



## **KISUMU COUNTY GAZETTE SUPPLEMENT**

**Bill for Introduction into the Kisumu County Assembly**

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## Citation

An Act of the County Assembly of Kisumu to provide control and management of environmental matters and for connected purposes as envisioned in the Constitution of Kenya 2010

## **PART I – PRELIMINARY**

### 1. Short title

This Act may be cited as the Kisumu County Environmental Management Act ,2019.

### Interpretation

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

‘County’ means Kisumu County

‘Board’ means County Public Service Board of Kisumu

Constitution means the Constitution of Kenya 2010

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

‘Department’ means Kisumu County Environmental Management Department

“County Environment Action Plan” means a County Environment action plan prepared under section 23;

*“County Environment Committee” means a committee established under section 10*

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

“Annual report on the state of the environment” means the report prepared and issued under section 24;

*“Biological diversity” means the variability among living organisms from all sources including, terrestrial ecosystems, aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, among species and of ecosystems;*

*“biological resources” include genetic resources organisms or parts thereof, populations, or any other biotic component or ecosystems with actual or potential use or value for humanity;*

*“chemical” means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature and for the purposes of this Act includes industrial chemicals, pesticides, fertilizers and drugs;*

*“developer” means a person who is developing a project which is subject to an environmental impact assessment process under this Act;*

*“effluent” means gaseous waste, water or liquid or other fluid of domestic, agricultural, trade or industrial origin treated or untreated and discharged directly or indirectly into the aquatic environment;*

*“environment” includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;*

*“environmental impact assessment” means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment;*

*“Environmental Officer” means any environmental officer appointed or designated under section 65;*

*“environmental management” includes the protection, conservation and sustainable use of the various elements or components of the environment;*

*“environmental monitoring” means the continuous or periodic determination of actual and potential effects of any activity or phenomenon on the environment whether short-term or long term;*

*“environmental planning” means both long-term and short-term planning that takes into account environmental exigencies;*

*“ex-situ conservation” means conservation outside the natural ecosystem and habitat of the biological organism;*

*“in-situ conservation” means conservation within the natural ecosystem and habitat of the biological organism;*

*“financial year” means the period of twelve months ending on the thirtieth June in every year;*

*“genetic resources” means genetic material of actual or potential value;*

*“hazardous substance” means any chemical, waste, gas, medicine, drug, plant, animal or microorganism which is likely to be injurious to human health or the environment;*

*“hazardous waste” means any waste which has been determined by the County to be hazardous waste*

*“indigenous knowledge” means any traditional knowledge of sources, components, capabilities, practices and uses of, and processes of preparation, use and storage of plant and animal species and their genetic resources;*

“inter-generational equity” means that the present generation should ensure that in exercising its rights to beneficial use of the environment the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

“intra-generational equity” means that all people within the present generation have the right to benefit equally from the exploitation of the environment, and that they have an equal entitlement to a clean and healthy environment;

“lead agency” means any Government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of control or management or any element of the environment or natural resources;

“natural resources” has the meaning provided under Article 260 of the Constitution;

“natural resource agreements” means an agreement which involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource in Kenya;

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

“owner” in relation to any premises means— (a) the registered proprietor of the premises; (b) the lessee, including a sub-lessee of the premises; (c) the agent or trustee of any other owners described in paragraphs (a) and (b) of this interpretation section or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative; (d) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the rent if such premises were let to a tenant; and in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship; except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship’s operator, “owner” shall include such country and the master of the ship;

*“ozone layer” means the layer of the atmospheric zone above the planetary boundary layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;*

*“person” means a legal person;*

“pollutant” includes any substance whether liquid, solid or gaseous which— (a) may directly or indirectly alter the quality of any element of the receiving environment; (b) is hazardous or potentially hazardous to human health or the environment; and includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“polluter-pays principle” means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is subject to a licence under this Act;

“practicable” means reasonably practicable having regard, among other things, to local conditions and knowledge and the term “practicable means” includes the provision and the efficient maintenance of plants and the proper use thereof, and the supervision by or on behalf of the occupier of any process or operation;

“precautionary principle” is the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

“premises” include messagages, buildings, lands, and hereditaments in every tenure and machinery, plant or vehicle used in connection with any trade carried on at any premises;

“proponent” means a person proposing or executing a project, program or an undertaking specified in the Second Schedule;

“proprietary information” means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law in Kenya or by any international treaty to which Kenya is a party;

“radiation” includes ionizing radiation and any other radiation likely to have adverse effects on human health and the environment;

“regional development authority” means a regional development authority established by an Act of Parliament;

“regulations” mean regulations made under this Act;

“segment” in relation to the environment means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

“ship” includes every description of vessel or craft or floating structure;

“soil” includes earth, sand, rock, shales, minerals, vegetation, and the flora and fauna in the soil and derivatives thereof such as dust;

“strategic environmental assessment” means a formal and systematic process to analyse and address the environmental effects of policies, plans, programmes and other strategic initiatives;

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems;

‘Disposal site’ means county government’s designated solid waste disposal site

“sustainable use” means present use of the environment or natural resources which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystems;

“territorial waters” means territorial waters provided for under section 3 of the Maritime Zones Act (Cap. 371);

“trade” means any trade, business or undertaking whether originally carried on at fixed premises or at varying places which may result in the discharge of substances and energy and includes any activity prescribed to be a trade, business or undertaking for the purposes of this Act;

“traditional knowledge” means such knowledge as may be socially and culturally acquired within or without the context of conventional education by Kenyans;

“waste” includes any matter prescribed to be waste and any matter whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, composition or manner likely to cause an alteration of the environment;

“water” includes drinking water, river, stream, water-course, reservoir, well, dam, canal, channel, lake swamp, open drain, or underground water;

“wetland” means areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres;

“wildlife” has the meaning assigned to it in the Wildlife Conservation and Management Act, (No. 47 of 2013).

3. The Provisions of this Act shall apply in addition to other requirements imposed by or under the national laws regulating environmental management and other relevant legislation

## **PART II- GENERAL PRINCIPLES**

### **4. Entitlement to a clean and healthy environment**

(1) Every person in Kenya is entitled to a clean and healthy environment in accordance with the Constitution and relevant laws and has the duty to safeguard and enhance the environment.

(2) The entitlement to a clean and healthy environment under subsection (1) includes the access by any person in Kenya to the various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.

5. Every person shall cooperate with the county government to protect and conserve the environment and to ensure the ecological sustainable development and use of natural resources.

### **6. Access to information.**

- (1) Subject to the law relating to access to information, every person has the right to access any information that relates to the implementation of this Act that is in the possession of the County.

### **PART III- ADMINISTRATION**

7 (1) There is established in the County, a department of environmental management which shall be a department of the County Public Service

(2) The Department shall have all the necessary powers for the execution of its functions under this Act

(3)The Executive Committee Member shall ensure the Department has adequate human, financial, and other requisite resources to enable it carry out the functions assigned to it under this Act

8. The functions of the Department shall be to;

- a) Coordinate the implementation of this Act within the county
- b) Prepare and submit to the County Executive Member every two years, a report on the state of the environment in the Countyfor tabling in the County Assembly
- c) Prepare a County Environmental Action Plan for tabling in the County Assembly
- d) Develop, in collaboration with other county and national government institutions strategies for implementation of this act
- e) Undertake public education and awareness matters including public clean- ups and observance of environmental days
- f) Provide for landscaping and beautification of the county
- g) Designate dumping sites
- h) Ensure, in collaboration with relevant departments, that County plans and policies are subjected to strategic environmental Assessments
- i) Designate smoking zones
- j) Perform any other function that may be assigned by any national or county legislation

9. The County Executive Member shall;

- a) Prescribe activities for which records shall be kept under this Act, the contents of such records, and the manner in which they shall be kept
- b) Issue licenses to applicants subject to such lawful conditions as the Executive Committee Member may determine

10. The Governor shall, by notice in the Gazette, constitute a County Environment Committee of the County.

11. Every County Environment Committee shall consist of —

- (a) the member of the county executive committee in charge of environmental matters who shall be the chairperson;

(b) an officer of the National Environment Management Authority (NEMA) whose area of jurisdiction falls wholly or partially within the county who shall be the Secretary to the County Environmental Committee;

(c) one representative for each of the Ministries responsible for the matters specified in the *First Schedule at the county level*;

(d) two representatives of farmers within the county to be appointed by the Governor;

(e) two representatives of the business community operating within the concerned county appointed by the Governor;

(f) two representatives of the public benefits organizations engaged in environmental management programmes within the county appointed by the Governor in consultation with the National Federation of Public Benefit Organizations; and

(g) a representative of every regional development authority whose area of jurisdiction falls wholly or partially within the county.

(2) Appointments under this section shall be made in consultation with the relevant county organs that are representative of the nominees in the county.

(3) The Governor, in making the appointments under this section, shall ensure—

(a) Equal opportunities for persons with disabilities and other marginalized groups;

And (b) that not more than two-thirds of the members are of the same gender.

(4) The members of the County Environment Committee appointed under paragraphs (c) to (g) of subsection (2) shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

12. The County Environment Committees shall—

(a) Be responsible for the proper management of the environment within the county for which it is appointed;

(b) Develop a county strategic environmental action plan every five years; and (

c) Perform such additional functions as are prescribed by this Act or as may, from to time, be assigned by the Governor by notice in the Gazette.

#### PART IV-PROTECTION OF THE ENVIRONMENT

13. Protection of rivers, lakes, and wet lands

(1) No person shall, without the prior written approval given after an environmental impact assessment, in relation to a river, lake, sea or wetland in Kenya, carry out any of the following activities—

- (a) erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, lake, sea or wetland;
- (b) Excavate, drill, tunnel or disturb the river, lake, sea or wetland;
- (c) introduce any animal, whether alien or indigenous, dead or alive, in any river, lake, sea or wetland; (d) introduce or plant any part of a plant specimen, whether alien or indigenous, dead or alive, in any river, lake, sea or wetland;
- (e) Deposit any substance in a lake, river or wetland or in, on or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake, sea or wetland;
- (f) Direct or block any river, lake, sea or wetland from its natural and normal course;
- (g) Drain any lake, river, sea or wetland;
- Or (h) any other matter prescribed by the Cabinet Secretary on the advice of the Authority.

14. The County Executive Member shall, in consultation with the relevant lead agencies and stakeholders, issue guidelines and prescribe measures for co-management of critical habitats within or around the lake basin, wetland, or forest and such measures shall take into account the interests of the local communities resident therein.

15. Protection of hill tops, hill sides, mountain areas and forests

- a. The County shall, in consultation with the relevant lead agencies, develop, issue and implement, procedures, guidelines and measures for the sustainable use of hill sides, hill tops, mountain areas and forests and such guidelines, procedures and measures shall control the harvesting of forests and any natural resources located in or on a hill side, hill top or mountain area so as to protect water catchment areas, prevent soil erosion and regulate human settlement.
- b. Every County Environment Committee shall identify the hilly and mountainous areas under their jurisdiction which are at risk from environmental degradation. Hilly or mountainous area is at risk from environmental degradation if—
  - i. it is prone to soil erosion;
  - ii. landslides have occurred in such an area;
  - iii. vegetation cover has been removed or is likely to be removed from the area at a rate faster than it is being replaced;
  - iv. or (any other land use activity in such an area is likely to lead to environment degradation.
- c. Every County Environment Committee shall specify which of the areas are to be targeted for afforestation or reforestation.
- d. The County Environment Committee shall take measures, through encouraging voluntary self-help activities in their respective local community, to plant trees or other vegetation in any areas which are within the limits of its jurisdiction.
- e. The guidelines issued and measures prescribed by the County shall include those relating to—

- i. appropriate farming methods;
  - ii. carrying capacity of the areas described in subsection (1) in relation to animal husbandry;
  - iii. measures to curb soil erosion;
  - iv. disaster preparedness in areas prone to landslides;
  - v. the protection of areas referred to in subsection (1) from human settlements;
  - vi. the protection of water catchment areas; and
  - vii. any other measures the Department considers necessary.
- f. The County Environment Committee shall be responsible for ensuring that the guidelines and measures issued in respect of their counties are implemented.
- g. A person who contravenes any conservation measure prescribed by the County, or fails to comply with a lawful conservation directive issued by the County Environment Committee commits an offence.
16. Conservation of energy and planting of trees or woodlots;  
The Department shall, in consultation with the relevant lead agencies,
- i. promote the use of renewable sources of energy
  - ii. promote measures for the conservation of non-renewable sources of energy;
  - iii. Take measures to encourage the planting of trees and woodlots by individual land users, institutions and by community groups.

*17. Protection of environmentally significant areas -define*

The Department may, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the management and protection of any area of environmental significance

**18. Climate change**

The County Executive Member shall, in consultation with relevant lead agencies, bring into force provisions on the Climate Act 2016 with specific reference to;

- i. Accessing the Climate Fund
- ii. Mainstreaming climate action within the County Planning Documents
- iii. Promoting local adaptation and Mitigation actions
- iv. Promoting public- private partnerships in climate action

**PART V-WASTE MANAGEMENT**

19. Duty to manage waste

(1) Waste Management shall be a shared responsibility amongst all actors including the County Government, generators, transporters, occupiers of premises and contracted service providers

(2). The County Executive Member shall, issue guidelines for the handling, storage, transportation, segregation and destruction of any waste.

#### 20. Prohibition against dangerous handling and disposal of wastes

(1) No person shall discharge or dispose of any wastes, whether generated within or outside the County, in such manner as to cause pollution to the environment or ill health to any person.

(2) No person shall transport any waste other than—

(a) in accordance with a valid licence to transport wastes issued by the County;

and (b) to a wastes disposal site established by the County

(4) Every person whose activities generate wastes shall employ measures essential to minimize wastes through treatment, reclamation and recycling.

(5) Any person who contravenes any provisions of this section shall be guilty of an offence and will be responsible for the safe removal and disposal of such waste

#### 21. Application for waste licence

(1) Any person intending to transport wastes within the County, operate a wastes disposal site or plant or to generate hazardous waste, shall prior to transporting the wastes, commencing with the operation of a wastes disposal site or plant or generating hazardous wastes, as the case may be, apply to the County Executive Member in writing for the grant of an appropriate licence.

(2) A licence to operate a waste disposal site or plant may only be granted subject to the payment of the appropriate fee and any other licence that may be required by the relevant Local Authority.

(3) Where the County Executive Member rejects an application made under this section, it shall within twenty one days of its decision, notify the applicant of the decision specifying the reasons therefore.

(4) The Executive Committee Member may, where a licensee fails to comply with the whole or parts of the licensing conditions and upon giving notice cancel or vary the license

(5) The Executive Committee Member may by a notice in the gazette impose a charge on waste generators and handlers for purposes of sustainable waste management

#### 22. Zoning

The County Executive Committee Member may, by notice in the gazette, establish zones for purposes of proper waste management within the County

Any person who causes littering within the County precincts outside the designated places shall be guilty of an offense

The County Shall be in charge of waste disposal sites

PART VI- COUNTY ENVIRONMENTAL PLANNING AND MONITORING (*Kisumu County needs to agree on this provisions and which actors will be involved*)

23. The County Environment Committee shall, every five years;

(1) prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly.

(2) Every County Environment Committee, in preparing a county environment plan, shall undertake public participation and take into consideration every other county environment action plan already adopted with a view to achieving consistency among such plans.

Purpose of Environmental Action Plans.

(1) The purpose of environmental action plan is to co-ordinate and harmonize the environmental policies, plans, programmes and decisions of the national and county governments, as the case may be, in order to

(i) minimize the duplication of procedures and functions; and promote consistency in the exercise of functions that may affect the environment;

and (iii) prevent unreasonable actions by any person, state organ or public entity in respect of the environment that are prejudicial to the economic or health interests of other counties or the country.

24. County State of Environment Report

The Department shall periodically produce a County State of Environment Report

The Purpose of the County State of Environment will be to monitor the environmental standards in the County

The County State of Environment Report Shall be tabled in the County Assembly for debate and adoption

PART VII-AIR POLLUTION;

25. The Executive Committee Member may

- (a) determine measures necessary to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both,
- (b) issue guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution; and
- (c) do all such things as appear necessary for the monitoring and controlling of air pollution
- (d) issue licenses where necessary for purposes of controlling air pollution

26. The Department Shall

- (a) undertake public awareness campaigns to minimize air pollution
- (b) regulate smoking in public places

27. The Following operations shall be permissible under this Act

- (a) back- burning to control or suppress wildfires
- (b) fire- fighting and other emergency rehearsals
- (c) burning for purposes of public health protection

28. The Department Shall liaise with relevant lead agencies regarding;

- (a) methods for abating and regulating air pollution
- (b) determining protected areas and special areas
- (c) Air pollution clean up
- (d) Declaring any activity exempt from provisions of this Act

29. All Public entertainment places must designate smoking and non- smoking areas for purposes of protecting the health of the general public

30. Prohibition against air pollution

. (1) No person shall—

- (a) act in a way that directly or indirectly causes, or is likely to cause immediate or subsequent air pollution;
- (b) cause or allow the scattering, dispersion or spreading of visible particulate matter from material being transported.

31. Causing air pollution constitutes an offence . A person who—

- (a) intentionally or negligently commits any act or omission which causes or is likely to cause air pollution;

- (b) or (b) acts 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;
- (c) or (c) refuses to comply with a directive issued under this Part—  
commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or both. Ambient

## PART VIII-NOISE (AND EXCESSIVE VIBRATION) POLLUTION

### 32. General prohibitions

(1) Except as otherwise provided in this Act, a person shall not make any loud, unreasonable, unnecessary or unusual noise which annoys, disturbs, injures or endangers the comfort, repose or safety of other persons and environment.

(2) In determining whether noise is loud, unreasonable, unnecessary or unusual, the following factors may be considered—

- (a) time of day;
- (b) proximity to residential area;
- (c) proximity to schools and other controlled areas;
- (d) whether the noise is recurrent, intermittent or constant;
- (e) level and intensity of the noise;
- (f) whether the noise has been enhanced in level or range by type of electronic or mechanical means;
- or (g) whether the noise may be controlled without much effort or expense to the person making the noise.

*(3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both*

### 33. Permissible noise levels.

A person shall not make, continue or cause to be made or continued any noise in excess of the noise levels set in the **Second Schedule** to this Act, unless such noise is reasonably necessary to the preservation of life, health, safety or property.

Measurements and control of noise levels.

(1) A person shall not cause noise from any source which exceeds any sound level as set out in the applicable column in the **second Schedule to this Act**.

(2) Measurement of noise levels shall be undertaken by **authorized officers**.

(3) Where a person exceeds permissible levels in subsection (1), the authorized officer may—

- (a) take reasonable measures to remedy the situation or apply to a competent court for appropriate relief;
- and (b) recover costs for reasonable remedial measures which should have been undertaken by any person who is or was responsible for, or who contributed to, the excessive noise.

**(4) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or both.**

34. Exemptions. The provisions of this Part shall not apply to—

- (a) the emission of noise for the purpose of alerting persons to the existence of an emergency;
- (b) the emission of noise in the performance of emergency response;
- (c) the emission of noise in connection with the protection of the health and safety of residents or their property during emergency conditions;
- (d) warning devices necessary for the protection of public safety, such as police, fire and ambulance sirens, and train horns;
- or (e) parades, National or County celebrations.

35; Prohibitions

(1) A person shall not use or operate any radio or receiving set, musical instrument, phonograph, television set, any other machine or device for the producing or reproducing of sound or any other soundamplifying equipment in a loud, annoying or offensive manner such that the noise from the device—

- (a) interferes with the comfort, repose, health or safety of members of the public;
- (b) creates a risk thereof, within any building or, outside of a building, at a distance of 30 meters or more from the source of such sound;
- or (c) interferes with the conversation of members of the public who are 30 meters or more from the source of such sound.

(2) A person shall not cause noise from any source which exceeds any sound level as set out in the applicable column in the **Second Schedule to this Act.**

(3) For the purposes of this section, a person includes—

- (a) in the case of an offence that occurs on any public property where permission was obtained to use that public property, the person or persons who obtained permission to utilize that property for that event;
- and (b) in case of an offence that occurs on private property, any adult person or persons who live in or on the property that is involved in the offence.

**(4) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or both. Parties and social events**

36. Responsibility

(1) Any person in charge of a party or other social event which occurs on any private or public property shall ensure that the party or event does not produce noise in a loud, annoying or offensive manner such that noise from the party or event interferes with the comfort, repose, health or safety of members of the public within any building or, outside of a building, or recklessly creates the risk thereof, at a distance of 30 meters or more from the source of such sound

- (2) For the purposes of this section, a person in charge of a party or other social event—
- (a) that occurs on any public property shall include the person or persons who obtained permission to utilize that property for that event;
  - (b) that occurs on private property shall include the person who owns the premises involved and any adult person who lives in or on the premises involved in such party or social event;
  - (c) shall include the person who is listed on a permit issued by the County Government with respect to such event.

**(3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or both.**

37. Hawkers, peddlers, touts and street preachers.

- (1) Subject to provisions of subsection (2), a person shall not—
- (a) preach, tout, advertise, promote or sell any goods;
  - (b) or; (b) engage in any commercial activity. In such manner, as to emit noise by shouting within the Central Business District of any town, market, a residential area, a silent zone, or any other area declared as a silent zone.
- (2) The provisions of subsection (1) shall not be construed to prohibit the selling by shouting of merchandise, food and beverages at licensed sporting events, parades, fairs, circuses and other similar licensed public entertainment events.

**(3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or both.**

38. Operating machinery etc.

- (1) Any person wishing to operate or repair any machinery, motor-vehicle, construction equipment or other equipment, pump, fan, airconditioning apparatus or similar mechanical device; or engage in any commercial or industrial activity, which is likely to emit noise shall carry out such activity or activities within the relevant levels prescribed in the second Schedule to this Act.
- (2) Any person engaging in industrial activity, who has any of the sources of noise emission shall install, calibrate, maintain and operate equipment for continuously monitoring and recording emission levels.
- (3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or imprisonment to a term not exceeding six months or both.**

39. Noise from motor vehicles, motorcycle. etc. .

- (1) A person shall not operate a motor-vehicle, motor cycle or other motorized machine which produces any loud and unusual sound that exceeds limits prescribed in the **second Schedule**.
- (2) A person shall not at any time sound the horn or other warning device of a vehicle except when necessary to prevent an accident or an incident.
- (3) The provisions of the Traffic Act, Chapter 403, Laws of Kenya shall apply to this section.

**(4) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or both**

40. Noise from construction, demolition, mining or quarrying sites.

(1) Except for the purposes specified in subsection (2), a person shall not operate construction equipment or perform any outside construction or repair works as to emit noise in excess of the permissible levels as set out in the **Second Schedule to this Act**.

(2) Sub-section (1) shall not be deemed to prohibit—

(a) any work of an emergency nature;

(b) public utility construction, or, with respect to construction of public works, projects exclusively relating to roads, bridges, airports, public schools and sidewalks: Provided that, if any domestic power tool, including mechanically powered saws, sanders, grinders and lawn and garden tools used outdoors, is **operated during the night time hours**, person shall not operate such machinery so as to cause noise within a residential building or across a residential real property boundary where such noise interferes with the comfort, repose, health or safety of members of the public within any building or, outside of a building, at 30 metres or more from the source of the sound.

(3) Any person who contravenes the provisions of sub-section (1) commits an offence.

41. PROVISIONS RELATING TO LICENSING PROCEDURES FOR CERTAIN ACTIVITIES.

(1) Where a sound source is planned, installed or intended to be installed or modified by any person in such a manner that such source shall create or is likely to emit noise, or otherwise fail to comply with the provisions of this Act, such person shall apply for a licence to the Executive Committee Member.

(2) A person shall not use any sound-amplifying equipment in such a way that such equipment is or is likely to be heard outside of any building between 9:00 p.m. of any day and 7:30 a.m. of the next day, without a valid license.

(3) Where any person uses or plans to use a public-address system which is likely to emit sound outside of a building, such person shall secure a license under this Act.

(4) An application for the license shall provide the following information—

(a) the reasons for such usage, including a demonstration as to why it is desirable or necessary that the sounds involved be authorized by a license pursuant to this Act;

(b) plans and specifications for use;

(c) noise-abatement and control methods to be used with respect to the sound source involved;

(d) the period of time during which the license shall apply;

(e) the name of the person(s) who is responsible for ensuring that the activity complies with any license issued for it pursuant to this Act;

and (f) evidence that notification of the application for the license has been given to each person reasonably expected to be affected by the noise, the content of such notification and the manner in which such notification has been given, if the event is not a community-wide or public event: Provided that the notification shall state that any person objecting to the granting

of such a license may contact the appropriate office to whom the application is being made to express his or her opposition to the granting of the license.

(5) Any license granted shall state that the license only applies to this Act.

(6) In order to further the purposes of this Act and to facilitate compliance and enforcement, the department shall have power to attach such other conditions in relation to this Act as they may deem necessary to a license or permit issued thereunder

#### 42. License Application .

(1) An application for a license shall be made to authorized licensing officer appointed in writing by the Executive Committee Member in the form prescribed in the **Third Schedule** to this Act and shall be accompanied by the prescribed fee.

(2) When determining if a license is to be issued, the factors the authorized licensing officer shall consider may include—

(a) the level of the noise;

(b) the proximity of the noise to accommodation or residential facilities;

(c) the time of the day or night the noise occurs; (d) the time duration of the noise; and

(e) the impact of the noise on persons living or working in different places or premises who are affected by the noise.

(3) The authorized licensing officer shall process the application for a license within a reasonable time from the date of receipt of the application.

(4) A license shall contain requirements relating to the manner in which the activities are to be carried out and may, in particular specify—

(a) the equipment or material to be used;

(b) the hours during which the activities may be carried out;

(c) the level of noise which may be emitted in excess of the permissible levels;

(d) the activities and the method by which they are to be carried out; and

(e) the steps proposed to be taken to minimize noise resulting from the activities.

(5) The authorised licensing officer shall issue a license in the form prescribed in the **Fourth Schedule** to this Act.

(6) A license issued under this section shall be valid for a period not exceeding seven days provided that the Executive Committee Member may grant permission for the issuance of licenses to periods exceeding seven days in exceptional circumstances.

(7) Any applicant who is aggrieved by the refusal of the authorized licensing officer to grant a license may appeal to the Executive Committee Member.

#### 43. Improvement notice.

(1) Where an authorized officer has reasonable cause to believe that any person is emitting or is likely to emit noise in any area in excess of the maximum permissible levels, or is causing or is likely to cause annoyance, the authorized officer may, with the approval of the Executive Committee Member, serve an improvement notice on that person in the directing all or any or all of the following—

(a) the cessation of the noise or prevention or discontinuance of any annoyance, or prohibiting or restricting its occurrence or reoccurrence;

(b) compliance with the permissible noise levels;

- (c) reduction of the level of noise emanating from the premises to a level specified in the notice; (d) compelling enforcement officers to take measures to prevent, discontinue or stop the emission of the noise;
- (e) the prevention of any subsequent increase in the level of noise emanating from the premises or area;
- (f) issue such directions intended to contribute to the reduction of emission of noise from or within the vicinity of a specified area;
- (g) the execution of such works, and the taking of such steps, as may be specified in the notice; or (h) carrying out of any other order as may be issued.

**(2) Any person who fails or refuses to comply with the conditions in an improvement notice commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.**

Closure notice .

Where there is continuous emission of noise after the authorized officer has issued improvement notice, the authorised officer may, with the approval of the Executive Committee Member, and in consultation with the Executive Committee, order the closure of an establishment or an undertaking emitting such noise.

Existing activities. Any person carrying out activities that emit noise immediately before the coming into force of this Act shall, within six months from the coming into force thereof take necessary measures to ensure compliance with the provisions of this Act.

#### 44. Responsibility of department to control noise pollution

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

- (a) Measures to control noise in special areas including schools, hospitals, residential areas, and libraries;
- (b) Regulating high noise levels associated with commercial machinery, public transportation and social activities;
- And (c) measures to regulate the businesses, factories and workshops which, by reason of noise, 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 out.

## PART IX-WATER POLLUTION

### 45. Effluent to be Discharged only into Sewer

(1) Every owner or operator of a trade or industrial undertaking if within a distance of one hundred meters from a public sewer shall discharge any effluent or any other liquid waste originating from the trade or industrial undertaking into an existing sewerage system;

### 46. Duty of the County

It shall be the duty of the county to ensure that any discharge into a public sewer or any other water receiving body is within the stipulated water quality standards in this Act.

47. Failure To Submit Reports.

Failure to submit such waste water analytical reports and within the specified period to the Department shall be an offence and upon conviction be liable to a **fine not less than one hundred thousand shillings or to imprisonment not exceeding twelve months or to both such fine and imprisonment.**

Any person who discharges effluent that does not conform to the county set trade effluent standards in the **schedule of this Act** shall be guilty of an offence

48. Discharge of Trade Effluent

(a) no person shall discharge any trade effluent into any public sewer without a written permission from the county;

(b) where the discharge of effluent in (a) above is into a watercourse, such effluent should be within the standards in the **relevant schedules of this Act** failure to which is an offence;

(c) where the discharge of an effluent is into a public sewer or any other receiving body, effluent shall be within the acceptable limit set in the **relevant schedule of this Act**;

(d) the county may at any time revoke the permission granted under paragraph (a) above and attach condition it deems fit to be followed

Effluent Pre-treatment.

Any firm, factory or petrol station or any other facility which discharges waste water shall have an approved waste water or units effluent pre-treatment unit or oil interceptor as the case may be.

**Any person who contravenes this part shall be guilty of an offence as is liable to a fine of not less than one hundred thousand shillings or to six months imprisonment or both such fine and imprisonment.**

49. Discharge License .

(1)No owner or operator of a trade or industrial undertaking shall discharge any effluent or other liquid waste originating from the trade or industrial undertaking without a discharge license obtained from the county. Such license may be issued with or without conditions.

(2)The proprietor or owner of a trade or an undertaking shall, prior to being granted a license to discharge effluents in the environment by the county, install an appropriate plant for the treatment of such effluents before they are discharged into the environment or public sewer.

(3)The county may in writing refuse or cancel any effluent discharge license if the holder of the license contravenes any provisions of this Act or if the holder fails to comply with any condition specified in the license.If the county considers it in the interest of the environment or in the public interest to do so.

50. Unique enterprises such as car washes shall be sited so as to minimize pollution of lakes, rivers and other water bodies.

## PART X- SAND HARVESTING

### 51. Duty of the Department

The department shall ensure that all sand harvesting activities are carried out in a sustainable manner

The Department shall issue guidelines on sustainable sand harvesting

### 52. licensing

The Executive Committee Member shall issue licenses to regulate sand harvesting

53. Licenses for sand harvesting shall only be issued to registered SACCOs upon payment of the prescribed fee

54. The Executive Committee Member may revoke a sand harvesting license having given the concerned SACCO a notice of 21 days

### 55. Requirement for EIA

Prior to licensing and commencement of sand harvesting activities, the SACCO shall obtain an Environmental Impact Assessment license from NEMA

Failure to obtain a sand – harvesting license; or to observe the conditions therein constitutes and offense

## PART XI- NUISANCES

56. No person shall cause a nuisance or shall suffer to existing land or premises owned or occupied by him or of which he is in charge of any environmental nuisance or other condition liable to promote environmental degradation or harm human health

57. The County shall take all lawful measures to prevent or cause to be remedied all conditions liable to be injurious to the environment and human health while invoking both the polluter-pays principle and the precautionary principal

Failure to observe provisions of this part constitutes and offense

## PUBLIC SPACES

### 58. Definitions of Public Places.

A public place shall include but not limited to road reserves, streets, corridors, cinema halls, eating places, public offices, open spaces, shops, newspapers buying areas, recreational areas and any other area where members of public meet for whatever reason.

### 59. Private Sector Involvement in Beautification.

The county shall allow private sector involvement in greening and environmental beautification of the town on terms and conditions agreed by the involved parties. A memorandum of agreement or understanding will be entered between the county and the partner.

60. Cancellation of Memorandums of Understanding.

The county shall cancel or withdraw the memorandum of understanding if the partner fails to comply withal or any of the condition(s) agreed thereof.

61. Any owner or occupier of any land in which an open space is available and/or which is suitable for greening, if so required by the county shall plant grass, flowers, shrubs or trees unless it is being prepared for any other immediate approved use.

62. Protection of Bushes from Clearance.

No person shall cut, prune or permit cutting or pruning of trees, of flowers or shrubs within the county's jurisdiction without first obtaining a written authority from the Department, failure to which it shall be an offence.

63. Penalty

(1) Anyone found having contravened the preceding Act in this part Shall be guilty of an offence and upon conviction shall be liable to a **fine not exceeding twenty thousand shillings or to an imprisonment not exceeding nine months or to both such fine and imprisonment**

. (2) In case of subsequent offence to a fine not exceeding fifty thousand or an imprisonment not **exceeding nine months or to both such fine and imprisonment.**

Failure to Trim (3) Any person(s) who fails to trim his or her flower bed hedge or fence to a size which in the opinion of the Director is reasonable hedges or fences shall be guilty of an offence.

(4) Any person who grows or causes growth or allows growth of tall grass, or vegetation of more than half-foot high in his or her plot or within a radius of five meters from the boundaries of the plot shall be guilty of an offence.

64. Public Spaces and any Garden not to be used without authority

(1) Any person who uses for any purpose any public park or public place without authority from the Department shall be guilty of an offence.

(2) Any person who occupies a public place without authority of the county shall be guilty of an offence.

PART III—OFFENCES AND ENFORCEMENT

65. Appointment of Environmental Officers

The Executive Committee Member shall appoint and gazette suitable officers to be environmental officers

66. Duties of Environmental Officers.

(a) An Authorized Officer shall-

(i) monitor compliance with the environmental standards established under this Act;

(ii) Perform such other functions as may be required under this Act.

(b) An environmental officer may, in the performance of his duties under this Act, at all reasonable times and without a warrant—

(i) Enter any land, premises, vessel, motor vehicle or ox drawn trailer and make examination and enquiries whether the provisions of this Act are being complied with;

(ii) require the production of, inspect, examine and copy licenses, registers, records and other documents relating to this Act or any other law and as may be prescribed, submit such samples for test and analysis;

(iii) seize any article, vessel, motor vehicle, plant, equipment, substance or any other thing which he reasonably believes has been used in the commission of an offence under this Act;

(iv) order the immediate closure of any manufacturing plant or other establishment or undertaking which is causing or is likely to cause in his opinion significant pollution to the environment;

(v) Require the owner or operator of such establishment or undertaking to implement any remedial measures that the environmental officer may direct;

(vi) Issue an improvement notice requiring the owner or operator of any manufacturing plant, vessel, and motor vehicle or other establishment or undertaking to cease any activities deleterious to the environment and to take appropriate remedial measures, including the installation

of new plant and machinery if necessary, within such reasonable times as the Director may determine;

(vii) with the assistance of a county enforcement officer or a police officer arrest any person whom he reasonably believes has committed an offence under this Act;

(viii) install any equipment on any land, premise, vessel or motor vehicle for purposes of monitoring compliance of this Act; (c) any establishment or undertaking closed down under this section may resume its operations only with the written approval of the County Executive Member.

## **FIRST SCHEDULE**

(national government ministries to be represented in the County Environment Committee)

Agriculture.

Economic Planning and Development.

Education.

Energy.

Environment.

Finance.

Fisheries.

Foreign Affairs.

Health.

Industry.

Law or Law Enforcement.

Local Government.

Natural Resources.

Public Administration.

Public Works.

Research and Technology.

Tourism.  
Water Resources.

## SECOND SCHEDULE

### MAXIMUM PERMISSIBLE NOISE LEVELS

Zone	Sound level limits dB (A) (leq, 14h)		Noise Rating Level (NR) (leq, 14h)	
	Day	Night	Day	Night
Silent zone	40	35	30	25
Place of worship	40	35	30	25
Residential indoor outdoor	45	35	35	25
	50	35	40	25
Mixed residential	55	35	50	25
commercial	60	35	55	25

Time Frame

Day: 6:01 am- 8:00 pm

Night: 8:01pm-6:00 am

### MAXIMUM PERMISSIBLE NOISE LEVELS FOR CONSTRUCTION SITES

(Measurements taken within the facility)

Facility		Maximum noise level permitted (leq) in dB (A)	
		Day	Night
i	Health facilities; educational facilities; homes for special needs people	60	35
ii	residential	60	35
iii	Other areas	75	65

### MAXIMUM PERMISSIBLE NOISE LEVELS FOR MINES AND QUARRIES

(Measurement taken within the facility)

Facility	Limit value
i	For any building used as a health facility, educational institution, convalescence home, old age home or residential;
ii	For any building used as a residential and one or more of the following purposes; commerce, small scale production, entertainment, industry, commerce

**THIRD SCHEDULE**

**APPLICATION FOR A LICENSE TO EMIT NOISE/ VIBRATIONS IN EXCESS OF PERMISSIBLE LEVELS**

1. Name of applicant.....

Address.....

ID/ Passport Number.....

Telephone number.....

Email.....

2. Physical Address /premises where the noise/ excessive vibrations will be produced

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

3. Source of noise.....

Activity.....

Purpose.....

4. Description of neighbourhood (within a 2km radius)

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

5. Measures to control/ mitigate the noise/ excessive vibrations

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

6. Intended time of noise/ excessive vibrations.....

7. Date.....Signature of applicant

**FOR OFFICIAL USE ONLY**

Date Received

Fees paid

Approved/ Not Approved

Comments

Name of Officer.....sign.....Date.....

**FOURTH SCHEDULE**

**LICENSE TO EMIT NOISE/ VIBRATIONS IN EXCESS OF PERMISSIBLE LEVELS**

License ..... No.  
.....NAME.....  
.....is hereby licensed to emit noise/ vibrations in excess of  
permissible ..... levels  
at.....  
.....  
..... (Geographical location)

Activity.....  
License valid from .....to.....  
From the hours of .....to.....  
Of each day

License conditions

- 1.
- 2.
- 3
- 4
- 5

Date.....sign.....seal