

THE KILIFI COUNTY ENVIRONMENT (REGULATION AND CONTROL) ACT, 2016

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AN ACT of the Kilifi County Assembly to give effect to the Fourth Schedule of the Constitution; to control and regulate air pollution, noise pollution, public nuisances and outdoor advertising; and for connected purposes

ENACTED by Kilifi County Assembly, as follows—

PART I— PRELIMINARY

Short title. **1.** This Act may be cited as the Kilifi County Environmental (Regulation and Control) Act, 2016

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

“advertisement” or “advertising” means any visible representation of a word, name, and object or of an abbreviation of a word or name or of any sign or symbol which is not intended solely for illumination or as a warning against any danger;

“air pollution” means any change in the composition of air caused by air pollutants;

“air pollutant” includes—

- (a) fume, smoke, particulate matter, vapour, gas, odorous substance or any combination thereof; and
- (b) any other substance or matter whether physical, chemical, biological, or radioactive, including source material, special nuclear material, and by-product materials, which is emitted into or otherwise enters the atmosphere from any object or activity and causes, or, if unabated, may cause air pollution,

but does not include water vapour, steam condensate or any other emission exempted under any written law;

“ambient air” means the atmosphere surrounding the earth and does not include the atmosphere within a structure or within any underground space;

“authorized officer” means an authorized officer appointed under section 32(1);

“Department” means the county department for the time being responsible for matters relating to environment;

“entity” includes a company, corporation, firm, institution, partnership, trust, or other organization, whether incorporated or not;

“Member” means the County Executive Member for the time being responsible for matters relating to environment;

“noise pollution” means the emission of uncontrolled noise that is likely to cause danger to human health, or damage to the environment;

“protected area” means an area declared by the county government to be a protected area for grazing of animals under section 17;

“public place” means any square, park, recreation ground or open space which—

(a) is vested in the town or

(b) the public has the right to use; or

- (c) is shown on a general plan of a township filed in a deeds registry or a Surveyor-General's office and has been provided for or reserved for the use of the public or the owners of in such township,

and it includes a workplace and a public conveyance;

“special area” means an area declared by the Department to be a special area under section 17;

“sub-county committee” means the Sub-County Environment Committee established under section 6 of this Act; and

“urban area” means a municipality or a town.

Objectives.

3. The objective of this Act is to provide for the control of—

- (a) air pollution;
- (b) noise pollution;
- (c) public nuisances, including waste and disease causing pests; and
- (d) unregulated outdoor advertising,

in order to ensure a clean and healthy environment.

Application.

No 25 of 2005.

4. The provisions of this Act shall be in addition to other requirements imposed by or under the Environmental Management and Coordination Act, 2015 or any other written law.

PART II – ADMINISTRATION

Administration of
the Act.

5. This Act shall be administered by the County Department responsible for matters relating to environment.

Establishment of
the Sub-County
Environment
Committees

6. (1) There is established in every Sub-County, a Committee to be known as the Sub-County Environment Committee.

(2) The functions of the Committee shall be to –

- (a) Be responsible for the proper management of the environment within the sub-county for which it is appointed
- (b) Perform such additional functions as are prescribed by this Acts or as may from time to time be assigned by the Member

(3) The Committee shall consist of;

- (a) Sub-County Administrator who shall be the chairperson;
- (b) Sub-county environment officer from the relevant sub-county who shall be the Secretary;
- (c) A representative from each of the county department
- (d) One person representing farmers or pastoralists;
- (e) Three residents of the sub-county appointed by the Executive Committee Member one of whom shall be a Youth.
- (f) one person representing the business community and non-governmental organization engaging in environment matters in the community from the Sub-County.

(4) The Sub-County Environment Management Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

(5) (a) the appointed members under sub-section(3) (a) and (e) shall be subject to such persons satisfying the requirements of Chapter Six of the Constitution and hold a minimum qualification of **a certificate at O-level.**

(b) The above appointments shall satisfy the requirements of the gender rule envisaged in the constitution

(6) A member of the Committee appointed under sub-section (3) (a) (e) and (f) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

7. (1) The conduct and regulation of the business and affairs of the Committees shall be as set out in the Schedule.

(2) Except as provided in the Schedule, the Committees may regulate their own procedure.

8. The offices in the Committee shall not attract any remuneration.

9. A member of the Committee may be removed from office on any one or more of the following grounds -

(a) Lack of Integrity;

(b) Gross misconduct , whether in the performance of the members' functions or otherwise;

(c) Violation of the Constitution or any other law;

(d) Physical or mental incapacity to perform the functions of the office;

(e) Missing three consecutive meetings without a reasonable cause;

(f) Incompetence during the period in office, the

Conduct of Business

Remuneration.

Removal from
Office

appointing authority shall write to the County Assembly requesting the removal of a member from the Board and in the case of the Sub-County Committee the appointing authority shall write to the Board requesting for removal of a member in the Sub-County Committee.

10. A person shall cease to be a member of the Board if such person—

- (a) resigns in writing, to the Executive Committee Member for persons under (2) (a) (e) and (f)
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (e) dies.

Vacation from
Office

Implementation of
the Act.

11. In order to implement the objectives of the Act the county executive committee Member shall—

- (a) formulate county policy for necessary laws and Regulations for the control of air and noise pollution, other public nuisances and outdoor advertising;

(b) consider all matters brought to its attention by the

county or national government, and report its findings thereof;

- (c) take all measures possible to ensure activities within the county conform with national and county legislation on health, safety, environmental and other relevant standards;
- (d) regulate outdoor advertising and graffiti;
- (e) control public nuisances, including waste, pests and insects;

.

- (f) establish and manage pounds, and determine the circumstances and conditions under which any article, vehicle, animal or bird found to be abandoned may be impounded and, if necessary, be sold or destroyed; and

(g) take any other step that may be necessary to implement this Act.

PART III — PROVISIONS RELATING TO AIR POLLUTION

Nobody shall cause air pollution.

12. (1) A person or an entity shall not act in a way that directly or indirectly causes, or is likely to cause immediate or subsequent air pollution, or emit any liquid, solid or gaseous substance or deposit any such substance contrary to this Act.

(2) Any person or entity found acting in contravention of the subsection (1) commits an offence and shall upon

conviction –

(a) if a person; be liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both; and

(b) if an entity; be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding one year or both.

Responsibilities of the Department to control air pollution.

13. The Department shall take necessary steps in order to control air pollution within the county, including—

(a) promotion of alternative cooking technologies that are non polluting;

(b) development of well ventilated buildings;

(c) regulation of smoking in enclosed spaces, including designation of smoking zone areas in public areas; and

(d) promotion of tree planting and expansion of forest cover.

Responsibility of owner or operator of controlled facility.

14. Every owner or operator of a controlled facility shall ensure that emissions from the facility does not cause air pollution in any territory outside the facility, in excess of the prescribed relevant ambient air quality levels.

Responsibility of occupier or operator of premises.

15. (1) The occupier or operator of premises shall ensure that exposure of indoor air pollutants does not exceed the exposure limits stipulated under the Factories and Other Places of Work (Hazardous Substances) Rules, 2007, and any other written law.

L.N. 60 of 2007.

(2) Where the hazardous substances referred to in sub section (1) are not covered under the legislation referred to therein, the occupier or operator shall apply the

guidelines provided by the manufacturer or supplier of the substances.

Permitted operations.

16. Subject to any national or county legislation on the subject, the following operations shall be permissible within the county provided that they are not used for the disposal of refuse—

- (a) back-burning to control or suppress wildfires;
- (b) fire fighting rehearsals or drills conducted by county fire service agencies;
- (c) traditional burning of savanna grasslands;
- (d) burning for purposes of public health protection; and
- (e) emissions of air pollutants from all stationary and mobile sources as may be prescribed.

Liaising with other departments and agencies.

17. The Department shall, in collaboration with other departments and agencies of the county government—

- (a) provide methods of abating and regulating air pollution;

- (b) determine protected areas and special areas for the purpose of this Act;
- (c) promote public awareness campaigns relating to measures to safeguard the health of non-smokers from second-hand smoke; and
- (d) take steps to clean up any air pollution where necessary

PART IV— PROVISIONS RELATING TO NOISE POLLUTION

No person shall cause noise pollution.

18. (1) A person or an entity shall not act in a way that directly or indirectly causes, or is likely to cause, noise pollution contrary to this Act.

(2) Any person or entity found acting in contravention of the subsection (1) commits an offence and shall upon conviction –

(a) if a person; be liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both; and

(b) if an entity; be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding one year or both.

Responsibilities of the Department to control noise pollution.

19. The Department shall take necessary steps in order to control noise pollution within the county, including—

(a) measures to control noise in special areas like schools, hospitals, residential areas, and libraries;

(b) regulating high noise levels associated with commercial machinery, public transportation and social activities;

- (c) measures to regulate the businesses, factories and workshops which, by reason of noise, vibration or other cause, become a source of danger, discomfort or annoyance to the neighbourhood, and to monitor the fulfilment of the conditions subject to which such businesses, factories and workshops shall be carried on under this Act; and
- (d) any other steps for implementing the county policy and strategy on control of noise pollution under this Act.

PART V – PROVISIONS RELATING TO PUBLIC NUISANCES

Responsibilities of
the Department to
control public
nuisances

20. (1) The Department shall—

- (a) compel occupiers or, in the case of vacant premises, owners, to keep their premises free from offensive or unwholesome matter;
- (b) monitor the keeping of animals, birds and bees at their premises by any owner or occupier, so that their keeping or the premises are not constructed, situated, used or kept in such manner as to be a public nuisance, or otherwise offensive, or injurious to public health;
- (c) take such steps and measures as may be necessary for securing the prevention and destruction of insects, fungi and any other pests which attack timber in buildings and felled timber, and for preventing and eradicating the infestation of any such timber;

- (d) take measures for the destruction and suppression of rats and vermin within the county, and to set traps or take other measures necessary for the purpose on any land whether within or, with the consent of the government of the county concerned, without its area;
- (e) establish and maintain sanitary services for the removal and destruction of, or otherwise dealing with, all kinds of refuse and effluent;
- (f) take such measures as may be necessary for preventing or stemming the flow of any noxious matter or waste water flowing or discharged from any premises, into the street, any water course, irrigation canal or other places not approved for the reception of such discharge; and
- (g) take other necessary steps under the Act.

(2) The Department shall, if satisfied that a public nuisance exists, serve a notice on the owner, or, if the owner cannot be found, on the occupier of the premises where the nuisance exists, requiring such owner or occupier, as the case may be, to remove the nuisance within the period specified in the notice.

(3) The Department may further instruct the owner or occupier under sub-section (2) to take additional measures in order to prevent a recurrence of the nuisance.

(4) A person or entity which fails to comply with a notice issued under subsection (1) to remove the nuisance within the period specified in the notice commits an offence.

Impounding of certain animals.

21. (1) Any person who, except with a written permit from the Department, and subject to such conditions as the Department may impose in this regard under this Act, keeps within an urban area of the county a game animal or

reptile other than a lizard, or any ass, mule, ox, bull, or cow, goat, sheep or pig commits an offence. Upon conviction such person shall be liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or to both.

(2) The Department may remove any of the species of animals referred to in subsection (1) which has been kept or left in a street in contravention of this Act, and impound the same.

(3) The keeper of any of the species of animals which has been removed in pursuance of sub-section (2) shall not be entitled to recover the same until he or she pays such fees and expenses as may be prescribe by the Department for the upkeep of the animal.

(4) If a keeper fails to pay the fees and expenses under subsection (3), the Department may sell or otherwise dispose off the animal, by auction or any other means, and the proceeds of such disposal shall be set off against the outstanding fees and expenses incurred by the Department in the removal or disposal of the animal.

Street offences.

22. Any person who, on any street—

- (a) ignites any firework;
- (b) without a permit for the purpose of hawking, selling, distributing or otherwise outdoor advertising any article or event, shouts or uses any bell, gong, or other noisy instrument or loudspeaker;
- (c) without a permit, draws, wheels or drives any vehicles or carries any board or placard used solely or chiefly for the purpose of exhibiting advertisements;
- (d) without a permit for the purpose of outdoor advertising, distributes any hand bill or other

- paper;
- (e) performs any act contrary to public decency;
 - (f) without statutory authority, defaces the footway or roadway by writing or other marks;
 - (g) places or deposits and leaves any glass, china, earthenware, tin, carton, paper, sawdust or other rubbish so as to create or tend to create litter;
 - (h) to the inconvenience or danger of any person, carries or conveys any bag of sand, lime, charcoal, or other offensive material, timber or any pointed or edged tools or implements not properly guarded;
 - (i) plays any game in such a manner as to cause the likelihood of damage to any property, or danger to any person;
 - (j) without a permit, lights or maintains, or causes to be lit or maintained, any fire or brazier in the protected area;
 - (l) rides or drives any animal on a footpath;
 - (m) defecates, spits or urinates; or
 - (n) smokes in an enclosed space outside the designated smoking zone reserved for the purposes of smoking in that establishment,
- commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings or

imprisonment for a term not exceeding six months or to both.

PART VI — OUTDOOR ADVERTISING

Prohibition to outdoor advertisement.

23. Any person or entity which erects, fixes, places, maintains, displays or uses, or permits to be erected, fixed, placed, maintained, displayed or used, any advertisements devise in any street or public place without first obtaining a permit, or otherwise than in accordance with the terms and conditions of permit, commits an offence and shall be liable, upon conviction,

- (a) if a person, to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or to both.
- (b) if an entity, to a fine not exceeding five million shillings or imprisonment for a term not exceeding six months or to both.

PART VII – GENERAL LICENSING PROVISIONS

Application for licences and Permits

24. (1) Any person or entity which desires to obtain a licence or permit, or vary a licence or permit already issued to them under this Act shall make an application in a prescribed form to the Department where the intended activity is to be situated and the application shall be accompanied by the prescribed fee.

(2) The Department may-

- (a) issue a license or permit, in accordance with this Act;
- (b) refuse to issue the license or permit on any ground which may appear to be sufficient and inform the applicant, in writing, the reasons; or
- (c) cancel, vary or suspend any license or permit if, in the finding of the Department, the license or permit is found to have contravened the Act.

- Department may object to granting or renewal of licences
- 25.** The Department may raise objection in granting or renewing a licence relating to—
- (a) the use of premises as a theatre, music hall, concert room or other place of amusement, or as a restaurant or eating house; or
 - (b) the use of premises for the carrying on of any work or trade, on the grounds that—
 - (i) the method adopted or proposed to be adopted by the applicant for preventing noxious or offensive vapours, gases or smells arising from such premises are not efficient; or
 - (ii) the granting of such license or the renewal thereof would be calculated to cause public nuisance or annoyance to persons residing in the neighbourhood, or otherwise be against public interest.
- Issue of licences
- 26. (1)** The Department shall issue licenses to applicants subject to such lawful conditions as the Department may determine.
- (2) The Department, after consultation with the Executive Committee Member, shall prescribe the fees payable on the issue of licenses and permits under this Act.
- (3) The issuance of a license or a permit to an applicant under this Act shall not be withheld without reasonable cause.
- (4) A license issued under this Act is not transferable.
- (5) The Department shall ensure that an updated register is kept and maintained for all licenses issued pursuant to this part.
- Conditions of a license
- 27. (1)** A license or permit issued under this Act shall be subject to such conditions as the Department may

determine which shall be specified in the Regulations.

(2)The Department may at anytime during the validity of a license or a permit—

(a) vary the conditions of the license; or

(b) impose conditions or further conditions on the license.

Revocation,
alteration or
suspension of
license

28. The Department may revoke, alter or suspend a license or permit issued under this Act if—

(a) an offence under this Act or in respect of the licensed activity under any other written law, has been committed by the license holder or any employee of the license holder;

(b) a condition of the license has been contravened or not complied with.

Surrender of
license

29.(1) The holder of a license which is revoked shall immediately surrender it to the Department.

(2)A license holder may, at anytime, surrender the license to the Department and the license shall cease to have effect forthwith.

Appeals

30.(1)An applicant for or the holder of a license or a permit who is aggrieved by a decision of the Department on—

(a) the grant, refusal, renewal, variation or revocation;
or

(b) the conditions imposed on the grant, renewal or variation, of a license,

May appeal to the Member.

Publication of
revocation order

31. Where a revocation order has been made under section 28 directing that a license or permit be revoked, the Department shall inform the public of that order in such manner as it considers necessary under the circumstances.

PART VIII – ENFORCEMENT

Authorised Officers **32. (1)** The Member shall by notification in the *Gazette*, appoint such number of authorized officers as may be necessary for the proper administration of this Act.

(2) The Member shall issue a letter of appointment to every officer 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) Environment Officers in the department of Environment

(b) Senior Officers in the Enforcement Unit of the County Government above the rank of the superintendent ;

(c) A member of the police force above the rank of Inspector; and

(4) The officers appointed in sub-section (b) and (c) above shall not act without approval by the Executive member.

Power of Entry **33. (1)** For the purposes of ensuring compliance or implementation of the Act, an authorised officer may, at any reasonable time, enter any place in which any function related to this Act are carried out.

(2) Despite subsection (1), the authorised officer shall produce a valid identification document before entering any premises.

Power of Authorised Officers **34. (1)** An authorized officer may examine or inspect any facility or equipment, related to this Act or gain access to any area for the purposes of implementing this Act.

(2) Any person who obstructs an authorized officer while

enforcing or implementing this Act commits an offence and liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months.

PART IX - MISCELLANEOUS

Regulations.

35. (1) The Department may, with the approval of the county executive committee, make Regulations for the better carrying out of the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations made under this Act may prescribe for -

- (a) regulating the businesses, factories and workshops within the county which, by reason of smoke, fumes, chemicals, gases, dust, smell, or any other cause, may become a source of danger, discomfort or annoyance to the neighbourhood;
- (b) controlling emission of fumes from vehicles;
- (c) prohibiting or controlling the display of advertisements and advertising devices in or in view of any street or other public place or in such places or in such manner or by such means as would, in the opinion of the department, be likely to affect injuriously the amenities of or to disfigure any neighbourhood;
- (d) regulating the use and passage of advertising

vans, sandwich boards, lanterns, flags, screens or other moveable advertising devices;

- (e) regulating the distribution of handbills in or along any street or other public places;
- (f) controlling street decorations, and prohibiting or controlling the erection and removal of temporary platforms, seats and other structures for the use of the public at any meeting or entertainment or for the accommodation of spectators at any procession;
- (g) regulating the size of the billboards and the number that may be erected on a road reserve;
- (h) the procedure and manner of issuing a permit for outdoor advertising and application for such a permit under section 20; and
- (i) such fees and expenses as may be payable for any permit or other authorization relating to the control of air pollution, noise pollution, any public nuisance or outdoor advertising to be issued under the Act.

FIRST SCHEDULE

(s. 7)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE SUB-COUNTY ENVIRONMENT MANAGEMENT COMMITTEE

1. Meetings

- (1) The Committee shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

- (2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least seven members shall, convene a special meeting of the Committee at any time for the transaction of the business of the Committee.
- (3) Unless three quarters of the total members of the Committee otherwise agree, at least fourteen days' written notice of every meeting of the Committee shall be given to every member of the Committee.
- (4) The quorum for the conduct of the business of the Committee shall be seven members including the Chairperson or the person presiding.
- (5) The Chairperson shall preside at every meeting of the Committee at which he/she is present but, in his/her absence, the members present shall elect one of their members to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
- (6) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (7) Subject to subparagraph (4), no proceedings of the Committee shall be invalid by reason only of a vacancy among the members thereof.

2. Conflict of interest

(1) If a member is directly or indirectly interested in any matter before the Committee and is present at a meeting of the Committee at which the matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Committee may permit the

member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

3. Minutes

The Committee shall cause minutes of all resolutions and proceedings of meetings of the Committee to be entered in books kept for that purpose.

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Daniel Chai Chiriba
Chairperson Environment
and Natural Resources Committee