

THE NYERI COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2023

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**THE NYERI COUNTY ALCOHOLIC DRINKS CONTROL
BILL, 2023**

A Bill for

AN ACT of the Nyeri County Assembly to provide for the management, control, licensing and regulation of the production, sale, distribution, and consumption of alcoholic drinks; and for connected purposes

ENACTED by the County Assembly of Nyeri as follows—

PART 1 – PRELIMINARY

Short title.

1. This Act may be cited as the Nyeri County Alcoholic Drinks Control Bill, 2023.

Interpretation.

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

"alcohol" means the product known as ethyl alcohol or any product obtained by fermentation or distillation of any fermented alcoholic product, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with the prescribed formulas;

"alcoholic drink" includes alcohol, spirit, wine, beer, liquor, traditional alcoholic drink, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic drinks, modified industrial alcohol blended for human consumption and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being;

"authorised officer" means an authorised officer within the meaning of section 62;

"Authority" means the National Authority for the Campaign Against Alcohol and Drug Abuse" established under the National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012 Cap 222;

"bar area" in relation to a hotel premises means any part of the hotel in which alcoholic drink is ordinarily sold or supplied for consumption in the hotel and does not include a dining area of the hotel;

"cinema" has the meaning assigned to it in the Films and Stage Plays Act;

“Chief Officer” means the Chief Officer responsible for alcohol control;

"County Executive Member" means the county executive member responsible for alcohol control;

“County Liquor Committee” means the County Liquor Committee established under section 5;

“County Secretary” means the County Secretary established under Section 44 of the County Governments Act No. 17 of 2012 and who, for purposes of this Act, shall assume the duties and responsibilities of the County Executive Member until such a time the County Executive Member shall be appointed;

"dining area" in relation to licensed premises, means a part of the licensed premises used permanently and primarily for the consumption of meals at tables;

"Directorate" means the Alcoholic Drinks Control Directorate established under section 4;

"entity" includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

"Fund" means the Alcoholic Drinks Control Fund established by section 7;

"health institution" means a hospital, nursing home, convalescent home, maternity home, health centre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee;

"hotel" means any premises or commercial establishment classified as such under any written law or any licensed premises whose sole purpose is to sell bed occupancy as primary and core business;

"illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products or any

adulterated drink, including any practice or conduct intended to facilitate such activity;

"licensee" means a person who holds a licence granted under this Act;

"locality" unless where the context otherwise provides to the contrary, means a city, municipality, town, urban area, Sub-County or ward as the case may be;

"manager" in relation to—

- (a) cinema or theatre, includes an assistant manager, a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre;
- (b) a health institution, includes the owner or a person in charge or in control of the health institution;
- (c) a specified building, includes the owner, occupier, lessee or the person in charge or in control of the specified building;

"manufacture" means the brewing, distilling, tapping or any processing or intermediate processing of an alcoholic drink and includes the packaging, labelling, distribution or importation of an alcoholic drink for sale in the county or anywhere in Kenya;

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

"package" means the container, receptacle or wrapper in which an alcoholic drink is sold or distributed and includes the carton in which multiple packages are stored;

"retailer" means a person who is engaged in a business that includes the sale of any alcoholic drink to consumers;

"restaurant" means a place, premises or commercial establishment (however described) where meals are prepared, served and sold to customers;

"sell" includes—

- (a) barter or exchange without use of money;

- (b) offer or expose for sale, barter or exchange without use of money;
- (c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit;
- (d) supply or offer to supply, gratuitously but with a view of gaining or maintaining custom, or otherwise with a view for commercial gain;

"Sub-County committee" means the Sub-County Alcoholic Drinks Regulation Committee established under section 6.

"sub county police commander" means the police officer designated by the Inspector General of police to head the Kenya Police within a sub county

Purpose of the Act.

3. (1) The purpose of this Act is to provide for licensing of alcoholic drinks so as to control the production, sale, distribution, promotion and consumption of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks.

(2) For the avoidance of doubt, this Act shall not apply to any matter in respect of the functions of the National Government regarding the prescribing and enforcement of standards of production, manufacture, importation and exportation of alcoholic drinks and similar matters.

PART II- ADMINISTRATION

Establishment of the Directorate.

4. (1) There is established in the County the Alcoholic Drinks Control Directorate which shall be an office in the county public service.

(2) The functions of the Directorate shall be to—

- (a) Offer secretariat services to the County Liquor Committee
- (b) support and facilitate Sub—county Committees in carrying out their functions;
- (c) carry out public education on alcoholic drinks control in the county directly and in collaboration with other public or private bodies and institutions;
- (d) facilitate citizen participation in matters related to

alcoholic drinks control in accordance with the framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;

- (e) facilitate and promote in collaboration with other county and national government institutions the establishment of treatment and rehabilitation facilities and programmes;
- (f) carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks control;
- (g) develop in collaboration with other county and national government departments strategies and plans for implementing this Act and control of alcohol abuse and any other relevant national legislation and coordinate and support their implementation;
- (h) advise the County Executive Member generally on the exercise of his powers and performance of his functions under this Act, and in particular on county policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;
- (i) in collaboration with other relevant county departments, prepare and submit an alcoholic drinks status report annually in the prescribed manner to the County Executive Member which shall be transmitted to the County Executive Committee, the County Assembly and the County Assembly;
- (j) monitoring and evaluating the implementation of this Act including the operations of the Sub— county Committees and advising the County Executive Member on the necessary measures to be adopted;
- (k) in collaboration with the Sub-County committee prepare and submit to the Authority on a quarterly basis, an alcohol abuse control status report containing such matters as may be specified by the Authority;
- (l) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the County Executive Member;

(3) (1) The Directorate shall be headed by a Director who

shall be competitively appointed by the County Public Service Board.

- (4) The report referred to in sub-section (2) (i) shall contain among others—
 - (a) data on status of alcoholic drinks use and impact disaggregated in terms of age, gender, geographical location;
 - (b) impact of alcoholic drinks in the county;
 - (c) measures adopted to control and reduce negative impact of alcoholic drinks in the county;
 - (d) level of public participation in implementing the Act and feedback from residents of the county in relation to appropriate processes for mitigating impact of alcoholic drinks use;
 - (e) data on use of treatment and rehabilitation services in each Ward;
 - (f) challenges faced in implementation of the Act;
 - (g) level of collaboration with other county and national government agencies;
 - (h) any matter relevant to the implementation of the Act.

Establishment of
the County
Liquor Committee.

- 5. (1) There is established a committee to be known as the County Liquor Committee.

(2) County Liquor Committee shall be responsible for—

- (a) receiving, review, approving and granting licences in accordance with applications recommended by the Sub-County committees;
- (b) receiving and hearing appeals from decisions made by the Sub-County committees; and
- (c) carrying out any other function as may be assigned by the County Executive Member.

(3) The County Liquor Committee shall consist of—

- (a) A non-executive Chairperson, who shall be appointed by the Governor, with the approval of the County Assembly;

- (b) The County Commissioner or their designate;
- (c) The Chief officer responsible for alcoholic drinks control;
- (d) the Chief officer for the time being responsible for physical and land use planning in the county or their representative;
- (e) the Director of the County Alcoholic Drinks Control Directorate, who shall be an *ex-officio* member and the Secretary;
- (f) the County Public Health Officer;
- (g) One person designated by the Kenya Bureau of Standards;
- (h) one stakeholder whom shall be nominated by an accredited organization working to provide support for alcoholic addiction, prevention and treatment in Kenya;
- (i) subject to the two-thirds gender rule prescribed by Article 27(8) of the Constitution, two residents of the county appointed by the County Executive Member with the approval of the County Assembly—
 - i. one of whom shall be a youth; and
 - ii. one of whom shall be a person living with disabilities;
- (4) The Chairperson, may co-opt such other persons whose knowledge and skills are necessary for the proper performance of its function under this Act.
- (5) The conduct of business and affairs of the County Liquor Committee shall be as prescribed in Schedule 1 of the Act.
- (6) The members appointed under subsection (3)(i)(i-ii) shall be eligible for appointment if that person:-
 - (a) is a citizen of Kenya and a resident of Nyeri County;
 - (b) possess at least an academic certificate from a tertiary institution recognised in Kenya;
 - (c) has knowledge and relevant experience in community service or social work; and
 - (d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

- (7) The members appointed under sub-section 3(a) and (i) shall serve for a non -renewable term of three years.

Vacancy of office

6. (1) The chairperson or member of the County Liquor committee may—
- (a) at any time resign from office by notice in writing to the appointing authority; or
 - (b) be removed from office by the appointing authority on the following grounds—
 - i. absent for five consecutive meetings of the County Liquor committee without the permission of the Chairperson;
 - ii. convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - iii. adjudged bankrupt;
 - iv. Gross misconduct; or
 - v. convicted of a crime under the leadership and Integrity Act or Public Officers Ethics Act.

(2) Where a vacancy occurs in the County Liquor committee, the appointed replacement shall hold office for the remainder of the term of office of that member, and shall be deemed to have served a full term as a member if, at the date on which the person assumed office, more than one year remained before the date of the end of the term of the committee.

Establishment of the Sub-County Alcoholic Drinks Regulation Committee.

7. (1) There shall be, for every Sub- County, a committee to be known as the Sub-County Alcoholic Drinks Regulation Committee which shall—
- (a) receive, review and recommend for approval, applications for licence in accordance with this Act; and
 - (b) perform such other functions as may, from time to time be assigned to it by the Executive Member.
- (2) The Sub-County Committee may, in the discharge of its functions under this Act, conduct inspections or other visits to licensed premises at such times as it may deem appropriate.
- (3) The Sub-County committee shall consist of—

- (a) The Sub-County Administrator who shall be the Chairperson;
 - (b) The Deputy County Commissioner
 - (c) the Sub-County public health officer;
 - (d) the officer for the time being responsible for physical planning in the Sub-County;
 - (e) one person nominated by an accredited organization working to provide support for alcoholic addiction, prevention and treatment in Kenya;
 - (f) two residents of the Sub-County appointed by the County Executive Member with the approval of the County Assembly in accordance with the prescribed rules-
 - (i) one of whom shall be a youth; and
 - (ii) One of whom shall be a person living with disabilities;
 - (g) An Officer from the Department responsible for liquor licensing who shall be the secretary and an ex-officio member.
- (4) The members appointed under subsection (3)(f)(i)and(ii) shall be eligible for appointment if that person:-
- (a) is a citizen of Kenya and a resident of Nyeri County;
 - (b) possess at least an academic certificate from a tertiary institution recognised in Kenya;
 - (c) has knowledge and relevant experience in community service or social work; and
 - (d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.
- (5) The Sub-County committee may co-opt such other persons whose knowledge and skills are necessary for the proper performance of its function under this Act.
8. (1) A member of the Sub-County Committee may—
- (a) at any time resign from office by notice in writing to the appointing authority; or

Filling of vacancy for the
Sub-county Committees

(b) be removed from office by the appointing authority on the following grounds—

- (i) absent for five consecutive meetings of the County;
- (ii) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (iii) adjudged bankrupt;
- (iv) Gross misconduct; or
- (v) convicted of a crime under the leadership and Integrity Act or the Public Officers Ethics Act.

(2) Where a vacancy occurs in the sub-county committee, the appointed replacement shall hold office for the remainder of the term of office of that member, and shall be deemed to have served a full term as a member if, at the date on which the person assumed office, more than one year remain before the date of the end of the term of the committee.

(3) The members appointed under section 7(3)(f) shall serve for a non - renewable term of three years.

Meetings and
Remuneration of the
Committees

9. (1) The meetings of the County Liquor Committee and sub-county committee shall be as set out in the First Schedule to the Act.

(2) Despite subsection (1), the County liquor committee and sub-county committee, may regulate their own procedure.

(3) Remuneration of the committees shall be as recommended by the Salaries and Remuneration Commission.

(4) The committee members shall be facilitated at the rates to be determined by the executive member.

PART III- LICENSING

Control of
alcoholic drinks.

10. (1) No person shall—

- (a) manufacture or otherwise produce; or
- (b) sell, distribute or dispose of, or deal with, any alcoholic drink in the county except under and in accordance with a licence issued under this Act.

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

(3) Sub-section (1) shall not apply to—

- (a) the importation of alcoholic drinks into the country if the alcoholic drink has been imported to the country pursuant to an import license issued under the Alcoholic Drinks Control Act, 2010;
- (b) the bona fide administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine, by a medical practitioner, a veterinary surgeon registered under the Veterinary Surgeons Act or a pharmacist registered under the Pharmacy and Poisons Act, of a medicine containing alcoholic drink;
- (c) the sale of spirituous or distilled perfume, or perfumery;
- (d) the sale of industrial alcohol;
- (e) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 1996, of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink licence belonging to a wholesale dealer, on the licensed premises of the dealer;
- (f) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;
- (g) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;
- (h) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;
- (i) the sale of alcoholic drink at the county assembly buildings, if sold with the permission of the Speaker of the county assembly; and

- (j) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces for reasons other than for personal profit.

Application for a licence.

11. (1) A person intending to produce, manufacture, distribute any alcoholic drink in the county or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the Sub-County Committee in the sub-county where the premise is to be situated and shall pay a prescribed fee.

(2) The application under sub-section (1) shall contain—

- (a) a comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale;
- (b) an indication as to whether the manufacture or sale of the alcoholic drink is licensed in another county and if so the evidence of such licensing;
- (c) the brands the establishment will be selling if granted the license; and
- (d) such other matters as may be prescribed.

Notice by sub-county committee.

12. The Sub-County committee shall, within twenty- one (21) days after the submission of application for a licence, prepare a notice setting forth the names of all applicants, the types of licences applied for, the premises in respect of which the licences are applied for and the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—

- (a) published at the office of the Sub-County administrator for a period of not less than twenty-one consecutive days;
- (b) posted in some conspicuous place at or near the applicant's premises;
- (c) sent to the Sub-County public health officer in the Sub-County in which the premises in respect of which the licences are applied for are situated; and

(d) sent to the Sub-County physical planning officer

Report by Sub-
county Public
Health officers
on application

13. (1) The Sub-County public health officer and the sub-county physical planning officer shall, before the hearing of any application under this section, report as fully as possible to the Sub-County committee on all matters which may be relevant to the consideration of the application.

Objection to
application.

14. (1) Any person may lodge objection to an application for a Licence.

(2) Every objection to an application shall be made in writing to the Secretary to the Sub-County committee, and the Sub-County committee shall serve notice of the grounds of the objection on the applicant, personally or by post, at least seven days before the hearing of the application and the onus of proof of such service shall be on the objector.

(3) A Sub-County committee may of its own motion take notice of any matter or thing which, in the opinion of the committee, constitutes an objection to an application, whether or not any objection has been otherwise lodged.

(4) Where in respect of an application a Sub-County committee acts in respect of an objection, the committee shall inform the applicant of the nature of the objection, and shall, if the applicant so requests, adjourn the hearing for such period, not being less than seven days, as the Sub-County committee considers necessary to enable the applicant to reply thereto.

Applicant and
objector to appear
in person or
through advocate
at hearing.

15. (1) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the Sub-County Committee, and shall satisfy the Sub-County committee that there is need for the grant of a licence of the type applied for in the particular locality in respect of which the application is made.

(2) A Sub-County committee may require the personal appearance before it of the applicant, or of the manager of the premises to which the application relates, or of both of them and of any other person whose attendance is considered by the committee to be necessary.

(3) Any objector may appear personally or by an advocate at the hearing of the application.

Residents may be represented at hearing.

16. A Sub-County committee may authorize, in writing, any person to appear before any Sub-County committee having jurisdiction in any part of the area within the Sub-County for the purpose of representing the residents of that part in respect of any objection lodged to an application.

Evidence may be taken on oath at hearing.

17. Where a Sub-County committee considers it necessary to take evidence respecting any question to be determined by the court, such evidence shall be given on oath, and the Chairpersons shall be empowered to administer oaths.

Rules of natural justice to apply

18. All proceedings before a Sub-County Committee shall observe the rules of natural justice.

Records of sub – county committee proceedings.

19. (1) Every Sub-County committee shall maintain records of all its proceedings, and, in particular, of the purpose for which an application was made, and notes of the evidence given and of the arguments adduced and the decision of the Committee thereon:

Provided that no decision shall be quashed on appeal solely by reason of any omission or error in such Record, unless it appears that a substantial miscarriage of justice has thereby been occasioned.

(2) The secretary to the sub-county committee shall be the sole custodian of the sub-county committee's records and proceedings and shall, within three days of approval of the final report, forward it in writing to the secretary of the County Liquor Committee.

Record of recommendation of Sub-County committee.

20. The Sub-County committee shall, within twenty- one days of receipt of the application under section 11 record the application and assess the same on the basis of the objections received if any and the interests of the Sub- County, and shall ensure that-

- (a) the available premises are suitable with regard to the nature of the licence being sought;
- (b) the premises conform to the prescribed requirements of the occupational health and safety regulations;
- (c) the applicant possesses the infrastructure and equipment necessary to carry out the business applied for;

- (d) the applicant for a licence to brew, distil, bottle or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under the Standards Act or any other relevant written law; and
- (e) the premises has sufficient number of competent staff in line with such norms as may be prescribed.

Grant of License

21. (1) The Sub-County committee shall, after considering the application under section 11 indicate in writing whether it objects to the grant of the licence applied for.

(2) Where the Sub-County committee has no objection to the application under section 11 it shall submit the application to the County Liquor Committee for review, approval and grant of licence.

(3) The County Liquor Committee shall review the application and if it has no objection to the application, it shall grant a licence to the applicant upon payment of the prescribed fee.

(4) The licence issued shall be in such form as may be prescribed and subject to such conditions as the County Liquor Committee may consider fit.

(5) Where the County Liquor Committee is not satisfied with the application under sub-section (1), it may—

(a) reject the application giving reasons and notify the applicant accordingly within thirty (30) days of the decision to reject; or

(b) make comments and recommendations thereon and return it to the applicant within fourteen (14) days.

(6) The applicant to whom the application is returned under subsection (5)(b) may re-submit a revised application within thirty days of the date of notification to the Sub-County committee.

(7) On receipt of any revised application under subsection 6, the Sub-County committee shall, within thirty (30) days review the application in accordance with this Act and upon such review, if satisfied, it shall submit the application to the County Liquor Committee for consideration.

(8) Where the County Liquor Committee grants a licence under this section it shall, publish the grant in the Sub-County Administrator's office in the respective Sub-County.

Conditions for grant of license of premises where alcoholic drinks are sold.

22. (1) The County Liquor Committee shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the County Liquor Committee is satisfied that—

- (a) the number of such premises in respect of which such licences have already been granted is insufficient as prescribed in regulations made under this Act by the County Executive Member;
- (b) the premises in respect of which the application is made is not within the precincts of any institution of learning including primary and secondary schools;
- (c) the premises in respect of which the application is made is not situated in any residential area as have been demarcated by the County Plans or under the relevant written laws;
- (d) the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements;
- (e) the premises, other than hotel premises, in respect of which the application is made are located at least three hundred metres from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years:
Provided that where a hotel is located within three hundred metres from the school, it shall not bear any outdoor promotion or advertisement related to alcoholic drinks;
- (f) the premises in respect of which the application is made is located within the areas prescribed under the fourth Schedule;
- (g) The premises in respect of which the application is made is not located within the areas prescribed as alcohol free zones as identified under the Regulations made by the County Executive Member; and

(h) The premises in respect of which an application is made is located adjacent to a road, street or lane and whose main entrance is facing the said road, street or lane.

(2) The County Liquor Committee shall not grant a licence for the sale of an alcoholic drink in-

(a) a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years; and

(b) an outlet or premises located within a fuel station unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years.

Licensing of wines and
spirits depots

23. (1) The County Liquor Committee shall only grant a Wines and Spirit Depot licence if the following conditions are met-

(a) the premises in respect of which the application is made is located within the areas prescribed under the Fourth Schedule where the wines and spirits depot licence is permissible;

(b) the floor area for the premises in respect of which the application is made measures not less than twenty square metres;

(2) The maximum number of premises licenced under subsection (1) above shall not exceed the number provided under the regulations prescribed by the County Executive Member.

(3) A proprietor, attendant or employee of a wines and spirits depot shall not sell alcoholic drink for consumption in the premises or allow a person to consume alcoholic drinks within the precincts of the licensed premises.

(4) A person who contravenes subsection (3) commits an offence and shall, upon conviction be liable to a fine not exceeding One Hundred Thousand Kenya shillings or to imprisonment for a term not exceeding six months.

Alcohol Free Zones

24. (1) The County Executive Member shall make regulations classifying and zoning specific areas or streets within the County to be alcohol sale free zones.

(2) Where an area has been classified as an alcohol sale free zone, no alcoholic drink licence shall be issued for sale of alcoholic drinks within that area.

(3) The County Executive Member shall, while classifying the areas under sub-section (1) herein, take into consideration the public order, social order, public health, public safety and public security interests and factors in relation to the specific area.

Licences to body
Corporates.

25. (1) A licence issued to a body corporate shall be issued in the name of the body corporate:

Provided that the County Liquor Committee may require prior disclosure of the directorship of the body corporate or refuse to grant a licence to the body corporate if any of the directors does not qualify to be granted the licence individually.

(2) No transfer of a licence issued to a body corporate shall be necessary on any change in the office of secretary, but any person for the time being holding such office shall be entitled to the privileges granted by, and shall be subject to the duties and liabilities imposed upon the holder of such licence.

Persons not
eligible to be
granted a licence.

26. (1) The County Liquor Committee shall not grant a new licence to any person who—

- (a) has failed to satisfy the County Liquor Committee, if called upon to do so, of his good character and standing in relation to the expectations in this Act;
- (b) has been convicted of an offence under this Act or of any offence of which the sentence is imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months;
- (c) in the case of a retail licence, is not resident in Kenya;
- (d) is under eighteen years of age; or
- (e) is an undischarged bankrupt.

- (2) The County Liquor committee may refuse to renew an existing licence only when the County Liquor Committee is satisfied that—

- (a) the licensee is not a fit and proper person to hold the licence;
- (b) the licensee has been convicted of an offence under this Act or any other Act at any time in force regulating the manufacture, distillation, distribution sale of an alcoholic drink;

- (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months;
- (d) the business to which the licence relates is conducted in a manner that is in breach of this Act, or any other rules and regulations for the time being in effect, or conditions set by the County Liquor Committee;
- (e) the conditions of the licence have not been satisfactorily fulfilled; or
- (f) the premises to which the licence relates are not in a proper state of repair, or are not provided with proper sanitary arrangements and do not comply with the reasonable requirements of the county public health officer.

Types of licences.

27. (1) The licences granted under this Act shall be those specified in the Third Schedule, and the provisions of that Schedule and of any rules made under this Act that shall have effect in relation to the respective licences therein specified.
- (2) The County Liquor Committee shall, when a licence is granted, renewed, withdrawn or cancelled, include in the licence a sufficient description of the licensed premises.
 - (3) A licence shall not be granted to apply to more than one premises.
 - (4) A person intending to sell alcoholic drink in premises classified as lodging shall apply for general retail alcoholic drink licence.
 - (5) A holder of a hotel alcoholic drink licence shall—
 - (a) not sell alcoholic drink to a person other than a lodger unless in area situate in premises within the hotel where the holder possesses a general alcoholic drink retail licence where sale of alcoholic drink occurs under conditions for a general alcoholic drink licence;
 - (b) designate an area as a bar area where sale and consumption of alcoholic drink shall only take place and which shall be a restricted area for access to persons under the age of eighteen years; and

- (c) not sell an alcoholic drink in the area designated as dining area.
- (6) A holder of a wines and Spirits depot licence shall not sell alcoholic drink for consumption in the premises.
- (7) The County Executive Member shall issue a list of all premises in the county that are classified as hotel in accordance with the relevant written law.
- (8) A person who contravenes subsection (5) and (6) commits an offence and shall, upon conviction be liable to a fine not exceeding One Hundred Thousand Kenya shillings or to imprisonment for a term not exceeding six months.
- (9) Licenses shall be issued within 14 days of the County Liquor Committees approval.
- (10) The County Executive Member shall make regulations specifying the conditions to be met under each category of licenses issued under this Act.

Grant and renewal
of licences.

- 28.** (1) Except as otherwise provided in this Act, the County Liquor Committee may, subject to this Part, grant, renew, transfer or remove a licence, and may embody therein such conditions as it may deem appropriate, or it may refuse to grant, renew, transfer, withdraw or cancel a licence.
- (2) Every licence and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the county liquor committee.
 - (3) Every grant of a licence or its every renewal or transfer shall—
 - (a) be subject to the payment of such fee or fees as may be prescribed;
 - (b) expire on the thirty first day of December in each year;
 - (c) specify in the licence; the hours stipulated under the Second Schedule within which the sale of alcohol is permitted and any other relevant condition; and
 - (d) specify the address of the person to whom the licence has been granted including the physical address and relevant geo-

locational information of the premises from where the licenced activities shall be undertaken.

- (4) Where an application for the renewal of a licence has been made and the County Liquor Committee has not by the date of expiration of the licence reached a decision thereon, such licence shall continue in force until the decision of the County Liquor Committee is made known.
- (5) Where an application for a licence has been refused, or a licence has been cancelled, no subsequent application by the former applicant or licensee for a licence of the same description shall be considered by the County Liquor Committee during the period of six months from the date of such refusal or cancellation, except at the discretion of the County Liquor Committee.

Transfer of
Licences.

- 29. (1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his licence, he may apply in writing to the Sub-County committee for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the Sub-County committee may, if it thinks fit, recommend to the County Liquor Committee to grant the transfer of such licence.
- (2) No further fee shall be payable in respect of a licence granted under this Act if, at the date of the grant, the licence which was temporarily transferred was valid for a period of more than six months.
- (3) In the event of the death, bankruptcy or unsoundness of mind of a licensee, or in any similar event to which the County Liquor committee declares in writing that this section should be applied, it shall be lawful, for the purposes of this Act for the executor, administrator, trustee or manager, as the case may be or any other person approved by the County Liquor committee, to carry on the business of the licensee without any transfer or grant of a licence either personally or by an agent approved by the County Liquor committee.
- (4) Every person to whom a licence may have been transferred under sub-section (1), and every person permitted to carry on a business without a transfer or grant of a licence in pursuance of subsection (3), shall possess all the rights and be liable to all the duties and obligations of the original licensee.

Review of
applications

- 30.** (1) An applicant whose application for a new licence, to renew or transfer a licence has been refused may within fourteen (14) days of such refusal, request in writing the review of such refusal to the County Liquor Committee.
- (2) A person aggrieved by the decision of the sub-county committee to approve grant of a new licence or to renew a licence may request in writing, for a review of such decision by the County Liquor Committee.
- (3) Upon receipt of a request under this section, the County Liquor Committee shall notify the Sub-County committee of the pending review.
- (4) The County Liquor Committee shall within twenty-one (21) days consider and make a final determination on the request for review.
- (5) The County Liquor Committee may—
- (a) dismiss the request for review if in its opinion, the request is frivolous or vexatious;
- (b) uphold the decision of the Sub-County committee;
- (c) annul the decision of the Sub-County committee;
- (d) give directions to the Sub-County committee with respect to any action to be taken; or
- (e) make any other declaration as it may deem fit.

Refusal to renew
Licence.

- 31.** If the renewal of a licence is refused, the licensee shall, on payment of the proportionate part of the fee for the appropriate licence, be entitled to a licence of such description and for such period, not exceeding three months, as the County Liquor Committee may consider necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises. Such period to commence on the day after the last sitting of the County Liquor Committee at which the renewal of the licence has been refused, or on the day after the termination of the existing licence, whichever day is the later.

Cancellation of
Licences.

- 32.** (1) Upon receipt of a report made under Sections 13 and 34
(2) the Sub-County Committee shall—

- (a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned therewith, informing him that at a meeting of the Sub-County Committee to be held on a date to be specified, but not less than thirty (30) days therefrom, the report will be considered by the Sub-County Committee;
 - (b) send a copy of the report to every member of the Sub-County Committee and to the Officer Commanding Police Services in the Sub- county; and
 - (c) inform the Sub-County public health officer or the police officer, as the case may be, of the date upon which the Sub-County committee will consider the report, and require him to attend on the date specified.
- (2) Any licensee concerning whom a report is to be considered may appear in person or by advocate before the Sub-County Committee.
- (3) The Sub-County Committee, having duly considered the report and having heard the licensee, if he appears, may make such recommendations to the County Liquor Committee in respect of such licence or the licensed premises specified therein.
- (4) The County Liquor Committee upon receiving and reviewing the recommendations under sub-section (3), may make such an order in respect of such licence or the licensed premises specified therein as, in the opinion of the County Liquor Committee, is necessary.
- (5) Any person aggrieved by the decision of the County Liquor Committee upon any such report may within twenty-one (21) days appeal against the decision to Court.
- (6) The Court, on an appeal under this section, may confirm or reverse the decision of the County Liquor Committee.
- (7) If a licence is cancelled or if on appeal under sub-section (6), the appeal is dismissed by the Court, the licensee shall be entitled, on payment of the proportionate part of the fee for the appropriate licence, to a licence of such description and for such period, not exceeding three months, as the Sub-County committee may deem necessary for the purpose of

disposing of the alcoholic drink or apparatus on the premises, such licence to run from the date of the decision of the County Liquor Committee or of the Court as the case may be.

Suspension or withdrawal of licences

33. (1) Subject to section 4 sub-section (2)(k) of this Act, the Director may, without notice to any holder of a licence issued under this Act, temporarily withdraw or suspend such licence in the event:

(a) there are reasonable grounds for suspicion that the licence holder is utilising the licence for the manufacture, distribution and/or sale of adulterated/illicit alcoholic drinks; there are reasonable grounds for suspicion that the licence holder is utilising the licence for the manufacture, distribution and/or sale of adulterated/illicit alcoholic drinks;

(b) it is realised after the grant of the licence that the same was approved by the County Liquor Committee due to a misstatement of fact(s) by the applicant/licence holder during the application process;

(c) public health concerns arise in the premises in respect to which the licence has been issued;

(d) of the occurrence of an epidemic within the area of operation of the licence holder; and

(e) of any other grounds where there is reasonable belief or suspicion that the licence holder has violated the provisions of this Act.

(2) where a licence is temporarily suspended or withdrawn under this section, the Director shall within 7 days submit a report to the County Liquor Committee on all matters relevant leading to the temporary suspension or withdrawal of the licence for determination in accordance with the provisions of Section 32 of this Act.

Reports by Sub-County public health officers and police officers.

34. (1) A Sub-County public health officer within whose jurisdiction the premises fall, shall report to the Sub-County Committee any licensed premises which are deficient in their state of sanitary or drainage conditions, or which are in bad repair.

- (2) A Sub-County public health officer or any person authorized by him in writing in that behalf may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.
- (3) A police officer not below the rank of Inspector shall report in writing to the chairperson of the appropriate Sub-County Committee every case in which a licensee is of drunken habits or keeps a disorderly house, or commits any breach of any of the provisions of this Act or of his licence.
- (4) A police officer not below the rank of inspector may without written authority enter and inspect any licensed premises for the purpose of ascertaining whether a report under sub-section (1) is required.
- Display of
Licences.
35. (1) Every licence shall be prominently and conspicuously displayed on the premises to which it relates, and any licensee who fails or neglects so to display his licence commits an offence.
- (2) Where a wholesale alcoholic drink licence is granted so as to be applicable to more premises than one, the original licence it shall be displayed in the premises first named therein and copies thereof displayed in the other outlets.
- (3) Any person causing or permitting to be on his premises or on premises under his control any words, letters or sign falsely importing that he is a licensee commits an offence.
- Appeals.
36. Subject to section 10, an applicant whose application for a new licence, to renew, or transfer a licence has been refused or a person aggrieved by decision of the County Liquor Committee may appeal against such refusal or decision to the Courts.
- List of
suppliers to be
maintained by licensee.
37. (1) A licensee under this Act shall—
- (a) maintain a list of all alcoholic drinks manufactured, distributed or sold in the prescribed form;
- (b) maintain a list of persons who supply to the licenced persons inputs for manufacturing alcoholic drinks in the case of a manufacturer and the persons who supply alcoholic drinks to a licenced person in the prescribed form; and

- (c) submit the lists described under paragraphs (a) and (b) together with the accompanying documents in each quarter to the County Executive Member.
- (2) The County Executive Member shall facilitate the establishment of an online system for submitting the lists described under sub-section (1).
- (3) A person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding ten thousand or to imprisonment for a term not exceeding one month.

PART IV- GENERAL REQUIREMENTS

Conformity
with requirements.

- 38.** (1) No person shall manufacture, or distribute or sell an alcoholic drink in the County that does not conform to the requirements of this Act or any other written law regulating alcoholic drinks.
- (2) A person who contravenes the provisions of this section in relation to manufacture, distribution of an alcoholic drink commits an offence and shall be liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding five years, or to both.
- (3) A person who contravenes the provisions of this section in relation to sale of an alcoholic drink commits an offence and shall be liable to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Supply to young
persons.

- 39.** (1) No person shall sell, supply or provide an alcoholic drink to a person under the age of eighteen years.
- (2) Subject to sub-section (3), a person who contravenes the provisions of sub-section (1) commits an offence and shall be liable to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year, 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;
- (b) a valid passport; or
- (c) any other documentation as the Executive Member may prescribe.

Display of signs.

40. (1) Every retailer shall post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of an alcoholic drink to a person under the age of eighteen years is prohibited by law.

(2) Every sign required to be posted under sub-section (1) shall—

- (a) be displayed on a surface measuring not less than twelve inches by eight inches in size;
- (b) bear the word "WARNING" in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement;
- (c) be in English or in Kiswahili.

(3) A retailer who contravenes any of the provisions of 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.

(4) The County Executive Member shall, in collaboration with the relevant county department install within the distance of three hundred metres from all nursery, primary and secondary

schools, signs bearing the words "WARNING: THIS IS AN ALCOHOL- FREE AREA".

Vending
Machines.

- 41.** (1) No person shall sell or permit an alcoholic drink to be sold by way of an automatic vending machine.
- (2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

Packaging.

- 42.** (1) No person shall sell, manufacture, pack or distribute an alcoholic drink in sachets or such other form as may be prescribed under this Act or any other relevant written law.
- (2) Notwithstanding the provisions of sub-section (1) —
- (a) no person shall manufacture, pack, distribute or sell in the county an alcoholic drink in a container of less than two hundred and fifty millilitres;
- (b) any other distilled or fortified alcoholic drink shall only be manufactured, packed, sold or distributed in glass bottles of the kind specified in paragraph (a); and
- (c) labelling on containers should have the health warnings as prescribed under national standards and legislation.
- (3) Each bottle in which an alcoholic beverage is packaged shall be inscribed with the name of the manufacturer in such a manner as the inscription may not be altered or defaced.
- (4) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

Transportation of
alcoholic drinks.

- 43.** (1) No person shall transport alcoholic drinks for the purposes of sale or distribution between the hours of 6:00 o'clock in the afternoon and 6:00 o'clock in the forenoon.
- (2) The County Executive Committee Member shall, by Regulations, prescribe the manner that vehicles used for the transportation of liquor for the purposes of sale or distribution shall be branded including—

- (a) the proportion of the surface area of the vehicle that may be covered by branding; and
- (b) the proportion of the branded area of the vehicle that shall be reserved for health warnings.
- 44.** No person shall sell, distribute while unlicensed or otherwise hawk alcohol in any public space.
- Prohibition against hawking of alcoholic drinks.
- (1) Hawking shall be deemed to include any act of selling, packaging, distribution or attendant acts by a person without any licence;
- (2) Any person convicted of the offence of hawking alcohol commits an offence and shall be sentenced to imprisonment to a sentence not exceeding 5 years with an option of a fine of Kenya Shillings one million or both.
- 45.** (1) No Person shall consume any alcoholic drink within the County except on private spaces or on licensed premises or other premises where the consumption of alcoholic drinks is not prohibited by law.
- Prohibition against consumption of alcohol in public spaces.
- (2) Any person convicted for violation of the provisions of this section commits an offence and shall be sentenced to imprisonment to a sentence not exceeding 1 year with an option of a fine of Kenya shillings one hundred thousand or both.
- 46.** (1) No person shall produce, distribute, sell or offer for sale traditional liquor without a license issued by the County Liquor committee.
- Production, sale and distribution of traditional liquors.
- (2) A person shall be eligible to be granted with a licence under subsection (1) if—
- (a) that person has been vetted by the sub-county committee and a recommendation has been made to the management committee to issue the person with a licence;
- (b) the premises for the production or manufacture of the traditional liquor has been approved by the county public health department; and
- (c) the process for the production or manufacture of the traditional liquor conforms to the standards prescribed by the Kenya Bureau of Standards.

- (3) No person shall produce or manufacture traditional liquor in excess of the limits that shall be prescribed by the management committee
- (4) No person shall produce or manufacture traditional liquor in a residential area or a dwelling house

Provided that where the residential area or dwelling house is being used for a ceremony for which the traditional liquor is required, the residential area or dwelling house may be used for the production or manufacture of traditional liquor for a period not exceeding seven days.

PART V- SALE AND CONSUMPTION

Access to persons under eighteen years.

- 47.** (1) No person holding a licence to manufacture, store or sell alcoholic drinks under this Act shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored, sold or consumed.
- (2) A person shall not enter or gain access to an area referred to under sub-section (1) if such a person is in custody or accompanied by a person under the age of eighteen years.
- (3) Any person found by a police officer to be drunk and incapable or drunk and disorderly in or near a street, road, licensed premises, shop, hotel or other public place may be arrested without warrant and brought, without unreasonable delay, before a Magistrate.
- (4) Any person who contravenes the provisions of sub-sections (1) and (2) commits an offence.

Sale to intoxicated persons.

- 48.** Any licensee who sells an alcoholic drink to a person already in a state of intoxication or by any means encourages or incites him to consume an alcoholic drink commits an offence and shall be liable upon conviction to a fine not exceeding ten thousand shillings.

Disorderly conduct.

- 49.** (1) Any person found by a police officer to be drunk and incapable or drunk and disorderly in or near a street, road, licensed premises, shop, hotel or other public place may be arrested without warrant and brought without unreasonable delay before a Magistrate.

- (2) Any person convicted of being drunk and incapable or drunk and disorderly in or near a place referred to in sub-section (1) shall be liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months or to both.
- (3) Upon conviction under sub-section (2), the convicting Magistrate may issue an order for community service to any person convicted of the offence under this section for more than one time in accordance with provisions of the Community Service Orders Act, 1998.
- (4) Despite sub-section (3), any person convicted under sub-section (2) on more than three occasions in any period of twelve months shall—
 - (a) be ordered by the convicting Magistrate to undergo at his own cost, such rehabilitation programme as may be appropriate in a public health institution;
 - (b) be forthwith reported by the convicting Magistrate to the Sub-County Committee, which shall inform such licensees as he deems desirable of such convictions, and thereupon, and until a period of twelve months has passed without any further such conviction in respect of that person, any licensee so informed who knowingly sells or supplies alcoholic drinks to or for delivery to that person commits an offence, and it shall furthermore be an offence for that person to be in possession of any alcoholic drink.

Breach of licence.

- 50.** (1) Any person who sells an alcoholic drink or offers or exposes it for sale or who bottles an alcoholic drink except under and in accordance with and on such premises as may be specified in a licence issued in that behalf under this Act commits an offence and is liable—
- (a) for a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or to both;
 - (b) for a second or subsequent offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

and in addition to any penalty imposed under paragraph (a) or (b), the Court may order, the forfeiture of all alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drink.

(2) Except as may be provided for in this Act, no person shall—

(a) sell, supply or offer for sale an alcoholic drink in any workplace, office, factory, public park or any public recreational facility, public transport vehicle, public beach, sports stadium or public street; or

(b) sell, purchase or consume an alcoholic drink in an alcoholic drink selling outlet after the expiry of the hours for which the outlet is licensed to sell the alcoholic drink.

(3) Any person who contravenes the provisions of sub-section (2) commits an offence and shall be liable to the penalties specified under sub-section (1).

Non-disclosure of conviction.

51. Any person who is required by any provision of this Act to disclose any conviction and fails to do so when making any application commits an offence.

Sale without a Licence.

52. (1) If any person purchases any alcoholic drink from a licensee whose licence does not cover the sale of that alcoholic drink for consumption on the premises, and drinks the alcoholic drink on the premises where it is sold, or in any premises adjoining or near to those premises, if belonging to the seller of the alcoholic drink or under his control or used by his permission, or on any highway adjoining or near any such premises, and it is proved to the court that the drinking of the alcoholic drink was with the privity or consent of the licensee who sold the alcoholic drink, the licensee commits an offence.

(2) If a licensee whose licence does not cover the sale of alcoholic drink to be consumed on his premises himself takes or carries, or employs or suffers any other person to take or carry, any alcoholic drinks out of or from his premises for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any place (whether enclosed or not, and whether or not a public thoroughfare) other than the licensed premises, with intent to evade the conditions of

the licence, the licensee commits an offence, and, if the place is any house, tent, shed or other building belonging to the licensee or hired, used or occupied by him, the licensee shall be deemed, unless the contrary is proved, to have intended to evade the conditions of the licence.

Manufacture and
sale of adulterated
alcoholic drinks.

53. (1) No person shall manufacture, distribute, keep for sale, offer for sale or sell—

(a) any alcoholic drink which has been in any way adulterated, or diluted by any person; and

(b) any non-alcoholic drink which has been in any way adulterated with alcohol, or which contains any of the substances prohibited under any written law.

(2) A person who, while manufacturing an alcoholic drink adulterates the alcoholic drinks by way of adding impurities, prohibited substances or additives to the alcoholic drink commits an offence and shall, upon conviction be liable to a fine not exceeding ten million Kenya shillings or to imprisonment for a term not exceeding ten years, or to both.

(3) A person who knowingly distributes an alcoholic drink that is adulterated commits an offence and shall, upon conviction be liable to a fine not exceeding two million Kenya shillings or to imprisonment for a term not exceeding two years, or to both.

(4) A person who knowingly sells an alcoholic drink that is adulterated commits an offence and shall, upon conviction be liable to a fine not exceeding five hundred thousand Kenya shillings or to imprisonment for a term not exceeding two years, or to both.

(5) On the conviction of a licensee of an offence under subsections (2), (3) and (4) the Court may, in addition to any other penalty it may lawfully impose, if it finds that the drink in respect of which the offence was committed was adulterated by a substance or substances which rendered the drink unfit for human consumption, and unless the licensee proves to the satisfaction of the court that he took all reasonable precautions against such adulteration and that such adulteration took place without his knowledge or consent, order that his licence be forfeited, and no licence shall thereafter be granted or transferred to him or her.

Being in possession of unauthorized industrial ethanol, methanol or other alcoholic material

54. A person found in possession of unauthorized industrial ethanol, methanol or any other alcoholic material commits an offence and shall, upon conviction be liable to a fine not exceeding one million Kenya Shillings or to imprisonment for a term not exceeding two years, or to both.

Proof of sale.

55. (1) In any proceedings under this Act relating to the sale or consumption of an alcoholic drink, such sale or consumption shall be deemed to be proved if the Court is satisfied that a transaction in the nature of a sale took place, whether or not any money has been shown to have passed, or as the case may be, if the court is satisfied that any consumption was about to take place.

(2) Evidence of consumption or intended consumption of an alcoholic drink, on licensed premises by some person other than the licensee or a member of his family or his employee or agent shall be *prima facie* evidence that the alcoholic drink was sold by or on behalf of the licensee to the person consuming or about to consume the alcoholic drink.

Endorsement of conviction on licence.

56. Every licensee who is convicted of an offence under this Act shall produce his licence to the Court convicting him, and the Court shall endorse every such conviction on the licence and the relevant administrative officer of the Court shall inform the licensing Officer.

Forfeiture of licence upon conviction.

57. If in any proceedings before a Court it appears that a licensee—

(a) whether he was present in the licensed premises or not, has permitted an unlicensed person to be the owner or part owner of the business of the licensed premises or to have a substantial interest in that business, except with the consent of the County Liquor Committee;

(b) is convicted of an offence under this Act and a previous conviction within the preceding twelve months of the same or any other offence under this Act or three such previous convictions within the preceding five years is or are proved; or

(c) is twice convicted within twelve months of selling, offering or keeping for sale any adulterated alcoholic drink;

then the court may, in addition to any other penalty which it may lawfully impose, order that his licence be forfeited, and that no licence shall be issued or transferred to him for a period of two years.

PART VI- ADVERTISEMENTS AND PROMOTIONS

Prohibited
advertisements
and promotions.

58. (1) No person shall promote an alcoholic drink by way of outdoor advertisement—

(a) in a manner that is false, misleading or deceptive or that is likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcoholic drink; and

(b) in places demarcated under any written law as residential areas or within a distance of three hundred metres from nursery, primary, secondary school, or other institution of learning for persons under the age of eighteen years or a place of worship, health facility or a public playground, public road reserve or any other public land or property or in public service vehicle.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of—

(a) protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks; and

(b) protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

Promotion at
events where
under-eighteen-year-olds
are present.

59. (1) No person shall promote an alcoholic drink—

(a) at any event or activity associated with persons under the age of eighteen years; or

- (b) using such things or materials that are associated with persons under the age of eighteen years.
- (2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shilling or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
- (3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

Encouraging
Consumption.

60. (1) A licensee shall not—

- (a) award, grant or give to a person an alcoholic drink for consumption in or outside the licensed the premises without any consideration equivalent to the market price of the alcoholic drink; or
- (b) promote any alcoholic drink in such a manner as to encourage more consumption of an alcoholic drink in order to win an award or prize.
- (2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.
- (3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks and also for the purpose of protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

PART VII– ENFORCEMENT

Appointment of
authorised
officers.

- 61. (1) The County Executive Member shall appoint for each Sub-County authorised officers for purposes of this Act.**

- (2) The County Executive Member shall issue a certificate of appointment to every person appointed as an authorized officer under this section.
- (3) In addition to the authorized officers appointed under 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;
 - (b) enforcement officers appointed under the National Police Service Act, 2011, Standards Act, Weights and Measures Act and Anti-counterfeit Act;
 - (c) County Enforcement Officers;
 - (d) Sub-County Administrators;
 - (e) Ward Administrators; and
 - (f) any other person upon whom any written law vests functions of the maintenance of law and order

Places authorised officers may enter.

- 62.** (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 believes on reasonable grounds that any person or persons is in any way contravening the provisions of 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 61(2).

Powers of authorised officers.

- 63.** In carrying out an inspection in any place pursuant to section 62, an authorised officer may—
 - (a) examine an alcoholic drink 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 alcoholic drink 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 the alcoholic drink 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.

64. 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 into dwelling places.

65. 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 66.

Court to issue warrant.

66. (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 65;
- (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. **67.** An authorised officer executing the warrant issued under section 66 shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.
- Certificates of analysis. **68.** An authorised officer who has analyzed or examined an alcoholic drink or thing under this Act, or a sample of it, shall issue a certificate in the prescribed form or report setting out the results of the analysis or examination.
- Assistance of officers. **69.** (1) The owner 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; and
- (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 authorised officer in sub-section (1) shall issue the respective inspection completion certificate once satisfied with the inspection.
- Obstruction of authorised officers. **70.** 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.
- Seizures. **71.** (1) During an inspection under this Act, an authorised officer may seize any alcoholic drink 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 thereof shall be made at the time of such seizure by the officer.
- (2) The authorised officer may direct that any alcoholic drink or thing seized be kept or stored in the place where it was seized or that it be moved to another place.

- (3) Unless authorised by an officer, no person shall remove, alter or interfere in any manner with any alcohol, alcoholic drink or other thing seized.
- (4) Any person from whom an alcoholic drink or thing was seized may, within thirty (30) 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.
- (5) Pursuant to Article 24(2) of the Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.
- (6) The Court may, upon production of the alcoholic drink seized as evidence for the purposes of proceedings before the Court in relation of contravention of this Act, order for public destruction of the alcoholic drinks save for what is necessary as sample for use as the necessary evidence during the proceedings.

Forfeiture of seized vessels.

72. Where a person is convicted of an offence of producing, manufacturing and transporting alcoholic beverages contrary to the provisions of this Act, the premises, vessels, vehicles, tools or implements used in the commission of the offence may be forfeited to the County Government.

Order for restoration.

73. (1) The High Court may order that the alcoholic drink or thing seized 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 alcoholic drink or thing seized; and
 - (b) the alcoholic drink 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 sub-section (1) the Court is satisfied that the applicant is entitled to possession of the alcoholic drink or thing seized but is not

satisfied with respect to the matters mentioned in paragraph (b) of sub-section (1), the Court may order that the alcoholic drink 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.

Disposal of
seized alcohol.

74. (1) Where an owner of seized products fails to obtain a Court Order or seized products are not subject to any ongoing judicial consideration, the County liquor Committee shall within Thirty (30) days publicly destroy the seized products in the most practical way.

(2) Where the consignment of seized products is to the best of the County liquor Committee reasoning large enough to exert undue resources to destroy, the County liquor Committee may recover attendant costs to destroy the said consignment.

distribution
of alcohol by branded vehicle

75. A holder of a distribution license shall distribute alcohol by way of a branded vehicle only and within the hours stipulated under the Second Schedule of this Act.

Protection from personal
liability

76. A member, officer, employee or agent of the County Liquor Committee or the Sub-County Committees or other office established under this Act shall not be held personally liable for any action, claim or demand whatsoever, if the matter or thing is done in good faith while executing the functions, powers or duties conferred by this Act.

General penalty.

77. Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

PART VIII- FINANCIAL PROVISIONS

Source of money

78. (1) The source of money for the implementation of this Act shall consist of—

(a) such sum of money as may be appropriated by the County Assembly; and

(b) any gifts, grants or donations for furtherance of the objects of this Act

Operation costs

79. The committees' operation costs shall be a recurrent charge in the department where the function is domiciled as approved by the assembly.

Revenue Collected by the
County Liquor Committee

80. (1) Any such other monies or funds collected by the management committee, pursuant to this Act, shall be paid to the County Revenue Fund and shall include—

- i. such licence and other fees as may be payable under this Act;
- ii. such sums as may be realized from property forfeited to the County Government under this Act;
- iii. sums received, including contributions, gifts or grant from or by way of testamentary bequest by any person; and
- iv. all sums which may in any manner become payable to, or vested in the management committee.

(2) Where, in terms of subsections (1)(b), any immovable property is forfeited, the County Executive Committee Member for Finance shall deal with the property in such manner as he thinks fit and may sell the property and deposit the proceeds to the County Revenue Fund.

PART IX-MISCELLANEOUS PROVISIONS

Regulations.

81. (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 sub-section (1), the Regulations may—

(a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;

(b) prescribe the forms of applications, notices, licences and other documents for use under this Act; and

(c) prescribe the fees payable under this Act.

(3) Pursuant to Article 94(6) of the Constitution, the legislative authority delegated to the County Executive Member under this section shall be exercised only for the purpose and intent specified in this section and in accordance with the principles

and standards set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Transitional matters

- 82.** (1) A person who held a valid licence on the commencement of this Act, shall be deemed to have been granted a licence under this Act:

Provided that the validity of a licence granted before the commencement of this Act shall expire on the 31st December, 2024.

- (2) An application for a license that had been lodged with the County Government before the commencement of this Act shall be deemed to have been validly lodged under this Act:

Provided that the relevant committee shall have the right to request additional information or documentation from an applicant who had applied for a licence before the commencement of this Act.

- (3) Any proceedings in respect of a contravention of a provision of a law in respect of the matters contemplated under this Act shall proceed in accordance with the provisions of that other law.

- (4) Any appeal or application for review against a decision in respect of an application for a licence under a written law in existence immediately before the commencement of this Act shall be heard and determined in accordance with the provisions of that written law.

Repeal.

- 83.** The Nyeri County Alcoholic Drinks Control and Management Act, 2013 shall stand repealed upon the commencement of this Act.

	SCHEDULES
	FIRST SCHEDULE (Sections 5(5))
	Meetings of County Liquor committee and Sub-County Committees
Meetings of the Committees	1. (1) The committees shall elect the deputy-chairperson during its first sitting. (2) The County Liquor committee shall meet for a maximum of six (6) times per year, the meetings of the County Liquor committee shall be held on such date and time as the County Liquor committee shall decide or, in the absence of such decision, on any other time as the Chairperson, may, in consultation with the Secretary decide. (3) The Chairperson shall, on the application of at least five members of the County Liquor committee, write to the executive member requesting for approval to convene a special meeting of the County Liquor committee. The application shall contain the reasons for such an application. (4) Notwithstanding the provisions of paragraph of 3 of this schedule, in situations of an emergency, a special meeting may be convened by the Chairperson and any resolution passed at the meeting shall be ratified and adopted in the subsequent ordinary meeting of the County Liquor committee. (5) A written notice of every meeting shall be given seven days prior to the date of the meeting, indicating the venue, date, time and agenda. (6) The provisions of clause (3) and (5) shall not apply to a special meeting convened in situations of emergency. (7) The Chairperson shall preside at every meeting of the County Liquor committee at which he or she is present and in the absence of the Chairperson, the deputy chairperson shall preside. In their absence, members at the meeting shall elect one of the members who shall with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson. (8) All the decisions of the County Liquor committee shall be by simple majority of all members present and voting.

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	(9)The Chairperson shall not have an original vote but shall have a casting vote in case of a tie on any decision before the County Liquor committee. (10) The County Liquor committee shall cause minutes of all proceedings of the meetings of the County Liquor committee to be entered in minute book for that purpose. (11) The quorum of the meetings of the County Liquor committee shall be half of its members.
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SECOND SCHEDULE

LICENCE HOURS (Section 28)

<i>s/No.</i>	<i>Licenses</i>	<i>Licence hours, conditions and exceptions</i>
1.	Alcoholic Drink Licence (on licence) for retail outlets commonly known as Bar	(a) From Monday to Friday during the hours of 5.00p.m. to 11.00 p.m. (b) During weekends and public holidays during the hours of 2:00 p.m. to 11:00 p.m.
2.	Supermarket Retail Chain Stores Alcoholic Drink Licence	Authorised to sell alcoholic drink on any day of the week during the hours of 2.00 p.m. to 9:00 p.m.
3.	Hotel Alcoholic Drink Licence	Authorized to sell alcoholic drink on any day of the week to a lodger - for his own consumption and his guest's consumption on the premises, from 1.00 p.m. to 11.00 p.m.
4.	Members Club Alcoholic Drink License. A members' club alcoholic drink license shall only be held to a member's club that is a non-profit association incorporated under the Societies Act and existing solely for the benefit of members and where no profits are drawn by any member of the club or any person managing or associated with the operations and governance of the club.	Authorized to sell alcoholic drink to members at any hour.
5.	Night Club Alcoholic Drinks Licence	Authorized to sell alcoholic drink any day of the week during the hours of 5:00 p.m. to 3.00 a.m.
6.	Temporary/occasional alcoholic drinks licence	Authorised to sell alcoholic drink on the day and during the hours stipulated in the license by the County Liquor Committee for the purposes of specific occasions, ceremonies or events as indicated in the application

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7. Bar and Restaurant License.

Authorised to operate as specified in the Fourth Schedule and to sell alcoholic drinks on Monday to Friday during the hours of 2:00 p.m. and 11:00 p.m. and on weekends and public holidays between 2:00 p.m. and 12:00 a.m.

A bar and Restaurant shall be fitted with a fully functional:

- (a) Kitchen;
- (b) Dining area; and
- (c) Beer hall.

THIRD SCHEDULE

TYPES OF LICENCES (Section 27)

1. Manufacturer's licence.

Subject to the conditions specified in the licence, a Manufacturer's licence authorizes the holder to—

- (a) manufacture and store the manufactured alcoholic drink in his depot;
- (b) sell the product of his manufacturing plant by wholesale in accordance with the conditions that are for the time being, applicable to a holder of a wholesale licence or by delivery from depot throughout Kenya in accordance with the Alcoholic Drinks Control Act, 2010:

Provided that the manufacturer shall be required to possess a licence to distribute the product of his manufacturing plant within the county; and

- (c) bottle the alcoholic drink subject to such conditions as may be prescribed.

For the purposes of this paragraph, "depot" means premises of whatever description which are occupied by a Manufacturer for of his trade.

2. Wholesaler's licence / (Wines and Spirits depot).

A wholesale licence authorizes the licensee to sell an alcoholic drink at the premises at wholesale specified in the licence, subject to such conditions as may be:

Provided that a licensee shall not sell any alcoholic drink for consumption in the premises any time not earlier than 2.00 p.m. and not later than 8.30 p.m.

3. Retailer's licence.

A retail licence authorizes the licensee to sell an alcoholic drink on the premises, at the hours and subject to such other conditions as are specified in the licence.

4. Distributor's licence.

A distributor's licence authorizes the licensee to distribute or supply an alcoholic drink within the County not earlier than 6.00 a.m. and not later than 6.00 p.m. and the sale shall be by way of a branded vehicle ONLY and subject to such other conditions as shall be specified in the licence:

Provided that a distributor of an alcoholic product in the County shall establish a depot in the County and possess a licence for the depot and for distributing the alcoholic product.

FOURTH SCHEDULE

Types of licenses Permitted

<u>ZONE</u>	<u>AREA</u>	<u>LICENSES PERMITTED</u>
Zone A	Nyeri Town, Kingongo, Ruringu, Karatina Town, Othaya Town, Mukurweini Town and Narumoru Town. <i>(Excluding alcohol free zones)</i>	All licenses are permitted including Wines and Spirits Depots Whole sale and Franchise Premises
Zone B	Kiawara, Kiganjo, Chaka, Mweiga, Kamakwa, Giakanja, Kangemi, Gatitu, Gakindu Shopping Centre and Jambo <i>((Excluding alcohol free zones)</i>	All licenses are permitted including Wines and Spirits Depots, Whole sale and Franchise Premises
Zone C	All other shopping centers within the County <i>(Excluding alcohol free zones)</i>	Only Hotels and On Bar licenses and Manufacturing plants are permitted. (Wines and Spirits Depots and Bar and Restaurants are NOT permitted.)