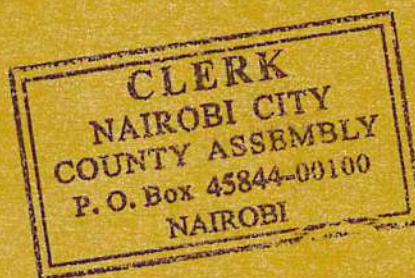


## SPECIAL ISSUE

Kenya Gazette Supplement No. 18 (Nairobi City County Bills No. 12)



REPUBLIC OF KENYA



# **KENYA GAZETTE SUPPLEMENT**

## **NAIROBI CITY COUNTY BILLS, 2021**

**NAIROBI, 1st December, 2021**

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# THE NAIROBI CITY COUNTY AIR QUALITY BILL, 2021

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## **THE NAIROBI CITY COUNTY AIR QUALITY BILL, 2021**

### **A Bill for**

**AN ACT of the Nairobi City County Assembly to provide a legislative framework on air quality in order to protect the right to a clean and healthy environment by providing reasonable measures for the prevention of air pollution and for connected purposes.**

**ENACTED** by the Nairobi City County Assembly, as follows—

### **PART I—PRELIMINARY**

#### **Short title and Commencement**

1. This Act may be cited as the Nairobi City County Air Quality Act, 2021 and shall come into operation on a date appointed by the Executive Committee Member but in any case not later than six (6) months after gazettment.

#### **Interpretation**

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

“Air” means the air surrounding the earth, but does not include air contained within a building or pressurized containers, or confined under the surface of the earth;

“Air Quality” means the concentration of a pollutant in the atmosphere at the point of measurement duly prescribed under or pursuant to the Nairobi City County Air Quality Regulations;

“Air quality standard” means an air quality level as established by this Act setting a limit of pollutant levels in the atmosphere;

“Air pollutant” means—

- (a) any fume, smoke, particulate matter, aerosols, vapour, gas, odorous substance or any combination thereof or;
- (b) any other substance or matter whether physical, chemical, biological, or radioactive, including source material, special nuclear material, and by-product materials which is emitted into or otherwise enters the atmosphere from any object or activity and causes, or, if unabated, may cause air pollution, but does not include water vapour, steam condensate or any other emission exempted under this Act;

“Air pollution” means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances and any other pollutant that exceed ambient Air Quality Standards for that particular pollutant;



“Ambient air” means the atmosphere surrounding the earth and does not include the atmosphere within a structure or within any underground space;

“Authorised Officer” means an inspector and or any other officer of the Department, duly authorized by the County Executive Committee Member, in writing, to ensure compliance of this Act;

“Best Available Techniques Economically Achievable” means the effective method in preventing pollution and, where that is not practicable, generally to reduce emissions into the air from the industrial activities and their impact on the environment as a whole;

“biomedical waste” means waste that is generated by human or animal health care facilities and clinical testing or research laboratories including—

- (a) chemical and pharmaceutical waste;
- (b) human and animal anatomical waste;
- (c) infectious non-anatomical waste;
- (d) needles, sharp instruments and similar waste,

but does not include waste from animal husbandry or household in origin, or generated in the food production, general building maintenance and office administration of such facilities or laboratories;

“Chief officer” means the Chief Officer for the time being responsible for environmental matters in the Nairobi City County;

“Department” means the county department for the time being, responsible for matters relating to Environment in Nairobi City County;

“Emission” means any discharge of pollutants into the atmosphere from any source;

“Emission limit” means the permissible levels as specified in the Regulations;

“Emitting facility” means a facility or equipment that causes air pollution;

“Excessive emission” means emission of air pollutants in excess of limit standards as specified in the Regulations;

“Fuel-burning Equipment” means any equipment, apparatus, device, mechanism or structure that burns solid, liquid or gaseous fuel for the purpose of vehicle transportation, heating, drying, generating power, processing steam or any combination thereof;

“Greenhouse gas” means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and includes carbon dioxide, methane and nitrous oxide;



“Ground level” means all that portion of the atmosphere beginning at one metre above the surface of the earth and extending vertically upwards for a distance of ten metres;

“Hazardous Substance” means any material that may pose a substantial threat or potential hazard to human health or the environment and includes those substances named in the Environmental Management and Co-ordination Act (Cap. 387) Laws of Kenya;

“incinerator” means any equipment, apparatus, device, mechanism or structure that is designed to incinerate waste, and that is capable of controlling the combustion temperature, the degree of gaseous mixing and the length of time that combustion gases reside in the incinerator;

“Industrial source” means any facility, operation, activity or equipment that releases air pollutant;

“Mobile Source” means a single identifiable source of atmospheric emission which does not emanate from a fixed location;

“Inspector” means a gazetted officer of the County Executive responsible for enforcement of the provisions of this Act;

“Kenya Standards” mean standards developed or adopted by the Kenya Bureau of Standards;

“Non-point sources” means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes bush, forest and open fires, mining activities, agricultural activities and stockpiles;

“Occupier” means a person in occupation or control of premises, and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;

“Odour” means an unpleasant smell that is considered to be a nuisance to a reasonable person;

“Owner” in relation to any premises means—

- (a) the registered proprietor of the premises;
- (b) the lessee, including a sub-lessee of the premises;
- (c) the agent or trustee of any other owners described in paragraphs (a) and (b) of this interpretation section or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative; or
- (d) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the rent if such premises were let to a tenant;





“Permit” means an authority in writing, issued by the Chief Officer of the department pursuant to the Act or these regulations, to operate an undertaking;

“Point source” means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;

“Premises” refers to point and non-point sources of air pollution including quarries;

“Suspended particles” small airborne particles with a diameter of ten (10) micrometres or less;

“visible air pollutants” includes particulate matter or smoke; on exhaust emissions;

“Waste” means solid, liquid or gaseous waste and includes used lubricating oil;

“Person” includes a company, industry, association or other body of persons whether incorporated or un-incorporated; and

“Pollution Control System” means acceptable emission control technology as Specified in a Schedule in the Regulations.

### **Objects of the Act**

3. The objects and purpose of this Act is to establish a legal and institutional framework for—

- (a) protection of the right to a clean and healthy environment within Nairobi City County;
- (b) provision of reasonable measures for—
  - (i) the protection and enhancement of the quality of air in the Nairobi city County; and,
  - (ii) the prevention of air pollution;
- (c) to give effect to Section 19 (4) of the Climate Change Act, 2016;
- (d) to give effect to Paragraph 3 of Part 2, of the Fourth Schedule of The Constitution of Kenya and Part VIII of the Environment and Co-ordination Act, Cap. 387 laws of Kenya, in order to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people.

## **PART II—APPLICATION AND PROHIBITION**

### **Application of this Act**

4. (1) This Act shall apply to—



- (a) any premises used for any industrial or trade purposes, or on which matter is burnt in connection with any industrial or trade purposes, including open burning, whether or not the premises are prescribed in the Act;
- (b) any other premises or process that discharges and/or emits; or is capable of discharging and/or emitting air pollutants into the open air;
- (c) any industrial plant;
- (d) any fuel burning equipment including vehicular, industrial and domestic sources.
- (e) all quarrying and mining activities;
- (f) all premises, places, processes, operations, or works to which the provisions of the Act and Regulations made thereunder apply; and
- (g) any other appliance or activity that may by order be specified by the Executive Committee Member in the *Kenya Gazette*.

(2) An owner or occupier of every existing premises engaged in any industrial activity as specified in the Regulations, including that which is not subject to any condition on limit values for air pollutants whether on the license issued or approval granted for the operation of the existing facility, shall, on or before twelve (12) months from the date on which this Act comes into operation, take such measures as may be necessary to comply with the requirement of this Act.

(3) The provisions of this Act shall be in addition to other requirements imposed by or under the Regulations or any other written law.

(4) Notwithstanding sub section (2) herein, where there is a justified complaint or evidence of air pollution, and in the opinion of the authorized officer in charge of compliance made hereunder that such compliance should be accelerated, the Chief Officer may serve upon the owner or occupier of the existing premises a notice in writing requiring compliance within such shorter reasonable period as the Chief Officer may direct or otherwise as need may be.

### **Obligation to Comply**

5. (1) The owner or occupier of a new premises shall comply with the limit values and technical standards specified in this Act.

(2) An owner of every existing premise, including that which is not subject to any condition on limit values for air pollutants whether on the license issued or approval granted for the operation of the existing facility, shall, on or before the expiry of six (6) months from the date on which this Act come into operation, take such measures as may be necessary to comply with the prescribed limit values as specified in the Regulations.



(3) Notwithstanding Sub-section (2), where there is a justified complaint or evidence of air pollution, and in the opinion of the authorized officer, compliance with sub-section (1) should be accelerated, the authorized officer may serve upon the owner or occupier of the existing premises a notice in writing requiring compliance within such shorter reasonable period as the officer may direct.

(4) Evidence of compliance shall be in the form of a license issued by the Department in a prescribed form set out in the Regulations.

### **Obligation to notify**

**6.** (1) An owner or occupier of a premises shall not, without giving prior written notification to the Chief Officer –

- (a) carry out any change in licensed operation of his premises;
- (b) carry out any work that may result to air pollution;
- (c) construct on any land, any building or premises designed or used for a purpose that may result in air pollution;
- (d) make, cause, or permit to be made any change of, to, or in any plant, machine, equipment or technology used or installed at the premises that releases excessive emissions into the air and that such emissions cause a material change in the quantity or quality of emission from an existing source; or
- (e) carry out any changes or modifications to an existing air pollution control system.

(2) The written notification shall be submitted to the Chief Officer not less than fourteen days before the commencement of such work in such form as determined by the Chief Officer.

(3) The Chief Officer may approve or object to the notification and the decision shall be accompanied by reasons thereof.

### **General duty of the County Government**

**7.** In the application of this Act, the County Government must seek to protect and enhance the quality of air within its boundaries; and must apply this mechanism in a manner that will achieve the progressive realization of rights as prescribed under Article 42 of the Constitution of Kenya.

### **Measures to reduce emissions**

**8.** The owner or occupier of a premises involved in any activity or industry that is likely to cause air pollution shall incorporate measures to reduce the emission of air pollutants to the atmosphere in accordance with the Best Available Techniques Economically Achievable approved by the Chief Officer responsible for environmental issues within Nairobi City County.



### **General Prohibition**

**9.** (1) Subject to Section 49 on exemptions, no person shall discharge a pollutant into the air from any source without a license.

(2) No person shall discharge a pollutant into the air from any source or equipment which causes a concentration in the ambient air which is greater than the maximum concentration specified in a license.

### **Determination of ambient air pollution level**

**10.** Maximum ambient air pollution levels will be determined based on ground level concentration standards as specified in the Regulations under this Act.

## **PART III—AIR POLLUTION CONTROL SYSTEM**

### **Air pollution control system**

**11.** (1) Every premise shall be equipped with an air pollution control system installed in accordance with the specifications as shall be determined by the Regulations.

(2) An owner or occupier of the premises shall engage an accredited professional approved by the Nairobi City County Air Pollution Control Committee as established under section 41, to design, install, maintain and monitor the air pollution control system, in accordance with the standards set in the Regulations.

(3) An owner or occupier of the premises shall operate and maintain the air pollution control system in accordance with sound engineering practice and ensure that all components of the air pollution control system are in good working condition.

(4) The operation of the air pollution control system shall be supervised by a competent person who shall be on duty at all times during the operation of the air pollution control system.

(5) The owner or occupier of the premises and the professional described under sub-section (2) hereof shall, within thirty days after the commencement of operations at the premises or after six months upon commencement of this Act, submit a written declaration to the Chief Officer in such form as determined by him/her, certifying that the design and construction of the air pollution control system have been complied with the specifications referred to in sub-section (1).

(6) The owner or occupier of the premises shall, within fourteen days after the commencement of the operations at the premises, submit to the Chief Officer as-built drawings that show the placement of any works or structures that form part of the air pollution control system.

### **Performance monitoring of air pollution control systems**

**12.** The owner or occupier of a premise or premises shall —



- (a) equip the premises with relevant facilities, equipment or instruments to conduct performance monitoring of the air pollution control system; and
- (b) conduct performance monitoring of the components of the air pollution control system as determined by the Regulations and submit the same to the Chief Officer quarterly or as may be advised.

### **Maintenance of records**

**13.** (1) An owner or occupier of a premise shall maintain records of manufacturing processes, and of maintenance and performance monitoring of the air pollution control system.

(2) The records shall be kept and made available anytime for inspection by an authorized officer on demand and in line with the provisions of the Constitution of Kenya 2010 and the Access to Information Act, No. 31 of 2016.

(3) Any person who fails to keep records, fraudulently alters records or fraudulently makes false statements in any records required to be kept under this Act commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term of not less than two years, or both.

### **Limit Values and Technical Standards**

**14.** (1) Any person who carries out any activity that is likely to emit an air pollutant shall comply with the limit values and technical standards as specified in the Regulations under this Act.

(2) Unless otherwise specified, the emission shall be calculated in terms of mass of pollutant per volume of the waste gases (expressed as mg/m<sup>3</sup>), assuming standard conditions for temperature and pressure for dry gas (volume at 273 K, 101.3 kPa).

(3) Notwithstanding Sub- section (1), any fuel burning equipment that is rated to consume pulverized fuel or any solid fuel at 30 kilograms or more per hour or any liquid or gaseous matter at 15 kilograms or more per hour shall comply with the limit values and technical standards as shall be specified in the regulations.

(4) For the purpose of this Act, the threshold values as shall be listed in the Regulations are met when the total capacity of one or more facilities of a particular category of activity in the same premises exceeds the respective threshold values of that category.

(5) Any Person who contravenes standards and measures prescribed under this Act or its Regulations commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term of not less than two years, or both.



### **Prohibition of emission dilution**

15. (1) No person shall dilute, or cause or permit to be diluted, any emission at any time or point before it is emitted to the atmosphere.

(2) Emission becomes diluted when it undergoes a process to make it less concentrated by adding oxygen or other gases from external sources before its' emission into the atmosphere.

(3) Any person who dilutes emission commits an offence and shall, on conviction, be liable to a fine of not less than five hundred thousand shillings, or to imprisonment for a term of not less than one year, or both.

### **Hazardous substances**

16. (1) An owner or occupier of a premise shall use the best practicable means to prevent the emission of hazardous substances and to render harmless and inoffensive those substances necessarily discharged.

(2) In the case of the use or handling or unintentional release of hazardous or toxic substances, the limit values and technical standards as prescribed in the regulations shall apply.

### **Periodic Monitoring and inspection**

17. (1) An owner or occupier of a premise shall conduct monitoring of emissions to ascertain no harm to the occupants or public at large.

(2) Unless otherwise directed by the Chief Officer, periodic inspection shall be conducted by an authorized officer.

(3) The owner or occupier of a premise shall ensure that the first monitoring for new facilities is carried out after three months, but no later than six months, from the commencement of operation of such premises.

(4) An owner or occupier of a premise shall submit a quarterly monitoring report in accordance with the specifications as determined by the Committee established under this Act, and the Regulations; and samples for analysis by an accredited laboratory as prescribed in Schedule.

(5) Any record of periodic monitoring under this Act shall be kept for at least three years and shall be made available for inspection by the authorized officer.

### **Continuous emission monitoring**

18. (1) In addition to periodic monitoring under Section 17 of this Act, the owner or occupier of a premise shall carry out continuous emission monitoring. For purposes of continuous emission monitoring, the measuring device shall comply with the specifications as determined by the Regulations.

(2) For continuous emission monitoring, the limit values are complied with if the evaluation of the results for the operating period within any one calendar year shows that no daily average exceeds the



emission standard, and no half-hour average exceeds the emission standard more than two times.

(3) The owner or occupier of the premises shall make evaluations of the continuous emission monitoring in a calendar year, whereby for each calendar day, the daily mean value that relates to the daily operating time shall be derived from the half-hourly mean values.

(4) The owner or occupier of the premises shall submit to the Chief Officer the results of evaluations within three months after the end of each calendar year, and such evaluation results are to be kept and maintained by the owner or occupier for at least 3 years.

(5) In the event where emission standards exceed the prescribed limit values, the owner or occupier of such premises shall notify the Chief Officer within twenty-four hours from the discovery of the excess emission.

(6) In the event a monitoring device fails to operate, the owner or occupier of the premises shall notify the Chief Officer not later than one hour from the occurrence of such failure.

(7) Any person who distorts a device contemplated under this Section so as to give wrong information commits an offence under this Act.

#### **Emissions declarations**

**19.** (1) An owner or occupier of a premise which carries out any of the activities or industries specified in this Act shall for every calendar year submit to the Chief Officer an emission declaration in such form as determined by the Regulation.

(2) The emission declaration shall be submitted as follows—

- (a) in the case of an existing premise, not later than six months from the date on which these Regulations come into operation; and
- (b) in the case of a new premises, the first emission declaration shall be submitted 3 months after the date the facility commences its operations, but not later than six months from such date.

(3) In the event of a change in occupancy, the new owner or occupier shall submit an emission declaration for the next calendar year.

(4) The emission report shall be prepared by a qualified environment expert who shall be duly registered by a relevant government agency.

#### **Duty to render assistance**

**20.** An owner or occupier of a premise being inspected by the authorized officer shall provide, access, every reasonable assistance and facility available at the premises, including labour, equipment, appliances and instruments that the officer may require.



### **Limit values and technical standards**

**21.** All activities, premises and industries shall comply with the limit values and technical standards as specified in this Act and in the Regulations under this Act.

### **Failure of control equipment and emergency requirement**

**22.** Where in the opinion of the Authorized Officer, a failure in the operations of any premise, plant, machine, or equipment, or any control equipment used or installed on any premise may cause an accumulation of air pollutants to such level so as to threaten public health, safety or welfare, or the quality of the environment, the Chief Officer may, by notice in writing require the owner or occupier of such premises to—

- (a) submit a comprehensive emergency response plan detailing out the equipment, chemicals and personnel requirement, as well as measures and steps to be taken by parties concerned in the event of such emergency;
- (b) Install necessary public warning or alert systems;
- (c) keep in adequate stock such equipment or chemicals as may be required in such emergency; and
- (d) comply with any other directions which the Authorized officer considers necessary in dealing with such emergency.

### **Accidental or emergency release or discharge**

**23.** (1) Where any accidental, emergency or unauthorized release or discharge of a pollutant into the air occurs the person in charge of the undertaking which caused the release or discharge shall immediately inform the Chief Officer or nearest police station within twenty-four (24) hours of the occurrence and submit a written report to the Chief Officer within seven (7) days specifying—

- (a) the date and time of the release or discharge;
- (b) the duration of the release or discharge;
- (c) the composition of the release or discharge showing—
  - (i) the concentration of air pollutants;
  - (ii) the emission rate, and iii. the total amount, by weight;
- (d) a description of the circumstances leading to the release or discharge; and
- (e) the steps and procedures taken to control the release or discharge, as well as those taken to prevent similar releases or discharges in the future; and the steps and procedures taken to clean up the release or discharge.



(2) Failure to notify the department of accidental release or discharge commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term of not less than two years, or both.

## **PART IV—OPERATIONS AND LICENSING**

### **Installation and operations**

**24.** (1) In addition to any other provisions in this Act, the Chief Officer may, by notice in writing, require an owner or occupier of a premise to—

- (a) measure, take samples of, analyze, monitor, record and report any environmentally hazardous substances, air pollutants or emissions containing pollutants;
- (b) comply with stricter limit values, parameters or equivalent technical measures;
- (c) provide proof of installation of Air pollution control systems; or
- (d) take any other action which the Chief Officer considers necessary, within such time and in such manner as may be specified in the notice.

### **Sampling and analysis of pollutants**

**25.** The sampling and analysis of pollutants shall be carried out in accordance with the appropriate Kenyan Standards or any other standards as shall be determined in the Regulations under this Act.

### **Improvement order and prohibition order**

**26.** (1) In the event of any undesirable occurrence and where in the opinion of the Chief Officer, the continued operation of any premise or process in question, should not be permitted in order to safeguard public health, safety, welfare or environment, the Chief Officer may—

- (a) by notice in writing, issue an improvement order that the owner should respond to in writing within 2 days from the day it is received stating the commitment to take the necessary corrective measures within seven days;
- (b) issue a prohibition order, prohibiting the further operation of such premise or process absolutely or conditionally, or for such period as may be directed but not exceeding two weeks, or until remedial requirements have been complied with;
- (c) for the purpose of sub- section (b), a copy of the prohibition order shall be posted in a conspicuous place in the vicinity of the premises to which the said prohibition order refers, and no person shall operate such premises until the prohibition order is withdrawn;



- (d) failure to comply with the orders herein constitutes an offence which upon conviction if an individual, will attract a fine of not less than Kenya shillings ten thousand and not more than Kenya shilling fifty thousand or a jail term of six months or both; if a corporate or business, a fine of not less than Kenya shillings two million and not more than Kenya shillings five million and a jail term of one year or both.

### **License required to operate emission source**

27. (1) An owner or occupier of premises shall apply for a license to operate an emission source every calendar year.

(2) Every application for a license or renewal to operate an emission source or air pollutant source shall—

- (a) be in the form set out in the Regulations with all the applicable information required thereunder; and
- (b) be signed by the applicant;

(3) Any person required to acquire a license under this Act from the Department shall register the sources of pollution on forms provided by the Department and shall provide the following information—

- (a) the name of the person, company, or corporation operating the sources;
- (b) the address, GPS coordinates, Ward, and sub county;
- (c) directors or managers of the company;
- (d) quantities and kinds of raw materials used;
- (e) emission assessment report from an accredited professional;
- (f) process flow sheets;
- (g) operating schedules;
- (h) total weights and kinds of air pollutants released;
- (i) types and quantities of fuels used;
- (j) stack heights; and,
- (k) other information as the department may require or documents, maps, considered essential in evaluating the potential of the source to cause air pollution.

(4) An applicant for a license shall pay such fees as shall be prescribed in the Regulations.

(5) The Chief Officer shall issue the license after being verified and approved by the Chief Executive Committee Member.



**Consideration of an application**

28. The Executive Committee Member shall consider an application for a license or renewal to operate an emission source or air pollutant source within forty-five (45) days.

**False or misleading information**

29. Any person who provides any information under this Act which he knows to be false or, in any material respect, misleading shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand Kenya shillings or to imprisonment for a term not exceeding two years or to both.

**Issuance or refusal of license**

30. (1) When an application for a license containing the information required by section 27 has been received, the Department through Chief Officer shall either—

- (a) issue a license authorizing the operation of the proposed activity, as the case may be, subject to any terms and conditions that the Chief Officer considers appropriate; or
- (b) refuse to issue a license by written notice to the applicant indicating reasons for the refusal.

(2) The terms and conditions imposed under subsection (1) may be any or all of those set out in the Regulations and any other as appropriate.

(3) A license issued under this section expires on the 31st December of the year issued and is renewed yearly.

**Revocation of a license**

31. (1) The County Executive Committee Member may, at any time, after issuing a license, impose additional terms and/or conditions, suspend, alter the terms and conditions of the license or revoke the license—

- (a) where the County Executive Committee member believes on reasonable and probable grounds that continued operation of the Emitting facility, is or may be—
  - (i) injurious to the health or safety or comfort of the public;
  - (ii) injurious or damaging to property, plant or animal life;
  - (iii) an interference with normal business;
  - (iv) obnoxious to the public;
  - (v) a threat to environmental health for any other reason; or
  - (vi) if an emitting facility is, leased or otherwise disposed of, the license in respect thereof expires immediately on the date of the sale, lease or other disposition;



- (b) where the Chief Executive Committee Member on reasonable and probable grounds finds out false information has been provided in the application, as evidenced by an Inspector's report; or
- (c) any other conditions as specified in the Regulations.

(2) Whenever a licence is revoked, suspended or cancelled, the holder thereof shall not proceed with the project which is the subject of the licence until a new licence is issued by the County Executive Committee Member.

### **Renewal**

**32.** (1) A license may be renewed if the application for renewal of a license includes—

- (a) the requirements set out in section 27 of this Act;
- (b) the existing license number;
- (c) the emission report of the facility that is not more than 3 months old at the time of application for renewal;
- (d) all details respecting any changes in the documentation and information with respect to the existing facilities;
- (e) the renewal fee in the amount required by Schedule XI; and
- (f) any other information required by the Chief Officer.

(2) The application for renewal is filed with the Department at least 30 days prior to the expiration of a license

### **Prohibited burning**

**33.** (1) No person shall burn the following materials except where authorized and in accordance with a valid and subsisting license—

- (a) used lubricating oil;
- (b) hazardous substances;
- (c) biomedical waste;
- (d) motor vehicle tires;
- (e) animal or human cadavers;
- (f) railway ties and other wood treated with wood preservatives;
- (g) Waste materials from building or construction sites, or resulting from building demolition, unless permitted under written law;
- (h) trash, garbage, litter or other waste from commercial, industrial or public operations;
- (i) materials containing rubber or plastic; or,
- (j) spilled oil or oil production by-products except as may be required for the emergency response.



(2) No person shall burn or permit to be burned any waste, garbage or litter at a public disposal site, except where authorized by the Chief Officer in writing.

(3) Any person who contravenes provisions of this Section commits an offence and shall, on conviction, be liable to a fine of not less than five hundred thousand shillings, or to imprisonment for a term of not less than six months, or both.

### **Inspection of pollutants from transport means**

34. (1) Any person owning or operating any private, public or commercial vehicle which is an emission source must comply with Kenyan Standards prescribed by Kenya Bureau of Standards.

(2) The Chief Officer after consultation with lead agencies may determine modalities and requirements for compliance with permissible emissions limits by the operators of private, public or commercial vehicles using petroleum products.

### **Inspectors of air pollution**

35. (1) The County Executive Committee Member shall, by *Gazette* notice, appoint duly qualified persons whether public officers or otherwise, by name or by title of office, to be air quality inspectors of the County for such jurisdiction units as shall be specified in the *Gazette* Notice appointing them.

(2) An inspector shall—

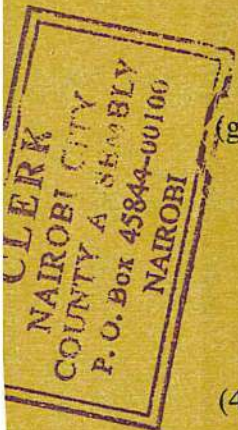
- (a) monitor compliance with the standards established under this Act and Regulations;
- (b) monitor the activities of persons, industries and premises where air pollution takes place or is likely to take place;
- (c) monitor the emission of air pollutants into the air within their jurisdiction; and
- (d) perform such other functions as may be required under this Act, the Regulations or under the appointing *Gazette* notice.

(3) An inspector may, in the performance of his/her duties under this Act or the Regulations made thereunder, at all reasonable times and without a warrant—

- (a) enter any land, premises, vessel, vehicle and make examinations and enquiries to determine whether the provisions of this Act are being complied with;
- (b) require the production of, inspect, examine and copy licenses, registers, records and other documents relating to this Act;



- (c) take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for test and analysis;
  - (d) carry out periodic inspections of all establishments and undertakings within their respective jurisdictional limits which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely pollute the air, to ensure that the provisions of this Act are complied with;
  - (e) seize any article, vessel, vehicle, plant, equipment, substance or any other thing which he/ she reasonably believes has been used in the commission of an offence under this Act or the Regulations made thereunder;
  - (f) with the written approval of the County Executive Committee Member order the immediate closure of any manufacturing plant or other establishment or undertaking which pollutes or is likely to pollute the air contrary to the provisions of this Act and to require the owner or operator of such establishment or undertaking to implement any remedial measures that the inspector may direct in the notice closing down the establishment or undertaking. Any establishment or undertaking closed down under this paragraph may resume its operations only with the written approval of the Air Pollution Control Committee established under this Act;
  - (g) with the approval of the County Executive Committee Member issue an improvement notice requiring the owner or operator of any manufacturing plant, vessel, vehicle or other establishment or undertaking to cease any activities deleterious to the quality of air and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the County Executive Committee Member may determine.
- (4) Any Person who—
- (a) fails to or obstructs inspectors duly appointed and in their line of duty from accessing any premises for purposes of inspection; shall be guilty of an offence and be liable upon conviction to a fine of not less than Kenya shillings fifty thousand or to imprisonment of up-to six months or both;
  - (b) fails to comply with a lawful order of an inspector or fails, neglects or refuses to carry out an improvement order issued under this Act by an inspector; shall be guilty of an offence and shall be liable upon conviction to a fine of Kenya shillings one hundred thousands or to imprisonment of up-to one year or both;





- (c) impersonates an inspector, shall be guilty of an offence and shall upon conviction be liable to a fine of not less than Kenya shillings five hundred thousand or to imprisonment of up-to two years or both.

### **Standards and limits of Air Pollution**

36. The standards and limits of air pollution shall be set out in the Regulations.

### **Air pollutants from construction and quarries**

37. Any person transporting or storing construction materials or materials from construction works, quarry, or carrying out demolition of a building or part of a building must avoid air pollution or dispersion of visible particulate materials by complying with relevant quality standards.

### **Air pollutants from other sources**

38. (1) No person shall cause or allow stockpiling or storage of materials in a manner likely to cause ambient air quality levels to be contravened.

(2) Any person who contravenes provisions of this Section commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term of not less than two years, or both.

(3) All quarry and mining operators shall meet the prescribed ambient air quality standards for commercial facilities.

### **Duty of the authorized officer to notify**

39. Where the authorized officers of the department notice any activity that causes or is likely to cause emissions of air pollutants, they shall notify the concerned person and require them to find a remedy. If such a person fails to find the remedy, the department may take corrective measures at the cost of the owner.

### **Air quality survey**

40. The department shall identify and map major emission sources thereafter do air quality surveys after every two years. This will be for the purpose of improving air quality standards.

### **Oduor guidelines**

41. Any person, being an owner of premises, who causes or allows the generation, from any source, of any odour which unreasonably interferes, or is likely to unreasonably interfere, with any other persons' lawful use or enjoyment of his property shall use recognized good practices and procedures to reduce such odours to a level determined by the Committee or any guidelines published by the environment Sector or any national guidelines for the reduction of odours.



### **Trans-boundary pollution**

42. Every owner or operator of a controlled premise shall ensure that emissions from his/her premise do not cause air pollution in any territory outside the jurisdiction of Nairobi City County in excess of the relevant ambient air quality levels prescribed both in Nairobi City County and in the territory outside the jurisdiction of Nairobi City County or the Republic of Kenya.

### **Visible air Pollutants**

43. (1) No person shall cause the discharge or emission of visible air pollutants to the air.

(2) If an authorized officer suspects that a premise, facility or a vessel is emitting or discharging visible air pollutants into the air, he /she shall conduct investigations and make a report for consideration by the Committee which shall make appropriate recommendations.

(3) Measurements of visible air pollutants shall be in accordance with the relevant method of measurement set out by national government or in accordance with any method approved by the Department.

## **PART V—ADMINISTRATION**

### **Establishment of the Nairobi City County Air Pollution Control Committee**

44. (1) There is established a committee to be known as the Nairobi City County Air Pollution Control Committee which shall consist of the Chief Officer who shall be the Chairperson and six other members who shall be tasked with the responsibility of implementing provisions of this Act and matters relating to control of air pollution including the implementation of the Regulations for control of air quality within the County.

(2) The County Executive Committee Member shall appoint and *Gazette* the names of the membership herein.

### **Functions of the Committee**

45. The Nairobi City County Air Pollution Control Committee shall—

- (a) be responsible for the proper management of air quality within the county;
- (b) accredit professionals who shall be tasked with designing, installation, maintenance and supervision of the air pollution control systems.
- (c) perform such additional functions as are prescribed by the Act or as may, from time to time, be assigned by the Executive Committee Member by notice in the *Kenya Gazette*.



**Composition of the Committee**

**46.** (1) The Nairobi City County Air Pollution Control Committee shall consist of—

- (a) the Chief Officer responsible for environmental matters within Nairobi City County who shall be the chairperson;
- (b) the County Director for Environment matters who shall be the Secretary;
- (c) a representative of manufacturers, business community and industrialists operating within Nairobi City County;
- (d) a representative of the Civil society engaged in environmental management programmes within the County;
- (e) a representative of research and academic organizations specializing in environmental matters;
- (f) a representative of the Nairobi Residents Association; and
- (g) a member representing women, youth, Persons-With Disabilities and other minorities.

(2) In considering the composition of the Committee, the County Executive Committee Member shall observe principles relating to special interest groups including minorities and marginalised persons, women, persons with disabilities.

**PART VI—MISCELLANEOUS****General penalty**

**47.** (1) Any person who contravenes or fails to comply with any provisions of this Act, whose fines have not been specified, shall be guilty of an offence and shall, upon conviction, be liable—

- (a) if an individual and first time offender, to a fine of not less than Kenya shillings fifty thousand and not more than Kenya shillings one hundred thousand or imprisonment of up to six months;
- (b) if an entity and first offender, to a fine not less than Kenya shillings one million;
- (c) if an individual and second time or subsequent offender be liable to a fine of not less than Kenya shillings two hundred thousand and not more than Kenya shillings five hundred thousand or imprisonment of not less than one year but not more than two years; and
- (d) if an entity and a second time or subsequent offender, to a fine not less than Kenya shillings two million.





(2) Any person aggrieved by such convictions shall appeal to the National Environment Tribunal which shall consider and decide on the Appeal as filed.

### **Exemption**

**48.** (1) The activities and entities to be exempted under this Act are as shall be set out in the Regulations.

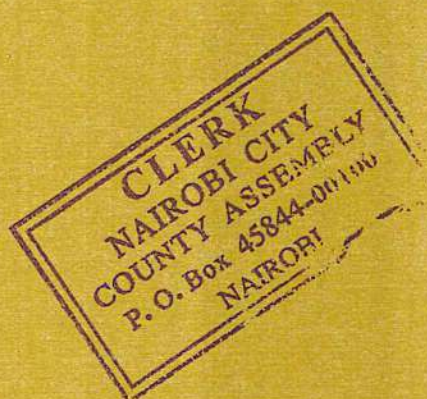
(2) Nothing in this Act affects any requirements for a license under the Environmental Management and Coordination Act, No.8 of 1999 or any other written law within the Republic of Kenya.

### **Incentives**

**49.** Incentives for compliance under this Act shall be set out in a Schedule under the Regulations.

### **Regulations**

**50.** The County Executive Committee Member shall, upon consultations with the relevant stakeholders make Regulations for the better carrying into effect and enforcement of the provisions of this Act.





## **MEMORANDUM OF OBJECTS AND REASONS**

Pursuant to Standing Order 124, I hereby wish to present the following Statements.

### **Statement of Objects and Reasons To Give effect to Constitutional provisions on Air Pollution**

One of the main objectives for this law is to give effect to paragraph 3 of Part 2 of the Fourth Schedule to the Constitution of Kenya on air pollution. As a right enshrined in the Constitution, providing the guidelines within which that right can be exercised in Nairobi County is imperative.

### **Establishment of local emission standards**

The proposed law is aimed at establishment of local emission standards which include identification of substances and development of local emission standards consequences of identification and public participation process in addition to the National Regulations.

### **Motor Vehicle Emissions, Small Boilers and controlled activities**

The proposed law is also principally aimed at establishing provisions for control of emissions from motor vehicles, small boilers and controlled activities such as dust emissions caused by open burning, emissions caused by burning, emissions caused by burning of industrial waste, domestic waste and garden waste in waste bins or skips on any land or premises, sugar cane burning emissions, emissions caused by tyre burning and burning of rubber products and cables in open spaces, pesticide spraying emissions, spray painting emissions, sand blasting emissions, noise pollution management and emissions that cause a nuisance.

### **Establishment of general provisions for enforcement of the law**

The proposed law is further aimed at providing for Appeals, offences and penalties, enforcement, exemptions, national and County governments bound.

### **Establishment of mechanisms for implementation of the National Regulations**

The proposed law is further aimed at providing for mechanisms for effective implementation of the National Regulations on the air pollution and environmental management.

### **Statement of delegation of legislative powers**

It is my considered opinion that the delegated powers should go to the County Executive Committee Member responsible for matters related to environment management who shall be charged with overseeing the enforcement of the Act.



**Statement of financial implication**

After a thorough understanding of the objects, the Bill will have financial implications to the county. However, it is worth noting that the County will benefit in the long run.

Further, the implementation of the Bill, once passed and assented, should be factored in the budget making process for the Financial year 2021/2022.

Dated the 1st December, 2021.

ESTHER WAITHERA CHEGE,  
*Member of County Assembly.*

