SPECIAL ISSUE

Kenya Gazette Supplement No 19 (Nyandarua County Acts No 4)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NYANDARUA COUNTY ACTS, 2019

NAIROBI, 2nd December, 2019

CONTENT

Act—

The Nyandarua County Alcoholic Drinks Control Act, 2019

PAGE

1

NATIONAL COUNCIL FOR LAW REPORTING LIBRARY

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI
THE NYANDARUA COUNTY ALCOHOLIC DRINKS CONTROL ACT, 2019
No 4 of 2019

Date of Assent 12th November, 2019
Date of Commencement See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I— PRELIMINARY

1—Short title and Commencement
2—Interpretation
3—Objects and purpose of the Act

PART II— ADMINISTRATION

4—Establishment of Alcohol Management and Control Committee
5—Functions of the Management and Control Committee
6—Vacation of office of the Management Committee
7—Sub-county control Committee
8—Functions of the Sub County committees
9—Restrictions of Membership of the Sub - County Committees
10—Protection from personal liabilities
11—Licensing officer
12—Distributors license
13—Retailers license
14—License to be displayed
15—Application for license
16—Notice of Application
17—Lodging of complaints
18—Requirement of license
19—Recommendation for the grant of a license
20—New License
21—Protection of minors
22—Person not eligible for license
No 4  
\textit{Nyandarua County Alcoholic Drinks Control 2019}

23—Renewal of license  
24—Cancellation of license  
25—Review of license  
26—Types of license  
27—Transfer of licenses  
28—Prohibited sales  
29—Proof of sale  
30—Forfeiture of a licence  
31—Prohibited Promotions  
32—Authorized officers  
33—Responsibility on enforcement  
34—Places authorized officers may enter  
35—Powers of authorized officers  
36—Use of Records  
37—Entry of a dwelling place  
38—Use of force  
39—Certificate of analysis  
40—Assistance of officers  
41—Seizure  
42—Orders of Restoration  
43—Alcohol Control and Management Fund  
44—Revenue Collected by the management Committee  
45—Access by minors  
46—Display of signs  
47—Packaging of alcoholic drinks  
48—Disorderly conduct  
49—Breach of license  
50—Non-disclosure of conviction  
51—Obstruction  
52—General Penalty
53—Nature of Proceedings
54—Regulations
55—Transitional Clause
56—Repeal

FIRST SCHEDULE— SUB-COUNTY COMMITTEE MEETINGS
SECOND SCHEDULE— CLASSIFICATION OF LICENCES
THIRD SCHEDULE— TYPES OF LICENCES
FOURTH SCHEDULE— LICENCE FEES
THE NYANDARUA COUNTY ALCOHOLIC DRINKS CONTROL ACT, 2019

AN ACT of the County Assembly of Nyandarua to provide for the management, control licensing and regulation of the production, sale, distribution, consumption of alcoholic drinks, and for connected purposes

ENACTED by the County Assembly of Nyandarua as follows—

PART I—PRELIMINARY

Short title and Commencement

1 This Act may be cited as the Nyandarua County Alcoholic Drinks Control Act, 2019 and shall come into operation on the date of publication in the Gazette

Interpretation

2 In this Act, unless the context otherwise requires—

“Alcohol” means the product known as ethyl alcohol or any product obtained by fermentation or distillation of any fermented alcoholic product, rectified either once or more often, whatever the origin and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with the prescribed formulas in any existing laws in Kenya,

“Alcoholic drink” includes alcohol, spirit, wine, beer, liquor, traditional alcoholic drink and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic drinks, modified industrial alcohol blended for human consumption and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being,

“Alcoholic drinks retail license” means an authorization given by the county Government of Nyandarua upon the recommendation of the Sub-county Committee,

“Authorized officer” means an authorized officer within the meaning prescribed in this Act,

“County Enforcement Officer” means any officer within the County administration to whom the Executive Committee Member has assigned the duty or duties of enforcing the obligations created under this Act,

“County” Means the Nyandarua County,

“Dwelling place” means a place of residence, an abode, which is ordinarily not meant for business transactions,
“Management and Control Committee” means the Alcoholic Drinks Management and Control Committee established under section 4 of this Act,

“Sub-County Committee” means the Sub-County Alcoholic Drinks Control Committee established under this Act

“Entity” includes a company, department, corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not,

“Executive Committee Member” means the County executive Committee member responsible for Cultural activities, public entertainment and alcoholic drinks control,

“Health institution” means a hospital, nursing home convalescent home, maternity home, health centre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee

“Illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products, including any practice or conduct intended to facilitate such activity

“Licensee” means a person who holds a licence granted under this Act,

“Locality” unless where context otherwise provides to the contrary, means a city, municipality, town, urban area, sub-county or ward as the case may be,

“Manager” in relation to—

(a) a cinema or theatre includes an assistant manager a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre,

(b) a health institution, includes the owner or a person in charge or in control of the health institution,

(c) a specified building includes the owner occupier, lessee or the person in charge or in control of the specified building

“Manufacture” means the brewing, distilling, tapping or any processing or intermediate processing of an alcoholic drink and includes the packaging, labeling, distribution or importation of an alcoholic drink for sale in the County or anywhere in Kenya
“Manufacturer”, in respect of an alcoholic drink, includes any entity that is involved in its manufacture, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer,

“Package” means the container, receptacle or wrapper in which an alcoholic drink is sold or distributed and includes the carton in which multiple packages are stored,

“Premises” means any building, structure room or rooms that have been approved by the physical planner in the county and which have all relevant licences under this Act to be used for purposes of manufacture or sale of alcohol as envisaged herein,

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

“Relevant Authority” means the National Authority for the Campaign Against Drug and Alcohol Abuse,

“Sell” includes—
(a) barter or exchange without use of money,
(b) offer or expose for sale, barter or exchange without use of money,
(c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit,
(d) supply or offer to supply gratuitously but with a view of gaining or maintaining custom or otherwise with a view for commercial gain,

“Spirits” means any intoxicating liquor in the nature of an essence of or abstract from any substance, obtained by distillation, and includes any liquor mixed with spirits,

“Traditional liquor” means—
(a) an intoxicating liquor manufactured by traditional African methods, other than distillation, which is offered, or intended to be offered, for sale in a state of continuing fermentation without further processing, or
(b) such other intoxicating liquor manufactured in Kenya, otherwise than by distillation, as the County Executive Committee Member may, by notice in the Gazette, declare to be traditional liquor for the purposes of this Act
Object and Purpose of Act

3 The object and purpose of this Act is to provide a legal framework for the County Government in exercise of its powers in matters related to—

(a) management, control and regulation of liquor licensing pursuant to Part II of the Fourth Schedule to the Constitution

(b) control the production, sale, distribution, promotion and use of alcoholic drinks,

(c) reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumption of alcoholic drinks,

(d) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting,

(e) educate the residents of the county on the harmful health economic and social consequences attributable to alcoholic drinks,

(f) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks,

(g) promote research, treatment and rehabilitation for persons dependent on alcoholic drinks,

(h) protect the health of the individual in light of the dangers of excessive consumption of alcoholic drinks

(i) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisement of alcoholic drinks,

(j) protect consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks

PART II—ADMINISTRATIVE STRUCTURE

Establishment of County Alcoholic Drinks Management and Control Committee

4 (1) There is established the County Alcoholic Drinks Management and Control Committee comprising of—

(a) a Chairperson appointed by the County Public Service Board with the approval of the County Assembly,
(b) the Executive Committee Member responsible for matters of social services or their representative,

(c) the Executive Committee Member responsible for matters of Finance or their representative,

(d) Four persons appointed by the Executive Committee Member responsible for matters of social service, with the approval of the County Assembly as follows—

(i) a person representing the Marginalized groups in the County,

(ii) two persons, one of whom shall be of opposite gender, nominated by a registered alcoholic drinks association within the County,

(iii) an Advocate of the High Court of Kenya with a five-years standing

(iv) the Director responsible for matters of social services who shall be the Secretary and an \textit{ex-officio} member

(e) the Executive Committee Member responsible for matters of Social Services shall ensure the constitutional gender rule is adhered to

(2) The persons appointed under section 4 (a), 4(d) (i), (ii), and (iii), shall hold office for a term of three years and shall be eligible for re-appointment for one further and final year

(3) despite the provisions of sub-section (4) the Committee shall serve until a new Committee is in place provided that the period shall not exceed six months

(4) A person is qualified for appointment as Chairperson of the Management Committee if the —

(a) is a citizen of Kenya,

(b) holds a degree from a university recognized in Kenya,

(c) has knowledge and relevant experience in community service or social work,

(d) meets the requirements of leadership and integrity set out in chapter six of the Constitution, and

(5) A person is qualified for appointment under section 4(d) if the person—
(a) holds a minimum of diploma from an institution recognized in Kenya,
(b) has knowledge and experience in management, and
(c) meets the requirements of leadership and integrity set out in chapter six of the Constitution

**Functions of the Alcoholic Drinks Management and Control Committee**

5 (1) The Committee shall be responsible for—
(a) overseeing the implementation of this Act and devising lawful strategies for realizing its objectives,
(b) advising the county government on policies that would best achieve the objectives of this Act,
(c) collaborating with other governments and non-state agencies with a view to achieving the objectives of this Act,
(d) quarterly review all the retail licenses issued by the licensing officer,
(e) receiving and vetting applications for distribution or wholesale licenses,
(f) approve after conducting public participation, retail outlets licenses, recommended by the Sub-county committee
(g) recommending to the licensing officer the issuance a license made pursuant to paragraph (e and f),
(h) prescribing the conditions prerequisite and applicable to the various licences obtainable under this Act,
(i) oversee the operations of the sub county committees
(j) to receive, review and analyse the quarterly reports submitted by the sub county committees with a view to giving directions,
(k) coordinate education programs promote research, treatment and rehabilitation for persons dependent on alcoholic drinks in collaboration with relevant national government agencies,
(l) 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
No 4  Nyandarua County Alcoholic Drinks Control 2019

pay a trade license determined from time to time by the committee

(2) The committee may co-opt any other members on a needs basis

Vacation of Office of the Management Committee

6 (1) A member of the Management Committee may—

(a) at any time resign from office by notice in writing to the appointing authority,

(b) be removed from office by the executive member if the member—

(i) has been absent from five consecutive meetings of the Committee without the permission of the chairperson,

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months

(iii) is adjudged bankrupt

(iv) is convicted of a crime under the Leadership and Integrity Act, or is culpable of gross misconduct

Sub-county Committees

7 (1) There is established for each sub-county in the county, a committee known as the Sub-County Alcoholic Drinks Regulation and Control Committee comprising of—

(a) the Sub-County Administrator who shall be the chairperson,

(b) the Sub-County Public Health Officer

(c) the Sub-County Physical Planning Officer,

(d) a person representing the youth,

(e) a person representing the people living with disability,

(f) two persons of either gender representing special interests of the community, and

(g) an officer from the department responsible for matters for social services who shall be the Secretary and an ex-officio member

(2) The persons under (1) (d) (e) and (f) shall be appointed by the CEC responsible for matters of Social Services who shall ensure the constitutional gender rule is adhered to

(3) The term of office of the Sub-County Committees committee shall expire on the date of the general election
(4) Despite the provisions of sub-section (3) the Committee shall serve until a new Committee is in place provided that the period shall not exceed six months

Functions of the Sub-County Committee

8 (1) The Committees shall be responsible for—

(a) receiving and vetting applications for any retail license under this Act and with respect to the sub-county of their jurisdiction,

(b) recommending to the Management and Control Committee the issuance of a retail license,

(c) co-ordinate, under the direction of the management committee the enforcement of this Act in their various sub counties, and

(d) performing such other functions as may from time to time be assigned to them by the Management and Control

(2) The Sub-County Committee may, under the instruction of the Management Committee make inspection or other visits to premises and retail outlets at such times as they will be instructed

(3) In carrying out its functions, the Sub-county Committee shall before recommending an outlet for licensing or renewal of a license, ensure that there is effective public participation to guide its action

(4) Collaborate with ward administrators and village administrators and councils appointed under the County Governments Act, 2012 and the officers in charge of coordination of National Government functions in the wards and villages,

(5) Make quarterly reports on applications received, vetted and recommended for approval to the Management and Control

Restrictions to membership of the Sub-County Committee

9 (1) A person shall not be a member of the Sub-County Committee if such person is—

(a) a holder of a licence in the county under this Act,

(b) a partner in a firm or director or shareholder of a company or other body which is the holder of a licence in the County under this Act,

(c) directly or indirectly employed as an agent of a person, firm or company which is the holder of a licence in the county under this Act,

(d) bankrupt,
(e) does not meet the requirements of leadership and integrity under Chapter Six of the Constitution

(2) There will be required of each member of the Sub-County Committee, a declaration if any, of conflict of interest, on each of the issues being considered by the Committee

**Protection from Personal Liability**

10 A member officer, employee or agent of the Management Committee or other office established under this Act shall not be held personally liable for any action, claim or demand whatsoever if the matter or thing is done in good faith while executing the functions, powers or duties conferred by this Act

**PART IV— LICENSING**

**Licensing officer**

11 (1) The Chief Officer responsible for matters of Social Services shall be the authorized licensing officer for purposes of the Act and shall only issue a license under this Act—

(a) only on the recommendation of the Management Committee, and,

(b) upon evidence of receipt that the applicant has paid the fee applicable to the license

**Distributor’s license**

12 (1) A person shall not distribute, sell or otherwise dispose any alcoholic drink branded or not manufactured or produced within or outside the county unless the distribution or sale of the alcoholic drink has been licensed under this Act

(2) All distributors and wholesalers will ensure that the products they stock are from the list of manufacturers in the manufacturer’s catalogue issued by the relevant authority

(3) A person who contravenes this section commits an offence and shall be liable upon conviction to either—

(a) a fine of not more than two hundred thousand shillings,

(b) imprisonment for a period not more than two years, or,

(c) to both a fine and imprisonment

(4) A person intending to distribute any alcoholic drink in the county shall make an application to the Management Committee through the Secretary
(5) The Committee shall by regulations and through the Secretary prescribe —

(a) a standard application form, and

(b) the conditions to accompany the application including an application fee

Retailers' License

13 (1) A person shall not retail or otherwise sell any alcoholic drink in the county, unless the person has obtained a retail license issued pursuant to this Act

(2) A person who contravenes this section commits an offence and shall be liable upon conviction to either —

(a) a fine of not less than one hundred thousand shillings,

(b) imprisonment for a period not more than two years, or

(c) To both to a fine and imprisonment

(3) A person who intends to sell by retail any alcoholic drink in the county, shall make an application to the Sub-County Alcoholic Drinks Management and Control Committee through the Sub-County administrator

License to be displayed

14 (1) Every license shall be prominently and conspicuously displayed on the premises to which it relates, and any licensee who fails or neglects so to display his license commits an offence

(2) A person who contravenes this section commits an offence and shall be liable upon conviction to either —

(a) a fine of not less than ten thousand shillings,

(b) imprisonment for a period not more than six months, or,

(c) to both to a fine and imprisonment

Application for Licence

15 (1) A person intending to produce, manufacture, distribute or sell any alcoholic drink in the county or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the Sub-County committee in the sub-county where the premises is situated and shall pay the prescribed application fee to the Sub-County Administrator's office

(2) The application under sub-section (1) shall contain—
No 4 Nyandarua County Alcoholic Drinks Control 2019

(a) a comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale,

(b) an indication as to whether the manufacture or sale of the alcoholic drink is licensed in another county and if so the evidence of such licensing,

(c) for a manufacturer's license, certification from Kenya Bureau of Standards, and

(d) such other matters as may be prescribed

Notice of applications

16 The Sub-county Committee shall within Fourteen (14) days after the submission of application for a licence prepare a notice setting forth the names of all applicants the types of licences applied for, the premises in respect of which the licences are applied for and the time, date and place of the meeting and shall forthwith cause a copy of the notice to be—

(a) Published at the office of the Sub-County administrator for a period of not less than twenty-one days,

(b) Posted in some conspicuous place at or near the applicant's premises,

Lodging of objections

17 (1) Any person may lodge objection to an application made in writing to the Secretary to the Sub-county Committee and the objector shall serve notice of the grounds of the objection on the applicant personally or by post, at least seven (7) days before the hearing of the application and the onus of proof of such service shall be on the objector

(2) A sub-county Committee may on its own motion take notice of any matter or a thing which, in the opinion of the Committee constitutes an objection to an application whether or not any objection has been otherwise lodged

(3) Where in respect of an application a Sub-county Committee acts in pursuance of an objection in this section, the committee shall inform the applicant of the nature of the objection, and shall if the applicant so requests, adjourn the hearing for such period, not being less than seven (7) days as the Sub-county Committee considers necessary to enable the applicant to reply

(4) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the Sub-county
Committee and shall satisfy the Sub county Committee that there is need for the grant of a licence of the type applied for in the particular locality in respect of which the application is made

(5) A Sub-county Committee may require the personal appearance before it of the applicant, or of the manager of the premises to which the application relates, or of both of them and of any other person whose attendance is considered by the committee to be necessary

(6) Any objector may appear personally or by an advocate at the hearing of the application

(7) A sub-county committee may authorize, in writing any person to appear before any Sub-county Committee having jurisdiction in any part of the area within the jurisdiction of the local authority for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application

(8) Every Sub-county Committee shall maintain records of all its proceedings and in particular, of the purpose for which an application was made and notes of the evidence given and of the arguments adduced

Requirements for Licence

18 (1) The Sub-county Committee shall, within fourteen days of receipt of the application, record the application and assess the same on the basis of the objections received if any and the interests of the sub-county, and shall ensure that—

(a) the available premises are suitable with regard to the nature of the licence being sought,

(b) the premises conform to the prescribed requirements of the occupational health and safety regulations

(c) the applicant possesses the infrastructure and equipment necessary to carry out the business applied for

Recommendation for Grant of a licence

19 (1) The Sub-county Committee shall, after considering the application indicate in writing whether it objects to the grant of the licence applied for or whether it will recommend to the Management Committee to issue a license

(2) Where the Sub-county Committee is not satisfied with the application under subsection (1) it shall—

(a) reject the application giving reasons and notify the applicant accordingly within seven (7) days of the decision to reject or
(b) make comments and recommendations thereon and return it to the applicant within seven (7) days

(3) The applicant to whom the application is returned under subsection (4) (b) may re-submit a revised application within fourteen (14) days of the date of notification

(4) On receipt of a revised application under subsection (3), the Sub-county Committee shall within fourteen (14) days determine the application in accordance with this Act and upon such determination, if satisfied, recommend to the Management Committee for the issuance of a licence

New Licence

20 (1) The Management Committee shall grant a new licence for the sale of an alcoholic drink to be consumed on the premises if it is satisfied—

(a) that it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the particular locality in respect of which the application is made

(b) that the number of such premises in respect of which such licences has already been granted is insufficient for the requirement of the locality given the population density per square kilometer

(c) the premises are not within in any institution of basic education including primary and secondary schools or any residential properties

(d) that 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,

(e) that the premises in respect of which the application is made are located at least three hundred meters from any nursery, primary, secondary school and or any other learning institution for persons under the age of eighteen years

Protection of minors

21 The Management Committee shall not grant a licence of 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,
(b) in an outlet or premises located within a fast food restaurant

**Persons not eligible for a licence**

22 The Management Committee shall not grant a new licence or transfer a licence to any person who—

(a) is under eighteen years of age,

(b) is bankrupt, and

(c) a person who has been convicted of an offence under this Act

**Renewal and transfer of a licence**

23 The business to which the licence relates is conducted in a manner that is in breach of this Act or any other rules and regulations for the time being in effect, under this Act shall not have their licenses renewed

**Cancellation of licence**

24 (1) The Management Committee may cancel a licence, refuse to grant a renewal or disapprove a transfer of licence

(2) Any cancelation of licence shall be only on violation of the conditions of the grant of licence

(3) An authorized officer under this Act may make a report in writing to the management Committee on the violation of the conditions of licence by a licensee

(4) The Management Committee or its authorized agent may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (3) is factual

(5) The Management Committee shall consider the report within thirty days and make determination and shall observe the rules of natural justice or it may make such an order in respect of such a licence specified therein as guided by the law and regulations

**Review on license**

25 An applicant whose application for a new licence, a renewal or a transfer licence has been refused or cancelled may within fourteen days of such refusal, apply to a court of competent jurisdiction for review

**Types of licences**

26 (1) The licences which may be granted under this Act shall be those specified in the second schedule and the provisions of that schedule and of any rules made under respective licences therein specified
(2) Save as otherwise provided in this Act, no licence may be granted so as to be applicable to more premises than one

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

**Transfer of licence**

**27** (1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his licence, he may apply in writing to the Management Committee for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the management Committee may, if it thinks fit, grant a transfer of such licence

(2) No further fee shall be payable in respect of a licence granted under subsection (1) if, at the date of the grant, the licence which was temporarily transferred was valid for a period of more than six months

(3) In the event of the death, bankruptcy or a licensee of unsound mind, or in any similar event to which the management Committee declares in writing that this section should be applied, it shall be lawful, for the purposes of this Act for the executor, administrator, trustee or manager, as the case may be or any other person approved by the management Committee, to carry on the business of the licensee without any transfer or grant of a licence either personally or by an agent approved by the Management and Control

(4) Every person to whom a licence may have been transferred under subsection (1) and every person permitted to carry on a business without a transfer or grant of a licence in Pursuance of subsection (3) shall possess all the rights and be liable to all the duties and obligations of the original licensee

**PART V —SALE AND CONSUMPTION**

**Prohibited sales**

**28** (1) A licensee shall not—

(a) Award, grant or give to a person an alcoholic drink for consumption in or outside the licensed premises without any consideration equivalent to the market price of the alcoholic drink or

(b) promote any alcoholic drink in such a manner as to encourage more consumption of an alcoholic drink in order to win an award or prize
(2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both

Proof of sale

29 (1) In any proceedings under this Act relating to the sale of consumption of an alcoholic drink, such sale of consumption shall be deemed to be proved if the court is satisfied that a transaction in the nature of a sale took place, whether or not any money has been shown to have passed, or as the case may be, if the court is satisfied that any consumption was about to take place.

(2) Evidence of consumption or intended consumption of an alcoholic drink, on licensed premises by any person other than the licensee or his employee or agent shall be construed as evidence that the alcoholic drink was sold by or on behalf of the licensee to the person consuming or about to consume the alcoholic drink.

(3) In any proceedings under this Act, where a person is charged with selling alcoholic drink without a licence or without an appropriate licence, such alcoholic drink being in a bottle and appearing to be unopened and labeled by its bottler, the contents of such bottle shall be deemed, unless the contrary is proved to be alcoholic drink of the description specified on the label thereof.

Forfeiture of licence upon conviction

30 (1) If any proceedings before a Court it appears that a licensee—

(a) whether he was present in the licensed premises or not, has permitted an unlicensed person to be the owner or part owner of the business of the licensed premises or to have a substantial interest in that business, except with the consent of the Management Committee, or

(b) is convicted of an offence under this Act and a previous conviction within the preceding twelve months of the same or any other offence under this Act or three such previous convictions within the preceding five years is or are proved, or

(c) is twice convicted within twelve months of selling, offering or keeping for sale any adulterated alcoholic drink

the Court may, in addition to any other penalty which it may lawfully impose order that his licence be forfeited and that no licence shall be issued or transferred to him for such period as the Court may order.
(3) Every licensee who is convicted of an offence under this Act shall produce his licence to Court convicting him, and the Court shall endorse every such conviction on the licence and the relevant administrative officer of the Court shall inform the relevant Sub-county Committee

**PART VII—ADVERTISEMENT AND PROMOTION**

**Prohibited advertisement and promotion**

31 (1) A person shall not promote an alcoholic drink by way of outdoor advertisement—

(a) in a manner that is false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcoholic drink,

(b) in places demarcated under any written law as residential areas or within a distance of three hundred metres radius from nursery, primary, secondary school or other institution of learning for persons under the age of eighteen years or a health facility or a public playground or any other public land or property or in public service vehicle

(2) A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or both

**PART VII—ENFORCEMENT**

**Authorized officers**

32 (1) The enforcement of this Act and the regulations therefrom shall be, facilitated coordinated and directed by the Management and Control

(2) The enforcement function shall be carried out by authorized officers

(3) For purposes of this Act authorized officers will include—

(a) County officers appointed for the function of enforcement of County laws,

(b) public health officers under the Public Health Act

(c) Police officers under the National Police Service,

(d) National Government officers appointed under the Co-ordination of National Government Act,
(e) Officers appointed under the Standards Act

(f) Officers mandated to maintain law and order under any other law

Responsibility for enforcement

33 (1) The enforcement of this Act and the regulations thereof shall fall under the County office responsible for enforcement in collaboration with the relevant National Government Agencies.

(2) The functions of the Enforcement Office shall be to—

(a) co-ordinate enforcement of the Act, and regulations,

(b) monitor and evaluate the enforcement process and system under the Act and regulations,

(c) advise the Committee Member on the necessary measures to be adopted in ensuring effective enforcement and compliance with the Act and regulations, and

(d) create civic awareness on compliance with the provisions of this Act and regulations.

Places authorized officers may enter

34 (1) For the purposes of ensuring compliance with this Act, an authorized officer may at any reasonable time, enter any place in which the officer believes on reasonable ground that any person or persons is in any way contravening the provisions of this Act.

(2) An authorized officer entering any premises under this section shall, if so required produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under this Act.

Powers of officers

35 (1) In carrying out an inspection in any place pursuant to section 30, an authorized officer may—

(a) examine an alcoholic drink or anything referred to in that section

(b) require any person in such place to produce for inspection, in the manner and form requested by the officer, the alcoholic drink or thing,

(c) open or require any person in the place to open any container or package found in the place that the officer believes on reasonable grounds contains the alcoholic drink or thing,

(d) conduct any test or analysis or take any measures,
(e) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this Act

Use of records

36 In carrying out an inspection in a place, an authorized officer may—

(a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act,

(b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying,

(c) use or cause to be used any copying equipment in the place to make copies of any data, record or document,

(d) scrutinize any other record system in use in that place

Entry of dwelling place

37 (1) An authorized officer may not enter a dwelling place or premises except with the consent of the occupant upon notice or under the authority of a warrant issued under sub-section 2

(2) A Magistrate or Judge, may upon an ex-parte application, issue a warrant authorizing the authorized officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant if the Magistrate or a Judge is satisfied by information on oath that—

(a) entry to the dwelling place is necessary for the administration or enforcement of this Act,

(b) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused

(3) The time of such entry shall be between six O’clock in the forenoon and six O’clock in the afternoon of any day of the week or during the licensed hours under the license issued in the Act

Use of force

38 An authorized officer executing the warrant issued under section 44 may use reasonable force as specified in the warrant
Certificate of Analysis

39 An authorized officer, who has analyzed or examined an alcoholic drink or thing under this Act, or a sample of it, shall issue a certificate of report setting out the results of the analysis or examination.

Assistance of Officers

40 (1) The owner of a place inspected by an authorized officer under this Act or the person in charge of the place and every person found in the place shall—

(a) provide all reasonable assistance to enable the authorized officer to carry out his duties under this Act,

(b) furnish the authorized officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

(2) The authorized officer in subsection (1) shall issue the respective inspection completion certificate once satisfied with the inspection.

Seizure

41 (1) An authorized officer may during an inspection seize and make full inventory of any alcoholic drink or thing by means of which or in relation to which the officer believes on reasonable grounds, that this Act has been contravened.

(2) The authorized officer may direct that any alcoholic drink or thing be kept or stored in the place where it was seized or that it be removed to another place.

(3) No person shall remove, alter or interfere in any manner with any alcoholic drink or other thing seized unless so ordered by an authorized officer.

(4) Any person from whom an alcoholic drink or thing was seized may, within fourteen (14) days after the date of seizure, apply to the Court for an order of restoration, and shall send notice containing the prescribed information to the Executive Committee Member in the prescribed manner.

Orders for restoration

42 (1) The Court may order that the alcoholic drink or thing be restored immediately to the applicant if, on hearing the application, the Court is satisfied that—

(a) the applicant is entitled to possession of the alcoholic drink or thing seized, and
(b) the alcoholic drink or thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act

(2) Where upon hearing an application made under subsection (1) the Court is satisfied that the applicant is entitled to possession of the alcoholic drink or thing seized but is not satisfied with respect to the matters mentioned in paragraph (b) of subsection (1), the Court may order that the alcoholic drink or thing seized be restored to the applicant on the expiration of one hundred and eighty days from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before that time

PART VIII — FINANCIAL PROVISIONS

Alcoholic Management and Control Fund

43 (1) There is established an Alcoholic Management and Control Fund from which the Management and Control Committee shall finance its projects and programs

(2) The Executive Committee Member shall ensure that there is adequate budgetary allocation for Management Committee and the Sub-County Committees

Revenue Collected by the Management Committee

44 (1) Any such other monies or funds collected by the Management Committee regard being paid to section 40 shall be deposited in the County Revenue Fund and shall include—

(a) such licence and other fees as may be payable under this Act,

(b) such sums as may be realized from property forfeited to the County Government under this Act,

(c) sums received, including contributions, gifts or grant from or by way of testamentary bequest by any person

(d) all sums which may in any manner become payable to, or vested in the Management and Control

(2) Where, in terms if subsections (1)(b), any immovable property is forfeited, the County Executive Committee Member for Finance shall deal with the property in such manner as he thinks fit and may sell the property and deposit the proceed to the County Revenue Fund

(3) The Fund Collected shall be deposited in the County Revenue Fund, established under section 109 of the Public Finance Management Act, 2012
(4) The Management Committee shall keep or cause to be kept proper books of accounts and other books and records in relation to all the revenue collected.

(5) The Executive Committee Member for Finance shall cause an audit on all revenue transactions carried out by the Management and Control.

(6) The Management Committee shall furnish such information as may be required for examination and audit by the County Executive Member for Finance or as required by law.

PART IX—OFFENCES

Access by minors

45 (1) A person holding a licence to manufacture, store or sell alcoholic drinks under this Act shall not allow any person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, sorted, sold or consumed.

(2) A person shall not enter or gain access to an area referred to under subsection (1) if such a person is in custody or accompanied by a person under the age of eighteen years.

(3) Any person who manufactures alcoholic drinks contrary to the provisions of section 18 and 19 commits an offence and is liable upon conviction to a fine of not less than fifty thousand shilling and a jail term not exceeding six months or both.

Display of signs

46 (1) Every retailer shall post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content that inform the public that the sale or the availing of an alcoholic drink to a person under the age of eighteen years is prohibited by law.

(2) Every sign required to be posted under subsection (1) shall—

(a) be displayed on a surface measuring not less than 12 inches by 8 inches in size,

(b) bear the word “WARNING” in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement,

(c) be in English or in Kiswahili.
No 4  

Nyandarua County Alcoholic Drinks Control  

2019

(3) A retailer who contravenes any of the provisions of this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months or both

Packaging of alcoholic drinks

47  (1) A person shall not manufacture, pack, distribute or sell an alcoholic drink in the county in —

(a) sachets, and

(b) container of less than two hundred and fifty (250) milliliters or such other forms as may be prescribed under this Act

(2) Any other distilled or fortified alcoholic drink shall only be manufactured, packed, sold or distributed in glass bottles of the kind specified in sub-section (1) (a) or as may be prescribed in the national legislation related to control of alcohol drinks

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both

Disorderly conduct

48  (1) Any person found by a county enforcement officer to be drunk and or drunk and disorderly in or near a street, road, licensed premises, shop, hotel or other public place

(2) Any person convicted of being drunk and disorderly in or near a place referred to in subsection (1) shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months, or to both

Breach of Licence

49  (1) Any person who packs, distributes or sells an alcoholic drink except under and in accordance with, this Act and regulations commits an offence and is liable upon conviction to—

(a) for a first offence, a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or both,

(b) for a second or subsequent offence a fine not exceeding one hundred thousand shilling or an imprisonment term not exceeding one year or both

(2) Except as may be provided for in this Act, no person shall—
(a) sell an alcoholic drink in any workplace, office, factory, public park or any public recreational facility, public transport vehicle, public beach, sports stadium or public street,

(b) sell, purchase or consume an alcoholic drink in an alcoholic drink selling outlet after the expiry of the hours for which the outlet is licensed to sell the alcoholic drink

(3) Any person who contravenes the provisions of subsection (2) commits an offence and shall be liable to the penalties specified under subsection (1)

Non-disclosure of conviction

50 Any person who is required by any provision of this Act to disclose any conviction and if fails to do so when making any application commits an offence

Obstruction

51 A person who obstructs, hinders, or knowingly makes a false or misleading statement to an authorized officer carrying out duties under this Act commits an offence

General penalty

52 A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both

Nature of evidence in proceedings

53 (1) In any prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall in the absence of evidence to the contrary, be proof of its contents

(2) Subject to this part, a certificate or report purporting to be signed by an officer stating that the officer analyzed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report

(3) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced notice of not less than seven days of that intention together with a copy of the certificate or report
(4) The party against whom the certificate or report provided for under subsection (3) is produced may, with leave of the Court, require the attendance of the officer for purposes of cross-examination

(5) In a prosecution for a contravention of this Act—

(a) Information on a package indicating that it contains an alcoholic drink is, in the absence of evidence to the contrary, proof that the package contains an alcoholic drink, and

(b) A name or address on a package of the person by whom the alcoholic drink was manufactured is in the absence of evidence to the contrary, proof that it was manufactured by that person

PART X—MISCELLANEOUS

Regulations

54 (1) The Executive Committee Member may, generally or on the recommendations of the Management Committee make regulations for the better carrying out of the objects of this Act

(2) The fees payable under this Act shall be as prescribed in the Fourth schedule of this Act

Transitional

55 (1) Notwithstanding any other provision of this Act to the contrary, a person who immediately before the commencement of this Act was in accordance with the Nyandarua Alcoholic Drinks Control Act, 2014 a manufacturer, distributor or retailer of any alcoholic drink under that Act shall be deemed to be a manufacturer importer, distributor retailer of any alcoholic drink under this Act

(2) The manufacturer, importer, exporter, distributor or retailer of any alcoholic drink in the contemplated referred to in subsection (1), shall upon commencement of this Act, comply with the requirements of this Act

Repeal

56 The Nyandarua County Alcoholic Drinks Control Act, 2014 shall stand repealed upon publication of this Act
FIRST SCHEDULE—MEETINGS OF MANAGEMENT COMMITTEE AND SUB-COUNTY COMMITTEES

Meetings of the Management Committee

(1) The Management Committee shall meet for a minimum of four (4) times per year, the meetings of the Management Committee shall be held on such date and time as the Management Committee shall decide or, in the absence of such decision, on any other time as the Chairperson, may, in consultation with the Secretary decide.

(2) The Chairperson shall, on the application of at least five members of the Management Committee, write to the Executive Committee Member requesting for approval to convene a special meeting of the Management and Control. The application shall contain the reasons for such an application.

(3) (a) Notwithstanding the provisions of clause of 1 of this schedule, in situations of an emergency, a special meeting may be convened by the Chairperson and any resolution passed at the meeting shall be ratified and adopted in the subsequent ordinary meeting of the Management Committee.

(b) All decisions made at the meetings provided under 1 (3) above shall be in writing and shall give reasons thereof.

(4) A written notice of every meeting shall be given seven days prior to the date of the meeting, indicating the venue, date, time and agenda.

(5) The provisions of clause 4 and 5 shall not apply to a special meeting convened in situations of emergency.

(6) The Chairperson shall preside at every meeting of the Management Committee at which he or she is present and in the absence of the Chairperson the vice-chairperson shall preside. In their absence members at the meeting shall elect one of the members who shall with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(7) Voting in a Management Committee meeting shall be decided by a simple majority through a show of hands or secret ballot by the members present.

(8) In instances of a tie in a vote on any matter before the Management Committee the Chairperson shall have a casting vote.
(9) The Management Committee shall cause minutes of all proceedings of the meetings of the Management Committee to be entered in minute book for that purpose

(2) The quorum of the meetings of the Management Committee shall be more than half of its members

**Meetings of the Sub-County Committee**

2 (1) The meetings of Sub-County Committees shall be convened on such date and time as the Chairperson in consultation with the Secretary shall decide

(2) The Chairperson shall, on the application of at least three members of the Sub-County Committee, write to the Chief Officer in charge of Social Services requesting for approval to convene a special meeting

(3) The Executive Committee Member in charge of Social Services in consultation with the Management Committee shall make regulations on the effective running of the sub-committee

Provided that the Sub County committee shall met at least four times a year

(4) The provisions above in relation to the meetings of the Management Committee shall with necessary modifications apply to the meetings of the sub-county committees
<table>
<thead>
<tr>
<th>Licenses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 General Retail Alcoholic Drink Licence (on licence)</strong></td>
</tr>
<tr>
<td>Authorized to sell alcoholic drink</td>
</tr>
<tr>
<td>(a) From Monday to Friday during the hours of 5:00 p.m to 12:00 a.m</td>
</tr>
<tr>
<td>(b) During weekends and public holidays during the hours of 2:00 p.m to 12:00 a.m</td>
</tr>
<tr>
<td><strong>2 General Retail Alcoholic Drink Licence (Off Licence) Wines and Spirits Retailers (Rural and Sub-Urban)</strong></td>
</tr>
<tr>
<td>Authorized to sell alcoholic drink on any day of the week during the hours of 5:00 p.m to 10:00 p.m</td>
</tr>
<tr>
<td><strong>3 Distributor Licence</strong></td>
</tr>
<tr>
<td>Authorized to sell Alcoholic Drinks between 8:00 a.m to 7:00 p.m</td>
</tr>
<tr>
<td><strong>4 Supermarket or Franchised Retail Chain Stores (Urban) Alcoholic Drink Licence (Off licence)</strong></td>
</tr>
<tr>
<td>Authorized to sell alcoholic drink on any day of the week during the hours of 5:00 p.m to 11:00 p.m</td>
</tr>
<tr>
<td><strong>5 Hotel Alcoholic Drink Licence</strong></td>
</tr>
<tr>
<td>Authorized to sell alcoholic drink on any day of the week to a lodger - for his own consumption and his guest’s consumption on the premises, at any hour</td>
</tr>
<tr>
<td><strong>6 Club Alcoholic Drink Licence</strong></td>
</tr>
<tr>
<td>Authorized to sell alcoholic drink to members on any day of the week at any hour</td>
</tr>
<tr>
<td><strong>a Members Club</strong></td>
</tr>
<tr>
<td>A member’s club licence</td>
</tr>
</tbody>
</table>
No 4  |  *Nyandarua County Alcoholic Drinks Control*  |  2019

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>may only be held by a club that is a non-profit association incorporated under the Society’s Act.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>b Proprietary Club (Including Night Club)</strong></td>
<td>Authorized to sell alcoholic drink any day of the week during the hours of 7:00 p.m. to 3:00 a.m.</td>
<td></td>
</tr>
<tr>
<td><strong>7 Theatre Alcoholic Drink Licence</strong></td>
<td>Authorized to sell alcoholic drink during the hours of 5:00 p.m. to 11:00 p.m.</td>
<td></td>
</tr>
<tr>
<td><strong>8 Travellers' Alcoholic Drink Licence</strong></td>
<td>Authorized to sell alcoholic drink on any day of the week at any hour to persons bona fide travelers on Management Committee a train or air</td>
<td></td>
</tr>
<tr>
<td><strong>9 Railway Restaurant Car Alcoholic Drink Licence</strong></td>
<td>Authorized to sell alcoholic drink at any hour</td>
<td></td>
</tr>
<tr>
<td><strong>10 Steamship Alcoholic Drink Licence</strong></td>
<td>Authorized to sell alcoholic drink on any day of the week at any hour while the steamship, whether stationary or in motion, is on a voyage</td>
<td></td>
</tr>
<tr>
<td><strong>11 Temporary or Occasional license</strong></td>
<td>Authorized to sell alcoholic drink on the day and during the hours stipulated in the license by the Sub-county Committee for the purposes of specific occasions, ceremonies or events as indicated in the application</td>
<td></td>
</tr>
</tbody>
</table>
### THIRD SCHEDULE - TYPES OF LICENCES

<table>
<thead>
<tr>
<th></th>
<th>Licence Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wholesale Licence</td>
<td>A wholesale licence authorizes the licensee to sell an alcoholic drink on the premises, at the hours and subject to such other conditions as are specified in the licence</td>
</tr>
<tr>
<td>2</td>
<td>Retail Licence</td>
<td>A retail licence authorizes the licensee to sell an alcoholic drink on the premises, at the hours and subject to such other conditions as are specified in the licence</td>
</tr>
<tr>
<td>(a)</td>
<td>Distributor's Licence</td>
<td>A Distributor Licence authorizes the licensee to sell/distribute an alcoholic drink to licensed wholesalers or retailers within Nyandarua County subject to such conditions as are specified in the licence and such a licence shall apply to alcoholic drink(s) manufacturers within and without the county or a manufacturer's appointed distributors intending to supply alcoholic drinks within the county</td>
</tr>
</tbody>
</table>

### FOURTH SCHEDULE - LICENCE FEES

Licence Fees shall be as stipulated in the County finance law