

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

SECOND ASSEMBLY-THIRD SESSION

NBI CA. PLC. 2019 / (063)

8th October, 2019

PAPER LAID

Pursuant to Standing Order 146 (2) (b), I beg to lay the following Paper on the Table of the Assembly, today Wednesday 8th October, 2019.

THE REPORT OF THE SECTORAL COMMITTEE ON HEALTH SERVICES REPORT ON IT'S CONSIDERATION OF THE GOVERNOR'S MEMORANDUM ON THE NAIROBI CITY COUNTY TOBACCO BILL, 2019.

(Chairperson, Sectoral Committee on Health Services)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

*Paper laid by
the Chair on
8th Oct 2019.
W. K. Williams
C.A.*

*Approved for tabling.
S. J. J. J.
08/10/2019.*

THE GOVERNMENT OF NAIROBI CITY COUNTY



NAIROBI CITY COUNTY ASSEMBLY SECOND ASSEMBLY – (THIRD SESSION)

REPORT OF THE SECTORAL COMMITTEE ON HEALTH SERVICES ON ITS CONSIDERATION OF THE GOVERNOR'S MEMORANDUM ON THE NAIROBI CITY COUNTY TOBACCO CONTROL BILL, 2019

CA - Lady

Prepare for
tabling
8/10/2019 @ 2-3pm.

[Signature]
P/C.A (LSP)
7/10/19

Clerk
Forwarded for
guidance and advice
Mony
D/C
4/10/19.

CLERK'S CHAMBERS,
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL
NAIROBI.

Paper laid by
Hon. Warutere
on 8th October 2019.
[Signature]
F.C.A

D/C
- approved
- Have the report
tabled and matter
referred to committee
of whole after
cess.
SEPTEMBER 2019 *[Signature]* 04/10/19

→ C.I. Ag. *[Signature]*
advise on
procedures
ca

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CHAIRPERSON'S FOREWARD

The Nairobi City County Tobacco Control Bill, 2019 was passed by the Assembly on Wednesday 12th June, 2019. On 31st July, 2019, H.E the Governor referred the Nairobi City County Tobacco Control Bill, 2019 back to the Assembly for reconsideration in accordance with Section 24 of the County Government Act, 2012 and the Standing Order 145(2) (b).

The Governor's reservations were subsequently submitted to the Committee for consideration in line with the County Government Act and the Standing Orders 146

The Committee thanks the Office of the Speaker and the Clerk for the necessary support extended to it in the process of considering the Governor's reservations to the Nairobi City County Tobacco Control Bill, 2019.

The Chairperson thanks all the Members of the Committee and the secretariat for their sacrifice and commitment in considering the Governor's reservations to the Nairobi City County Tobacco Control Bill, 2019.

Hon. Speaker, it is now my pleasant duty and privilege to present and commend this report of the Sectoral Committee on Health Services , for consideration and approval by the House pursuant to Standing Order 146.

**THE HON. PETER MURIITHI WARUTERE, MCA.
CHAIRPERSON HEALTH SERVICES COMMITTEE.**

EXECUTIVE SUMMARY

In line with Article 196 of the Constitution of Kenya, the Committee had sought the views of stakeholders including the general public, the Executive Health Sector as well as the Office of the County Attorney and incorporated amendments proposed in its final report and Bill, adopted by the Assembly on 12th July 2019.

The bill sought to;

- protect persons from the harmful effect of Tobacco,
- protect underage children from consumption of tobacco,
- control the supply of tobacco and tobacco products, and
- give effect to the provisions of the Constitution on Tobacco control.

In line with powers conferred by Section 12 of the County Government Act 2012, and Standing Order 145(2) (b), H.E the Governor expressed his reservations to assent to the Nairobi City County Tobacco Control Bill, 2019. Consequently, a Memorandum was sent to the Assembly on 29th July 2019 detailing the reasons for his reservations.

The Speaker vide a communication dated 31st July 2019 conveyed the Governors Memorandum on the Nairobi City County Tobacco Control Bill, 2019 and subsequently referred it to the Committee on Health Services for consideration.

The Governors expressed his reservations together with recommendations as follows:-

1. Interpretation especially designated smoking area in clause 2 be amended by deleting “29” in the definition and replacing with “16” which provides for designated smoking area.
2. Interpretation of tobacco products in clause 2 be amended by inserting the words “and any other nicotine delivery system of mechanism” immediately after the word “filters” to cover a wide range of tobacco products such as electronic nicotine delivery systems.
3. Tobacco Control Committee in clause 5(2)(b) be amended by substituting the words “Director Health Services” with “officer in charge of public health as Clause 28(3) provides for Authorized officers.
4. Proposed amendment to 5(2)(e) by substituting the words “representative of the business community to be nominated by the Kenya National Chamber of Commerce and Industry” with “ a representative nominated by religious-based organization and appointed by the County Executive Member responsible for Health as Article 5.3 of WHO-FCTC restricts interaction between the executive and the tobacco industry.
5. Insertion of new sub- clauses to 9(1) on Prohibited places for sale by introducing sub-clauses after (c): (d) public institution and government

- buildings, (e) prohibited places and (f) prohibited smoking areas as covered under clause 15 to comply with WHO-FCTC, the Tobacco Act and Tobacco Control Regulations.
6. Proposed amendment to 9(2) by substituting the words “a term not exceeding one month” with “a term not exceeding six months” for universality of offence penalties.
 7. Insertion of new sub- clauses to 9(3) “to prohibit sale of tobacco products within a radius of 300 meters of learning institutions” to protect children, other persons from accessing tobacco products and exposure to 2nd hand smoke.
 8. Proposed amendment to clause 11 on Display for sale by deleting 11(1) and introducing 11(1) (a) “No person shall sell or offer to sell a tobacco product unless it is hidden from the view of the general public at the point of sale” and 11(1)(b) “No person shall sell or offer to sell a tobacco product by means of display that permits a person to handle a tobacco product before paying for it” to safeguard the non-intended users of such products from attraction and more so minors. TCA, 2007 defines advertisement to include product taking and product display of any kind or size aimed at reducing demand of tobacco products.
 9. Proposed amendment to clause 13 (1) on Outdoor advertisement by inserting the word “color or combination of colors” after the word “any” as use of color or combination of colors is unique to an entity or company, whereas use of names and colors are associated with specific brands/manufacturers.
 10. Proposed amendment to clause 13 (2) by substituting the words “fine not exceeding ten thousand shillings or to imprisonment for a term no exceeding one month” with “a fine not exceeding fifty thousand shillings or six months imprisonment or both” for consistency with the TCA, 2007 and to deter outdoor advertisement of tobacco products.
 11. Deletion of sub- clauses 13(3), (4) and (5) and introduction of sub- clause 13(3) to provide “upon conviction or successful preliminary application before a court by the prosecution, the court may order the offender to remove the outdoor advertisement ” as the nature of offences under this bill are “Cognizable offenses”.
 12. Proposed amendment to clause 14(4) on Right to smoke free environment by introducing a new sub-clause 14(5) to provide a penalty “a person who contravenes this section shall be guilty of an offense and upon conviction to a fine not exceeding fifty thousand shillings, or to imprisonment not exceeding a term of six months, or both”.
 13. Proposed amendment to clause 15(3) by substituting the words “three” appearing after the word “exceeding” with the word “six” to appear before the word “months”.
 14. Proposed amendment to clause 17(3) on Display of notices by substituting the words “three months” appearing after the word “exceeding” with the words “six months” before the word “or” for consistency with the TCA, 2007.

15. Proposed amendment to clause 21 on School health programs by inclusion of “tertiary college and universities” to appear immediately after the word “secondary schools” to make provision for comprehensive coverage of learning institutions.
16. Proposed amendment to clause 30 (1) on Enforcement by introducing a new sub-clause 30(1)(f) to read: “take or require any person in place to produce sample(s) of tobacco, tobacco product or thing” to be consistent with the TCA, 2007 Section 38.
17. Insertion of new clause 43 on General provisions by introducing new Clause 43 to provide for the nature of offense to read as “offenses under this Act shall be Cognizable” to be consistent with the TCA, 2007 Section 55.
18. Insertion of new clause 44 to provide for general penalty and read: “ay person convicted for an offense under this act for which no other penalty is provided for shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment not exceeding a term of six months or both” to be consistent with the TCA, 2007 Section 54.
19. Insertion of new clause 45 on Public-tobacco industry interaction to address tobacco industry interaction to comply with WHO-FCTC Art. 5.3 and its guidelines and also to comply with Tobacco Control Regulations, 2014 Part V.
20. Insertion of new clause 46 on Tobacco Advertisement, promotion and sponsorship (TAPS) to address Tobacco advertisement, promotion and sponsorship to comply with WHO-FCTC Art. 5.3 and its guidelines and also comply with TCA, 2007 Part VII

In line with the Speakers communication, the Committee proceeded to consider the Governor’s Memorandum on 20th August 2019 and the deliberations formed the basis on which the Committee made its decision.

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

The Sectoral Committee on Health Services is established under Standing Order No. 203 (1). Its mandate pursuant to Standing Order 203 (6) is to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- b) study the programme and policy objectives of departments and the effectiveness of the implementation;
- c) study and review all county legislation referred to it;
- d) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with its stated objectives;
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 196(Committee on Appointments): and
- g) ***make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.***

1.2 MANDATE OF THE COMMITTEE

In accordance with the third Schedule to the Standing Orders, the Sectoral Committee is mandated to consider all matters related to county health services, including, in particular county health facilities and pharmacies, ambulance services, promotion of primary health care, licensing and control of undertakings that sell food to the public, cemeteries, funeral parlours and crematoria.

1.3 COMMITTEE MEMBERSHIP

The Committee comprises of the following Members:-

- | | |
|-------------------------------------|-------------------------|
| 1. Hon. Peter Warutere, MCA | CHAIRPERSON |
| 2. Hon. Stephen Gikonyo, MCA | VICE CHAIRPERSON |
| 3. Hon. James Kiriba, MCA | |
| 4. Hon. Julius Maina, MCA | |
| 5. Hon. Naftaly Mathenge, MCA | |
| 6. Hon. Juliet June Ndegwa, MCA | |
| 7. Hon. Asli Mohamed Mohamud, MCA | |
| 8. Hon. Pius Mbono, MCA | |

9. Hon. Maurice Ochieng Onyango, MCA
10. Hon. Elijah Stazo Omung'ala, MCA
11. Hon. Moses Ogeto Nyangaresi, MCA
12. Hon. Ann Thumbi, MCA
13. Hon. John Nganga, MCA
14. Hon. David Mbithi, MCA
15. Hon. John Kyalo Mulyungi, MCA
16. Hon. Carolyn Mayunzu, MCA
17. Hon. Emily Oduor Ondeje, MCA
18. Hon. Hasfa Khalif Mohamud, MCA
19. Hon. Mark Mugambi, MCA

2.0 CONSIDERATION OF THE GOVERNOR'S RESERVATIONS TO THE TOBACCO CONTROL BILL, 2019

The Committee held four (4) meetings to deliberate on the Governors reservations to the Tobacco Control Bill 2019 and observed as follows:-

2.1 Interpretation especially designated smoking area in clause 2 – As proposed by the Governor.

Clause 2 as proposed by the Governor on interpretation especially designated smoking area in clause 2 be amended by deleting “29” in the definition and replacing with “16”.

2.1.1 The Committee's recommendation

The Committee agreed with the Governor's recommendation to delete “29” in the definition and replacing with “16”.

2.1.2 Justification

Clause 29 is on places authorized officers may enter and not on designated smoking areas.

2.2 Interpretation of tobacco products in clause 2 – As proposed by the Governor.

Insertion of amended interpretation of tobacco products in clause 2 be amended by inserting the words “and any other nicotine delivery system of mechanism” immediately after the word “filters” to cover a wide range of tobacco products such as electronic nicotine delivery systems.

2.2.1 The Committee's recommendation

The Committee disagreed with the Governor's recommendation to insert the words “and any other nicotine delivery system of mechanism” immediately after the word “filters” to cover a wide range of tobacco products such as electronic nicotine delivery systems.

2.2.2 Justification

The insertion would bring ambiguity on what nicotine delivery system of mechanism includes and as such this would bring about harassment to consumers not using tobacco and tobacco products as even tea leaves and other products contains nicotine .

2.3 Tobacco Control Committee in clause 5(2)(b) – As proposed by the Governor.
Tobacco Control Committee in clause 5(2)(b) be amended by substituting the words “Director Health Services” with “officer in charge of public health

2.3.1 The Committee’s recommendation

The Committee disagreed with the Governor’s recommendation on substituting the words “Director Health Services” with “officer in charge of public health.

2.3.2 Justification

The authorized officer in the case should be the Director Health Services.

2.4 Proposed amendment to 5(2)(e) – As proposed by the Governor.

Proposed amendment to clause 5(2)(e) by substituting the words “representative of the business community to be nominated by the Kenya National Chamber of Commerce and Industry” with “ a representative nominated by religious-based organization and appointed by the County Executive Member responsible for Health

2.4.1 The Committee’s recommendation

The Committee disagreed with the Governor’s recommendation on substituting the words “representative of the business community to be nominated by the Kenya National Chamber of Commerce and Industry” with “a representative nominated by religious-based organization and appointed by the County Executive Member responsible for Health

2.4.2 Justification

For fair representation of the business community and also fair representation of their views and objectivity from all areas of interest.

2.5 Insertion of new sub- clauses to 9(1) on Prohibited places for sale – As proposed by the Governor.

Insertion of new sub- clauses to 9(1) on Prohibited places for sale by introducing sub-clauses after (c): (d) public institution and government buildings, (e) prohibited places and (f) prohibited smoking areas as covered under clause 15 to comply with WHO-FCTC, the Tobacco Act and Tobacco Control Regulations

2.5.1 The Committee’s recommendation

The Committee agreed with the Governor’s recommendation on inserting of new sub- clauses to 9(1) on Prohibited places for sale by introducing sub-clauses after (c) as proposed.

2.5.2 Justification

This is to align the Act with the WHO- Framework Convention on Tobacco Control (FCTC) and Tobacco Control Act 2007.

2.6 Proposed amendment to 9(2) – As proposed by the Governor.

Proposed amendment to clause 9(2) by substituting the words “a term not exceeding one month” with “a term not exceeding six months” for universality of offence penalties.

2.6.1 The Committee’s recommendation

The Committee agreed with the Governor’s recommendation

2.6.2 Justification

This is to create a penalty for each and every offence in the Bill as the Law requires and also for universality of offence and penalties.

2.7 Insertion of new sub- clauses to 9(3) – As proposed by the Governor.

Insertion of new sub- clauses to 9(3) “to prohibit sale of tobacco products within a radius of 300 meters of learning institutions” to protect children, other persons from accessing tobacco products and exposure to second hand smoke.

2.7.1 The Committee’s recommendation

The Committee disagreed with the Governor’s recommendation on insertion of new sub- clauses to 9(3) “to prohibit sale of tobacco products within a radius of 300 meters of learning institutions”

2.7.2 Justification

Such a proposal is unenforceable as our City is densely populated and hence the issue of 300 meters radius cannot apply.

2.8 Proposed amendment to clause 11 on Display for sale – As proposed by the Governor.

Proposed amendment to clause 11 on Display for sale by deleting 11(1) and introducing 11(1) (a) “No person shall sell or offer to sell a tobacco product unless it is hidden from the view of the general public at the point of sale” and 11(1)(b) “No person shall sell or offer to sell a tobacco product by means of display that permits a person to handle a tobacco product before paying for it” to safeguard the non-intended users of such products from attraction and more so minors. TCA, 2007 defines

advertisement to include product taking and product display of any kind or size aimed at reducing demand of tobacco products.

2.8.1 The Committee's recommendation

The Committee disagreed with the Governor's recommendation on display for sale by deleting 11(1) and introducing 11(1) (a) "No person shall sell or offer to sell a tobacco product unless it is hidden from the view of the general public at the point of sale" and 11(1) (b) "No person shall sell or offer to sell a tobacco product by means of display that permits a person to handle a tobacco product before paying for it"

2.8.2 Justification

This would encourage illicit trade of counterfeit products.

2.9 Proposed amendment to clause 13 (1) on Outdoor advertisement – As proposed by the Governor.

Proposed amendment to clause 13 (1) on Outdoor advertisement by inserting the word "color or combination of colors" after the word "any".

2.9.1 The Committee's recommendation

The Committee disagreed with the Governor's recommendation on inserting the word "color or combination of colors" after the word "any" as colors cannot be a representation of a brand or product.

2.9.2 Justification

Colors are generic in nature and not unique to given products or business products and hence unfair, unjustifiably expensive and impractical for retailers to be required to comply with this provision.

2.10 Proposed amendment to clause 13 (2) – As proposed by the Governor.

Proposed amendment to clause 13 (2) by substituting the words "fine not exceeding ten thousand shillings or to imprisonment for a term no exceeding one month" with "a fine not exceeding fifty thousand shillings or six months imprisonment or both".

2.10.1 The Committee's recommendation

The Committee agreed with the Governor's recommendation on substituting the words "fine not exceeding ten thousand shillings or to imprisonment for a term no exceeding one month" with "a fine not exceeding fifty thousand shillings or six months imprisonment or both".

2.10.2 Justification

For consistency with the Tobacco Control Act 2007.

2.11 Deletion of sub- clauses 13(3), (4) and (5) and introduction of sub- clause 13(3) – As proposed by the Governor.

Deletion of sub- clauses 13(3), (4) and (5) and introduction of sub- clause 13(3) to provide “upon conviction or successful preliminary application before a court by the prosecution, the court may order the offender to remove the out-door advertisement ” as the nature of offences under this bill are “Cognizable offenses”.

2.11.1 The Committee’s recommendation

The Committee disagreed with the Governor’s recommendation on Deleting sub-clauses 13(3), (4) and (5) and introduction of sub- clause 13(3) to provide “upon conviction or successful preliminary application before a court by the prosecution, the court may order the offender to remove the out-door advertisement ”

2.11.2 Justification

The business is legal and hence the offender is not guilty until proven guilty by a court of law.

2.12 Proposed amendment to clause 14(4) on Right to smoke free environment – As proposed by the Governor.

Proposed amendment to clause 14(4) on Right to smoke free environment by introducing a new sub-clause 14(5) to provide a penalty “a person who contravenes this section shall be guilty of an offense and upon conviction to a fine not exceeding fifty thousand shillings, or to imprisonment not exceeding a term of six months, or both”.

2.12.1 The Committee’s recommendation

The Committee agreed with the Governor’s recommendation of introducing a new sub-clause 14(5) to provide a penalty.

2.12.2 Justification

For every offense, specific penalties should be well spelt out in the Bill.

2.13 Proposed amendment to clause 15(5) – As proposed by the Governor.

Proposed amendment to clause 15(5) by substituting the words “three” appearing after the word “exceeding” with the word “six” to appear before the word “months”.

2.13.1 The Committee's recommendation

The Committee agreed with the Governor's recommendation on substituting the words "three" appearing after the word "exceeding" with the word "six" to appear before the word "months".

2.13.2 Justification

For consistency with Section 33 (3) of the Tobacco Control Act 2007.

2.14 Proposed amendment to clause 17(3) on Display of notices – As proposed by the Governor.

Proposed amendment to clause 17(3) on Display of notices by substituting the words "three months" appearing after the word "exceeding" with the words "six months" before the word "or".

2.14.1 The Committee's recommendation

The Committee agreed with the Governor's recommendation on substituting the words "three months" appearing after the word "exceeding" with the words "six months" before the word "or"

2.14.2 Justification

For consistency with Section 34 (6) of the Tobacco Control Act 2007.

2.15 Proposed amendment to clause 21 on School health programmes – As proposed by the Governor.

Proposed amendment to clause 21 on School health programmes by inclusion of "tertiary college and universities" to appear immediately after the word "secondary schools" to make provision for comprehensive coverage of learning institutions.

2.15.1 The Committee's recommendation

The Committee agreed with the Governor's recommendation on inclusion of "tertiary college and universities" to appear immediately after the word "secondary schools"

2.15.2 Justification

This is a health program which will educate the youths in the institutions on the risks of tobacco and tobacco products even though the institutions are ordinarily the preserve of adults who should enjoy freedom of choice.

2.16 Proposed amendment to clause 30 (1) on Enforcement – As proposed by the Governor.

Proposed amendment to clause 30 (1) on Enforcement by introducing a new sub-clause 30(1) (f) to read: “take or require any person in place to produce sample(s) of tobacco, tobacco product or thing” to be consistent with the TCA, 2007 Section 38.

2.16.1 The Committee’s recommendation

The Committee disagreed with the Governor’s recommendation on introducing a new sub-clause 30(1) (f) to read: “take or require any person in place to produce sample(s) of tobacco, tobacco product or thing”

2.16.2 Justification

The tobacco, tobacco product or things that are required to be produced is already captured and taken care of in sub-clause 30 (a) and (b).

2.17 Insertion of new clause 43 on General provisions – As proposed by the Governor.

Insertion of new clause 43 on General provisions by introducing new Clause 43 to provide for the nature of offense to read as “offenses under this Act shall be Cognizable” to be consistent with the TCA, 2007 Section 55.

2.17.1 The Committee’s recommendation

The Committee disagreed with the Governor’s recommendation on introducing new Clause 43 to provide for the nature of offense to read as “offenses under this Act shall be Cognizable”

2.17.2 Justification

The offences are already cognizable.

2.18 Insertion of new clause 44 to provide for general penalty – As proposed by the Governor.

Insertion of new clause 44 to provide for general penalty and read: “ay person convicted for an offense under this act for which no other penalty is provided for shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment not exceeding a term of six months or both” to be consistent with the TCA, 2007 Section 54.

2.18.1 The Committee’s recommendation

The Committee disagreed with the Governor’s recommendation on insertion of new clause 44 to provide for general penalty

2.18.2 Justification

Penalties on specific offences have already been outlined in the Bill.

2.19 Insertion of new clause 45 on Public-tobacco industry interaction – As proposed by the Governor.

Insertion of new clause 45 on Public-tobacco industry interaction to address tobacco industry interaction to comply with WHO-FCTC Art. 5.3 and its guidelines and also to comply with Tobacco Control Regulations, 2014 Part V.

2.19.1 The Committee's recommendation

The Committee disagreed with the Governor's recommendation on insertion of new clause 45 on Public-tobacco industry interaction to address tobacco industry interaction

2.19.2 Justification

The provisions are unconstitutional as they discriminate against the tobacco industry alone in its interaction with public authorities. Further BAT has challenged similar provisions in the TCA and is awaiting judgment in the supreme court of Kenya. This clause is both unenforceable and unconstitutional. The Constitution gives every person the right to association and we cannot limit such a right under the Bill of rights.

2.20 Insertion of new clause 46 on Tobacco Advertisement, promotion and sponsorship (TAPS) – As proposed by the Governor.

Insertion of new clause 46 on Tobacco Advertisement, promotion and sponsorship (TAPS) to address Tobacco advertisement, promotion and sponsorship to comply with WHO-FCTC Art. 5.3 and its guidelines and also comply with TCA, 2007 Part VII

2.20.1 The Committee's recommendation

The Committee disagreed with the Governor's recommendation on Tobacco Advertisement, promotion and sponsorship (TAPS)

2.20.2 Justification

The provisions against sponsorship, promotion and advertising have already been covered in part III Clauses 7 to 13 of the bill. Our Bill makes it illegal to promote, or advertise any tobacco product as provided under the WHO Framework Convention on Tobacco Control (FCTC) in Clause 13 and hence there is no need to add further provisions.

3.0 COMMITTEE'S RECOMMENDATION

The Sectoral Committee on Health Services, having considered the Governors' memorandum to the Nairobi City County Tobacco Control Bill, 2019 pursuant to Standing Order 146, recommends as follows:-

1. Approves the interpretation especially designated smoking area in clause 2 be amended by deleting "29" in the definition and replacing with "16".
2. Rejects reconsideration of the Insertion of amended interpretation of tobacco products in clause 2.
3. Rejects reconsideration of the amendment of clause 5(2)(b).
4. Rejects reconsideration of the amendment of clause 5(2)(e).
5. Approves the insertion of new sub- clauses to 9(1) on Prohibited places for sale as proposed.
6. Approves the amendment of clause 9(2) as proposed.
7. Rejects reconsideration of the insertion of new sub- clauses to 9(3).
8. Rejects reconsideration of the amendment of clause 11 on Display for sale.
9. Rejects reconsideration of the amendment of clause 13 (1) on Outdoor advertisement.
10. Approves the amendment of clause 13 (2) as proposed.
11. Rejects reconsideration of the deletion of sub- clauses 13(3), (4) and (5) and introduction of sub- clause 13(3).
12. Approves the amendment of clause 14(4) on Right to smoke free environment by introducing a new sub-clause 14(5) to provide a penalty as proposed.
13. Approves the amendment of clause 15(5) as proposed.
14. Approves the amendment of clause 17(3) on Display of notices as proposed.

15. Approves the amendment of clause 21 on School health programs by inclusion of “tertiary college and universities” to appear immediately after the word “secondary schools”.
16. Rejects reconsideration of the introduction of a new sub-clause 30(1) (f).
17. Rejects reconsideration of the Insertion of new clause 43 on General provisions by introducing new Clause 43 to provide for the nature of offense.
18. Rejects reconsideration of the Insertion of new clause 44 to provide for general penalty.
19. Rejects reconsideration of the insertion of new clause 45 on Public-tobacco industry interaction to address tobacco industry interaction. and
20. Rejects reconsideration of the Insertion of new clause 46 on Tobacco Advertisement, promotion and sponsorship (TAPS) to address Tobacco advertisement, promotion and sponsorship to comply with WHO-FCTC Art. 5.3 and its guidelines and also comply with TCA, 2007 Part VII.

4.0 COMMITTEE STAGE AMMENDMENTS

Having considered the reservations by H.E the Governor on the Nairobi City County Tobacco Control Bill, 2019 as passed by the Assembly, the committee came up with following proposed amendment:-

CLAUSE 2

THAT, the Bill be amended in clause 2 by deleting “29” appearing immediately after the word “section” and substituting with “16” in the interpretation of the words “specially designated smoking area”.

CLAUSE 9

THAT, the Bill be amended in clause 9(1) on Prohibited places for sale by introducing sub-clauses after (c), (d) public institution and government buildings, (e) prohibited places and (f) prohibited smoking areas as covered under clause 15 to comply with WHO-FCTC, the Tobacco Act and Tobacco Control Regulations.

THAT, the Bill be amended in clause 9(2) by substituting the words “a term not exceeding one month” with “a term not exceeding six months” for universality of offence penalties.

CLAUSE 13

THAT, the Bill be amended in clause 13(2) on Outdoor advertisement by substituting the words “fine not exceeding ten thousand shillings or to imprisonment for a term no exceeding one month” with “a fine not exceeding fifty thousand shillings or six months imprisonment or both for consistency with Tobacco Act 2007.

CLAUSE 14

THAT, the Bill be amended in clause 14(4) on Right to smoke free environment by introducing a new sub-clause 14(5) to provide a penalty “a person who contravenes this section shall be guilty of an offense and upon conviction to a fine not exceeding fifty thousand shillings, or to imprisonment not exceeding a term of six months, or both” for consistency with Tobacco Act 2007.

CLAUSE 15

THAT, the Bill be amended in clause 15(5) by substituting the words “three” appearing after the word “exceeding” with the word “six” to appear before the word “months” for consistency with Section 33(3) of the Tobacco Act 2007 .

CLAUSE 17

THAT, the Bill be amended in clause 17(3) on Display of notices by substituting the words “three months” appearing after the word “exceeding” with the words “six months” before the word “or” for consistency with Section 34(6) of the Tobacco Act 2007.

CLAUSE 21

THAT, the Bill be amended in clause 21 on School health programs by inclusion of “tertiary college and universities” to appear immediately after the word “secondary schools” to make provision for comprehensive coverage of learning institutions and to educate the youths on the risks of use of tobacco and tobacco products.

SIGNED DATE

HON. PETER M. WARUTERE, MCA
CHAIRPERSON
SECTORAL COMMITTEE ON HEALTH SERVICES.

5.0 ANNEXTURES

1. The minutes of the proceedings of the committee
2. Governor's reservations to the Nairobi City County Tobacco Control Bill, 2019.
3. Matrix on referral to the Governor's reservations.



Member	Signature
1. Hon. Peter Warutere, MCA
2. Hon. Stephen Gikonyo, MCA
3. Hon. James Kiriba, MCA
4. Hon. Julius Maina, MCA
5. Hon. Naftaly Mathenge, MCA
6. Hon. Juliet June Ndegwa, MCA
7. Hon. Asli Mohamed Mohamud, MCA
8. Hon. Pius Mbono, MCA
9. Hon. Maurice Ochieng Onyango, MCA
10. Hon. Elijah Stazo Omung'ala, MCA
11. Hon. Moses Ogeto Nyangaresi, MCA
12. Hon. Ann Thumbi, MCA
13. Hon. John Nganga, MCA
14. Hon. David Mbithi, MCA
15. Hon. John Kyalo Mulyungi, MCA
16. Hon. Carolyne Mayunzu, MCA
17. Hon. Emily Oduor Ondeje, MCA
18. Hon. Hasfa Khalif Mohamud, MCA	
19. Hon. Mark Mugambi, MCA	

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NAIROBI CITY COUNTY TOBACCO CONTROL ACT, 2019

ARRANGEMENT OF SECTIONS

Sections

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- 2 – Interpretation.
- 3 – Purpose and objects of the Act.

PART II– ADMINISTRATION

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- 5 – Tobacco control committee.
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- 9 – Prohibited places for sale.
- 10 – Sale of cigarettes in packages.
- 11 – Display for sale.
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- 21– School health programmes.

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- 22– Public education and awareness.
- 23– Family as a basic unit of empowerment.
- 24 – Community programmes.

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- 25 – Research.
- 26 – Maintenance of data, statistics and indicator
- 27– Annual report.

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- 30 – Powers of officers.
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- First Schedule–Display of Health Messages

NAIROBI CITY COUNTY TOBACCO CONTROL ACT, 2019

AN ACT of Nairobi City County Assembly to provide measures additional to those in the national legislation for the control of the sale, labelling, advertising and promotion of tobacco products; to provide for the control of pollution and the conservation of the environment within the precincts of Nairobi City County pursuant to the Part 2 of the Fourth Schedule to the Constitution and for connected purposes

ENACTED by the Nairobi City County Assembly, as follows—

PART I- PRELIMINARY

Citation. 1. This Act shall be cited as the Nairobi City County Tobacco Control Act, 2019

Interpretation. 2. In this Act—
“brand element” includes a brand name, manufacturer’s name, trade mark, trade name, logo, graphic arrangement, design, colour, motto or slogan that is reasonably associated with, or that evokes a product, a service or a brand of product or service;

“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;

“manufacture” means the processing of a tobacco product and includes the packaging, labelling, distribution or importation of tobacco products;

“manufacturer” includes any entity that is involved in the manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“minor” a person under the age of eighteen (18) years;

“promotion” means a representation, including an advertisement, whether direct or indirect, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behavior about the product or service, or that is intended to or has the effect of inducing consumers to use tobacco products, underestimate the dangers of tobacco consumption, or create recognition of or goodwill for the tobacco manufacturer;

“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” includes—

- (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.

Purpose and
objects of the Act.

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 minors 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

Duties of the
Department.

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

(2) In implementing this Act 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) consider and approve applications for the establishment of specially designated smoking areas;
- (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 on the implementation of this 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.

Tobacco control
committee.

5. (1) There is established a committee to be known as 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 Director of Health Services who shall be the secretary to the Committee;
- (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) a representative of the business community to be nominated by the Kenya National Chamber of Commerce & Industry;
- (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;
- (g) one youth appointed from among the youth organizations for promotion of health related matters among the youth

appointed by the County Executive Member;

(h) one woman appointed from among the women organizations involved in health related matters appointed by the County Executive Member; and

(i) one health professional who is experienced in matters related to tobacco control appointed by the County Executive Member.

(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 terms 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 further 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 the 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.

(6) The Committee shall regulate its own procedure.

Functions of the tobacco control committee.

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;
- (e) recommending to the County Executive Member and participating in the formulation of the regulations to be made under Section 41; and
- (f) carrying out any other activity as may be assigned under this Act.

PART III– SALE AND PROMOTION OF TOBACCO PRODUCTS

Sale or supply to young persons.

7. (1) No person shall sell, provide or supply a tobacco product to a minor.

(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 exceeding 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 County Executive Member may prescribe.

Sale or supply by young persons.

8. (1) A wholesaler, distributor or retailer of a tobacco product or any person dealing with tobacco product shall not employ or permit a minor to sell, provide or supply any tobacco product.

(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 six months, or to both such fine and imprisonment.

Prohibited places for sale.

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

(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 or to both such fine and imprisonment.

Sale of cigarettes
in packages.

10. (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.

(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 six months, or to both such fine and imprisonment.

Display for sale.

11. (1) No person shall sell or offer to sell a tobacco product 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 six months, or to both such fine and imprisonment.

Display of signs.

12. (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—

(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 First 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.

(4) 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 six months, or to both such fine and imprisonment

Outdoor
advertisement.

13. (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, logo, brand name or brand element of a tobacco product or associated with a specific tobacco product or brand.

(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 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 IV– SECOND-HAND SMOKING

Right to smoke
free environment.

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

(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 minor 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 minors are on board.

Prohibited
smoking areas.

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

(2) Notwithstanding the generality of subsection (1), no person shall, except in designated smoking areas 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) 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.

(4) 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.

(5) A person who commits an offence under this Section shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Designated
smoking areas.

16. (1) Notwithstanding the foregoing provisions of this Part , the owner, manager, the person or officer in charge of a place described under Section 15 (2) (a), (d), (f),(g), (o), (p) (q) and (r), may provide a specially designated smoking area within such a place:

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.

(2) A premise owner who wishes to provide a specially designated smoking area within the premises shall make an application in the prescribed form to the Committee and pay the requisite application fees.

Display
notices.

of **17.** (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.

(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 or to both such fine and imprisonment.

PART V– HEALTHCARE SERVICES

Provision of
treatment and
rehabilitation
health services.

18. (1) The Department shall provide treatment and rehabilitation services to persons addicted to tobacco products which shall include and not limited to cessation 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.

Training of
healthcare
professionals.

19. 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.

Dissemination of
tobacco control
information as
part of healthcare
services.

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

School health
programmes.

21. 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.

PART VI– PUBLIC EDUCATION, COMMUNITY AND FAMILY EMPOWERMENT.

Public education
and awareness.

22. 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.

Family as a basic unit of empowerment.

23. (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.

(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.

Community programmes.

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

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

PART VII– RESEARCH, STATISTICS AND REPORTING

Research.

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

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

Maintenance of data, statistics and indicators.

26. (1) The Department shall maintain all relevant data, statistics and indicators related to tobacco control in the County.

(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.

Annual report.

27. (1) The County Executive Member shall cause to be prepared an annual report of the implementation of this Act

(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 VIII— ENFORCEMENT

Authorised officers.

28. (1) The County Executive Member shall, by notice in the *Gazette* appoint such officers to be authorised officers for purposes of this Act.

(2) The County Executive Member 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.

Places authorized
officers may
enter.

29. (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.

(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 28(2).

Powers of
officers.

30. In carrying out an inspection in any place, an authorised officer may—

- (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.

Use of records.

31. In carrying out an inspection in a place, an authorised officer may-

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

Entry of dwelling place.

32. 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 33.

Court to issue warrant.

33. (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 –

- (a) the dwelling place is a place referred to in Section 32;
- (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.

Use of force.

34. An authorised officer executing the warrant issued under Section 33 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

Certificate analysis.	of	35. 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.
Assistance officers.	of	36. (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 — (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.
Obstruction.		37. 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.
Seizure.		38. (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. (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 sixty 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.

Order
restoration.

for

39. (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-

(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.

Forfeiture.

40. Where-

(a) no application has been made under Section 38(4) 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 IX– GENERAL PROVISIONS

Regulations.

41. (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 a licence for a specially designated smoking zone;

(b) prescribe the certificate of appointment for authorized officers; and

(c) prescribe the seizure inventory form.

Transitional

42. (1). Notwithstanding any other provision of this Act to the contrary, a person who, immediately before the commencement of this Act, was—

(a) a wholesaler, distributor or retailer of any tobacco product; or

(b) the owner or manager of any premises contemplated under Part V of this Act, shall, within sixty (60) days of such commencement, comply with the requirements of this Act.

FIRST SCHEDULE

Section 12

Display of Health Messages

Tobacco Use Kills

Tobacco use is addictive


MATRIX ON REFERRAL OF THE NAIROBI CITY COUNTY TOBACCO CONTROL BILL, 2019

BY THE HON. GOVERNOR

CLAUSE	PROPOSED AMENDMENT	RATIONALE	LEGAL COUNSEL'S COMMENTS	COMMITTEE CONCLUSION
Clause 2	<p>“specially designated smoking area” Amend by deleting ‘29’ appearing after the word section and substitute with ‘16’</p> <p>“tobacco products” insert the words and any other nicotine delivery system of mechanism after the word filter</p>	<p>Section 16 of the Bill provide for specially designated smoking area</p> <p>To cover a wide range of tobacco products such as electronic nicotine delivery system.</p>	<p>Agreed, Clause 29 deals with places authorized officers may enter.</p> <p>Disagreed, Tobacco products are products made entirely or partly of leaf tobacco as raw material, which are intended to be smoked, sucked, chewed or snuffed. We should define electronic nicotine delivery system.</p>	<p>Agreed</p> <p>Disagreed, this would bring about harassment to consumers not using tobacco and tobacco products as even tea leaves and other products contains nicotine .</p>
Clause 5 (2)(b)	Amend by deleting ‘Director of health services’ and substitute with ‘officer in charge of public health’	Section 28(3)	Agreed, but officer in charge of public health should be clearly defined in	Disagreed, Director is the Chief Executive Officer

			the interpretation section to avoid confusion.	
Clause 5 (2) (e)	Delete sub-clause (e) and substitute with 'a representative nominated by a religious-based organization and appointed by the County Executive Committee Member responsible for Health'	Article 5.3 of WHO-Framework Convention on Tobacco Control (FCTC) restricts interaction between the executive and the tobacco industry	Disagreed, Section 5 of the Tobacco Control Act, the membership of the national board has representative form the business community. We can however add a representative nominated by a religious-based organization	Disagreed, For fair representation of the business community
Clauses 9	(1) Include new sub-clause; - a) Public institution and government buildings b) Prohibited places c) Prohibited smoking areas as covered under clause 15 of the bill (2) Amend by deleting 'a term	To comply with WHO-FCTC and Tobacco Control Act, 2007	Agreed.	Agreed, to comply with WHO-FCTC and Tobacco Control Act, 2007
		Universality of the	We need to create	Agreed, for Universality of

not exceeding one month' and substituting with 'a term not exceeding six months'	offence and penalties	penalty for each offence in the Bill.	the offence and penalties
<p>(3) Add sub-clause 3 'Prohibit sale of tobacco products within a radius of 300 meters of learning institutions</p>	To protect the children	We can amend sub-clause (1) (b) and include 300 meters from an educational institution.... Or provide for that in the regulations	Disagreed, the city is so congested and hence no clear delineations for the learning institutions can be drawn.
<p><u>Clause 11</u></p> <p>Delete clause 11 (1) in its entirety and substitute with- 11 (1) (a) No person shall sell or offer to sell a tobacco product unless it is hidden from the view of the general public at the point of sale 11 (1) (b) No person shall sell or offer to sell a tobacco product by means of display that permits a person to handle a tobacco product before paying for it</p>	To safe guard non-intended users	Agreed, to reduce the demand for tobacco products	Disagreed, to avoid illegal trade
<p><u>Clause 13</u></p> <p>(1) Insert 'color or combination of</p>	Use of color or	Agreed	Disagreed,

	<p>colors' after the word any</p> <p>(2) Delete sub- clause 2 and substitute with 'a fine not exceeding fifty thousand shillings or six months' imprisonment, or both</p> <p>(3) Delete sub-clause 3,4 and 5</p>	<p>combination of colors is unique to an entity / company</p> <p>To deter out-door advertisement of tobacco products</p> <p>Nature of offences is cognizable offences</p>	<p>Agreed, and for consistency with the Tobacco Control Act, 2007. This is the role of the national government under the office of the DPP.</p> <p>Disagreed, though the nature of offences is cognizable offences, there is no harm with the provisions being in place, to give second chances to people who comply</p>	<p>Disagreed <i>agreed</i></p> <p>Disagreed, to avoid harassment of customers by enforcing officers</p>
<p>Clause 14</p>	<p>Introduce a new sub-clause 5 on penalty "a person who</p>		<p>Agreed, we need to introduce a specific</p>	<p>Agreed, each offence to have specific penalty</p>

	contravenes the provisions of this section shall be guilty of an offence and upon conviction to a fine not exceeding fifty thousand shillings or six months' imprisonment, or both		penalty for a specific offence.	
Clause 15(5)	Delete the word 'three' appearing after the word 'exceeding' and substitute it with the word "six"	Universality of the offence and penalties	Agreed. For consistency with Section 33(3) of the Tobacco Control Act, 2007	Agreed, for consistency with existing laws and regulations
Clause 17(3)	Delete the word 'three' appearing after the word 'exceeding' and substitute it with the word "six"	Universality of the offence and penalties	Agreed. For consistency with Section 34(6) of the Tobacco Control Act, 2007	Agreed, for consistency with existing laws and regulations
Clause 21	Amend by including 'tertiary college and universities' after the word 'secondary schools'	To make provision for comprehensive coverage of learning institutions.	Agreed. This is a health program which will educate the youth on the risks of tobacco products	Agreed, for purposes of educating the youths
Clause 30	Introduce sub-clause 30(f) to read 'take or require any person	To be consistent with the Tobacco	Disagree, this provision has	Disagreed, the issue has been covered under clause

	in the place to produce sample(s) of the tobacco, tobacco product or thing'	Control Act, 2007 section 38	already been dealt with under section 30 sub-clause (b) of the Bill.	30(b) of the Bill
NEW CLAUSES				
Clause 43	General provisions: 'Offences under this Act shall be cognizable offences'	To be consistent with the Tobacco Control Act, 2007 section 55	Agreed, this will ease the work of the enforcement officers	Disagreed
Clause 44	General penalty; 'any person convicted for an offence under this Act for which no other penalty is provided for shall be liable to affine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or both	To be consistent with the Tobacco Control Act, 2007 section 54	Disagreed, in line with the recent judgement Humprey Kariuki – vs- R general penalty is not enforceable .	Disagreed
Clause 45	Include part for Public-Tobacco Industry Interaction	To comply with WHO guidelines.	This can be included in the regulations by the CEC	Disagreed,

Clause 46	Introduce new part on Tobacco Advertisement, Promotion and Sponsorship	To comply with WHO guidelines.	<p>Agreed, we can expound on it though most of it is covered in the Bill, we can include provisions on-</p> <ul style="list-style-type: none"> ➤ Prohibition of promotion ➤ False promotion ➤ Promotion by advertisement ➤ Promotion by sponsorship ➤ Sales promotions 	Disagreed, the issue has already been covered in Part iii of the Bill.
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