



NAIROBI CITY COUNTY ASSEMBLY
FIRST ASSEMBLY - SECOND SESSION

**ELEVENTH REPORT OF THE SECTORAL
COMMITTEE ON AGRICULTURE, ENVIRONMENT AND NATURAL
RESOURCES ON THE CONSIDERATION OF THE NAIROBI CITY
COUNTY PLASTIC CARRY BAGS CONTROL BILL, 2014**

**Clerk's Chambers,
Nairobi City County Assembly
City Hall Buildings
Nairobi**

October, 2014

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1.0 PREFACE

Mr. Speaker Sir,

The Sectoral Committee on Agriculture, Environment and Natural Resources is established under Standing Order No. 191. Its mandate pursuant to Standing Order 191(5) is to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- b) study the programme and policy objectives of departments and the effectiveness of the implementation;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyse the relative success of the departments as measured by the results obtained as compared with its stated objectives;*
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 185(Committee on Appointments); and*
- g) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

The Committee comprises the following Members:-

- 1. Hon. Benson L Amutavi, MCA - Chairperson**
- 2. Hon. Alhad Ahmed Adam, MCA - Vice Chairperson**
3. Hon. Michael Wainaina Wanjiku, MCA
4. Hon. Hellen Katangie, MCA
5. Hon. Alexander Mutisya Mulatya, MCA
6. Hon. Dorcas Njoroge, MCA

7. Hon. Peter Wahinya Njau, MCA
8. Hon. Catherine Okoth, MCA
9. Hon. Samuel Kagiri Mwangi, MCA
10. Hon. Daniel Oria Odhiambo, MCA
11. Hon. Rosemary Macharia, MCA
12. Hon. Samwel Ndung'u Njoroge, MCA
13. Hon. Zulfa Hakim, MCA
14. Hon. Janet Wala Ayako, MCA
15. Hon. Peter Anyule Imwatok, MCA
16. Hon. Mike O Guoro, MCA
17. Hon. Margaret Sewe, MCA

Mr. Speaker Sir,

The Committee exercises oversight role on the work and administration of the following two departments:-

- i) Agriculture, Livestock Development & Fisheries
- ii) Water, Energy, Forestry and Natural Resources

In accordance with the Second Schedule of the Standing Orders, the Sectoral Committee is mandated to consider all matters relating to:-

- a) agriculture, including crop and animal husbandry, livestock sale yards, county abattoirs, plant and animal disease control and fisheries;**
- b) Animal control and welfare, including licensing of dogs and facilities for accommodation, care and burial of animals;**
- c) implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation and forestry and control of air pollution, noise pollution, other public nuisances and outdoor advertising; and**
- d) Refuse removal, refuse dumps and solid waste disposal**

Mr. Speaker Sir,

On Tuesday, 17th June 2014, the Nairobi City County Plastic Carry Bags Control Bill, 2014 sponsored by the Minority Leader, the Hon. Abdi I. Hassan, MCA, was read a first time and thereafter committed to the Sectoral Committee on Agriculture, Environment and Natural Resources for consideration pursuant to Standing Order 121.

Mr. Speaker Sir,

The Committee placed a notice in the local dailies on Wednesday 18th June, 2014 calling for any representations and amendments from the public on the Bill Pursuant to Article 196(b) of the Constitution of Kenya and Standing Order 121(3) which require public participation in the legislative and other business of the Assembly and its Committees. Following the notice, the Committee received written memoranda from the following stakeholders;

- i) Kenya Association of Manufacturers(KAM)
- ii) Retail Traders Association of Kenya (RETRAK);and
- iii) Two private citizens through email.

The Committee held a total of six (6) meetings and a retreat to consider the Bill and all representations received including meetings with the **County Executive Committee (CEC) Member (CEC) responsible for Water, Energy and Natural Resources** to get the views of the County Executive on the Bill since the sector is responsible for environmental conservation and would be responsible for the implementation of the Bill if passed. The Committee further held a joint meeting with representatives of the Kenya Association of Manufacturers (KAM), Kenya Bureau of Standards (KEBS), Retail Traders Association (RETRAK), and National Environmental Management Authority (NEMA). All the stakeholders were agreeable in principle with the Bill although they proposed amendments to certain Clauses. The CEC proposed amendments on the technical areas of the Bill to make it easier to implement.

Mr. Speaker Sir,

While examining the Bill, the Committee noted the following:

1. The principle objective of the Bill is to control the manufacture, usage and disposal of plastic carry bags and other plastic products so as to conserve and maintain a clean environment and control pollution within Nairobi City County pursuant to Part II of the Fourth Schedule to the Constitution.

The Committee took note that the Schedule IV of the Constitution empowers County Governments to control pollution and other public nuisance within the County. Plastic carry bags and other plastic products contribute immensely towards environmental pollution in the County and therefore the Committee is in support of any legislative measures that intend to protect environmental pollution caused by plastic products.

2. **Part I** of the Bill sets out the preliminary matters with regards to the Bill. Clause 1 sets out the short title and the commencement date of the proposed law. Clause 2 sets out the definition of terms used in the Bill, while Clause 3 outlines the object and purposes of the proposed law. Clause 4 sets out the scope of application of the proposed law.

However, the Committee resolved that the title of the Bill should not be confined to plastic carry bags only but rather it should be broad enough to cover all plastic products since all plastic products contribute to environmental pollution a view that was equally shared by KAM and KEBS.

In Clause 2, the Committee was of the view that definition of scientific words might have the effect of either narrowing or expanding the true scientific meaning of these words and therefore disagreed with proposals by KAM to define words such as “plastic”, “other plastic”, “biodegradable”, and “non-biodegradable”

In Clause 3, the Committee resolved to expand the objectives of the Bill so that the proposed law is consistent with the Constitution which empowers County Governments to implement specific national government policies on natural resources and environmental conservation such as the Kenya Standard which provide for the minimum thickness for plastic carry bags to be manufactured, and to control air pollution and public nuisances

3. **Part II** of the Bill deals with the specifications of the carry bags to be manufactured, recycling of plastic carry bags, and particulars to be printed on carry bags. The part also deals with exemption of manufacturers from fulfilling certain conditions under the proposed law. *The Committee opines that the thickness to be prescribed in the proposed law should be pegged on what is provided for in the Kenyan Standard which is the national policy. The Committee further notes that there is no plastic which is completely non-biodegradable. The Committee is of the view that inclusion of exemption under Clause 8 is subject to abuse and an avenue of corruption and the Committee recommended its removal.*
4. **Part III** of the Bill deals with usage of plastic carry bags. It particularly prohibits the use of carry bags or containers from recycled plastic in the packaging of goods by retailers. Clause 11 outlaws the giving of plastic carry bags to consumers at free cost.

Of concern to the Committee is the total prohibition of the use of recycled plastic carry bags. The Committee proposes that the Bill should emphasis on prohibition of use of recycled plastic carry bags that are likely to cause food poisoning during storing, carrying or packing of any food item. In terms of setting of prices of plastic carry bags, the Committee proposes that the Bill should specifically provide that the process of setting the prices should be participatory and in accordance with section 5 of the Statutory instruments Act, 2013.

5. **Part IV** of the Bill deals with the disposal of plastic carry bags. The part prohibits disposal of plastic carry bags in drainage system infrastructure and in public places. It places responsibility of providing to the public receptacles, depots or places of depositing or collecting non-biodegradable garbage to the relevant Department of the County Government. Clause 14 and 15 provide for the role of the owners and occupiers of land and premises in the collection and removal of garbage from their premises.

The Committee finds this part crucial for the maintenance of a clean environment and eliminates instances where sewer lines have been blocked due to the dumping of plastic materials in the drainage systems. However, the Committee opines that previous experience has seen delay in the collection of plastic waste by the County Government leading to most of them being blown away by wind and carried by storm water. To this end, the Committee proposes that the Bill should clearly propose that the responsible Department should do the collection and disposal of plastic waste in a timely and regular manner.

6. **Part V** of the Bill contains provisions relating to enforcement of the proposed law. It outlines the functions of the relevant Department in the control manufacture, use and disposal of plastic carry bags and empowers them to carry out public education campaigns aimed at achieving the objectives of the proposed Act. It also empowers the County Government to designate an independent analyst for purposes of tasting samples under the proposed Act. The part also contains provisions relating to inspection of premises for compliance with the proposed Act and the powers and mode of exercise of those powers during such inspections.

The Committee finds this part as the backbone of the Bill, since the defunct City Council of Nairobi has had several by-laws on the control of plastic and other waste but the challenge was implementation. The provisions of

this part will go a long way in ensuring compliance by all stakeholders and criminalizes pollution of the environment by waste arising from plastic products. However, the Committee is of the view that the role of training of persons engaged in manufacture, use and disposal of plastics should not be solely left to the County Government since it has a cost implication and therefore the Committee proposes collaboration of the County Government and the National Government and other state and environmental agencies. Further, by providing for an avenue of the County Government to designate an independent analyst, it will reduce delays that may be occasioned by officers of the national state agencies while the County Government is prosecuting a matter under the proposed Act. In addition, the manner in which inspection is to be conducted under the proposed Act respects the inherent right of privacy of citizens as enshrined in the Constitution while at the same time ensuring that no crime under the Act is committed. The Committee also finds it prudent to include officers appointed under the Environmental Management Act as authorized officer under the proposed Act.

The Committee also finds the general penalty provided under Clause 31 as too lenient and may not help in deterrence of committing crime under the Act. To this end, the Committee proposes increase in the fine of a first offender to a fine not exceeding three million shillings up from five hundred thousand shillings while for a second and subsequent offender to imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine.

7. **Part VI** contains provisions on delegated powers. The part empowers the Member of the County Executive responsible for environmental conservation to add or omit non-biodegradable material provided for in the schedule in consultation with a public analyst provided for in the Bill and who shall be a person with qualifications relevant to the subject

matter of plastic. The Member of the County Executive may also make regulations for purposes of implementing the proposed Act and such regulations shall become effective upon approval by the County Assembly.

This part anticipates changes in the subject matter of plastics hence allowing the CEC to accommodate those changes if and when they arise. However, in making the changes, the CEC shall have to table before the County Assembly the proposed regulations for approval.

8. The Schedule lists recognized non-biodegradable plastics as per the relevant Kenyan Standard to guide manufacturers

Mr. Speaker Sir,

The Committee finds this Bill a bold step towards the control, manufacture and disposal of plastic in the County. A comparative study of Cities that have embraced total ban on plastic materials such as Kigali, Rwanda reveals how control of plastic materials helps in the conservation of the environment. This Bill does not seek for the total burn of plastic materials as that would currently negatively impact on the economy of the country. The Committee is alive to the fact that the plastic industry has created employment opportunities to many County residents. The Committee would in future advocate for gradual shift towards a plastic free City.

Mr. Speaker, Sir,

The Committee will propose amendments to the Bill in Clauses 1, 2, 3, 4,5,6,7, 8, 10,11,13,16, 18, 26, 31 and the Schedule. Some of the ammendments are editorial while others are aimed at making the Bill to be consistent with the Constitution and other existing national policies on plastic control and environmental conservation and also to cater for the concerns of stakeholders.

Mr. Speaker Sir;

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the County Assembly for the support and services extended to Members of the Committee to enable them complete the exercise smoothly. I am grateful to the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the secretariat for their support at all times.

On behalf of the Committee, I now have the honour and pleasure to present this report on the consideration of the Nairobi City County Plastic Carry Bags Control Bill, 2014 for adoption.

Thank You.

SIGNED

**BENSON L AMUTAVI, MCA
(CHAIRMAN)**

DATE.....

2.0	<u>COMMITTEE MEMBERS</u>	<u>Signature</u>
1.	Hon. Benson L Amutavi, MCA - Chairperson	_____
2.	Hon. Alhad Ahmed Adam, MCA - Vice Chairperson	_____
3.	Hon. Michael Wainaina Wanjiku, MCA	_____
4.	Hon. Hellen Katangie, MCA	_____
5.	Hon. Alexander Mutisya Mulatya, MCA	_____
6.	Hon. Peter Wahinya Njau, MCA	_____
7.	Hon. Catherine Okoth, MCA	_____
8.	Hon. Samuel Kagiri Mwangi, MCA	_____
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11.	Hon. Peter Anyule Imwatok, MCA	_____
12.	Hon. Margaret Sewe, MCA	_____
13.	Hon. Mike O Guoro, MCA	_____
14.	Hon. Dorcas Njoroge, MCA	_____
15.	Hon. Janet Wala Ayako, MCA	_____
16.	Hon. Samwel Ndung'u Njoroge, MCA	_____
17.	Hon. Rosemary Macharia, MCA	_____

3.0 COMMITTEE CONSIDERATION OF THE NAIROBI CITY COUNTY PLASTIC CARRY BAGS CONTROL BILL, 2014

3.01. While considering the Bill the Committee emphasised on the following two aspects;

- i) Whether the Bill is consistent with the Fourth Schedule of the Constitution. The Committee was convinced that the Bill is Constitutional since it aims at implementing the national policy on plastic contained in the Kenyan Standard as empowered by paragraph 10 of Part II of the Fourth Schedule to the Constitution. In addition, the proposed Act shall empower the County Government to control pollution and public nuisance caused by plastic carry bags and other cheap plastic products.
- ii) The impact of the Bill on environmental conservation and cleanliness within Nairobi City County. The Committee was convinced that if the Bill is passed, it will help in environmental conservation by reducing the amount of plastic waste within the County.

3.02. The Committee deliberated on the Bill as follows;

Clause 1 to 3	- proposed amendments
Clause 4	- agreed to
Clause 5 to 8	- proposed amendments
Clause 9	- agreed to
Clause 10 to 11	- proposed amendments
Clause 12	- agreed to
Clause 13	- proposed amendment
Clause 14	- agreed to
Clause 15	- agreed to
Clause 16	- proposed amendment
Clause 17	- agreed to
Clause 18	- proposed amendment
Clause 19 to 25	- agreed to
Clause 26	- proposed amendment

Clause 27 to 30	- agreed to
Clause 31	- proposed ammendment
Clause 32	- agreed to
Schedule	- proposed ammendments
Long title	- proposed ammendment

4.0 COMMITTEE STAGE AMMENDMENTS

NOTICE is given that the Chairperson of the Sectoral Committee on Environment and Natural Resources, Hon. Benson Amutavi, M.C.A, intends to move the following amendments to the Nairobi City County Plastic Carry Bags Control Bill, 2014 —

LONG TITLE

THAT, the Bill be amended in the Long Title by deleting the words “Carry Bags” appearing immediately after the word “Plastic”;

CLAUSE 1

THAT, clause 1 of the Bill be amended by deleting the words “Carry Bags” appearing immediately after the word “Plastic”;

CLAUSE 2

THAT, clause 2 of the Bill be amended in the definition of “non-biodegradable garbage” by deleting the words “section 20” appearing immediately after the word “under” and substituting therefor the words “section 32”;

CLAUSE 3

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following clause—

3A. The object and purpose of this Act is to provide for the control of pollution and the conservation of the environment within the precincts of Nairobi City County pursuant to the Part II of the Fourth Schedule to the Constitution by—

- (a) implementing the national government policy on environmental conservation relating to plastics and plastic products pursuant to paragraph 10 of Part II of the Fourth Schedule to the Constitution;
- (b) implementing the specific national government standard relating to plastics and plastic products;

- (c) preventing the public nuisance arising from the disposal of plastic and plastic products pursuant to paragraph 3 of Part II of the Fourth Schedule to the Constitution;
- (d) controlling the manufacture of plastic carry bags and other plastic products from the recycled plastic and pigmented carry bags;
- (e) controlling the use of plastic carry bags and other plastic products;
- (f) providing for the control air pollution arising from the use of plastic and plastic products;
- (g) prohibiting the disposal of non-biodegradable plastic waste in public places, drains and sewers, for restoring and maintaining clean environment; and
- (h) such other measures as outlined in this Act.”;

CLAUSE 5

THAT, clause 5 of the Bill be amended by—

- (a) deleting the marginal note and substituting therefor the following marginal note—

“Prohibition of plastic carry bags and plastics not conforming to Kenyan Standard.”;
- (b) deleting subclause (1) and substituting therefor the following new subclause—

“(1) No person shall own, purchase, acquire, import, manufacture, sell, export, store, use, or otherwise deal in any plastic carrier bag or plastic product that does not conform to the relevant Kenyan Standard as prescribed under the Standards Act.”;

CLAUSE 6

THAT, clause 6 of the Bill be amended—

- (a) by deleting the marginal note and substituting therefor the following marginal note—

“Prohibition on manufacture of plastic carry bags from poisonous plastics”

(b) in subclause (1) by deleting the words “recycled non-biodegradable” appearing immediately after the words “use any”;

CLAUSE 7

THAT, clause 7 of the Bill be amended by inserting the words “or importer of a plastic carry bag” immediately after the word “manufacturer’ appearing in subclause (10);

CLAUSE 8

THAT, the Bill be amended by deleting Clause 8;

CLAUSE 10

THAT, clause 10 of the Bill be amended by inserting the words “that is likely to cause food poisoning during storing, carrying or packing any food item” immediately after the word “container” appearing in subclause (1);

CLAUSE 11

THAT, clause 11 of the Bill be amended by inserting the words “in accordance with section 5 of the Statutory Instruments Act, 2013” immediately after the word “shall’ appearing in subsection (2);

CLAUSE 13

THAT, clause 13 of the Bill be amended in subclause (d) by deleting the word “an” appearing immediately after the words “waste in” and substituting therefor the words “a timely, regular and”;

CLAUSE 16

THAT, clause 16 of the Bill be amended by—

(a) inserting the following new subclause immediately after subclause (a)—

“(aa) in liaison with the national government and other state and environmental agencies, formulate and implement measures to address the challenge of plastic waste in the County;”

(b) deleting subclause (b);

CLAUSE 18

THAT, clause 18 of the Bill be amended in subclause (3) by inserting the following paragraph immediately after paragraph (a)—

“(aa) environmental inspectors appointed under the Environmental Management and Coordination Act, 1999;”;

CLAUSE 26

THAT, clause 26 of the Bill be amended—

(a) in subclause (3) by deleting the word “alcohol” appearing immediately after the words “with any” and substituting therefor the words “non-biodegradable material”;

(b) in subclause (4) by deleting the word “Board” appearing immediately after the words “information to the” and substituting therefor the words “relevant Department”;

CLAUSE 31

THAT, the Bill be amended by deleting clause 31 and substituting therefor the following clause-

“**31**(1) Any person convicted of an offence under this Act for which no penalty is specifically provided shall, in the case of a first offence, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding three million shillings or to both such imprisonment and fine and, in the case of a second or subsequent offence, to imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine, and, where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding three hundred thousand shillings for each day or part thereof during which the offence continues.

(2) On the conviction of any person for an offence under this Act the Court may, in addition to any other penalty which may be imposed, make an order—

(a) confiscating all or any part of any goods in respect of which the offence was committed;

(b) prohibiting the manufacture or sale of that commodity unless it complies with the relevant Kenya Standard, and the Court may order that any goods which are the subject of an order under paragraph (a) shall be disposed of in such manner as it may direct.

(3) Where a complaint is or has been made in respect of an offence under section 9(2), the Court may, on application ex parte by an inspector, and on receiving evidence that the commodity, method or procedure complained of, or its manufacture or sale, fails to comply with the relevant Kenyan Standard, make an interim order prohibiting, either absolutely or subject to conditions, the manufacture or sale of that commodity, method or procedure until the earliest opportunity for hearing and determining the complaint.

(4) Any person who contravenes an order of the Court under paragraph (b) of subsection (2), or subsection (3), commits an offence.”

SCHEDULE

That the Bill be amended by deleting the Schedule and substituting therefor the following Schedule—

SCHEDULE

(s. 32)

NON-BIO-DEGRADABLE PLASTICS

(as per -the relevant Kenyan Standard)

1. Polyethylene Terephthalate (PET).

2. High Density Polyethylene (HDPE)
3. Poly Vinyl Chlorine (PVC)
4. Low Density Polyethylene (LDPE)
5. Polypropylene (PP)
6. Polystyrene (PS)
7. Others such as Polybutadiene Terephthalate (PBT),
Acrylonitrile Butadiene Styrene (ABS) and Acrylic.