

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY
FIRST ASSEMBLY – SECOND SESSION

REPORT OF THE
SECTORAL COMMITTEE ON CULTURE AND COMMUNITY SERVICES ON THE
CONSIDERATION OF THE NAIROBI CITY COUNTY ALCOHOLIC DRINKS CONTROL
AND LICENSING BILL, 2014.

CLERK'S CHAMBERS
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL BUILDINGS
NAIROBI

MARCH, 2014

PREFACE

Mr. Speaker, Sir,

The Sectoral Committee on Culture and Community Services is constituted pursuant to the provisions of Standing Order No. 191 of the Nairobi County Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 191(5), which mandates the Committee to, inter alia;

- (i) study and review all County legislation referred to it;*
- (ii) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

Mr. Speaker, Sir,

The Committee, according to Schedule II of the Standing Orders, examines the following subjects:

- i. All matters related to:
 - a. cultural activities and facilities and County parks, beaches and recreation facilities,
 - b. public entertainment and public amenities including betting, casinos and other forms of gambling, racing, liquor licensing, cinemas, video shows and hiring, libraries, museums
 - c. firefighting services and disaster management
 - d. control of drugs and pornography
 - e. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in Governance at the local level.

Mr. Speaker, Sir,

The following are the Members of the Committee:

1. Hon. Ronald Milare, MCA - (Chairman)
2. Hon. Oscar Lore, MCA - (Vice-Chairman)
3. Hon. Kennedy Ng'ondi, MCA
4. Hon. Martin Kinyanjui, MCA
5. Hon. Andrew Macharia, MCA
6. Hon. Asha Abdi Sosso, MCA
7. Hon. Nancy Luchiri, MCA
8. Hon. Elizabeth Sang, MCA
9. Hon. Tabitha Ndigirigi, MCA
10. Hon. Paul Kiguathi Kados, MCA
11. Hon. David Mberia, MCA
12. Hon. Janet Kimondo, MCA
13. Hon. Jackson Kiama, MCA
14. Hon. Janet Wala, MCA
15. Hon. Bernadette Ng'ang'a, MCA
16. Hon. Joash Omwenga, MCA
17. Hon. Nancy Mwaura, MCA

Mr. Speaker, Sir,

The Alcoholic Drinks Control and Licensing Bill, 2014, underwent the First Reading on Tuesday, 28th January, 2014 and was effectively committed to the Committee on Culture and Community Services, as provided for under Standing order 121(1).

Pursuant to Article 196(b) of the Constitution and Standing Order 121(3) which require public participation and involvement in the legislative and other business of the County Assembly and its Committees, a notification was placed in the mainstream print media on 03rd February, 2014, informing the public that the Committee was considering amendments to the Nairobi City County Alcoholic

Drinks Control and Licensing Bill, 2014, and inviting them to submit any representations they might have on the proposed amendments.

Mr. Speaker, Sir,

The Committee held a total of ten meetings and a retreat to consider final amendments to the Bill. A number of meetings were held with stakeholders from the County Executive during the scrutiny of the Bill. Specifically, the Department of Trade, Industrialization, Cooperative Development, Tourism & Wildlife met twice with the Committee on the proposed amendments to the Bills.

The Committee also received written memoranda from the following:-

1. National Authority for Campaign Against Alcohol and Drug Abuse (NACADA)
2. Pubs and Restaurants Association of Kenya (PERAK)
3. East African Breweries Ltd (EABL)

— Consideration of Memoranda on the Nairobi City County Alcoholic Drinks Control and Licensing Bill, 2014

On the memorandum by the National Authority for Campaign Against Alcohol and Drug Abuse (NACADA), the Committee noted that the organization raised several key issues that warranted further consideration. Several proposed amendments to the Bill by the organization were adopted.

These include amendments touching on:

- ✓ reorganization and grouping of Sections in parts for easy navigation;
- ✓ amendments to Clause 2; Clause 3; Clause 4; Clause 5; Clause 6; Clause 11 and Clause 43.

Some of the amendments dealt with typographical anomalies while others were substantive. The Committee however declined amendment proposals to channel 35% of revenues collected under the Act to NACADA for research. It was also agreed that an amendment to Clause 6 subsection 3 to bring a national officer responsible for coordination of national government functions be shelved, as it

would complicate matters in terms of accountability of the said officer to the Nairobi City County Assembly.

On the memoranda from Pubs and Restaurants Association of Kenya (PERAK), the Committee was in agreement that the Memoranda raised serious concerns with specific reference to Clause 33 on liability for underage persons found in pubs or clubs in breach of the Act and the Third Schedule on “opening and end of sale” timelines provided for in the Alcoholic Drinks Control and Licensing Bill, 2014.

It was agreed that Clause 33 be amended to provide for criminal liability for adults in whose company underage persons are found in clubs and pubs in breach of the law. The Bill had proposed that Club or pub owners be solely held liable for the same, a position vehemently opposed by PERAK. PERAK’s proposed amendments to the Third Schedule to provide for specific closure time were also considered and amendments proposed to take care of the same. It was noted that national legislation only provides for “closure on selling,” not of the premise. This has however been abused by enforcement officers to extort money from PERAK members.

On the memorandum from the East African Breweries Ltd, the company raised concerns regarding inconsistencies between the Bill and national legislation, specifically with reference to licensing, packaging, licensing hours, conditions and exceptions. The Committee was in agreement with the Company’s proposal for an amendment to Clause 40 (2) of the Bill on packaging of alcoholic drinks in glass containers of not less than 200 milliliters. This is in conformity with national legislation on the same under Section 9A of the Customs and Excise Act (Chapter 472 of the Laws of Kenya).

During its meeting on the Bills with the County Executive Committee Member for Trade, Industrialization, Cooperative Development, Tourism & Wildlife, Mrs. Anna Othoro, the Committee was informed that the purpose of the Alcoholic Drinks Control and Licensing Bill, 2014, is to regulate the manufacture, distribution and sale of alcoholic drinks in Nairobi City County.

The Alcoholic Drinks Control and Licensing Bill, 2014, will provide for the licensing of operators and individuals in Nairobi City County that;

- Manufacture;
- Distribute and or;
- Sell alcoholic drinks within the County, as provided for under the Fourth Schedule to the Constitution.

The Bills seek, through effective regulation and public engagement, to permit the manufacture and sale of alcoholic drinks and ensure:

- It is crime free;
- The activities are undertaken fairly and openly;
- And that Children and vulnerable people are protected.

Mr. Speaker, Sir,

The Constitution mandates and empowers the county governments with the responsibility of liquor licensing. The national legislation, namely the Alcoholic Drinks Control Act gives this function to the National Authority for the Campaign Against Drug Abuse (NACADA).

The purpose of this Bill is to ensure that the function of liquor licensing is immediately and effectively implemented at the county level and that mechanisms are provided for this in county legislation.

The national government is empowered to make legislation that has the following qualities that will apply and override county legislation if the following conditions exist—

- a) the national legislation provides for a matter that cannot be regulated effectively by legislation enacted by the individual counties;
- b) the national legislation provides for a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing-
 - i. norms and standards; or
 - ii. national policies; or

- c) the national legislation is necessary for —
 - i. the maintenance of national security;
 - ii. the maintenance of economic unity;
 - iii. the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - iv. the promotion of economic activities across county boundaries;
 - v. the promotion of equal opportunity or equal access to government services; or
 - vi. the protection of the environment.

The conditions set out above have been reviewed and they would apply to the following extent—

- a) control of drinking hours;
- b) security considerations;
- c) levels of alcohol content;

The county government is at liberty to establish its own institutions that will manage the licensing of liquor trade. These institutions should be able to implement the national government policy on the control of alcoholic drinks. The Bill also provides for collaboration between the two governments on this issue especially on enforcement.

This Bill provides for the County Alcoholic Drinks Licensing and Control Board to be chaired by a person appointed by the Governor. The other members will be drawn from various departments of the national and county governments. The Sub-county Alcoholic Drinks Control and Licensing committees shall be responsible for licensing at the sub-county level. The enactment of this Bill shall entail expenditure of county public funds to be provided for in the estimates.

The Alcoholic Drinks Control and Licensing Bill, 2014, will thus enable the Nairobi City County Government generate crucial revenues to supplement its other sources.

The committee notes that it is important to ensure amendments are in tune with the spirit of the Bill, which is designed to regulate and ensure fairness in manufacture, distribution and sell of alcoholic drinks within the county.

The Committee was informed that the Bill is crucial as it seeks to give exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the County.

Mr. Speaker, Sir,

The Committee is thankful to the Office of the Speaker and the Clerk of the Nairobi City County Assembly for the logistical and technical support accorded to it during its Sittings in consideration of the Bills.

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 130 (1), it is my pleasant duty to table in the Assembly the Report of the Sectoral Committee on Culture and Community Services on its scrutiny of the Nairobi City County Alcoholic Drinks Control and Licensing Bill, 2014.

Thank you.

Signed..... Date.....

Hon. Ronald Milare, MCA

Chairperson, Sectoral Committee on Culture and Community Services

THE NAIROBI CITY COUNTY ALCOHOLIC DRINKS CONTROL AND
LICENSING BILL, 2014

The Committee deliberated on the Bill as follows:

Clause 1	- Agreed to
Clause 2 to 6	- Proposed amendments
Clause 7	- Agreed to
Clause 8 to 9	- Proposed amendments
Clause 10	- Agreed to
Clause 11	- Proposed amendment
Clause 12-15	- Agreed to
Clause 16	- Proposed amendment
Clause 17 to 34	- Agreed to
Clause 35	- Proposed amendment
Clause 36 to 39	- Agreed to
Clause 40	- Proposed amendment
Clause 41 to 42	- Agreed to
Clause 43	- Proposed amendment
Schedules	- Proposed amendment
Title	- Agreed to

COMMITTEE'S PROPOSED AMENDMENTS TO THE NAIROBI CITY COUNTY ALCOHOLIC DRINKS CONTROL AND LICENSING BILL, 2014

CLAUSE	PROPOSED AMENDMENTS	JUSTIFICATION
ARRANGEMENT OF SECTIONS	<p>a) THAT the bill be amended by reorganizing and grouping the Sections in Parts</p> <p>b) THAT the bill be amended;</p> <p>By renumbering "Part VI" as "Part VII";</p> <p>By renumbering "Part VII" as "Part VIII";</p>	<p>Make navigating the Bill easy and get to specific provisions readily.</p> <p>Correct typographical error in numbering of parts.</p>
2	<p>THAT CLAUSE 2 of the Bill be amended-</p> <p>(a) by deleting the words "National Campaign Against Drug Abuse Authority" appearing in the definition of the expression "relevant agency" and substituting thereof the words "National Authority for Campaign Against Alcohol and Drug Abuse";</p>	<p>To correct typographical error in the acronym for NACADA.</p>

	<p>(b)by inserting the following new definition in proper alphabetical sequence-</p> <p>“Sub-county” means the Constituency.</p>	<p>Provide for the definition of sub-county in interpretation.</p>
3	<p>THAT CLAUSE 3 of the Bill be amended-</p> <p>By deleting the figure “198” appearing immediately after the word “Article” and substituting it with the figure “189” thereof;</p>	<p>To correct typographical error and refer to the right section of the Constitution.</p>
4	<p>THAT CLAUSE 4 of the Bill be amended-</p> <p>(a) In sub-clause 2 by inserting the words “and or the Chief Licensing Officer” immediately after the word “trade”;</p> <p>(b) By renumbering sub-clause clause 4(2) as 4(3);</p>	<p>Provide for the Chief Licensing Officer as a Secretary to the Board.</p> <p>Correct a typographical anomaly in numbering</p>

5	<p>THAT CLAUSE 5 of the Bill be amended-</p> <p>a) In paragraph (e) by deleting the word “Boards” and substituting with the word “committees” thereof;</p> <p>b) In paragraph (f) by deleting the figure “2011” and substituting with the figure “2010” thereof;</p> <p>c) In paragraph (h) by deleting the figure “2011” and substituting with the figure “2010” thereof;</p> <p>d) In paragraph (i) by inserting the following words “or the County Executive Committee Member” immediately after the word “Governor”;</p>	<p>Correct a drafting anomaly. There are no sub-county boards, but committees.</p> <p>Correct a drafting anomaly. The National law was enacted in 2010, not 2011.</p> <p>Bring in County Executive Committee Member for Trade in assigning other duties to the Board.</p>
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<p>6</p>	<p>THAT CLAUSE 6 of the Bill be amended-</p> <p>(a) in sub-clause 1 paragraph (b) deleting the word “Board” and substituting with the words “executive committee member” thereof;</p> <p>(b) in sub-clause 2 by deleting the word “may” appearing immediately after the word “committee” and substituting with the word “shall” thereof;</p> <p>(c) by deleting sub-clause 6</p>	<p>Provide for the CEC in allocation of duties to the Board from time to time.</p> <p>To expressly articulate the mandatory nature of the provision.</p> <p>Amendment to avoid unnecessary repetition. The Bill in paragraph (e) of sub-clause 3 already provides for an officer in the County Public service designated by the County Executive Committee Member who shall be secretary to the sub-county.</p>
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<p>8</p>	<p>THAT CLAUSE 8 of the Bill be amended-</p> <p>In sub-clause 3 paragraph (a) by inserting the words “and or the County Gazette” immediately after the word “Gazette”</p>	<p>Provide for the County Gazette in publication of notices containing names of license applicants and types of licenses.</p>
<p>9</p>	<p>THAT CLAUSE 9 of the Bill be amended-</p> <p>(a) in sub-clause 2 by deleting the word “to” appearing immediately after the word “no”;</p> <p>(b) in sub-clause 2 by inserting the word “to” immediately after the word “objection”;</p> <p>(c) in sub-clause 6 by deleting the words “three months” and substituting with the words “one month” thereof;</p> <p>(d) in sub-clause 7 by inserting the words “and or the County Gazette” immediately after the word “Gazette”</p>	<p>Correct typographical anomaly.</p> <p>Correct typographical anomaly.</p> <p>Reduce period within which the Board can consider a revised application and issue a license.</p> <p>Provide for the County Gazette in publication of notices of grant of licenses.</p>

11	<p>THAT Clause 11 be amended:-</p> <p>a) By inserting the a new sub-clause (3) as follows-</p> <p>(3)Notwithstanding paragraph (c) of sub-clause (1), the Sub-county committee may grant a new license for the sale of an alcoholic drink to be consumed on the premises if the Sub-county committee is satisfied that-</p> <p>a) the premises do not share a wall with the institution and are sealed off by a physical and non-transparent barrier that ensures zero visibility of the premise from the locality of the institution;</p> <p>b)the premises displays on its outside any of the prescribed health messages in a clear and visible manner;</p>	<p>Ensures premises where alcoholic drinks are sold are separated from learning institutions given the challenges of enforcing the 300 meters distance as is prescribed by National law, in light of the physical planning challenges of a city like Nairobi.</p>
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	<p>c) the premises do not bear any outdoor alcoholic drinks promotion or advertisement;</p> <p>d)the applicant does not engage in activities that interfere with learning in the institution or activities that are calculated to attract persons under the age of eighteen to the premises;</p>	
16	<p>THAT CLAUSE 16 of the Bill be amended-</p> <p>By deleting sub-clause 4.</p>	<p>Ensure each outlet for chains of restaurants or pubs receives an individual license, as opposed to one group license as has been proposed by sub-clause 4.</p>
33	<p>THAT Clause 33 of the Bill be amended-</p> <p>a) by renumbering sub-clause 2 as sub-clause 3;</p> <p>b) In sub-clause 2 by inserting the expression “and (2)” immediately after the figure “(1)”;</p>	<p>Correct the numbering after addition of new clause 2.</p> <p>Take care of the new sub-clause 2 in the penalties for an offense under</p>

	<p>c) by inserting the following new sub-clause 2;</p> <p>2. No adult may allow a person under the age of eighteen years to accompany him or her or gain access to an area in which alcoholic drink is manufactured, stored, distributed or consumed.</p>	<p>clause 33</p> <p>Provide for shared liability amongst pub owners or adults who knowingly allow minors in their company gain access to places where alcoholic drink is manufactured, distributed or sold.</p>
35	<p>THAT CLAUSE 35 of the Bill be amended-</p> <p>(a) in sub-clause 1 by deleting the figure "35" appearing immediately after the word "section" and substituting with the figure "34" thereof;</p> <p>(b) in sub-clause 5 by deleting the figure 11 appearing immediately after the word "section" and substituting with the figures 9(4) thereof;</p>	<p>Correct a typographical anomaly and refer to the right section.</p> <p>Correct a typographical anomaly and refer to the right section.</p>

40	<p>THAT CLAUSE 40 of the Bill be amended-</p> <p>In sub-clause 2 paragraph (a) by deleting the figure “250” and substituting with the figure “200” thereof;</p>	<p>To conform with provisions of National law on the manufacture, packaging, distribution or sell of an alcoholic drink in a container of not less than 200 millilitres.</p>
43	<p>THAT CLAUSE 43 of the Bill be amended-</p> <p>a) In sub-clause 1 by deleting the word “finance” and substituting with the word “trade” thereof;</p> <p>b) By deleting sub-clause 2(a) and substituting thereof the following new clause-</p> <p>2(a) such monies as may be appropriated by the County Assembly and such license and other fees as may be payable under this Act;</p> <p>c) By inserting a new paragraph immediately after paragraph 3 (c)-</p> <p>3(d) Carrying out the functions of the Nairobi City County Alcoholic Drinks Control and Licensing Board</p>	<p>Cure typographical error.</p> <p>Having the fund administered by the CEC Member for Finance would result to the funds being used for purposes that do not sustain the objects and purposes of the Bill.</p> <p>The fund collected under the Bill should serve the primary purpose of mitigating alcoholic drinks abuse and misuse and</p>

	<p>established under Clause 4 (1) and the Objects of the Act in Clause 3.</p> <p>d) By numbering Clause 3(d) appropriately to Clause 3(e) and by adding new paragraph (d) as follows-</p> <p>3(e) Any other matter incidental to the matters set out in paragraphs (a), (b), (c), (d).</p>	<p>therefore not constitute part of the revenue of the County.</p> <p>Cure typographical errors.</p> <p>Widen range of matters fund can be applied to.</p>
SCHEDULES	<p>THAT the Third Schedule of the Bill be amended;</p> <p>a) By adding the words “provided that closure shall be not more than one hour from the authorized selling time” in all parts of the Schedule with a time limit provision.”</p> <p>b) In part 2 by deleting the word “do” and substituting with the word “of” thereof;</p> <p>c) In part 2 by inserting a new line after the letters “p.m.” as follows:</p> <p>“Weekends and public holidays from 2pm to 8.30pm”;</p> <p>d) In part 3 by deleting “10.00pm” and substituting with “10.00am” thereof.</p>	<p>Provide for time of closure for premises (pubs and restaurants) and take care of a vacuum in National legislation.</p> <p>Correct typographical anomaly.</p> <p>Provide for licensing timelines during weekends and public holidays.</p> <p>Correct typographical anomaly</p>

