

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

**ELGEYO/MARAKWET COUNTY  
GAZETTE SUPPLEMENT**

**ACTS, 2014**

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**NAIROBI, 30th June, 2014**

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**THE ELGEYO MARAKWET COUNTY  
ALCOHOLIC DRINKS CONTROL ACT**

**No. 6 of 2014**

*Date of Assent: 5th June, 2014*

*Date of Commencement: 30th June, 2014*

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**THE ELGEYO MARAKWET ALCOHOLIC DRINKS CONTROL  
ACT, 2014**

**AN ACT of the County Assembly of Elgeyo Marakwet to provide  
for the licensing and regulation of the production, sale,  
distribution, consumption and outdoor advertising, of alcoholic  
drinks, and for connected purposes**

**ENACTED** by the Elgeyo Marakwet County Assembly, as follows -

**PART I—PRELIMINARY PROVISIONS**

**Short title and commencement.**

1. This Act may be cited as the Elgeyo Marakwet County Alcoholic Drinks Control Act, 2014 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 ;

“alcoholic drink” includes alcohol, spirit, wine, beer, liquor, traditional alcoholic drink, and any one or more of such varieties containing one-half of one per cent 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;

“authorised officer” means an authorised officer within the meaning of section 50;

“Authority” means the National Authority for the Campaign Against Alcohol and Drug Abuse” established under the National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012 Cap. 222.

“cinema” has the meaning assigned to it in the Films and Stage Plays Act;

“Chief Officer” means the chief officer responsible for alcoholic drinks control;

“County” means the Elgeyo Marakwet County;

“Directorate” means the Alcoholic Drinks Control Directorate established under section 4;

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“entity” includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

“Enforcement Committee” means the County Alcoholic Drinks Control Enforcement Co-ordinating Committee established under section 51;

“Executive Member” means the county executive member responsible for alcoholic drinks control;

“Fund” means the Alcoholic Drinks Control Fund established by section 6;

“Governor” means the Governor of Elgeyo Marakwet County;

“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, ward or village 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;

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

“review committee” means the County Alcoholic Drinks Regulation Administrative Review Committee established under section 10;

“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;

“sub county committee” means the Sub-county Alcoholic Drinks Regulations Committee appointed under section 9.

### **Object and purpose of Act.**

3. The object and purpose of this Act is to provide for licensing of alcoholic drinks by the County government pursuant to Part II of the Fourth Schedule to the Constitution so as to control the production, sale, distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks in order to—

- (a) protect the health of the individual in the light of the dangers of excessive consumption of alcoholic drinks;
- (b) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks;
- (c) protect consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks;

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- (d) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;
- (e) inform and educate the residents in the county on the harmful health, economic and social consequences of the consumption of alcoholic drinks;
- (f) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;
- (g) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks;
- (h) reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumptions of alcoholic drinks.

## **PART II—ADMINISTRATION**

### **Establishment of Directorate.**

4. (1) There is established in the county the Alcoholic Drinks Control Directorate which shall be an office in the county public service.

(2) The functions of the Directorate shall be to—

- (a) support and facilitate Sub-county Committees in carrying out their functions;
- (b) carry out public education on alcoholic drinks control in the county directly and in collaboration with other public or private bodies and institutions;
- (c) facilitate citizen participation in matters related to alcoholic drinks control in accordance to framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;
- (d) facilitate and promote in collaboration with other county and national government institutions the establishment of treatment and rehabilitation facilities and programmes;
- (e) carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks control;
- (f) develop in collaboration with other county and national government departments strategies and plans for implementing this Act and control of alcohol abuse and any other relevant



national legislation and coordinate and support their implementation;

- (g) advise the Executive Member generally on the exercise of his powers and performance of his functions under this Act, and in particular on county policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;
- (h) in collaboration with other relevant county departments, prepare and submit an alcoholic drinks status report bi-annually in the prescribed manner to the Executive Member which shall be transmitted to the County Executive Committee, county assembly and the Authority;
- (i) recommend to the Executive Member and participate in the formulation of laws and regulations related to alcoholic drinks;
- (j) monitoring and evaluating the implementation of this Act including the operations of the Sub-county Committees and advising the executive member on the necessary measures to be adopted;
- (k) in collaboration with the county subcommittee and the Enforcement Committee prepare and submit to the Authority on a quarterly basis, an alcohol abuse control status report containing such matters as may be specified by the Authority;
- (l) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the executive member.

(3) The Directorate shall be headed by a Director who shall be appointed by the County Public Service Board.

(4) The Executive Member and the County Public Service Board shall ensure that the Directorate has adequate human, financial and any other appropriate resource to enable it carry out the functions assigned under this Act.

**Establishment of rehabilitation facilities and programs.**

5. (1) The Directorate shall—

- (a) in collaboration with other relevant county and national government agencies establish treatment and rehabilitation facilities and programs for persons dependent on alcoholic drinks in each Ward;

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- (b) ensure that the treatment and rehabilitation facilities have the necessary human resources for effective operation and service delivery;
- (c) ensure that the treatment and rehabilitation services are designed in a manner that is accessible and affordable to persons dependent on alcoholic drinks.

**Establishment of the Fund.**

6. (1) There is established a fund to be known as the Alcoholic Drinks Control Fund.

(2) The Fund shall consist of—

- (a) such monies as may be appropriated by the county assembly;
- (b) such licence and other fees as may be payable under this Act;
- (c) such sums as may be realized from property forfeited to the county government under this Act;
- (d) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;
- (e) monies earned or arising from any investment of the Fund;
- (f) all other sums which may in any manner become payable to, or vested in, the Fund.

(3) Where, in terms of subsection (2) (c), any immovable property is assigned to the Fund, the Director shall deal with the property in such manner as he thinks fit and may sell the property and use the proceeds of sale for the purposes for which the Fund is established subject to approval from the relevant committee in the Elgeyo Marakwet County Assembly.

(4) The Fund shall be used for meeting the capital and recurrent expenditure relating to—

- (a) carrying out the functions of the Directorate stipulated under section 4;
- (b) assisting in the operations of the Sub-county Committees;
- (c) any other matter incidental to the matters stated in paragraphs (a) and (b).

(5) The receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the County Revenue Fund, but shall be retained for the purposes of the Fund.

**Administration of the Fund.**

7. (1) The Fund shall be administered by the Director.

(2) The Director may, with the approval of the Executive Member for the time being responsible for finance, invest or place on a deposit account any of the moneys of the Fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the Fund.

(3) The Director shall—

- (a) supervise and control the administration of the Fund;
- (b) impose conditions on the use of any expenditure personally authorized and may impose any restriction or other requirement concerning use of expenditure;
- (c) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (d) prepare, sign and transmit through the executive member to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 and in such details as the county treasury may from time to time direct;
- (e) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law; and
- (f) designate such staff as may be necessary to assist in the management of the Fund provided that such staff shall work in the Directorate.

### **PART III—LICENSING**

#### **Control of alcoholic drinks.**

8. (1) No person shall—

- (a) manufacture or otherwise produce;
- (b) sell, distribute or dispose of, or deal with; any alcoholic drink including the in the county except under and in accordance with a licence issued under this Act.

(2) No person or entity is allowed to sell, distribute and manufacture any alcoholic drink that is packaged in plastic bottles.

(3) Any person who contravenes the provisions of subsection (1) and (2) commits an offence.

(4) Subsection (1) and (2) shall not apply to—

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- (a) the importation of alcoholic drinks into the country if the alcoholic drink has been imported to the country pursuant to an import license issued by the Authority;
- (b) the bona fide administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine, by a medical practitioner, a veterinary surgeon registered under the Veterinary Surgeons Act or a pharmacist registered under the Pharmacy and Poisons Act, of a No.5 of 1996. medicine containing alcoholic drink;
- (c) the sale of spirituous or distilled perfume, or perfumery;
- (d) the sale of industrial alcohol;
- (e) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 1996, of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink licence belonging to a wholesale dealer, on the licensed premises of the dealer;
- (f) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;
- (g) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;
- (h) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;
- (i) the sale of alcoholic drink at Parliament or the County Assembly Buildings, if sold with the permission of the Speaker of the respective Assembly;
- (j) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces for reasons other than for personal profit:

**Establishment of the Sub-county committee.**

9. (1) There shall be, for every Sub-county, a committee to be known as the Sub-county Alcoholic Drinks Regulation Committee which shall—

- (a) issue licenses in accordance with this Act; and
- (b) perform such other functions as may, from time to time be assigned to it by the Governor.

(2) The Sub-county Committee may, in the discharge of its functions under this Act, make inspection or other visits to premises at such times as it may deem appropriate.

(3) In carrying out its functions, the Sub-county Committee shall—

- (a) ensure that there is effective public participation in accordance with the framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;
- (b) 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;
- (c) collaborate with similar committees in other counties for effective implementation of the Act.

(4) The sub-county committee shall consist of—

- (a) Sub-county administrator appointed under the County Governments Act who shall be the chairperson;
- (b) Deputy County Commissioner;
- (c) the sub-county public health officer;
- (d) the officer commanding police division in the sub-county;
- (e) one officer designated by the Directorate who shall be the Secretary who shall be an ex officio member;
- (f) the officer responsible for coordination of national government functions in the sub-county;
- (g) the officer for the time being responsible for physical planning in the sub-county;
- (h) three residents of the county appointed by the Executive Member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth provided that not more than two persons shall be of the same gender.

(5) The authorized officers specified under section 50 or any person designated by the Authority shall attend the meetings of the Sub-county Committee in an ex-officio capacity.

(6) An officer who is a member of the sub-county committee under sub-section (1) may be represented to the committee meetings by another officer who shall not be below the rank of the deputy to the officer being represented.

(7) A person shall not be a member of the Sub-county Committee if such person is—

- (a) the holder of or 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 that 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) undischarged bankrupt;
- (e) a person who has been convicted of an offence under this Act or of a felony.

(8) The conduct of business and affairs of the sub-county committee shall be in such manner as may be prescribed.

(9) The Directorate shall provide secretariat services for Sub-county Committees.

#### **Review Committee.**

10. (1) There is established the County Alcoholic Drinks Regulations Administrative Review Committee.

(2) The Review Committee shall consist of—

- (a) Chief officer who shall be the chairperson and in the absence the county secretary;
- (b) the county public health officer;
- (c) the officer commanding Kenya Police Services in the county;
- (d) the officer commanding Administration Police in the sub-county;
- (e) the Director who shall be the Secretary who shall be an *ex-officio* member;
- (f) the officer responsible for coordination of national government functions in the county;
- (g) the officer for the time being responsible for physical planning in the county;
- (h) one person who is an Advocate of the High Court appointed by the executive member from among staff serving in the county public service;

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(i) two residents of the county appointed by the Executive Member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth provided that one person shall be of the opposite gender.

(2) The Review Committee shall be responsible for reviewing on appeal decisions made by a sub-county Committee.

(3) The conduct of business and affairs of the Review Committee shall be in such manner as may be prescribed.

(4) The Directorate shall provide administrative services to the Review Committee.

**Application for licence.**

11. (1) A person intending to produce, manufacture, import, distribute 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 premise is to be situated and shall pay a prescribed fee.

(2) The application under subsection (1) shall contain—

- (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 licence, certification from Kenya Bureau of Standards;
- (d) such other matters as may be prescribed.

(3) The Sub-county Committee shall, within twenty-one 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 consecutive days;
- (b) posted in some conspicuous place at or near the applicant's premises;

- (c) sent to the Inspector-General of Police, or to such police officer as the Inspector-General may have notified the Governor that he has appointed to receive it on his behalf;
- (d) sent to the sub-county public health officer in the sub-county in which the premises in respect of which the licences are applied for are situated; and
- (e) sent to the sub-county physical planning officer.

(4) The Inspector-General of Police or, as the case may be, the police officer appointed by him for that purpose; the sub-county public health officer; and the sub-county physical planning officer shall, before the hearing of any application under this section, report as fully as possible to the Sub-county Committee on all matters which may be relevant to the consideration of the application.

(5) Any person may lodge objection to an application.

(6) Every objection to an application shall be 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 days before the hearing of the application and the onus of proof of such service shall be on the objector.

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

(8) Where in respect of an application a Sub-county Committee acts in pursuance of subsection (7), 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 days, as the Sub-county Committee considers necessary to enable the applicant to reply thereto.

(9) 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.

(10) 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.



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

(12) A sub-county 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.

(13) Where a Sub-county Committee considers it necessary to take evidence respecting any question to be determined by the court, such evidence shall be given on oath, and the chairman shall be empowered to administer oaths.

(14) For the purposes of Chapter XI of the Penal Code Cap. 63 (which concerns offences relating to the administration of justice), all proceedings before a Sub-county committee shall be deemed to be judicial proceedings.

(15) 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 and the decision of the court thereon: Provided that no decision shall be quashed on appeal solely by reason of any omission or error in such record, unless it appears that a substantial miscarriage of justice has thereby been occasioned.

(16) The Sub-county Committee shall, within twenty-one days of receipt of the application under subsection (1), 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;
- (d) the applicant for a licence to brew, distill, bottle or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant written law; and
- (e) the premises has sufficient number of competent staff in line with such norms as may be prescribed.