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THARAKA NITHI COUNTY BILLS, 2024

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**THARAKA NITHI COUNTY ALCOHOLIC DRINKS CONTROL
(AMENDMENT) BILL, 2024**

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to amend the Tharaka Nithi County Alcoholic Drinks Control Act, 2021 and for connected purposes

ENACTED by the County Assembly of Tharaka Nithi, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Tharaka Nithi County Alcoholic Drinks Control (Amendment) Act, 2024.

Amendment of section 2

2. The Tharaka Nithi County Alcoholic Drinks Control Act, 2021 in this Act referred to as the “principal Act” is amended by inserting the following new definition in proper alphabetical sequence—

“bar and restaurant” means any premises on which the business of serving food or drinks for reward is carried on but does not include an eatery;

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

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

“hotel” means premises as defined under the Hotels and Restaurants Act, Cap. 494;

“public interest” means the welfare of the public as compared to the welfare of a private individual or company. All of society has a stake in this interest and the government recognizes the promotion of and protection of the general public.

Amendment to section 3

3. The principal Act is amended in section 3 by inserting a new sub-section as follows—

(k) to facilitate the application and enforcement of the National Government standards on the regulation of manufacture, advertisement, sale and consumption of alcoholic drinks;

Amendment to section 6 (2)

4. The principal Act is amended in section 6(2) by inserting a new subparagraph as follows—

- (k) consider appeals from the decisions of the Sub-county Committee under this Act;
- (l) receive, vet and approve applications for distribution and manufacturer's licenses;
- (m) prescribe the conditions prerequisite and applicable to the various licenses obtainable under this Act;
- (n) oversee the operations of the Sub-County Committees;
- (p) ensure that all alcoholic drinks distributed, wholesaled in the County are from approved manufacturer, as per national manufacturers catalogue and that alcoholic drinks sold have met the national standards set out by the relevant authority provided that a manufacturer domiciled in the county, will be subject to pay a trade license determined from time to time by the Committee.

Amendment to section 6 (3) (e)

5. The Principal Act is amended in section 6(3) by substituting the word “bi-annually” with “quarterly” immediately after the word report.

Amendment to section 6(4)

6. The principal Act is amended in section 6 (4) by—

- (a) inserting the following new sub-paragraphs;
 - (j) the director in charge of enforcement;
 - (k) one person designated by Kenya Bureau of Standards;
 - (l) a representative of Non-Governmental organizations dealing with drug rehabilitation in the County Nominated by the National Council for Non-State Actors appointed by the Executive Committee Member.

(b) inserting new sub-sections immediately after sub-section (11) as follows—

(12) The Committee may co-opt a person whose expertise is necessary for effective discharge of its mandate.

(13) The Executive Member shall ensure as much as practicable the constitutional gender rule is adhered to while observing regional balance.

Amendment of section 7(4)

7. Section 7(4) of the principal Act is amended by—
- (a) adding new sub-paragraphs as follows—
 - (i) the person responsible for matters relating to Sub-county enforcement;
 - (j) a representative of Non-Governmental organizations dealing with drug rehabilitation in the County nominated by the National Council for Non-State Actors appointed by the Executive Committee Member.

Amendment of section 13

8. Section 13 of the principal Act is amended by inserting a new subsection immediately after sub-section (2).

Amendment

(3a) Notwithstanding the provisions of sub-section (2), any person who makes an application for a new business for a period not exceeding six months shall pay half of the license fee set out in the Third Schedule.

Amendment of section 11

9. The principal Act is amended in section 11 (1) by deleting the word “an” appearing immediately before the word “of ”

Amendment of section 15

10. The principal Act is amended by deleting Section 15 in its entirety and substituting it as follows—

License of premises where alcoholic drinks are sold

15. A (1) The Directorate shall not grant a new license for the sale of an alcoholic drink to be consumed on the premises or sale of an alcoholic drink in an off-licence retail outlet commonly referred to as wines and spirits unless the Directorate is satisfied that—

- (a) it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises or in the off-licence retail outlet in the particular locality in respect of which the application is made; and
- (b) that the number of such premises in respect of which such licenses have already been granted is insufficient for the requirement of the locality as provided under the Fourth Schedule:

Provided that no license shall be granted to sell alcoholic drinks in any institution of basic education including primary and secondary schools or any residential area or villages as have been demarcated by or under the relevant written laws;

- (c) the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements;
- (d) the premises, other than hotel premises, in respect of which the application is made are located at least three hundred metres from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years:

Provided that where a hotel is located within three hundred metres from the school, it shall not bear any outdoor promotion or advertisement related to alcoholic drinks;

- (e) the premises in respect of which the application is made is located within the areas prescribed under the Fifth Schedule.

Despite sub-section (1), the Directorate may issue a license to a premise located within three hundred metres of any nursery, primary, secondary or other learning institution for persons under the age of eighteen years only if— .

- (i) the premises do not share a wall with the institution and are sealed off by a physical and non-transparent barrier that ensures zero visibility of the premise from the locality of the institution;
- (ii) the premises displays on its outside any of the prescribed health messages in a clear and visible manner;
- (iii) the applicant does not engage in activities that interfere with learning in the institution or activities that calculated to attract persons under the age of eighteen to the premises.

(2) The Directorate shall not grant a license for the sale of an alcoholic drink in—

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

(a) no license shall be granted for sale of alcoholic drinks in the premises or for sale of an alcoholic drink in an off-licence retail outlet commonly referred to as wines and spirits in any area except the urban areas stipulated under the Fifth Schedule; and

(4) The Executive Member shall, subject to the approval by the County Assembly, designate other towns and centers where premises may be licensed for the sale and consumption of alcoholic drinks.

(5) The Executive Member shall, while designating the towns and centers under subsection (4) take into consideration be the public order, social order, public health, public safety and public security interests and factors in relation to the specific urban area.

Insertion of a new section

11. The principal Act is amended by inserting a new section immediately after section 24.

Revocation or cancelation of a licence

24.A (1) The authorized officer may on recommendation of the Sub-county Committee suspend or revoke a license where it is satisfied that—

- (a) the licensee has contravened the provisions of this Act or other relevant written laws including noise pollution and general nuisance;
- (b) the licensee has contravened the conditions of declaration made in accordance with this Act;
- (c) the business to which the license relates is being conducted in a manner that is contrary to the provisions of this Act;
- (d) the licensee has failed to comply with the conditions of a license granted under this Act; or any other requirement for the grant of a license under this Act has been violated.

(2) Notwithstanding sub-section (1), the authorized officer shall not suspend or revoke a license unless the licensee—

- (a) has been served with a notice of not less than seven days of the intention to suspend or revoke the license and the reasons for such intention; and
- (b) has within fourteen days from the date of such service, been given the opportunity to be heard by the Sub-county Committee convened for that purpose.
- (c) has been notified of the decision of the Sub-county Committee.

Amendment of section 29

12. The principal Act is amended in section 29 by adding a new sub-section immediately after sub-section (4) ;

(5a) It shall constitute an offence for any person to sell, supply or serve alcoholic beverages to any individual who is identifiable as a pupil or student by virtue of their uniform or dress whether or not such individual is of legal age to consume that alcohol.

Amendment of section 25

13. The principal Act is amended by inserting a new section immediately after section 25.

List of suppliers to be maintained by licensee

S. 25 A (1) A licensee under this Act shall—

- (a) maintain a list of all alcoholic drinks manufactured, distributed or sold in the prescribed form;
- (b) maintain a list of persons who supply to the licensed persons inputs for manufacturing alcoholic drinks in the case of a manufacturer and the persons who supply alcoholic drinks to a licensed person in the prescribed form; and
- (c) submit in the list described under sub-sections (a) and (b) in each quarter to the licensing officer.

(2) The Executive Member shall facilitate the establishment of an online system for submitting the lists described under subsection (1).

(3) A person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding ten thousand or to imprisonment for a term not exceeding thirty days.

Amendment of section 31

14. The Principal Act is amended in section 31 (2) by deleting the word “an” appearing immediately before the word “of”.

(2) The Principal Act is amended in section 31 (3) by deleting the word “an” appearing immediately before the word “of”.

(3) The Principal Act is amended in section 31 (4) by deleting the word “an” appearing immediately before the word “permit”.

Amendment of section 32 (1)

15. The Principal Act is amended in section 32 (1) by deleting the word “an” appearing immediately before the word “knowingly”.

Amendment of section 33 (1)

16. The principal Act is amended in section 33(1) by deleting the word “an” appearing immediately before the word “of”.

Insertion of a new section

17 principal Act is amended by inserting news section immediately after section 35.

Production, sale and distribution of traditional” liquors

35. A (1) No person shall produce, distribute, sell or offer for sale traditional liquor without a license issued by the Directorate.

(2) A person shall be eligible to be granted with a license under subsection (1) if—

- (a) that person has been vetted by the Sub-county Committee and a recommendation has been made to the Management Committee to issue the person with a license;
- (b) the premises for the production or manufacture of the traditional liquor has been approved by the County Public Health Department; and
- (c) the process for the production or manufacture of the traditional liquor conforms to the standards prescribed by the Kenya Bureau of Standards.

(3) No person shall produce or manufacture traditional liquor in excess of the limits that shall be prescribed by the Directorate.

(4) No person shall produce or manufacture traditional liquor in a residential area or a dwelling house:

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

Amendment of section 36

18. The Principal Act is amended in section 36 by deleting the word “an” appearing immediately before the word “consume”.

Amendment of section 37 (5)

19. The Principal Act is amended in section 37 (5) by deleting the word “an” appearing immediately before the word “sells”.

Amendment of section 38 (1) and (2) (b)

20 (1) The Principal Act is amended in section 38 (1) by deleting the word “an” appearing immediately before the word “sells”; and

(2) The principal Act is amended in section 38 (2)(b) by deleting the word “an” appearing immediately before the word “consume”.

Amendment of section 39

21 The principal Act is amended in section 39 by deleting the word “an” appearing immediately before the word “offers”.

Amendment of section 49

22. The principal Act is amended in section 49 by deleting the word “an” appearing immediately before the word “of”.

Amendment of section 52 (1) (a)

23. The principal Act is amended in section 52 (1) (a) by deleting the word “an” appearing immediately before the word “examine”.

Amendment of section 60(4)

24. The principal Act is amended in section 60 (4) by deleting the word “an” appearing immediately before the word “whom”.

Amendment of the First Schedule

25. (1) That the first schedule of the principal Act be amended in Item 1 by substituting the word “own” with “on” immediately before the word Bar; and

(2) Paragraph (a) is amended by substituting the word “5.00p.m.” with “2.00 p.m.” immediately before the word Hours;

Insertion of a new clause

26. The County Executive Committee Member responsible for matters relating to Alcoholic Drinks Control in Tharaka Nithi County shall within 30 days after publication of this amended Act cause to be made relevant Regulations setting the licensing cycle and all other matters deemed necessary for implementation of this Act.

Insertion of the Fifth Schedule

27. The principal Act is amended by inserting a new Fifth Schedule as follows—

FIFTH SCHEDULE

Permitted Areas of Sale of alcoholic drinks

Zone	Urban Area
<p>Area A</p> <p><i>(All licenses are permitted including off-licence wholesale, franchise premises and night clubs)</i></p>	<p>Chuka Town, Chogoria Town , Marimanti Town and Kathwana Town.</p>
<p>Area B</p> <p><i>(On Bar, off license-Wines and Spirits and Bar and Restaurant are permitted)</i></p>	<p>Kathwana, marimanti, itugururu, chogoria, chuka, mitheru, kaanwa, tunyai, Gatunga, Nkondi, Kibugua, Chiakairiga, Mukothima, Magutuni, Marima, Kajuki, Kibunga</p>
<p>Area C</p> <p><i>(On Bar and off license -wines and Spirits)are permitted</i></p>	<p>Mutindwa, Karaa, Kabeche, Mbogori, Pole Pole, Nturiri, Igwanjau, Iriga, Nguruki, Kaare, Gaciegoki, Muthenge Kiriani, Weru – Chuka, Kajuki, Mwoga, Thuchi Barrier, Kambandi, Kirege, Nkondi, Kwang’ombe, Makutano, Kathangachini, Rubate, Ikuu, Mugumoni, Gatithini, Gaciongo, Gacauni, Kaarwa, Kamatumo, Ura Gate/ Irereni Matiri, Ubarini, Kianamuthi, Gacera Aka, Kanyuru, Kembasi, Nkarini, Karocho, Ruungu, Mugwi, Kamangu, Ng’onya, Kariini, Kirangare, Kaiga kamwe, Igumo, Giekuri, Gachugini, Kithiori Miomponi, Turima tweru, Tumbura, Mucubi, Kaboto, Kiamiramba. Kwa Nziku Irunduni, Manyanga, Bondeni, Karwamba, Kamwimbi,Kiaritha,</p>

	Kabururu, Makanyanga, Mwoga, Kajuki, Kanthanje, Igambang'ombe, Kangu, Ngeru, Kiairugu/Chaigu, magundu, Matinia, Karingaga, Nkoru, WeruMuthambi, Muthiru, Kariani, Karigini, Mumbuni, Ntakani, Mwiria, Kibura, Ikumbo, Mukui, MiraaMiraja, Kangutu, Chiakanyinga, Ndunguri, Kiang'onde, Kiereni, Makawani, Nthigiriri, Mpiani, Kambungu, Ibithe, Mukunga, Kabururu, Mikuu, Kiracha, Katharaka, Wiru, Munga, Muthiro, Kirundi, Kamacabi, Kathathani, , Kamunguongo, Matinia, Kambandi, Muganani, Mubukoro, Kirege, Karewa, Kamara, Majira, Mariango, Kamathini.
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NOTE:

THE CLASSIFICATION ABOVE IS AS PROVIDED FOR IN THE RELEVANT COUNTY LEGISLATION ON CLASSIFICATION OF COMMERCIAL CENTRES OR AS AMENDED FROM COUNTY FINANCE LEGISLATION FROM TIME TO TIME

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Tharaka Nithi County Alcoholic Drinks Control Act, 2021. It proposes to make some changes to the composition of the Tharaka Nithi County and Sub-county Liquor licensing Committees as well as to review some of the provisions in the principal Act.

The Bill has 26 Clauses.

The enactment of this Bill shall not occasion additional expenditure of Public Funds.

Dated the 9th February, 2024.

NANCY MUTHONI,
Chairperson, Committee on Trade.