

SPECIAL ISSUE

Taita-Taveta County Gazette Supplement No. 14 (Bills No. 13)



REPUBLIC OF KENYA

**TAITA-TAVETA COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

NAIROBI, 29th October, 2014

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**THE TAITA-TAVETA COUNTY CONTROL
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**THE TAITA-TAVETA COUNTY CONTROL
OF AIR AND NOISE POLLUTION,
AND PUBLIC NUISANCE BILL, 2014**
A Bill for

AN ACT of the Taita-Taveta County Assembly for the control and regulation of air and noise pollution, and public nuisance, and for connected purposes

ENACTED by the Taita-Taveta County Assembly, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Taita-Taveta County Control of Air and Noise Pollution, and Public Nuisance Act, 2014. Short title.

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

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

“air pollutant includes—

- (a) fume, smoke, particulate matter, vapour, gas, odorous substance or any combination thereof; and
- (b) any other substance or matter whether physical, chemical, biological, or radioactive, including source material, special nuclear material, and by-product materials, which is emitted into or otherwise enters the atmosphere from any object or activity and causes, or, if unabated, may cause air pollution, but does not include water vapour, steam condensate or any other emission exempted under any written law.

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

“authorized officer” means an authorized officer appointed under section 5(2);

“County” means the Taita-Taveta County;

“County Executive Committee” means the County

Executive Committee of the Taita-Taveta County government;

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

“Department” means the Taita-Taveta County department for the time being responsible for matters relating to the environment;

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

“protected area” means an area declared by the Taita-Taveta County government to be a protected area for grazing of animals under section 13;

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

- (a) is vested in the Taita-Taveta County government;
- (b) the public has the right to use; or
- (c) is shown as a public place on the general plan of the Taita-Taveta County filed in the lands registry, and includes a workplace and a public conveyance; and

“special area” means an area declared by the Department to be a special area under section 13.

3. The object and purpose of this Act is to provide for the prevention and control of—

Object and purpose of the Act.

- (a) air pollution;
- (b) noise pollution; and
- (c) public nuisance, including waste and disease causing pests.

4. The provisions of this Act shall be in addition to the requirements imposed by or under the Environmental Management and Co-ordination Act, 1999, and any other written law.

Application.

No. 8 of 1999.

PART II—ADMINISTRATION

5. (1) This Act shall be administered by the Department. Administration of the Act.

(2) The County Executive Committee Member shall, by notice in the Gazette, appoint such number of authorized officers as may be necessary for the proper administration of this Act.

(3) For purposes of this section, a member of the police force above the rank of Inspector may be appointed as an authorized officer under subsection (2).

6. In order to achieve the object and purpose of this Act, the County Executive Committee shall— Implementation of the Act.

- (a) formulate a policy on the prevention and control of air and noise pollution, and public nuisance;
- (b) receive any grant or donation for purposes of implementation of this Act;
- (c) consider all matters brought to its attention by the County government, and report its findings thereof;
- (d) take all measures possible to ensure activities within the County conforms with the county legislation on health, safety, environmental and other relevant standards;
- (e) control public nuisance, including waste, pests and insects;
- (f) establish and manage pounds, and determine the circumstances and conditions under which any article, vehicle, animal or bird found to be abandoned may be impounded and, if necessary, be sold or destroyed;
- (g) establish sufficient number of cemeteries and crematoriums, and provide for the burial of all destitute persons who die within the County, and maintain the cemeteries and crematoriums in such manner as to ensure they are not offensive, dangerous to health or attractive to pests or

other nuisance; and

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

PART III—AIR POLLUTION

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

Person not to cause air pollution.

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

Department to control air pollution.

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

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

Responsibility of owner or operator of controlled facility.

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

Responsibility of occupier or operator of premises.

L.N. 60/2007.

(2) Where the hazardous substances referred to in subsection (1) are not covered under the legislation referred to therein, the occupier or operator shall apply the guidelines provided by the manufacturer or supplier of the substances.

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

11. Subject to any written law, the following operations shall be permissible within the County provided

Permitted operations.

that they are not used for the disposal of refuse—

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

12. The Department may raise objection in the grant or renewal of a licence relating to—

Objection to grant or renewal of a licence.

- (a) the use of premises as a theatre, music hall, concert room or other place of amusement, or as a restaurant or eating house; or
- (b) the use of premises for the carrying on of any work or trade, on the ground that—
 - (i) the method adopted or proposed to be adopted by the applicant for preventing noxious or offensive vapours, gases or smells arising from such premises are not efficient; or
 - (ii) the granting of such licence or the renewal thereof would be calculated to cause public nuisance or annoyance to persons residing in the neighbourhood, or otherwise be against public interest.

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

Collaboration with other departments and agencies.

- (a) provide methods of abating and regulating air pollution;
- (b) determine protected areas and special areas for the purpose of this Act;
- (c) promote public awareness campaigns

relating to measures to safeguard the health of nonsmokers from second-hand smoke; and

- (d) take steps to clean up any air pollution where necessary.

PART IV—NOISE POLLUTION

14. A person shall not act in a way that directly or indirectly causes, or is likely to cause, noise pollution.

Person not to cause noise pollution.

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

Department to control noise pollution.

- (a) measures to control noise in special areas like school, hospital, residential areas, and libraries; regulating high noise levels associated with commercial machinery, public transportation and social activities; measures to regulate the businesses, factories and workshops which, by reason of noise, vibration or other cause, become a source of danger, discomfort or annoyance to the neighbourhood, and to monitor the fulfilment of the conditions subject to which such businesses, factories and workshops shall be carried on under this Act; and
- (b) any other steps for implementing the County policy and strategy on control of noise pollution under this Act.

PART IV—PUBLIC NUISANCE

16. (1) The Department shall—

Department to control public nuisance.

- (a) compel occupiers or, in the case of vacant premises, owners, to keep their premises free from offensive or unwholesome matter;
- (b) monitor the keeping of pets, birds and animals at their premises by any owner or occupier, so that their keeping or the premises are not constructed, situated, used or kept in such manner as to be a public nuisance, or otherwise offensive, or injurious to public health;

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

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

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

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

17. (1) Any person who, except with a written permit from the Department, and subject to such conditions as the Department may impose in this regard under this Act, keeps within an urban area of the County a game animal or reptile, or a donkey, bull or cow, goat, sheep or pig commits an offence.

Impounding of certain animals.

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

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

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

18. Any person who, on any street—

Offences on streets.

- (a) ignites any firework;
- (b) without a permit for the purpose of hawking, selling or distributing any article or event, shouts or uses any bell, gong, or other noisy instrument or loudspeaker;
- (c) without a permit, draws, wheels or drives any vehicles or carries any board or placard used solely or chiefly for the purpose of exhibiting advertisements;
- (d) performs any act contrary to public decency;
- (e) without authority, defaces the footway or roadway by writing or other marks;
- (f) 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;

- (g) throws down or leaves any orange peel, banana skin, or other substance likely to cause a person to fall down;
- (h) to the inconvenience or danger of any person, carries or conveys any bag of lime, charcoal, or other offensive material, timber or any pointed or edged tools or implements not properly guarded;
- (i) plays any game in such a manner as to cause the likelihood of damage to any property, or danger to any person;
- (j) while being in charge of any dog, allows such dog to foul any path and fails to remove the stool;
- (k) without a permit, lights or maintains, or suffers to be lit or maintained, any fire or brazier in the protected area;
- (l) rides or drives any animal on a footpath;
- (m) defecates or urinates;
- (n) touts for passengers; or
- (o) fails to observe traffic lights or the zebra crossing or any other public directional signs, commits an offence.

19. (1) The County Executive Committee Member may make regulations generally for the better carrying into effect the provisions of this Act. Regulations.

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

- (a) regulating the businesses, factories and workshops within the County which, by reason of smoke, fumes, chemicals, gases, dust, smell, or any other cause, may become a source of danger, discomfort or annoyance to the neighbourhood;
- (b) controlling emission of fumes from vehicles; and
- (c) such fees and expenses as may be payable

for any permit or other authorization relating to the control of air pollution, noise pollution or public nuisance to be issued under the Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a legislative framework for the regulation of both air and noise pollution, and public nuisance in the Taita-Taveta County. It complements the provisions of the Environmental Management and Co-ordination Act, 1999.

The Bill prohibits a person from causing both air and noise pollution within the Taita-Taveta County, and imposes certain responsibilities on the Department of the county responsible for the environment regarding protection from pollution and public nuisance.

The Bill further specifies operations which are permitted for purposes of control of pollution under the Bill.

The Department is also tasked with some responsibilities relating to public nuisance and is required to take some measures to control the nuisance, including impounding of animals. It also defines which acts or conduct constitute offences for purposes of the Bill.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 29th October, 2014.

RAYMOND MWANGULA,
Member of the County Assembly of Taita-Taveta County.