

SPECIAL ISSUE

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**MACHAKOS COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

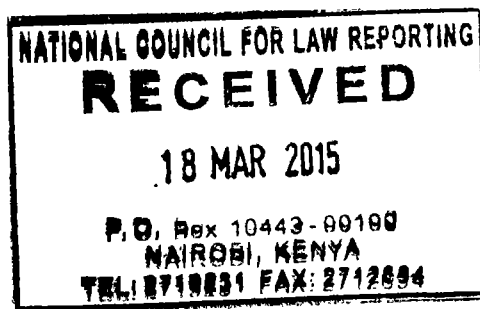
NAIROBI, 10th September, 2014

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THE MACHAKOS COUNTY LIQUOR LICENCING BILL, 2014

A Bill for

AN ACT of the Machakos County Assembly to provide for liquor licensing to give effect to paragraph 4 of Part 2 of the Fourth Schedule to the Constitution and for connected purposes.

ENACTED by the Machakos County Assembly as follows—

PART 1—PRELIMINARY

1. (1) This Act may be cited as the Machakos County Liquor Licensing Act, 2014 and shall come into operation on such date as the Executive Committee Member may, by notice in the Gazette, appoint.

Short title and commencement.

(2) Different dates may be appointed for the coming into operation of different provisions for purposes of subsection (1).

2. In this Act unless the context otherwise requires—

Interpretation.

“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 traditional alcoholic drink, and any one or more of such varieties containing one-half of one per cent or more of alcohol by volume, including mixed alcoholic drinks, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being;

“authorised officer” means an authorised officer within the meaning of section 9;

“County Executive Member” means County Executive Committee Member for the time being responsible for matters relating to control of alcohol;

“Directorate” means the Directorate established under

section 4;

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

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

“magistrate” means a magistrate above the rank of resident magistrate;

“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;

- (a) a health institution, includes the owner or a person in charge or in control of the health institution;
- (b) a specified building, includes the owner, occupier, lessee or the person in charge or in control of the specified building;

“manufacture” means the processing of preparing an alcoholic drink and includes the packaging, labelling, distribution or importation of an alcoholic drink for sale 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;

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

“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.

3. The object and purpose of this Act is to establish a legislative framework to—

Object and purpose.

- (a) regulate the production, sale, distribution, consumption and outdoor advertising of alcoholic drinks;
- (b) ensure that the production, sale, distribution and consumption of alcoholic drinks conform to certain health, social and infrastructural requirements;
- (c) protect underage persons from access and exposure to liquor;
- (d) protect consumers of liquor from misleading and deceptive inducements;
- (e) provide for measures to prevent illicit trade in alcoholic drinks;
- (f) provide for public participation in the regulation of alcoholic drinks; and
- (g) promote public education on the lawful dealings in alcoholic drinks.

PART II—ADMINISTRATION

4. (1) There is established a Directorate to be known as the Machakos County Directorate of Liquor Control which shall be a public office in the county government and whose administrative costs and other expenses shall be provided under the vote of the Department for time being responsible for liquor control.

Establishment of a Directorate.

(2) The Directorate shall comprise—

- (a) a Director who shall be appointed by the County Executive member;
- (b) six members nominated by the bodies and organizations specified under subsection (3), who shall be appointed by the County Executive member;
- (c) ex-officio members representing the county

departments specified under subsection (4); and

- (d) the Secretary who shall be an ex-officio member.

(3) The members referred to under subsection (2) (b), shall be nominated by—

- (a) a cluster representing the association of Hotel Keepers and Caters within the county;
- (b) a cluster representing the Pubs, Entertainment and Restaurants Association of Kenya;
- (c) a cluster representing the Coast Tourism Association;
- (d) a cluster representing the registered neighborhood associations in the county;
- (e) a cluster representing the civil society and nongovernmental organizations; and
- (f) an association representing the private sector in the county.

(4) The members referred to under subsection (2) (c) shall be senior public officers representing the departments responsible for—

- (a) finance;
- (b) health;
- (c) public works;
- (d) land and environment;
- (e) education; and
- (f) planning.

(5) In appointing the Director and members of the Directorate, the County Executive member shall ensure that—

- (a) the Directorate reflects the regional and ethnic diversity of the people within the county; and
- (b) not more than two-thirds of the members are of the same gender.

(6) The Directorate and any other office established under this Act shall be answerable to the County Executive member.

5. (1) The appointment and nomination of the Director and members of the Directorate shall be—

Appointment and qualifications of the Director and members.

- (a) carried out in a competitive and transparent manner;
- (b) based on merit; and
- (c) in line with the constitutional requirements for public service.

(2) A person is qualified for appointment as the Director or member of the Directorate if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university;
- (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.

(3) A person shall not be qualified for appointment as the Director or as a member under section (1) if such person—

- (a) is declared to be of unsound mind;
- (b) is an un-discharged bankrupt; or
- (c) has been removed from office for contravening the provisions of the Constitution or any other written law.

6. (1) The Directorate shall—

Functions of The Directorate.

- (a) receive and consider applications for liquor licenses in accordance with this Act;
- (b) advise the County Executive Committee on matters of policy relating to control and regulation of liquor;
- (c) collaborate with relevant government agencies for effective implementation of the Act;
- (d) carry out public education in collaboration with other public and private players on liquor control in the county;

- (e) facilitate citizen participation in matters related to liquor control;
- (f) enforce the provisions of this Act; and
- (g) perform any other function as may be assigned to it by the County Executive member pursuant to this Act.

(2) The Directorate shall make such regular reports to the County Executive member as the County Executive member may from time to time determine.

7. (1) The Directorate shall have all the powers necessary for the proper performance of its functions under this Act.

Powers of the Directorate.

(2) Without prejudice to the generality of the provisions of subsection (1), the Directorate shall have power to—

- (a) enter into agreements or arrangements with any institution, association or professional organizations as the Directorate may consider appropriate in furtherance of the purpose for which the Directorate is established;
- (b) enforce set standards regarding control and regulation of liquor;
- (c) manage, supervise, secure and administer the assets of the Directorate in such manner as best promotes the purpose for which the Directorate is established;
- (d) delegate any of its powers to any officer, employee, agent, section or committee of the Directorate; and
- (e) undertake any other activity necessary for the fulfillment of any of its functions under this Act.

8. The Director and members of the Directorate shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the First Schedule.

Oath or affirmation of office.

9. (1) The Directorate shall in consultation with the County Executive member establish such sub-county and other committees which shall be responsible for such functions as may be delegated to them under this Act.

Committees of Directorate.

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(2) A committee established under subsection (1) may comprise members of the Directorate and such other co-opted persons whose knowledge and skills may be necessary for the effective discharge of the functions of the Directorate.

(3) The Directorate may delegate to a member, an employee, a committee or agent, the exercise on any of its powers or the performance of any of the functions under this Act.

(4) A person to whom any power has been delegated in accordance with subsection (3) shall be an authorised officer for purposes of this Act.

(5) Despite subsection (4), the following officers shall be authorized officers for purposes of this Act—

- (a) a public health officer appointed under the provisions of any law;
- (b) medical officers; and
- (c) other persons under whom any written law vests functions of the maintenance of law and order.

10. (1) The Director shall be appointed for a term of three years and is eligible for re-appointment for one further term.

Term of office.

(2) A member of the Directorate shall be appointed for a term of three years and is eligible for re-appointment for one term.

(3) The Director and members of the Directorate other than the ex-officio members shall serve on a full time basis.

11. The Director and members of the Directorate, shall be paid such allowances and benefits as the County Executive Committee shall, on the advice of the Salaries and Remuneration Commission, determine.

Remuneration.

12. (1) The Director or a member may be removed from office for—

Removal from office.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;

- (c) incompetence or negligence of duty;
- (d) bankruptcy;
- (e) is found guilty of professional misconduct by the relevant professional body;
- (f) in any particular case, failure to declare his or her interest in any matter being considered or to be considered by the board or committee; or
- (g) absence from three consecutive meetings of the Directorate without a reasonable explanation.

(2) The Director or member may be removed from office on any of the grounds in subsection (1) by—

- (a) the County Executive member;
- (b) the Directorate, supported by the vote of at least two-thirds of the members of Directorate; or
- (c) upon petition by the residents of a county.

(3) Before a member is removed from office under subsection (2), the member shall be given an opportunity to provide a defence against any of the allegations against him or her.

13. A person shall cease to be a member of the Directorate if that person—

Vacation of office.

- (a) resigns in writing, to the County Executive member;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity;
- (e) ceases to be a member of the nominating body section 6 (2); or
- (f) dies.

14. Where a vacancy occurs in the membership of the Directorate under section 12 or 13, the County Executive

Filling of vacancy.

The Machakos County Liquor Licensing Bill, 2014

member shall, appoint a new member in accordance with the provisions of this Act.

15. (1) There shall be a secretary to the Directorate who shall be competitively recruited by the County Public Service Board.

Secretary.

(2) A person shall be qualified for appointment as a secretary to the Directorate if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years proven experience at management level;
- (d) has extensive experience in public administration; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The Secretary shall be the Chief Executive Officer of the Directorate and Head of the Secretariat and shall be responsible to the Directorate.

(4) The Secretary shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

16. (1) The Secretary may be removed from office in accordance with the terms and conditions of service if the person—

Removal of the
Secretary.

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared or becomes bankrupt or insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the County Executive member;
- (e) is absent from three consecutive meetings within one financial year without reasonable cause;;
- (f) is found guilty of professional misconduct by the relevant professional body;

- (g) is disqualified from holding a public office under the Constitution;
- (h) is convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- (i) fails to declare his or her interest in any matter being considered or to be considered by the Directorate; or
- (j) engages in any gross misbehaviour or gross misconduct.

(2) Before the Secretary is removed from office under subsection (1), the Secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

17. (1) The business and affairs of the Directorate shall be conducted in accordance with the Second Schedule.

Meetings.

(2) Except as provided in the Schedule, the Directorate may regulate its own procedure subject to the law governing meetings and proceedings of Boards of State Corporations.

(3) The Directorate may invite any person to attend any of its meetings and to participate in its deliberations, but that person shall not vote on any matter requiring decision of the Directorate.

18. The County Public Service Board may appoint technical staff and other employees as may be necessary for the proper discharge of the functions of the Directorate under this Act, and upon such terms and conditions of service as the County Public Service Board may determine.

Employees of the Directorate.

19. (1) There is established the Machakos County Liquor Licensing Review Committee.

County Liquor Licensing Review Committee.

(2) The committee shall comprise—

- (a) the County Executive member who shall be the Chairperson;
- (b) the Chief Officer in Charge of Culture and Tourism who shall be the Deputy Chairperson;

- (c) the Chief Officer in Charge of Health;
- (d) the Chief Officer in Charge of planning;
- (e) the County Police Commander;
- (h) two residents of the county appointed by the County Executive member, one to represent the youth, the other to represent the business community, and the two shall be of opposite gender.
- (i) A person representing the industry, jointly nominated by the associations referred to under section 4 (3) and appointed by the County Executive member.
- (f) the Director who shall be the Secretary;

(3) The Committee shall be responsible for reviewing on appeal decisions made by the Directorate.

(4) The Committee shall sit at least two times every year may, subject to the provisions of this Act regulate its own procedure.

(5) The Directorate shall provide administrative services to the Committee.

(6) A person aggrieved by the decision of the Committee may appeal to the High Court.

20. No matter or thing done by a member or any officer, employee or agent of the Directorate or other office established under this Act shall, if the matter or thing is done in good faith while executing the functions, powers or duties conferred by this Act, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

Protection from
personal liability.

21. (1) There is established a fund to be known as Machakos County Alcoholic Drinks Control Fund.

Establishment of
the Fund.

(2) The Fund shall consist of—

- (a) monies as may be appropriated by the county assembly;
- (b) licence and other fees as may be payable under this Act;

- (c) sums as may be realized from property forfeited to the county government under this Act;
- (d) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
- (e) moneys earned or arising from any investment of the Fund; and
- (f) all other sums which may in any manner become payable to, or vested in, the Fund.

(3) The Fund shall be used for meeting the capital and recurrent expenditure relating to—

- (a) carrying out the functions of the Directorate;
- (b) setting up sub-county and other committees;
- (c) providing rehabilitation facilities;
- (d) funding community development projects; and
- (e) funding any other matter authorized under this Act;

22. (1) The Fund shall be administered by the Director, subject to the general directions of the County Executive member.

Administration of
the Fund.

(2) The Director shall ensure that money held in the Fund, including any earnings and accruals is spent only for the purposes for which the Fund is established.

(3) The Director—

- (a) may, with approval of the County Executive member, impose conditions and restrictions on the use of the Fund;
- (b) shall prepare accounts for the Fund for each financial year;
- (c) shall not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General;
- (d) shall furnish such additional information as may be required for the purpose of examination

and audit by the Controller and Auditor-General; and

- (e) shall present the financial statements to the County Assembly.

(4) The Director shall ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the requirements of the Public Finance Management Act and the Public Audit Act.

(5) Every statement of account prepared under this section shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

PART III—LICENSING PROVISIONS

23. (1) A person shall not—

Control of
alcoholic drinks.

- (a) manufacture or otherwise produce;
- (b) sell, dispose of, or deal with any alcoholic drink except as provided under this Act or in accordance with a license issued under this Act.

(2) Subsection (1) shall not apply to—

- (a) 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—
 - (i) a medical practitioner,
 - (ii) a veterinary surgeon registered under the Veterinary Surgeons Act (Cap. 366); or
 - (iii) a pharmacist registered under the Pharmacy and Poisons Act (Cap. 244), of a medicine containing alcoholic drink;
- (b) the sale of spirituous or distilled perfume, or perfumery;
- (c) the sale of industrial alcohol;
- (d) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 1996 (No. 5 of

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;

- (e) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;
- (f) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;
- (g) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;
- (h) the sale of alcoholic drink at County Assembly Buildings, if sold with the permission of the Speaker of the County Assembly; and
- (i) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces:

(3) Subsection (2) does not apply to any canteen, club, institute, mess or similar institution operated by a person for personal profit.

24. (1) A person intending to manufacture or otherwise produce 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 Directorate specifying where the premises is to be situated and shall pay a prescribed fee.

Application for
licence.

(2) The application under subsection (1) shall contain—

- (a) a comprehensive proposal on the nature, orientation and other justification for the establishment of the alcoholic plant or establishment for sale;
- (b) a disclosure as to whether the applicant has been previously convicted of an offence under this Act or any Act at any time in force relating to the manufacture, sale or consumption of an alcoholic drink, giving full particulars of the

offence of which he was convicted, of the court by which he was convicted, of the date of the conviction;

- (c) certification from Kenya Bureau of Standards for a manufacturer's license;
- (d) such other matters as may be prescribed.

(3) The Secretary shall, within twenty-one days or such other time the secretary may determine, after the submission of an application for a licence, prepare a notice convening a meeting of the Directorate setting forth—

- (a) the names of all applicants;
- (b) the types of licences applied for;
- (c) the premises in respect of which the licences are applied for; and
- (d) the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—
 - (i) published in a newspaper circulating within the county;
 - (ii) posted in some conspicuous place within the Directorate's offices;
 - (iii) sent to the county medical officer of health; and
 - (iv) sent to any other relevant office..

(4) The Directorate shall, within twenty-one days of receipt of the application under subsection (1)—

- (a) record and serialize the applications;
- (b) inspect the premises to ascertain that they are suitable with regard to the nature of the licence sought;
- (c) cause a public health officer to inspect the premises to ascertain that they meet the occupational health and safety requirements the relevant laws; and
- (d) ascertain or cause to be ascertained any other matter as may be by law required.

25. (1) Any person may lodge objection to an application with the Directorate.

Objection to an application for a licence.

(2) Every objection to an application shall be made in writing to the Director, and the objector shall, at least seven days before the hearing of the application, serve the applicant with a copy of the objection together with the grounds of the objection.

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

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

26. (1) At the meeting convened pursuant to section 22 (3), the Directorate shall consider the application and examine the applicant to ascertain all conditions and requirements under this Act are met.

Consideration of an application.

(2) Every applicant for a licence under this Act shall appear before the Directorate in person or such other manner as the Directorate may permit, and shall satisfy the Directorate 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.

(3) Without prejudice to the generality of subsection (1) the Directorate shall, before issuance of any license, ensure that—

- (a) the premises are suitable to the nature of the licence being sought;
- (b) the premises conform to the 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, manufacture, or bottle an alcoholic drink possesses the necessary qualifications and relevant requirements stipulated under the Standards Act or any other law.

(4) The Directorate 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 court thereon.

27. (1) The Directorate shall, after considering the application under section 24, indicate in writing whether it objects to the grant of the licence applied for.

Grant of a licence.

(2) Where the Directorate has no objection to the application, it shall grant a licence to the applicant upon payment of the prescribed fee.

(3) The licence issued shall be in such form as may be prescribed and subject to such conditions as the Directorate may consider fit.

(4) Where the Directorate is not satisfied with the application under subsection (1), it may—

- (a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or
- (b) make comments and recommendations thereon and return it to the applicant within thirty days.

(5) The applicant to whom the application is returned under subsection (4) (b) may re-submit a revised application within six months of the date of notification.

(6) On receipt of any revised application under subsection (5), the Directorate shall, within three months determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

(7) Where the Directorate grants a licence under this section it shall, publish the grant in the *County Gazette*.

28. (1) Where premises are about to be constructed or reconstructed or are in course of construction or reconstruction for the purpose of being used for the sale of alcoholic drinks for consumption on such premises, any person having an interest in the premises may apply in the prescribed form to the Directorate for an assurance that, on the completion of the construction or reconstruction, a licence of the type to be specified in the application will be granted in respect of such premises.

Provisional licence.

(2) The provisions of sections 22 to 25 shall apply to

such applications, which shall be accompanied by a signed copy of the plans of such premises.

(3) The Directorate may, subject to such reasonable conditions as it may therein include, give to the applicant an assurance in the prescribed form that, on the completion of the premises, a licence of the type specified therein will be granted or it may refuse to give such an assurance.

(4) Where such an assurance has been given under subsection (3), the Directorate may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans submitted under subsection (2) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a licence of the type specified in the assurance in respect of the premises.

(5) Any assurance given under subsection (3) shall become ineffective and the Directorate shall not issue a licence if, between the date of the giving the assurance and the date of completion of the premises, the applicant becomes a person ineligible to be issued with a licence under this Act.

29. (1) The Directorate shall not grant a new licence or transfer a licence to any person who—

Persons not
eligible for a
licence.

- (a) has failed to satisfy the Directorate, 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 selling an alcoholic drink without a licence or offering or exposing it for sale, or of any offence against any law for the time being in force relating to the distillation, manufacture, sale or use of industrial alcohol;
- (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) in the case of a retail licence, is not resident in Kenya;
- (e) is under eighteen years of age; or

(f) is an undischarged bankrupt.

(2) The Directorate may refuse to renew an existing licence only when the Directorate 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 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 Directorate;
- (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, or do not comply with the reasonable requirements of the medical officer of health, and the owner of the premises or the licensee refuses or is unable to give satisfactory guarantees that the necessary repairs will be carried out, or due compliance effected, as the case may be, within a time specified by the Directorate.

30. (1) Except as otherwise provided in this Act, the Directorate may, subject to this Part, grant, renew or transfer 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.

Validity and
renewal of
licences.

(2) Every licence and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the Directorate.

(3) Every grant, renewal or transfer of a licence shall—

- (a) be subject to the payment of such fee or fees as

may be prescribed;

- (b) expire at the end of twelve months from the date of issue;
- (c) specify in the licence the hours within which the sale of alcohol is permitted.

(4) Where an application for the renewal of a licence has been made and the Directorate 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 Directorate 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 Directorate during the period of six months from the date of such refusal or cancellation, except at the discretion of the Directorate.

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

Licences to body corporate.

(2) The Directorate 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.

(3) 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.

32. (1) The types of licences which may be granted under this Act and the fees payable shall be those specified in the Third Schedule, and the provisions of that Schedule shall have effect in relation to the respective licences therein specified.

Types of licences.

(2) Save as otherwise provided in subsection (4), no licence may be granted to apply in respect of more than one premise.

(3) The Directorate shall, when a licence is granted, renewed, withdrawn or cancelled, include in the licence a sufficient description of the licensed premises.

(4) A licence may be granted to apply to more than one premise, subject to such conditions as may be specified in the licence and to specification of the addresses of all such premises in the licence.

33. (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 Directorate for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the Directorate may grant a transfer of such licence.

Transfer of licence.

(2) No further fee shall be payable in respect of a licence granted under subsection (1) 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 Directorate 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 Directorate, 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 Directorate.

(4) Every person to whom a licence may have been transferred under subsection (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.

34. (1) 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, or as the Directorate 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 Directorate at which the renewal of his licence has been refused, or on the day after the termination of his existing licence, whichever day is the later.

Renewal of
licence.

(2) If the grant or renewal of a licence is refused and the licensee appeals against the decision, the licensee shall, on payment of the prescribed fee for the appropriate licence, be entitled, unless the County Executive member directs otherwise, to a renewal of the licence which is the subject of the appeal to be valid only until the appeal has been heard and determined, such licence to commence on the day after the determination of his existing licence.

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.

Licence to be displayed.

(2) Where a wholesale alcoholic drink licence is granted so as to be applicable to more premises than one, it shall be displayed in the premises first named therein and copies thereof displayed in the other outlets.

(3) No licensee shall permit any other person to manage, superintend or conduct the day-to-day business of the premises in respect of which he is licensed except with the written consent of the Directorate and every person in respect of whom such consent is given shall be subject and liable to the same duties, obligations and penalties under this Act as the licensee.

(4) 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.

36. (1) A medical officer of health or any other authorized person may enter and inspect any licensed premises for the purpose of ascertaining any matter required under this Act.

Reports by medical officers and police officers.

(2) An officer who inspects any premises pursuant to subsection (1) shall report to the Directorate any deficient in sanitation or drainage conditions, or state of repair.

(3) 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 subsection (1) is required.

(4) A police officer referred to under subsection (1) shall report in writing to the Directorate every case of breach of any of the provisions of this Act or other law.

37. (1) Upon receipt of a report made under section 35 the Directorate shall—

Cancellation of
licence.

- (a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned, informing him that at a meeting of the Directorate to be held on a date to be specified, but not less than thirty days there from, the report will be considered by the Directorate; and
- (b) inform the medical officer of health, authorised officer or the police officer, as the case may be, of the date upon which the Directorate 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 Directorate.

(3) The Directorate, having duly considered the report and having heard the licensee, if he appears, may, if it deems fit, cancel the licence or make such an order in respect of such licence or the licensed premises specified therein as, in the opinion of the Directorate, is necessary.

(4) Any person aggrieved by the decision of the Directorate upon any such report may within twenty-one days appeal against the decision to the High Court, and the judgment of the High Court on such appeal shall be final.

(5) Where a licensee whose licence has been cancelled under subsection (3) appeals to the High Court under subsection (4), his licence shall not be deemed to be cancelled until the decision of the High Court is made known.

(6) The High Court, on an appeal under this section, may confirm or reverse the decision of the Directorate.

(7) If a licence is cancelled and no appeal is filed by the licensee against the cancellation, or if such appeal is dismissed by the High 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 Directorate 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 Directorate or of the High Court as the case may be.

PART IV—OFFENCES

38. (1) A person who knowingly employs—

- (a) a person under the age or apparent age of eighteen years;
- (b) a person who has been convicted of an offence under this Act or any other Act at any time in force regulating the sale of alcoholic drinks, to sell, control or supervise the sale of alcoholic drinks or to have the custody or control of alcoholic drinks commits an offence.

Employment of underage persons in sale of alcoholic drinks.

(2) Any person who contravenes the provisions of this section commits an offence.

39. (1) A person shall not knowingly obstruct or make a false or misleading statement to an authorised officer who is carrying out duties under this Act or any other law.

Obstruction.

(2) Any person who contravenes the provisions of this section commits an offence.

40. Any person who commits 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.

General penalty.

41. (1) Offences under this Act, other than the offences specified under this Act shall be cognizable offences.

Nature of offences.

(2) Where a corporation, registered society or other similar legal entity commits an offence under this Act, any director or officer of the corporation, society or legal entity who acquiesced in the offence commits an offence and shall, on conviction, be liable to the penalty provided for by this Act in respect of the offence committed by the corporation, society or legal entity, whether or not such corporation, society or legal entity has been prosecuted.

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.

(4) Any act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the act or omission of the employer, and any proceedings for an offence arising out of such act or omission may be taken against both the employer and the employee.

PART V—MISCELLANEOUS PROVISIONS

42. (1) The County Executive member may, on recommendation of the Directorate, make regulations generally for the better carrying out the objects of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe for conduct in licensed premises;
- (b) restrict access to licensed premises by persons under the age of eighteen years;
- (c) prescribe sale and consumption limits;
- (d) prescribe the hours within which the sale of alcoholic drinks shall be permitted;
- (e) prescribe the forms of applications, notices, licences and other documents for use under the Act;
- (f) prescribe the fees payable under the Act; and
- (g) prescribe or prohibit anything required by this Act to be prohibited.

(3) Without prejudice to subsection (1) the nature and scope of the Regulations shall—

- (a) be for the objects and purpose and set out under section 3 of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under this Act.

43. Without prejudice to the provisions of this Act, the Alcoholic Drinks Control Act, 2010 shall continue to apply in the county, save for the matters specifically provided in this Act. Savings.

FIRST SCHEDULE (s.8)

OATH OR SOLEMN AFFIRMATION OF DIRECTOR /MEMBER OF DIRECTORATE

I..... having been appointed as (Director/Member) of the Machakos County Directorate of Liquor Control, do swear/solemnly affirm that I will without fear or favour, affection or ill-will, discharge the functions of the office of (Director/ Member) of the Directorate, and that I will not, directly or indirectly, reveal any matter relating to such functions to unauthorized persons or otherwise in the course of duty.

So help me God.

Signed

.....
Sworn/Declared before me this day of.....
20

Before me

Signed.....

Chief Magistrate

SECOND SCHEDULE (s.17)

MEETINGS AND PROCEDURE FOR THE DIRECTORATE

1. The Director shall convene the first meeting of the Directorate.
2. The Directorate shall decide when and where it meets and the meetings shall be convened by the Director.
3. The Directorate shall have at least three meetings in every financial year and not more than five months shall elapse between one meeting and the next meeting.
4. Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member.
5. A meeting shall be presided over by the Director or in his or her absence, by a member elected by the members from among themselves.

6. If any person has a personal or fiduciary interest in any matter before the Directorate, and is present at a meeting of the Directorate or any committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.
7. A disclosure of interest made under paragraph 6 shall be recorded in the minutes of the meeting at which it is made.
8. A person who contravenes paragraph 6 commits an offence and is liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both.
9. No member or staff of the Directorate shall transact any business or trade with the Directorate.
10. Subject to paragraph 11, the quorum of the meeting shall not be less than half of the appointed members.
11. Where there is a vacancy in the Directorate, the quorum of the meeting shall not be less than three appointed members.
12. A question before the meeting shall be decided with a supporting vote of at least two thirds of the members present.
13. The Directorate shall keep minutes of proceedings of its meetings and decisions taken.

THIRD SCHEDULE-TYPES OF LICENSES

(s. 32)

FORM 1

**MACHAKOS COUNTY LIQUOR LICENCING ACT
APPLICATION FOR THE GRANT OR RENEWAL OF A
RETAIL LIQUOR LICENCE**

[To be completed in triplicate]

1. Name of applicant
2. Applicant's postal address
3. Address and plot number of premises
- [Give sufficient details adequately to identify the premises]
- Street, phone number
4. Name by which premises known
5. If for renewal, give expiring licence number
6. Licence to run from to
7. Type of licence applied for

Date

Signature of Applicant

Note.— If the application is for a wholesale alcoholic drinks licence to be applicable to more premises than one, paragraphs 3 and 4 must give particulars of all such premises.

FORM 2

**MACHAKOS COUNTY LIQUOR LICENCING ACT
APPLICATION FOR THE GRANT OR RENEWAL OF
A LICENCE TO MANUFACTURE
OR PRODUCE AN ALCOHOLIC DRINK**

1. Name of applicant
2. Type of business

The Machakos County Liquor Licensing Bill, 2014

(a) Sole proprietorship (the business is owned by one person)

Personal Identification Number

(b) Partnership

Names, Postal Addresses and Phone Contacts of the Partners

.....

.....

Contact Person

.....

(c) Limited Liability Company

Name, Postal Address and Phone Contacts of the Directors

.....

.....

.....

.....

.....

.....

.....

Contact person.....

3. Postal Address

4. Physical Address (exact place of manufacture)

5. Tel

6. Fax

7. E-mail

8. City, Town or Village

9. Business Registration No* or Certificate of Incorporation No*

10. Is this a New/Renewal application?

If Renewal, provide details of No

11. Do you have manufacturer's certification? Yes* No

12. List type and brands of alcoholic drinks to be manufactured

Alcoholic Drink Standards Certification Number

.....
.....
.....

13. Brief description of alcoholic drink(s)

(a) Unit Capacity in milliliters and Cost in Shillings of the alcoholic drink(s)

(b) Alcoholic content

(c) Mode of transportation and storage conditions

(d) Describe the purpose for which the alcoholic drink(s) will be used (e.g. retail, wholesale etc)

14. Declaration by Applicant:

I

hereby declare and certify that the information given in this application including attachmentsthereto is true and correct to the best of my knowledge and belief.

Date:

Signature:

Official Stamp

FORM 3

MACHAKOS COUNTY LIQUOR LICENCING ACT
APPLICATION FOR *TRANSFER/ REMOVAL OF ALCOHOLIC
DRINK LICENCE

[To be completed in triplicate]

1. Name of applicant

2. Applicant's postal address

3. Type and number of licence held

4. Address of premises specified therein

5. Name of transferee/address of premises to which it is desired to remove licence.....

Date

Signature of Applicant

FORM 4

MACHAKOS COUNTY LIQUOR LICENCING ACT
APPLICATION FOR A *TEMPORARY ALCOHOLIC DRINK
LICENCE/TEMPORARY EXTENSION ALCOHOLIC DRINK LICENCE

1. Name of Applicant
2. Applicant's postal address
3. Type and number of licence held
4. Type of licence required
- *5. Address to which temporary licence should be made applicable
- *6. Period for which temporary licence required
- *7. Extension times applied for

Date

Signature of Applicant

* Delete where not applicable.

FORM 5

MACHAKOS COUNTY LIQUOR LICENCING ACT
PARTICULARS CONCERNING CLUBS

[To be completed in block capitals]

THESE PARTICULARS relate to an application which has been made for the grant of a.

[Particulars of type of licence

[Full names of applicant] who intends to hold such licence on behalf of a club]

PARTICULARS

1. Name of club concerned
2. Address and situation of club premises
3. State whether the club is registered or exempted from registration under the provisions of the law for the time being relating to companies or societies

.....

4. Registration No.
 5. Particulars of types or categories of membership existing
 6. Total membership of club
 7. State whether entrance fees or subscriptions are payable
 8. Give details of the objects or purposes for which the club is established
 9. State whether any persons, other than members', may pay for or be charged for food, drink or accommodation offered by the club
 10. State whether the club is a members' club or a proprietary club; that is, who owns the club property, the freehold title or leasehold title to the land upon which the club is situate, and who retains any profits earned or made by the club.
 11. State whether any limit is imposed on temporary membership, and whether temporary members are required to pay both entrance fees and subscriptions
 12. Particulars of the applicant's office or position in the club
- I,the applicant, hereby
 declare that the foregoing particulars are correct in every detail.
- Date*
- Signature of Applicant*

FORM 6

MACHAKOS COUNTY LIQUOR LICENCING ACT ALCOHOLIC DRINK LICENCE

TYPE OF LICENCE

LICENCE No.

This alcoholic drink licence is granted under the provisions of the ...(name of County)..... COUNTY ALCOHOLIC DRINKS CONTROL ACT, to
of
 in respect of premises situate at

[Full details of premises to be inserted by issuing officer]

This licence is granted subject to the provisions of the ...(name of County)...
 COUNTY ALCOHOLIC DRINKS CONTROL ACT, and to the

following conditions
This licence shall expire on
Fees paid: KSh.
Date of issue
Directorate Chairperson,

FORM 7

MACHAKOS LIQUOR LICENCING ACT TEMPORARY ALCOHOLIC DRINK LICENCE

No.
This temporary alcoholic drink licence is granted under the provisions of the ...
County Alcoholic Drinks Control Act, toor
.....being the holder of a
.....alcoholic drink licence No.and
authorizes the licensee to sell
.....alcoholic drink at
This licence is valid from to
This licence is issued subject to the provisions of the ...(name of County)...
COUNTY ALCOHOLIC DRINKS CONTROL ACT and to the
following conditions
Fee paid: KSh.
Date of issue
Directorate Chairperson,

FORM 8

MACHAKOS COUNTY LIQUOR LICENCING ACT TEMPORARY EXTENSION ALCOHOLIC DRINK LICENCE

LICENCE No.
This temporary extension alcoholic drink licence is issued to

being the holder of a alcoholic drink licence, No. , and
authorizes the licensee to sell alcoholic drink at from
..... o'clock in the afternoon until o'clock in the noon
on

This temporary extension alcoholic drink licence is granted subject to the
provisions of theCounty Alcoholic Drinks Control Act, and to the following
conditions

.....
.....
.....

Fee paid: KSh.
Date of issue
Directorate chairperson

FORM 9

MACHAKOS COUNTY LIQUOR LICENCING ACT
ASSURANCE THAT A ALCOHOLIC DRINK LICENCE WILL BE
ISSUED

The Directorate ofCounty having satisfied me that he has an interest in
premises to be built/being built* at for the purpose of being
used for the sale of alcoholic drinks for consumption therein, and having supplied
me with a signed copy of the plans of the premises, he is hereby assured that, on
completion of the premises in accordance with the signed plans, and subject to
the provisions of, the ...(name of County)... COUNTY ALCOHOLIC DRINKS
CONTROL ACT, he will be granted a
alcoholic drink licence.

Fee paid: KSh.
Date of issue
Directorate Chairperson

THIRD SCHEDULE

LICENCE FEES

	Fees	
1. General retail alcoholic drink licence—	For 12 months	For 6 months
(a) In respect of premises situate within a City or a municipality	50,000	30,000
(b) In respect of premises situate within urban areas other than city or municipality	30,000	18,000
(c) In respect of premises situate elsewhere than a city, municipality and urban areas	15,000	9,000
2. General retail alcoholic drink licence (Off Licence)	For 12 months	For 6 months or less
(a) In respect of premises situate within a City or a municipality	24,000	14,000
(b) In respect of premises situate within urban areas other than city or municipality	18,000	10,000
(c) In respect of premises situate elsewhere than a city, municipality and urban areas	12,000	7,000
3. Brewer's alcoholic drink licence		
For each alcoholic drink or product manufactured:		
(a) One million litres and above per annum.....	1,000,000	

(b) Between five hundred thousand (500,000) and nine hundred ninety nine thousand, nine hundred and ninety nine (999,999) litres per annum.....	500,000	
(c) Above twelve thousand (12,000) but below four hundred and ninety thousand, nine hundred and ninety nine litres (499,000) per annum.....	250,000	
(d) Twelve thousand litres (12,000) and below per annum.....	50,000	
4. Wholesale alcoholic drink licence for each premise	50,000	30,000
5. (1) Bottler's alcoholic drink licence	250,000	150,000
(2) Depot licence, in addition to subparagraph (1), per depot.....	50,000	30,000
6. (1) Distributor alcoholic drink licence.....	50,000	30,000
(2) Depot licence, in addition to subparagraph (1) per depot.....	20,000	15,000
7. Hotel alcoholic drink licence—		
(a) In respect of premises situate within a city or a municipality	50,000	30,000
(b) In respect of premises situate within urban areas other city or municipality.....	30,000	20,000
(c) In respect of premises situate elsewhere than in a city, municipality and urban areas.....	20,000	12,000
(d) Where the licensee holds a general retail alcoholic drink licence in respect of the same premises	5,000	

8. Restaurant alcoholic drink licence—		
(a) In respect of premises situate within a city or a municipality	30,000	20,000
(b) In respect of premises situate within urban areas other city or municipality.....	20,000	12,000
(c) In respect of premises situate elsewhere than in a city, municipality and urban areas.....	10,000	6,000
9. (1) Club alcoholic drink licence (members' club)—		
(a) In respect of premises situate within a city or a municipality	100,000	
(b) In respect of premises situate within urban areas other city or municipality.....	80,000	
(c) In respect of premises situate elsewhere than in a city, municipality and urban areas	50,000	
(2) Club alcoholic drink licence (proprietary club or night club or discotheque)—		
(a) In respect of premises situate within a city or a municipality	100,000	
(b) In respect of premises situate within urban areas other city or municipality.....	80,000	
(c) In respect of premises situate elsewhere than in a city, municipality and urban areas.....	50,000	

10. Supermarket and franchised retail stores alcoholic drink licence—		
(a) In respect of supermarkets or franchised retail stores for each premises situate within city or municipality	80,000	
(b) In respect of supermarkets or franchised retail stores for each premises situate within urban areas other than city or municipality	50,000	
(c) In respect of supermarkets or retail chain stores for each premises situate elsewhere than in a city, municipality and urban areas	30,000	
11. Theatre alcoholic drink licence.....	15,000	7,000
12. Traveller's alcoholic drink licence		
(a) Where the licensee does not hold a general retail alcoholic drink licence in respect of the same premises.....	30,000	15,000
(b) Where the licensee holds a general retail alcoholic drink licence in respect of the same premises.....		
13. Railway restaurant car alcoholic drink licence, per car	5,000	
14. Steamship alcoholic drink licence, per steamship	30,000	
15. Temporary or occasional alcoholic drink licence, per day	30,000	
16. For transferring an alcoholic drink licence.....		1,000

17. For removing an alcoholic drink licence		500
18. For the issue of an assurance under the Act		1,000
19. For the issue of a duplicate licence.....		300

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to establish a legislative framework for the control of production, manufacture, sale, labelling, promotion, sponsorship and consumption of alcoholic drinks by the county government. This shall give effect to paragraph 4 of Part 2 of the Fourth Schedule to the Constitution and shall be in conformity of the objects and principles of devolution set out in Chapter Eleven of the Constitution.

The structure of the Bill is as follows:

Part I contains preliminary provisions including the long and short title, interpretation and objects and purpose the Bill.

Part II sets out the institutional framework that will facilitate the administration of the licensing function. The institutional framework includes the Directorate, whose main function is to receive and consider applications for different classes of licenses. The Directorate has the power to establish committees to enable it effectively discharge its functions. The Directorate is comprised of the Director and senior officers in the relevant government departments and representatives of the industry players. This Part also establishes the County Liquor Licensing Review Committee as the institution where persons aggrieved by the decisions of the Directorate would appeal for Review before proceeding to appeal to the High Court. There is also established a County Alcoholic Drinks Control Fund into which shall be paid all license fees raised pursuant to this Act.

Part III makes provisions relating to the licensing. It provides for the framework for applications, requirements for the grant of provisional or full licence and their renewal or cancellation. This Part outlines the persons not eligible for a licence and provides for an appeal to the high court on matters of refusal to grant a licence. It also provides the various types of licences, transfer or renewal and a special provision for licensing

of body corporate. In addition, it provides for requirement of, display of the licence and inspections by authorized officers. It is on the basis of an inspection report that the Directorate shall hold an hearing session to hear the licensee and thereafter to determine whether to cancel a licence or not.

Part IV provides for offences and general penalty.

Part V contains miscellaneous provisions. It provides for the power of the County Executive Member to make regulations on licensing and savings and transitional on matter relating to the pervious Alcoholic Control Act 2010.

The enactment of this Bill shall occasion additional expenditure which shall be provided for through the budgetary estimates.

Dated the 24th September, 2014.

JOSEPH ITUMO,
Member of the County Assembly.