

**THE KILIFI COUNTY ENVIRONMENTAL (REGULATION AND CONTROL) BILL, 2016**

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*Clause*

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**A Bill for**

**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 5(2);

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

“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 13;

“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 13.

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 –PROVISIONS RELATING TO ADMINISTRATION AND IMPLEMENTATION**

Administration of  
the Act.

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

(2) The Member shall by recommendation by the County Public Service Board through a notification in

the *Gazette*, appoint such number of authorized officers as may be necessary for the proper administration of this Act.

(3) For the purpose of this section, a member of the police force above the rank of inspector may be designated as an authorized officer under sub-section (2).

Implementation of  
the Act.

**6.** 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) with the approval of the County Assembly, on such terms and against such security as may be agreed upon, raise funds;
- (c) receive any grant or donation;
- (d) consider all matters brought to its attention by the county or national government, and report its findings thereof;
- (e) take all measures possible to ensure activities within the county conform with national and county legislation on health, safety, environmental and other relevant standards;
- (f) regulate outdoor advertising and graffiti;
- (g) control public nuisances, including waste, pests and insects.
- (h) 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

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

### **PART III — PROVISIONS RELATING TO AIR POLLUTION**

Nobody shall cause air pollution.

**7.** A person 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. Any person found acting in contravention of the provisions of this part commits an offence and shall upon conviction be liable to a fine of fifty thousand shillings or imprisonment for a term not exceeding six months or both.

Responsibilities of the Department to control air pollution.

**8.** 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.

**9.** 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.

L.N. 60 of 2007.

**10.** (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.

(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.

(3) The Department shall make regular inspection and ensure indoor pollutants do not exceed the recommended levels.

Permitted operations.

**11.** 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 and cultural 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.

Department may object to granting or renewal of licences.

**12.** 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.

Liaising with other departments and agencies.

**13.** 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.

**14.** A person shall not act in a way that directly or indirectly causes, or is likely to cause, noise pollution contrary to this Act. Any person found acting in contravention of this part commits an offence and shall upon conviction be liable to a fine of fifty thousand shillings or imprisonment for a term not exceeding six months or to both.

Responsibilities of the Department to control noise pollution.

**15.** 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

- 16. (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 who 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.

**17.** (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 of 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.

**18.** 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 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;

(k) 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 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 of fifty thousand shillings or imprisonment for a term not exceeding six months or to both.

## **PART VI — OUTDOOR ADVERTISING AND MISCELLANEOUS**

Prohibition to outdoor advertisement.

**19.** Any person who in or in view of any street or public place, erects, fixes, places, maintains, displays or uses, or permits to be erected, fixed, placed, maintained, displayed or used, any advertisements devise 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, to a fine of fifty thousand shillings or imprisonment for a term not exceeding six months or to both.

Application for

**20.** (1) Every application for a permit for outdoor

outdoor  
advertising permit.

advertising under this Act shall be made in writing to the Department.

(2) The procedure and manner of application for a permit and issuing a permit under sub-section (1) shall be prescribed by Regulations.

Regulations.

**21.** (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.



**MEMORANDUM OF OBJECTS AND REASONS**

To accomplish the county's mandate towards a clean and healthy environment for all as envisaged in Article 42 of the Constitution of Kenya 2010, the following policy objectives have served as the basis for this legislation:

- a. The Promotion of environmental conservation by curbing pollution and ensuring accountability for environmental pollution and degradation; and
- b. The Maintenance of a desirable level of environmental quality that will serve not only the current population of Kilifi County but for posterity as well;

The Act further seeks to give effect to Part 2 paragraph 3 of the Fourth Schedule of the Constitution to control air pollution, noise pollution, public nuisances and outdoor advertising.

The statute is structured as follows:

**Part I** provides for preliminary matters including the objects of the law; this County legislation is meant to be applied in consonance with the relevant provisions of the Environment Management and Coordination Act (EMCA), No. 25 of 2015.

**Part II** provides for the administration and implementation of the environmental laws within Kilifi County.

**Clauses 5 and 6** vest the County Executive Committee Member responsible for matters of the environment with this function.

**Part III** bears air pollution provisions and in particular air pollution is criminalized under clause 7.

This part charges the relevant county department with the obligation to control air pollution.

**Part IV** bears provisions relating to noise pollution including the criminalization of all forms of noise pollution under clause 14; the relevant county department has the mandate to control noise pollution.

**Part V** lays out provisions relating to public nuisances.

**Clause 16** prescribes the steps to be taken by the relevant county department so as to control public nuisances.

**Clause 17** deems it an offence to keep certain (game) animals within the urban areas of the county without a written permit.

**Clause 18** further sets out street offences including violations of the traffic code.

**Part VI** provides for outdoor advertising and incidental matters.

**Clause 19** criminalizes any advertisements placed without a permit while **clause 20** vests the discretion to grant a licence with the relevant county department.

The enactment of the Bill will not occasion additional expenditure to the county.

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Daniel Chai Chiriba  
Chairperson Environment  
and Natural Resources Committee