

THE THARAKA NITHI COUNTY PUBLIC NUISANCES BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short Title
- 2—Interpretation
- 3—Objectives

PART II - ADMINISTRATIVE PROVISIONS

- 4—Administration of this Act
- 5—Functions and powers of the Department
- 6—Department to declare public nuisances
- 7— What constitutes a nuisance?
- 8—Parasites deemed nuisances
- 9—Abatement of nuisances
- 10—Department may enter agreements
- 11—Protected areas

PART III - LICENCES AND PERMITS

- 12— Application for licence or permit
- 13— Refusal to issue, suspension or cancellation of licence
- 14— Period and renewal of licences
- 15—Permitted operations
- 16— Department may order inspection
- 17— Powers of entry
- 18— Powers of authorized officers

PART IV MISCELLANEOUS PROVISIONS

19— Public participation

20— Establishment of pounds

21—Directly or indirectly causing nuisance, air or noise pollution

22—.Offences

23— General penalty

24— Regulations

25—Savings

A BILL FOR

AN ACT of Tharaka Nithi County Assembly to provide for the regulation and management of public nuisances including air and noise pollution 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 Tharaka Nithi County Public Nuisances Act, 2021.

Interpretation **2.** In this Act-

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

“air pollutant means any-

(a) fume, smoke, particulate matter, vapour, gas, odorous substance or any combination thereof; or

(b) any other substance or matter whether physical, chemical, biological, or radioactive, including source material, special nuclear material, and by-product materials, which is emitted into or otherwise enters the atmosphere from any object or activity and causes, or, if unabated, may cause air pollution, but does not include water vapour or, steam;

“authorized officer” means any person authorized by the county to perform the functions of an authorized officer under this Act,;

“county executive committee member” means the county executive committee member responsible for matters relating to air pollution, noise pollution, nuisances;

“Department” means the Department, of the County responsible for matters relating to public nuisances;

"excessive vibration" means the presence of vibration which is of such intensity, duration, frequency or character as to annoy, disturb, or cause or tend to cause adverse psychological or physiological effects on persons, or to damages or tend to damage personal or real property;

“owner” mean the person in control of a building, premises or site;

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

“nuisance” includes air pollution and noise pollution;

“protected area” means an area declared by the county to be a protected area under this Act;

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

(a) is vested in the county;

(b) the public has the right to use; or

(c) is shown on a general plan of the county as being provided for or reserved for the use of the public in the county; and

(d) for purposes of smoking includes any indoor, enclosed or partially enclosed area which is open to the public or any part of the public and includes a workplace and a public conveyance as well as the areas within five meters of any doorways or entrances of the public place, workplace or conveyance;

"public vessel" includes a hand cart, bicycle, public service vehicle, train, aircraft or any other means of public transport, whether publicly or privately owned or operated;

"smoking" means inhaling or exhaling the smoke of any tobacco, cigarettes, or other product and includes the holding of, or control over any ignited tobacco product or device containing an ignited tobacco product.

"sound" as an oscillation in pressure, particle displacement, particle velocity or other Physical parameter in a medium with internal forces that causes compression and rarefaction of that medium.

"protected area" means a place declared to be a protected area under section 7.

Objectives

3. The objective of this Act is to empower the county to take all lawful, necessary and reasonably practicable measures for –
 - (a) the maintenance of the county, at all time, in a clean and sanitary condition;
 - (b) the abatement and prevention of public nuisances;
 - (c) the remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health, or which has been declared to be a public nuisance under this Act.

PART II – ADMINISTRATIVE PROVISIONS

Administration of this Act

4. (1) This Act shall be administered by the county department responsible for matters relating to public nuisances (in this Act referred to as the Department).
- (2) The county shall by notification in the *County Gazette* appoint such number of officers to be authorized officers for the purposes of this Act, as may be necessary.

Functions and powers of the Department

5. It is the responsibility of the Department to implement the objectives of this Act and to this end the Department shall-

- (a) formulate the county policy and legislation on public nuisances;
- (b) subject to relevant legislation, receive any grant or donation;
- (c) issue, suspend or revoke licenses and permits;
- (d) impose fines for breach of any conditions imposed in any license or permit issued under this Act;
- (e) charge fees for any services the county may render under this Act;
- (f) declare any area to be a protected area;
- (g) monitor the abatement of nuisances within the County
- (h) perform any other function as may be directed by the County Executive Committee Member for the effective implementation of this Act.

Department to declare nuisances

6. (1) The Department may, after public participation, through a gazette notice declare an act to be a nuisance.

(2) The Department shall make regulations on any nuisances that may be declared under subsection (1).

(3) A public nuisance under subsection (1) shall, provide adequate notice to affected persons where the nuisance requires adjustment in buildings or trading sites or otherwise affects the livelihood of any person.

(4) Notwithstanding subsection (1) the provisions of sections 13 and 14 are hereby declared to be nuisances.

What constitutes a public nuisance

7. (1) The following are deemed to be public nuisances and shall be dealt with in the manner provided in this Act -

- (a) any vessel, and any railway carriage or other conveyance, in such a state or condition as to be injurious or dangerous to health;
- (b) any dwelling or premises or part thereof which is or are of such construction or in such a state or so situated or so dirty or so verminous as to be, in the opinion of the medical officer of health, injurious or dangerous to health, or which is or are liable to favour the spread of any infectious disease;
- (c) any street, road or any part thereof, any stream, pool, ditch, gutter, watercourse, sink, water-tank, cistern, water-closet, earth-closet, privy, urinal, cesspool, soak away pit, septic tank, cesspit, soil-pipe, waste-pipe, drain, sewer, garbage receptacle, dust-bin, dung pit, refuse-pit, slop-tank, ash-pit or manure heap so foul or in such a state or so situated or constructed as in the opinion of the medical officer of health to be offensive or to be injurious or dangerous to health;
- (d) any well or other source of water supply or any cistern or other receptacle for water, whether public or private, the water from which is used or is likely to be used by man for drinking or domestic purposes or in connection with any dairy or in connection with the manufacture or preparation of any article of food intended for human consumption, which is in the opinion of the medical officer of health polluted or otherwise liable to render any such water injurious or dangerous to health;
- (e) any noxious matter, or waste water, flowing or discharged from any premises, wherever situated, into any public street, or into the gutter or side channel of any street, or into any watercourse, irrigation channel or bed thereof not approved for

the reception of such discharge;

- (f) any stable, cow-shed or other building or premises used for keeping of animals or birds which is so constructed, situated, used or kept as to be offensive or which is injurious or dangerous to health;
- (g) any animal so kept as to be a nuisance or injurious to health;
- (h) any accumulation or deposit of refuse, offal, manure or other matter whatsoever which is offensive or which is injurious or dangerous to health;
- (i) any accumulation of stones, timber or other material if such in the opinion of the medical officer of health is likely to harbour rats or other vermin;
- (j) any premises in such a state or condition and any building so constructed as to be likely to harbour rats;
- (k) any dwelling or premises which is so overcrowded as to be injurious or dangerous to the health of the inmates, or is dilapidated or defective in lighting or ventilation, or is not provided with or is so situated that it cannot be provided with sanitary accommodation to the satisfaction of the medical officer of health;
- (l) any public or other building which is so situated, constructed, used or kept as to be unsafe, or injurious or dangerous to health;
- (m) any occupied dwelling for which such a proper, sufficient and wholesome water supply is not available within a reasonable distance as under the circumstances it is possible to obtain;
- (n) any factory or trade premises not kept in a cleanly state and free from offensive smell arising from any drain, privy, water-closet, earth-closet or urinal, or not ventilated so as to destroy or render harmless and inoffensive as far as practicable any gases, vapours, dust or other impurities generated, or so overcrowded or so badly lighted or ventilated as to be

injurious or dangerous to the health of those employed therein;

- (o) any factory or trade premises causing or giving rise to smells or effluvia which are offensive or which are injurious or dangerous to health;
- (p) any area of land kept or permitted to remain in such a state as to be offensive, or liable to cause any infectious communicable or preventable disease or injury or danger to health;
- (q) any chimney sending forth smoke in such quantity or in such manner as to be offensive or injurious or dangerous to health;
- (r) any cemetery, burial-place or place of sepulture situated or so crowded or otherwise so conducts as to be offensive or injurious or dangerous to health;
- (s) any noise or sound that is so loud whether caused by music instrument, radio, television or any such device or through some other activity whether deliberate or not in such a state or condition as to be injurious or dangerous to health; and
- (t) any act, omission or thing which is, or may be. dangerous to life, or injurious to health.
- (u) Any motor cycles without mufflers and with mounted electronic sound emitting devices.

(2) The author of a nuisance means the person by whose act, default or sufferance nuisance is caused, exists or is continued, whether he is the owner or occupier or both owner and occupier or any other person.

Parasites deemed public nuisance

8. (1) For the purposes of this Act -

- (a) all collections of water, sewage, rubbish, refuse, ordure or other fluid or solid substances which permit or facilitate the breeding or multiplication of animal or vegetable parasites of men or domestic animals, or of insects or of other agents, which are known to carry, such parasites or which may otherwise cause or facilitate the infection of men or

domestic animals by such parasites;

(b) any collection of water in any well, pool, gutter, channel, depression, excavation, barrel, tub, bucket or any other article, and found to contain any of the immature stages of the mosquito;

(c) any cesspit, latrine, urinal, dung-pit or ash-pit found to contain any of the immature stages of the mosquito, shall be nuisances liable to be dealt with in the manner hereinbefore provided for the treatment of nuisances.

(2) It is the responsibility of the Department to prevent the proliferation of mosquitoes, insects and other parasites in any waters, swamps, dumpsites and other public areas within the county.

Abatement
nuisances

of **9.** The Department shall put measures in place for the abatement of public nuisances, air and noise pollution and shall in particular-

(a). promote alternative cooking technologies that are non polluting and which assist to preserve and expand forest cover within the county

(b)promote the development of well ventilated buildings through regulation and supervision;

(c) regulate smoking in enclosed public places;

(d) promote tree planting and the expansion of forest cover;

(e) take measures to abate emissions from vehicles and other sources of air pollution;

(e) regulate noise in special areas; and

(f) regulate high noise levels associated with commercial and associated machinery, public transportation and social activities.

Department may
enter agreements

10.(1) The Department may, on behalf of the county government, enter into agreements for the mutual

benefit of the county and any company for the abatement of public nuisances.

(2) The Department may provide selected infrastructure (street light poles, street or park benches, litter bins etc) to a company in exchange for investment opportunities.

(3) At the expiry of an agreement, under paragraph (2), a company shall surrender the infrastructure provided under subsection (2) to the county government.

(4) An agreement made under this section shall not exceed three years.

Protected areas

11. (1) The Department may declare an area to be a protected for purposes of this Act.

(2) Without prejudice to subsection (1) the following are deemed to be protected areas-

(a) natural recreational spaces and urban conservation areas;

(b) cultural and national heritage areas and sites;

(c) gazetted buildings and historical monuments;

(d) hospitals and schools.

PART III - LICENCES AND PERMITS

Application for license or permit

12. (1) The owner or occupier of any premises proposing

(a) to establish a business or trade that is likely to attract pests or cause other nuisance; or

(b) to install a source of air or noise pollution,

shall, at least three months before the work or trade is begun or the source of pollution is installed, make an application to the Department for the relevant licence or permit, specifying the-

- (a) the nature of the work or trade the applicant intends to start or is engaged in or the source of the pollution;
 - (b) plans of any building or other construction intended for use by the business;
 - (b) fuels and equipment to be used in the source creating pollution, or material which may attract pests or other thing that may cause nuisance;
 - (c) details of the method to be used to-
 - (i) prevent the proliferation of pests or other nuisance;
 - (ii) arrest smoke, dust, grit, fumes and odour;
 - (iii) control or regulate noise levels.
 - (d) height of any chimney connected to a source of air pollution;
 - (e) area and address in which the work or trade, or the source of pollution, attracting pests or causing other public nuisance is intended to be installed.
- (2) On receipt of an application under subsection (1), the Department, if satisfied that the work or trade or the source of pollution, attracting pests or causing other public nuisance meets with its requirements on the abatement or control of the nuisance, shall within three months from receipt of an application approve the application and issue a license or permit subject to any conditions it deems fit.
- (3) If the Department does not approve the application, it shall notify the applicant of its reasons, in writing, within three months from the date of receipt of the application.
- (4) Notwithstanding subsection (2) no trade which has a high potential of attracting pests or creating air or noise pollution shall be sited in a residential area.

(5) Any person who builds or installs a new source of pollution in contravention of the provisions of this section or who having been licensed fails to build in conformity with the conditions contained therein is guilty of an offence and on conviction shall be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.

Refusal to issue, suspension or cancellation of license or permit

13. (1) The Department may refuse to issue, or may suspend or cancel a license or permit with respect to any license or permit relating to-

(a) the use of premises as a theatre, music hall, concert room or other place of entertainment, or as a restaurant or bar;

(b) for the carrying on of any work or trade; on grounds that-

(i) that the method adopted or proposed to be adopted by the applicant for preventing noxious or offensive vapours, gases or smells, excessive noise, the proliferation of pests or other nuisance arising from such work or trade are not efficient;

(ii) that the granting of such license or the renewal thereof would cause nuisance or annoyance to persons residing in the neighbourhood.

(2) The Department may cancel any license or permit granted by it on any such grounds as it may by law specify and, in addition, on any of the following grounds,—

(a) with respect to any license, that it is contrary to the public interest for such license to remain in force; and

(b) with respect to any license specified in subsection (1) (b)—

(i) that the premises to which the license relates or any adjacent premises owned or occupied by the holder of the license

are frequented by persons of bad character;

(ii) that the continuation of such license in force would cause nuisance or annoyance to persons residing in the neighborhood; and

(c) with respect to any license for the carrying on of any work or trade—

(i) that the premises used by the holder of the license have become unsuitable for the purpose;

(ii) that the methods adopted by the applicant for preventing pests, noxious or offensive vapours, gases, smells, noise or other nuisance arising from the work or trade have become ineffective.

(3) The Department shall inform the owner of the work, trade or premises of its decision under this section within 14 days of the receipt of a complaint from any interested person.

Period
and
renewal of
licences

14. (1) A licence shall be in force for the period specified in the licence but not exceeding 12 months from the date of its issue or of any renewal of the licence.

(2) A licence may, on the application of the owner of a place of business subject to this Act and on payment of the prescribed fee be renewed from time to time.

(3) The Department may, in its discretion, refuse to renew a licence.

Permitted
operations

15. Notwithstanding the provisions of sections 12 and 13 the following operations shall be permissible without an application, provided that they are not used for the disposal of refuse-

(a) fire fighting and back-burning to control or

suppress wildfires;

- (b) fire fighting rehearsals or drills conducted by fire service agencies;
- (c) traditional and cultural burning of grasslands for purposes of farming;
- (d) burning for purposes of protection of public health.
- (e) emissions of noise for the purposes of alerting persons to the existence of an emergency and emissions of noise in performance of emergency response.
- f) parades and National Celebrations.

Department to
order inspection

16.(1) The Department may, through an authorized officer, at any reasonable time carry out the inspection of –

- (a) a vehicle releasing visible exhaust emissions;
- (b) any waste incinerator or fuel burning equipment;
- (c) any source of air or noise pollution;
- (d) any processes generating emissions;
- (e) any market, store, dumpsite work or trade which due to its nature has the potential to attract pests, odour or other nuisance;
- (f) any place which is the subject of a complaint under this Act.

(2) Where an inspection under this section indicates the owner or person in control of any work, trade machinery or vehicle has committed a breach of any conditions imposed on the license, the Department shall suspend the license until such time the breach has been rectified.

(3) Where an inspection under this section indicates the owner or person in control of any work, trade machinery or vehicle has committed a breach of any conditions imposed on the license and such breach poses a danger to the public, the Department shall depending on the seriousness of the danger posed to the public either-

(a) cancel the license; or

(b) suspend the license until such time the breach has been rectified and the danger to the public no longer exists.

(4) Any person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding two million shillings or to a term of imprisonment not exceeding two years.

(5) The Department may in addition to any penalty imposed under paragraph (4) demand the person repair any damage that may have occurred due to the breach committed under (3).

Powers of entry of authorized officers

17. (1) An authorized officer appointed for the purpose by the Department, may at all reasonable times enter upon any premises or place of business with a view to seeing whether the provisions of this Act or any rules made under this Act and the conditions of any licence or permit granted under this Act have been complied with.

(2) Any person preventing or obstructing the entry of any officer or authorized officer mentioned in subsection (1) commits an offence.

(3) If an authorized officer under subsection (1) is satisfied that any premises or place of business is being used contrary to the provisions of this Act or of any rule, licence or permit issued under this Act, he or she shall give a notice in writing to the owner ordering that the situation be remedied within such period as is indicated

in the notice.

Powers
authorized
officers

of

18. (1) Where an authorized officer is of the opinion that the continued use of a building or place of business in a particular constitutes a danger to the public, the authorized officer shall direct the licensee or his agent or employee in charge of the premises or place of business to take such action as the authorized officer thinks reasonably necessary to remedy the situation.

(2) If the licensee or person so directed under subsection (1) fails

to take that action within the time allowed for that purpose by the authorized person, the authorized person shall, by notice in writing addressed to the licensee and served personally on the licensee or his agent or employee in charge of the place business, close those premises or place of business pending the decision of the Department.

(3) The authorized officer shall immediately inform the Department of his actions giving the reasons thereof

(4) The licence in respect of premises or place of business closed under subsection (2) shall be deemed to have been suspended until the Department has made a decision under subsection (5).

(5) The Department shall, within seven days after being advised of the closure under subsection (3) consider whether the licence in respect of those premises should be re-instated, suspended, cancelled or varied and shall inform the licensee of its decision, in writing, within fourteen days.

(6) Any person aggrieved by the decision of the Department to suspend, cancel or vary a licence may appeal to the County Executive Committee Member.

PART IV - MISCELLANEOUS PROVISIONS

Public
participation

19. The Department shall liaise with the committee on public participation when making a decision under sections 8, 9, 10 and 13 on the declaration of

protected areas, issuance of licenses and permits, on the refusal to issue, cancellation or suspension of licenses and permits and on the declaration of public nuisances

Department to establish pounds

20. The Department shall establish pounds, from time to time and make provision for all or any of the following purposes -

(a) for the management of pounds;

(b) prescribing the circumstances in which any article or vehicle which is found abandoned or apparently abandoned, or any animal or bird, may be impounded;

(c) fixing the charges payable by the owner of any impounded article, vehicle, animal or bird;

(d) prescribing the circumstances in which and the conditions under which any impounded article, vehicle, animal or bird may be sold; and

(e) as to the transfer of the property in any impounded article, vehicle, animal or bird on such sale.

PART V – GENERAL PROVISIONS

Directly or indirectly causing, nuisance, air or noise pollution

21. A person who does any act that directly or indirectly causes, immediate or subsequent nuisance, air or noise pollution; commits an offence.

Offences

22. (1) A person who-

(a) commits a breach of any condition imposed by any licence or permit issued under this Act;

(b) aids or abets another person a person to commit a breach of any condition imposed by under any licence or permit issued under this Act;

(c) forges or through fraud obtains any document with intent to have a licence or permit issued or renewed;

commits an offence and on conviction shall be liable to a fine

of not more than shillings five hundred thousand or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

(2) A county may, by law, further prescribe that, in addition to any penalty, any expenses incurred by the county in consequence of the breach of any law made by it under this Act or in the execution of any work directed by any such law to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

General penalty

23. Every person who violates or fails to comply with any provision of this Act for which no other penalty is provided, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment of a term not exceeding six months.

Regulations

24. The County Executive Committee Member may make regulations –

(a) to regulate air quality within public places, public transport and residential areas;

(b) prescribing the areas in which businesses, factories and workshops which,

(i) by reason of smoke, fumes, chemicals, gases, dust, smell;

(ii) by reason of noise or vibration; or

(iii) by reason of the likelihood to attract pests or cause any disease,

maybe or become a source of danger, discomfort or annoyance to the neighbourhood, and to prescribe the conditions subject to which such businesses, factories and workshops shall be carried on;

(c) to regulate emission of fumes from any motor vehicle which causes or contributes to, or is likely to cause or contribute to air pollution which is a nuisance or endangers public health.

(d) to regulate public entertainment, the playing of musical instruments or the singing or performing for profit, in or on any public place;

(e) prescribing the fees payable for a licence or permit; and

(f) generally for the better carrying out of the purposes and provisions of this Act.

Saving provisions

25. All licenses, permits, certificates and other issued under any municipal legislation shall continue in operation for the remaining period of their validity and on passing of this Act shall be deemed to have been issued under the county nuisances Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objectives of this Bill is to provide for the regulation and management of public nuisances including air and noise pollution and to empower the county to take all lawful, necessary and reasonably practicable measures for maintenance of the county, at all time, in a clean and sanitary condition and for connected purposes.

Part I of the Bill provides for preliminary matters including the short title to the Bill, the interpretation of words and expressions used in the Bill and objective of the Bill.

Part II of the Bill provides for administrative provisions and sets out the administration of the Act, functions and powers of the Department, declaration of public nuisance, abatement of public nuisance and protected areas.

Part III of the Bill provides for licences and permits and makes provision for application, refusal suspension and cancellation of licenses, permitted operations, entry and inspection and powers of authorized officers.

Part IV of the Bill provides for miscellaneous provisions which include public participation in certain matters, establishments of pounds, direct or indirect nuisance including air and noise pollution, offences and penalties, power to make Regulations and savings of certain provisions of repealed laws or by-laws.

The enactment of this Bill will not occasion significant additional expenditure of public funds save for expenditure on employment of additional enforcement officer will be provided for through estimates in the county budget.