messages to be on both wrapper and packer while Clause 11 deals with rotation of specified health warnings and messages. Clause 12 prohibits on certain product descriptions while Clause 13 deals with production of identification markings, Clause 14 imposes requirements for display of signs at point of sale.

PART IV of the Bill deals with protection against exposure to second hand smoke

Clause 15 prohibits smoking in private vehicles and near public places while Clause 16 requires notice on prohibited smoking area. Clause 17 deals with supervision of non-smoking areas while Clause 18 requires a certificate of compliance on designation smoking area.

PART V of the Bill outlines measures relating to public tobacco industry interactions

Clause 19 sets out measures that impose a limitation on interaction while Clause 20 sets out the obligation to disclose. Clause 21 empowers the member of the County Executive Committee to come up with a code of conduct relating to the interactions between the tobacco industry and county public offers.

PART VI of the Bill contains provisions on delegated powers

Clause 22 sets out the general penalty for contravention of specified provisions of the Act while Clause 23 empowers the Member of the County Executive Committee to make rules for the better carrying out of the provisions of the Act.

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

Dated the 15th February, 2017

CHARLES THUO WAKARINDI,
Member of the County Assembly.

