

SPECIAL ISSUE

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**KWALE COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2016

NAIROBI, 10th March, 2017

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COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

ATTN: Budget Officer

**THE KWALE COUNTY AIR POLLUTION, NOISE POLLUTION
AND NUISANCES ACT, 2016**

No. 10 of 2016

Date of Assent: 16th May, 2016

Date of Commencement: 30th May, 2016

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**THE KWALE COUNTY AIR POLLUTION, NOISE POLLUTION,
AND NUISANCES ACT, 2016**

**AN ACT of the County Assembly of Kwale to provide for the
regulation and management of air pollution, noise pollution and
other nuisances and for connected purposes.**

ENACTED by the County Assembly of Kwale as follows—

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Air Pollution, Noise Pollution and Nuisances Act, 2016.

Interpretation

2. In this Act—

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

“air pollutant” means any —

- (a) fume, smoke, particulate matter, vapor, gas, odorous substance or any combination thereof; or
- (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 vapor, steam condensate or any other emission exempted under this Act;

“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 any person authorized by the County Executive Committee Member to perform the functions of an authorized officer under this Act;

“controlled facility” means a facility which in its day to day operations emits fumes, smoke or gases in such quantities as to be a danger or nuisance to persons working or residing within the facility’s vicinity;

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

“department” means department responsible for matters relating to environment;

“protected area” means an area declared by the County Executive Committee Member to be a protected area with regard to grazing of animals under section 28;

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

- (a) is vested in the county;
- (b) the public has the right to use; or
- (c) is shown on a general plan of the county filed in the ministry of lands registry that has been provided for or reserved for the use of the public in such county.

“special places” means an area declared by the County Executive Committee Member to be a special area with regard to regulation of noise levels under section 22 of this Act; and

“vehicle” means any device driven by mechanical, power on land or water, and includes any craft or aircraft, but does not include a wheeled chair used solely for the conveyance of a child or invalid.

Objectives

3. The objectives of this Act are to provide for the prevention, control and abatement of—

- (a) air pollution to ensure clean and healthy ambient air;
- (b) noise pollution;
- (c) waste and disease causing pests, and ensure a clean healthy environment.

Application

4. The provisions of this Act shall be in addition to other requirements imposed by or under the Environmental Management and Coordination Act, 1999 (No. 8 of 1999) or any other written law.

PART II—ADMINISTRATIVE PROVISIONS

Administration of this Act

5. (1) This Act shall be administered by the Department as defined in this Act.

(2) The County Executive Committee Member shall by notification in the County *Gazette* or public Notice appoint such number of officers to be authorized officers for the purposes of this Act as may be necessary.

Functions and Powers of the Department

6. (1) It is the responsibility of the Department to implement the objectives of this Act.

(2) To this end the County Executive Committee member has powers to—

- (a) create awareness with the public on the benefits of a clean environment;
- (b) issue, suspend or revoke licenses as each case may warrant;
- (c) prevent and control nuisances, pests and insects; and
- (d) control domestic animals and impound or destroy them where necessary.

PART III—AIR POLLUTION

Interpretation of this part

7. In this Part;—

“public place” means any indoor, enclosed or partially enclosed area which is open to the public or any part of the public and includes a workplace and a public conveyance as well as the areas within five meters of any doorways or entrances of the public place, workplace or conveyance;

“public vessel” means a public service vehicle, train, aircraft or any other means of public transport domestically or internationally, whether publicly or privately owned or operated;

“smoking” means inhaling or exhaling the smoke of any tobacco product and includes the holding of, or control over any ignited tobacco product or device containing an ignited tobacco product; and

“tobacco product” means a product composed, in whole or in part, of tobacco, including tobacco leaves and any extract of tobacco leaves intended for use by smoking, inhalation, chewing, sniffing or sucking and includes cigarette papers, tubes, and filters.

Abatement of Air Pollution

8. The Department is in addition to the responsibilities imposed under section 6 also undertake the—

- (a) promotion of alternative cooking technologies that are nonpolluting;
- (b) development of well ventilated buildings;
- (c) regulation of smoking in public places; and
- (d) promotion of tree planting and expansion of forest cover.

Permitted Operations

9. The following operations shall be permissible under this Act provided that they are not used for the disposal of refuse—

- (a) back-burning to control or suppress wildfires;
- (b) firefighting rehearsals or drills conducted by 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 set out under this Act.

Causing Air Pollution contrary to license an Offence

10. No person shall;—

- (a) act in a way that directly or indirectly causes, or is likely to cause immediate or subsequent air pollution;
- (b) or emit any liquid, solid or gaseous substance or deposit any such substance;

contrary to the license issued under this Act or other relevant law.

Department to liaise with lead Agencies

11. (1) The Department shall liaise with relevant lead agencies, from time to time regarding-

- (a) methods of abating and regulating air pollution;
- (b) determining protected areas and special areas;
- (c) clean up of any air pollution where necessary; and
- (d) declaring any area exempted from the provisions of this Act.

Executive Committee Member to order inspection

12. (1) The County Executive Committee Member or his/her representative may, to ensure the provisions of this Act are being observed, in consultation with the relevant agencies agency, at any time order the inspection—

- (a) of a vehicle releasing visible exhaust emissions;
- (b) any waste incinerator; and
- (c) of fuel burning equipment.

Powers to refuse to grant or renew licenses and to cancel licenses

13. (1) The County Executive Committee Member may refuse to grant or renew a license or cancel a license, with respect to any license 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;
- (b) for the carrying on of any work or trade;

on grounds that—

- (i) the method adopted or proposed to be adopted by the applicant for preventing noxious or offensive vapors, gases or smells arising from such work or trade are not efficient.
- (ii) the granting or renewal of such license would be calculated to cause nuisance or annoyance to persons residing in the neighborhood.

(2) The County Executive Committee Member may cancel any license granted by it on any such grounds as it may by law specify and, in addition, on any of the following grounds, whether specified in such law or not—

- (a) with respect to any license, that it is contrary to the public interest for such license to remain in force; and
- (b) additionally, with respect to any license specified in subsection (1) (b)—
 - (i) that the premises to which the license relates or any adjacent premises owned or occupied by the holder of the license are frequented by persons of bad character;
 - (ii) that the continuation of such license in force would be calculated to cause nuisance or annoyance to persons residing in the neighborhood; and
- (c) with respect to any license for the carrying on of any work or trade declared to be an offensive trade—
 - (i) that the premises used by the holder of the license have become unsuitable for the purpose;
 - (ii) that the methods adopted by the applicant for preventing noxious or offensive vapors, gases or smells arising from the work or trade have become ineffective.

Responsibility of owner or operator

14. (1) The County Executive Committee Member may, after consultation with the relevant agencies and the public, declare a facility to be a controlled facility for purposes of this Act.

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

Smoking in Public places

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

(2) Notwithstanding the provisions of sub-section (1), the Department may by notice in the Gazette prohibit or restrict smoking in a specified outdoor public place where persons are likely to congregate within close proximity to one another or where smoking may pose a fire or other hazard;

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

Smoking in Public vessels

16. (1) No person shall smoke a tobacco product or hold a lighted tobacco product in a public vessel.

(2) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

Display of signs in non-smoking areas

17. (1) The owner or manager of a public place or any public vessel in which smoking is prohibited under this Act shall post clearly legible signs stating that smoking is prohibited.

(2) The signs under subsection (1) shall be displayed in the national languages and may in addition be displayed in the language most widely spoken by the people of the area.

Owner to ensure no smoking

18. (1) The owner or manager of a public place or public vessel in which smoking is prohibited under this Act shall take reasonable steps to ensure that smoking does not take place in such place or vessel.

(2) The owner or manager of the premises shall—

- (a) ask the person who is smoking to immediately cease smoking; or
- (b) demand that the person smoking should leave the premises or vessel; or

- (c) Seek the assistance of a health officer, police officer or authorized officer.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence.

Public awareness campaigns

19. The County Executive Committee Member shall collaborate and partner with other relevant departments and agencies, promote public awareness on measures to safeguard the health of nonsmokers from second-hand smoke.

PART IV—NOISE POLLUTION

Interpretation of this part

20. In this part—

“noise” means any undesirable sound that is intrinsically objectionable or that may cause adverse effects on human health or the environment;

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

“vibration” means an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity or acceleration with respect to a given reference point;

“excessive vibration” means the presence of vibration which—

- (a) is of such intensity, duration, frequency or character as to annoy, disturb, or cause or tend to cause adverse psychological or physiological effects on persons, or to damages or tend to damage personal or real property; and,
- (b) exceeds the recommended noise level as per schedule I, II, and III of the Environmental Management and Coordination Act No. 8 of 1999.

Regulation of Noise

21. The County Executive Committee Member shall be responsible for—

- (a) the development of a county strategy on noise pollution;
- (b) regulation of noise in special areas (schools, hospitals, residential areas, libraries; and
- (c) regulation of high noise levels associated with commercial and associated machinery, public transportation and social activities.

Special Places

22. (1) The County Executive Committee Member shall, by notice, designate certain places to be special places for purposes of this Act.

(2) A place designated to be a special place under this section shall, subject to section 23, not be subjected to high noise levels.

Application for License

23. (1) A person who desires to undertake an activity, whose noise levels may constitute a danger or a nuisance under this Act, shall apply to the County Executive Committee Member for a license before carrying out such activity.

(2) The County Executive Committee Member shall—

- (a) where the activity is not taking place within a special area, issue a license subject to any conditions as it may impose;
- (b) where the activity is to take place within a special area, consult the community living in that area and seek expertise advice before making a decision on the issuance of a license.

(3) The consultations between the department and the community under subsection (2) shall be recorded and a copy thereof be placed with such community representative as may be agreed upon.

(4) A person who carries out an activity contrary to this section commits an offence.

License fees

24. (1) The County Executive Committee Member in consultation of County Executive Member Finance shall determine the fees to be paid for license under this Part and different fees may be set for different activities.

(2) Provided that where an activity exceeds the period stated within the license, the department shall on application, provided no breach of contract has occurred on the part of the applicant and on payment of such fee as may be prescribed, extend the license.

Regulations on Noise pollution

25. The County Executive Committee Member shall prescribe regulations—

- (a) to regulate the playing of musical instruments or the singing or performing for profit, in or on any public place;
- (b) to regulate all businesses, factories and workshops which, by reason of noise, vibration or other cause, may be or become a

source of danger, discomfort or annoyance to the neighborhood, and to prescribe the conditions subject to which such businesses, factories and workshops shall be carried on relating to special places;

- (c) specifying activities and license fees which fall under this Part;
- (d) generally to give effect to the provisions of this Act.

PART V—NUISANCES

County Executive Committee Member powers regarding nuisances

26 (1) The County Executive Committee Member or any other authorized person shall have power to;—

- (a) compel occupiers or, in the case of vacant premises, owners, to keep their premises free from offensive or unwholesome matter;
- (b) regulate the keeping of animals, birds and bees and their premises, so that their keeping and the premises are not constructed, situated, used or kept in such manner as to be offensive, be a public nuisance or injurious to health;
- (c) take or require the taking of such steps and measures as may be necessary or desirable 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 its area, and to set traps or take other measures necessary for the purpose on any land whether within or, with the consent 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, paying particular attention to markets, slaughter houses, silos and other places dealing in food;
- (f) establish and maintain public lavatories, closets and urinals within its urban areas, and where such lavatories, closets and urinals are established, maintain them in good order and repair;
- (g) take or require the taking of such steps and measures as may be necessary or desirable for preventing or stemming the flow of any noxious matter or waste water flowing or discharged from any premises wherever situated, into the street, or any water course irrigation canal or other place not approved for the reception of such discharge;

- (h) to establish and manage pounds and prescribe the circumstances in which any, article, vehicle, animal or bird which is found abandoned or apparently abandoned, may be impounded and the conditions under which any impounded article, vehicle, animal or bird may be sold or destroyed;
- (i) to establish sufficient number of cemeteries and crematoriums and provide for the burial of all destitute persons who die within its area and maintain the cemeteries and crematoriums in such manner as to ensure they are not offensive, dangerous to health or attractive to pests;
- (j) do any other thing for the effective implementation of this Act.

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

(3) The Department may further instruct the owner of the nuisance on additional measures that must be taken in order to prevent a recurrence of the nuisance.

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

Nuisance and impounding of Animals

27. (1) Any person who keeps within the county any animal or poultry which causes a nuisance to any of the residents in the neighborhood shall be guilty of an offence.

(2) Any person who, except with the written permission of Department and subject to such conditions as it may deem fit, keeps within an urban area, a game animal or reptile other than a lizard, or any ass, mule, ox, bull, or cow, goat, sheep or pig shall be guilty of an offence.

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

(4) The owner of an animal or reptile, as specified under subsection (2), which is removed from the city or street in pursuance of subsection (3) shall not be entitled to recover the same until he or she has paid to the county, such fee as may be prescribed in the Regulations to cover expenses incurred by the county for the upkeep of the animal.

(5) If an owner contemplated under subsection (4) does not pay the fees and expenses due within a period of seven days from the date the said

animal was impounded, the Department may sell or otherwise dispose of the animal by auction or any other means and the proceeds of such disposal, shall be set off against the outstanding fees and expense any, incurred by the Department in the removal or disposal of the animal.

(6) A person shall be guilty of an offence, if such person has under his control or in his custody: —

- (a) any animal, reptile or bird, which causes a nuisance or annoyance to any of the residents of the area; or
- (b) any animal, reptile or bird which is so kept as to be or likely to become injurious to the health of any person; or
- (c) any animal reptile poultry or bird which wanders on a street in such a manner as to cause obstruction, inconvenience to traffic or pose a danger to persons.

(7) Any person who, except with the written permission of the Department subject to such conditions as it may deem fit, permits any animal referred to in subsection (1) to graze within a protected area shall be guilty of an offence.

Protected area

28. (1) The County Executive Committee Member shall declare specified areas to be protected areas under this Act.

(2) The department before declaring an area to be a protected area shall consider the purpose for which it is being protected and the views of the community within that area.

(3) A person who allows animals under his or her control to graze within a protected area commits an offence.

Offences on Nuisances

29. (a) Any person who in any street, without a permit;

- (i) ignites any firework;
- (ii) for the purpose of hawking, selling, distributing or advertising any article or event, shouts or uses any bell, gong, or other noisy instrument or loudspeaker;
- (iii) lights or maintains or suffers to be lit or maintained any fire or brazier in the central area as defined in any laws of the County for the time being in force;
- (iv) commits any act contrary to public decency.

- (b) 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;
- (c) throws down or leaves any orange peel, banana skin, or other substance likely to cause a person to fall down;
- (d) 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;
- (e) plays any game in such a manner as to cause the likelihood of damage to property, or danger to any person;
- (f) rides, drives or propels a vehicle on a footpath;
- (g) while being in charge of any dog, allows such dog to foul any path and fails to remove the stool;
- (h) rides or drives any animal on a foot path;
- (i) defecates or urinates on the street or any open space;
- (j) touts for passengers; or
- (k) talks on a mobile telephone while driving or crossing a road;
- (l) without a permit draws graffiti on public buildings or on any private buildings without consent ;

shall be guilty of an offence.

PART VI—GENERAL PROVISIONS

Obstruction of Authorized Officer

30. Any person who assaults or obstructs an authorized officer, or other person duly authorized, in execution of their duty under this Act, commits an offence and shall on conviction be liable to a fine of not exceeding 100,000 thousand shillings or to imprisonment for a term not exceeding 6 months or both.

General Penalty

31. (1) A person who is convicted of an offence under this Act, for which no other penalty is provided, shall on conviction be liable to a fine not exceeding shillings 500,000 or imprisonment for a period not exceeding two years or to both such fine and imprisonment..

(2) The County Executive Committee Member may, by law, further prescribe that, in addition to any penalty, any expenses incurred by the county in consequence of the breach of any law made under this Act or in the execution of any work directed by any such law to be executed by any

person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

Regulations

32. (1) The County Executive Committee Member shall make regulations prescribing: —

- (a) the fees to be charged in respect of any license or permit issued under this Act;
- (b) the form of applications and permits;
- (c) any registers to be kept;
- (d) conditions subject to which the County Executive Committee Member shall issue permits relating to noise pollution, air pollution and advertising; and
- (e) generally to give effect to the provisions of this Act.

(2) All regulations made under this Act shall be forwarded to the county assembly for consideration.

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