

THE NAIROBI CITY COUNTY PLASTIC CONTROL ACT, 2016

ARRANGEMENT OF CLAUSES

Clause

PART I-PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Object and purposes of Act.
- 4—Application.

PART II-MANUFACTURE OF PLASTIC CARRY BAGS

- 5—Prohibition of plastic carrybags not conforming to Kenyan Standards.
- 6—Prohibition on manufacture of plastic carry bags from poisonous plastics
- 7—Particulars to be printed on carry particulars.

PART III-USAGE OF PLASTIC CARRY BAGS

- 8—Prohibition on use carry bags or containers from recycled plastic.
- 9—Retailer not to use recycled plastic
- 10—Explicit pricing of plastic bags.

PART IV-DISPOSAL OF PLASTIC CARRY BAGS

- 11—Prohibition on disposal of plastic carry bags
- 12—Provision for placement of receptacles.
- 13—Power for removal of garbage
- 14—Duty of owners and occupiers to collect and deposit garbage.

PART V-ENFORCEMENT

- 15—Functions of the relevant Department.
- 16—Public Analyst.
- 17—Authorised officers.
- 18—Places authorised officers may enter.
- 19—Powers of officers.
- 20 — Use of Records
- 21—Entry of dwelling place.
- 22—Inspection report.
- 23—Assistance of officers.
- 24—Obstruction.
- 25—Seizure.
- 26—Order for restoration.
- 27—Offences by partnership or bodies corporate.
- 28—Nature of evidence in proceedings.
- 29—Protection of actions taken in good faith.
- 30—General penalty.

PART VI— PROVISIONS ON DELEGATED POWERS

31—Non-biodegradable garbage.

32—Rules.

SCHEDULE –Non bio-gradable plastics

THE NAIROBI CITY COUNTY PLASTIC CONTROL ACT, 2016

AN ACT of Nairobi City County Assembly to provide for control on the manufacture, usage and disposal of plastic carry bags and other plastic products so as restore and maintain a clean environment in the County of Nairobi City and for connected purposes.

ENACTED by Nairobi City County Assembly as follows-

PART I-PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Nairobi City County Plastic Control Act, and shall come into operation upon the expiry of ninety days from the date of its publication.

Interpretation.

2. In this Act, unless the context otherwise requires-

“authorised officer” means an officer appointed under section 17;

“bio-degradable garbage” means the garbage or waste material capable of being degraded by the action of micro-organisms;

“building” means any shop, house, out-house, hut, shed or stable whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever; and includes a wall and a well;

“carry bag” means the plastic carry bag whether it has a self-carrying handle or a “D” punched handle or not;

“food” means any article used as food or drink for human consumption and includes,-

- (a) any article which ordinarily enters into or is used in the composition or preparation of human food;
- (b) any flavouring matter or condiment; and
- (c) any other article as may be prescribed, as food for the purposes of this Act having regard to its use, nature, substance or quality;

“Kenyan Standard” means the applicable standard issued under the Standards Act;

“Member of the County Executive” means the member of the County Executive Committee responsible for matters

relating to plastics carry bags;

“non-biodegradable garbage” has the meaning assigned to it under section 31;

“occupier” includes –

- (a) any person, who for the time being is paying or is liable to pay to the owner, the rent or any portion of the rent of the land or building, as the case may be, in respect of which such rent is paid or is payable;
- (b) an owner in occupation of or otherwise using his land or building;
- (c) a tenant occupying any land or building without rent; and
- (d) any person, who is liable to pay to the owner damages for the use and occupation of any land or building;

“owner” includes a person, who for the time being is receiving or is entitled to receive the rent of any land or building whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so receive the rent or be entitled to receive it, if the land or building or part thereof were let to a tenant ;

“pigments” means organic or inorganic chemical substances whether natural or synthetic, used for colouring the carry bags;

“place” means any land or building or part of a building and includes the garden, ground and out-houses, if any, pertaining to a building or part of a building ;

“place open to public view” includes any place or building, monument, fence or balcony visible to a person being in, or passing along any public place;

“plastic products” include plastic bottles, plastic containers, plastic jars, and plastic cups;

“public Analyst” means government chemist or a registered chemical analyst;

“public place” means any place which is open to use and enjoyment of the public whether it is actually used or enjoyed

by the public or not and includes a road, street, market, house-gully or way, whether a thoroughfare or not, and landing place to which public are granted access or have a right to resort or over which they have a right to pass;

“recycled plastic” means plastic waste which is collected, segregated and processed for the purpose of manufacturing carry bags or any other plastic item for use;

“relevant Department” means the Department of the County Executive for the time being responsible for matters relating to plastics.

Object and purposes of Act.

3. The object and purpose of this Act is 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 plastics 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 of air pollution arising from the use of plastics and plastic products;
- (g) prohibiting the disposal of non-biodegradable plastic waste in public places, drains and sewers, for restoring and maintaining a clean environment; and such other measures as outlined in this act.

Application.

4. The provisions of this Act shall apply to the county of Nairobi City and shall be in addition to and not in derogation of the provisions of any national law on the subject, for the time being in force.

PART II-MANUFACTURE OF PLASTIC CARRY BAGS

Prohibition of plastic carry bags not conforming to Kenyan Standards

5. (1) No person shall, import, manufacture, sell, export, store, or otherwise deal in any plastic carrier bag or plastic product that does not conform to the relevant Kenyan Standards as prescribed under the Standards Act.

(2) A person who contravenes the provisions of this section commits an offence.

Prohibition on manufacture of plastic carry bags from poisonous plastics.

6. (1) No person shall manufacture or cause to be manufactured for sale or use of any plastic carry bags or containers with or without inorganic or organic pigments, plasticizers, lubricants and stabilizers, which are liable to cause poisoning of food during storing, carrying or packing of any item of food.

(2) No license, for the manufacture, or sale of recycled carry bags referred to in sub-section (1), granted or received under any law before the commencement of this Act, shall entitle the holder thereof or any person on his behalf to commence or carry on such business.

(3) A person who contravenes the provisions of this section commits an offence.

Particulars to be printed on carry particulars.

7. (1) Every manufacturer or importer of a plastic carry bag shall print on each carry bag his name, address, registration number, size, thickness and the nature of plastic from which it is made and its codification as per the applicable Kenyan Standard.

(2) A person who contravenes the provisions of this section commits an offence.

PART III-USAGE OF PLASTIC CARRY BAGS

Prohibition on use carry bags or containers from recycled plastic.

8. (1) No person shall use or cause to be used any recycled non-biodegradable plastic carry bags or container containing organic pigments, plasticizers, lubricants and stabilizers, which are liable to cause poisoning of food for the purpose of storing, carrying or packing any item of food.

(2) A person who contravenes the provisions of this section commits an offence.

Retailer not to use recycled plastic

9. (1) A retailer must not provide to a person any recycled non-biodegradable plastic carry bag or container that is likely to cause food poisoning during storing, carrying or packing any food item for the purpose of enabling goods sold, or to be sold, by the retailer, to be carried from the retailer's premises.

(2) A person who contravenes the provisions of this section commits an offence.

Explicit pricing of plastic bags.

10. (1) No retailer shall make available to consumers any plastic carry bag free of charge.

(2) The relevant Department shall in accordance with section 5 of the Statutory Instruments Act, 2013 prescribe the price of plastic bags depending on their quality and size which covers their waste management costs in order to-

(a) encourage their re-use and minimize plastic waste generation;

(b) encourage consumers to use other alternative modes of carrying or packaging commodities.

(2) A person who contravenes the provisions of subsection (1) commits an offence.

PART IV-DISPOSAL OF PLASTIC CARRY BAGS

Prohibition on disposal of plastic carry bags

11. (1) No person, shall throw or cause to be thrown in any drain, ventilation shaft, pipe and fittings connected with the private or public drainage works or at any public place or in any place open to public view any non-bio-degradable garbage or plastic or any bio-degradable garbage in a non-bio-degradable bag or bio-degradable, which may-

(a) injure the proper functioning of the drainage and sewerage system;

(b) interfere with the free flow or affect the treatment and disposal of drain and sewer contents;

(c) be dangerous or cause nuisance or be prejudicial to public health; or

(d) likely to be ingested by stray animals leading to serious health hazards.

(2) No person shall, place or permit to be placed, except in accordance with such procedure and after complying with such safeguards, as may be prescribed, any bio-degradable or non-bio-degradable garbage in any public place or in a place open to public view, unless-

(a) the garbage is placed in a garbage receptacle; or

(b) the garbage is deposited in a location designated by the

County Government for the disposal of the garbage.

(3) If any person throws any biodegradable or non-biodegradable garbage at any public place or in any place open to public view, any person aggrieved of any such nuisance, may complain to the relevant Department in such manner as may be prescribed.

(4) A person who contravenes the provisions of subsections (1) and (2) commits an offence.

Provision for
placement of
receptacles.

12. It shall be the duty of the relevant Department or any officer authorized by it, to-

- (a) place or provide at proper and convenient location public receptacles, depots or places for temporary deposit or collection of non-bio-degradable garbage;
- (b) provide separate dustbins for temporary deposit of different kinds of non-bio-degradable garbage;
- (c) provide for the removal of contents of receptacles, depots and of the accumulation at all places provided under clause (a); and
- (d) arrange for disposal of plastic waste in a timely, regular and environmentally sound manner.

Power for removal
of garbage

13. It shall be the duty of the owners and occupiers of all lands and buildings to collect or cause to be collected from their respective land and buildings the non-biodegradable garbage and to deposit, or cause to be deposited, in public receptacles, deposits or places provided for temporary deposit or collection of the non-bio-degradable garbage by the relevant Department.

Duty of owners
and occupiers to
collect and
deposit garbage.

14. The relevant Department may, by notice in writing, require the owner or occupier or part-owner, or person claiming to be the owner or part-owner, of any land or building, which has become a place of unauthorized stacking or deposit of non-bio-degradable garbage and is likely to occasion nuisance, to remove or cause to be removed the said garbage so stacked or collected, and if, in its opinion, such stacking or collection of non-bio-degradable waste is likely to injure the drainage and sewerage system or is likely to be dangerous to public health and environment, it may pass an order to take such steps immediately at the cost of such persons, as it may deem appropriate.

PART V-ENFORCEMENT

Functions of the
relevant
Department..

15. (1) The relevant Department shall -

- (a) carry out and sponsor investigation and research relating to the problem of plastic waste;
- (b) 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;
- (c) organize and conduct a comprehensive public awareness programme on-
 - (i) the dangers of plastic usage including environment degradation; and
 - (ii) the promotion of alternatives to plastic carry bags;
- (d) collect, compile and publish technical and statistical data relating to manufacture, use and disposal of plastic waste;
- (e) prepare manuals, guides relating to manufacture, use and disposal of plastics and disseminate information relating thereto;
- (f) in conjunction with the national government and other state agencies, investigate the standards for plastic carry bags and plastic products.
- (g) perform such other functions, as may be specified in this Act.

(2) The Member of the County Executive shall, in each financial year, prepare for tabling before the county assembly status report outlining-

- (a) the measures taken by the relevant department in the year to ensure compliance with subsection (1);
- (b) the progress made and challenges encountered in achieving the compliance; and
- (c) such other matters as may be specified in a resolution of the County Assembly

Public Analyst

16. (1) The Member of the County Executive Committee may, by notification in the Gazette, appoint or recognize a person or persons, having such qualifications, as may be prescribed, to be a Public Analyst for the purpose of analyzing

and testing any plastic carry bag under this Act.

(2) The Public Analyst appointed under Section 16(1) shall analyze and test any plastic carry bag under this Act, only in collaboration with the national government and other state agencies

(3) The report of a Public Analyst shall be treated as a document of evidence in any proceeding under this Act.

Authorised officers.

17. (1) The Member of the County Executive Committee may, upon the recommendation of the relevant Department, appoint any person or class of persons to be authorised officers for purposes of this Act.

(2) The Member of the County Executive Committee shall issue a certificate of appointment to every person appointed under this section.

(3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorised officers for the purposes of this Act—

- (a) public health officers appointed under the Public Health Act (Cap. 242); and
- (b) environmental inspectors appointed under the Environmental Management and Coordination Act, 1999;
- (c) any other person upon whom any written law vests functions of the maintenance of law and order

Places authorised officers may enter.

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

(2) An authorised 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 section 18(2).

(3) The right to privacy enshrined in Article 31 of the Constitution and the right to property enshrined in Article 40 of the Constitution are limited as specified in this section for the purpose of ensuring the health and safety of the public.

Powers of officers.

19. In carrying out an inspection in any place pursuant to section 19 an authorised officer may—

- (a) examine any plastic bag 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 plastic bag 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 plastic bag or thing;
- (d) conduct any test or analysis or take any measurements; or
- (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.

20. In carrying out an inspection in a place, an authorised 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; or
- (d) scrutinize any other record system in use in that place.

Entry of dwelling place.

21. (1) An authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under sub-section (2).

(2) Upon an ex-parte application, a magistrate or judge of the High Court, may issue a warrant authorising the authorised officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that –

- (a) the dwelling place is a place referred to in section 19;
- (b) entry to the dwelling place is necessary for the administration or enforcement of this Act; and
- (c) 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.

(4) An authorised officer executing the warrant issued under this section shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

Inspection report.

22. An authorised officer who carried out an inspection under this Act shall make a preliminary report immediately upon completion of the inspection in a prescribed format, a copy of which shall be retained in the premises.

Assistance of officers.

23. (1) The owner of a place inspected by an authorised 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 authorised officer to carry out his duties under this Act; and
- (b) furnish the authorised officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

(2) The inspecting agent in sub-section (1) shall issue the respective inspection completion and certification certificate once satisfied with the inspection.

Obstruction.

24. (1) No person shall obstruct or hinder, or knowingly make a false or misleading statement to an authorised officer who is carrying out duties under this Act.

(2) A person who contravenes sub-section (1) commits an offence.

Seizure.

25. (1) During an inspection under this Act, an authorised officer may seize any plastic bag or thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

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

(3) Unless authorised by an officer, no person shall remove, alter or interfere in any manner with any non-

biodegradable material, plastic bag or other thing seized.

(4) Any person from whom a plastic bag or thing was seized may, within thirty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the relevant Department within the prescribed time and in the prescribed manner.

Order for restoration.

26. (1) The High Court may order that the plastic bag 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 plastic bag or thing seized; and
- (b) the plastic bag 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 sub-section (1) the court is satisfied that the applicant is entitled to possession of the plastic bag or thing seized but is not satisfied with respect to the matters mentioned in paragraph (b) of sub-section (1), the court may order that the plastic bag 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.

Offences by
partnership or
bodies corporate.

27. (1) Any act or omission which is an offence under this Act or any rules made hereunder shall, if done by a body corporate, be deemed to be an offence committed by every director, secretary or manager of the body corporate unless proved that the offence was committed without consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

(2) If an offence under this Act or any rules made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence unless there is proof that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

(3) In any prosecution for an offence under this Act, it shall

be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.

(4) Any act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the act or omission of the employer, and any proceedings for an offence arising out of such act or omission may be taken against both the employer and the employee.

Nature of evidence in proceedings.

28. (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 sub-section (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 a plastic bag is, in the absence of evidence to the contrary, proof that the package contains that plastic bag; and
- (b) a name or address on a package purporting to be the name or address of the person by whom the plastic bag was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

Protection of actions taken in good faith.

29. No suit, prosecution or other legal proceedings shall lie against the County Government or any officer or other employee of the County Government or any other person or authority authorized by the county Government, for anything, which is done or intended to be done in good faith under this

Act or the rules made thereunder.

General penalty

30. (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, and in the case of a second or subsequent offender, to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings, and, where an offence is of a continuing nature for the case of a manufacturer, he shall risk closure of his manufacturing firm.

(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 Kenyan 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(30), commits an offence

PART VI— PROVISIONS ON DELEGATED POWERS

Non-biodegradable
garbage

31. (1) Non-biodegradable garbage for purposes of this Act refers to the waste garbage or material, which is not biodegradable by an action of microorganism and includes thermoplastics and thermo-set plastics, such as P.V.C., polyethylene, terephthalate, polypropylene, polyurethane, polycarbonate, polystyrene as specified in the Schedule appended to this Act.

(2) Where it is expedient so to do, the Member of the County Executive Committee may, in consultation with the Public Analyst, may, by notification in the Gazette, add to or omit from the Schedule appended to this Act any item and

thereafter, the Schedule shall be deemed to have been amended accordingly.

Rules.

32. (1) The Member of the County Executive Committee may make rules for the for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the rules made may provide for -

- (a) the qualifications for appointing or recognizing a person as Public Analyst under this Act;
- (b) the procedure and safeguards to be complied with under section 13(2); and
- (c) any other matter, which is required to be prescribed by or under this Act.

(3) Every rule made under this Act shall be laid before the County Assembly for approval before the rule is gazetted.

SCHEDULE

(s. 31)

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.

