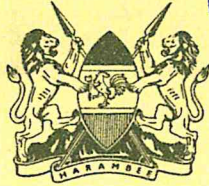


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SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY BILLS, 2023

NAIROBI, 9th August, 2023

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**THE NAIROBI CITY COUNTY CLIMATE CHANGE
MANAGEMENT BILL, 2023**

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**THE NAIROBI CITY COUNTY CLIMATE CHANGE
MANAGEMENT BILL, 2023**

A Bill for

AN ACT of the Nairobi City County Assembly to provide to provide for a legal framework for enhanced county climate change mitigation strategies and adaptation programmes; and for connected purposes.

ENACTED by the Nairobi City County Assembly, as follows—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Nairobi City County Climate Change Management Act, 2023.

Interpretation

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

“adaptation” means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects to moderate harm or exploit beneficial opportunities;

“adaptive capacity” means the ability of a system to adapt to the impacts, cope with the consequences, minimize potential damages, or take advantage of opportunities offered by climate change or climate variability;

“Authority” means the National Environment Management Authority established by the Environmental Management and Coordination Act, 1999 as amended by the Environmental Management and Coordination (Amendment) Act, 2015;

“climate change” means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period;

“constitution” means the Constitution of Kenya, 2010;

“county” means Nairobi City County;

“county assembly” means the County Assembly of Nairobi City;

“county government” means the County Government of Nairobi City;

“directorate” means the Climate Change Directorate established under section 9 (1) of the Climate Change Act, 2016;

environment” has the meaning assigned to it in section 2 of the Environmental Management and Coordination Act, 1999;

“fund” means the County Climate Change Fund established under section 25 of this Act;

“fund administrator” means the Administrator of the County Climate Change Fund established under section 25 of this Act;

“governor” means the Governor of Nairobi City County;

“mitigation” means preventing, reducing or slowing down the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and enhancing potential sinks for greenhouse gases;

“private entity” means a body or person with functions of a private nature, and includes bodies registered under the Public Benefits Organizations Act, 2013;

“public entity” means a body or person with functions of a public nature;

“resilience” means the ability of a social, economic or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organization and the capacity to adapt to stress and change;

“steering committee” means the County Climate Change Steering Committee established under section 5 of this Act;

“sustainable development” means economic development that is conducted without depletion of natural resources;

“vulnerability” means the conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of a system to the impact of hazards.

Objects and Purpose of the Act

3. The purpose of this Act is to ensure Nairobi City County takes effective and timely action to contribute towards meeting the National Obligations on Climate Change through facilitating the establishment of structures and systems for climate change adaptation, mitigation and financing of programs and projects in the County by—

- (a) mainstreaming of climate change in different sectors;
- (b) initiating and coordinating financing of climate change adaptation and mitigation projects at the community level;

- (c) facilitating community-initiated climate change adaptation and mitigation projects;
- (d) coordinating collection and dissemination of climate change information to the public to create awareness and preparedness;
- (e) seeking and receiving grants from the National Government and relevant implementing partners;
- (f) Developing and reviewing County Climate Change Policy and Legislative framework.
- (g) implementing any relevant obligations of the State under international agreements related to climate change;
- (h) regulate and manage all activities related to climate change,
- (i) requiring lead agencies including government, departments, private sector and individual citizens to undertake their own respective roles in climate change response measures; and
- (j) Providing for procedural and administrative matters.

Guiding Values and Principles

4. (1) In fulfilling its mandate, the County Government, shall act in accordance with the values and principles set out in the Constitution and any other written law.

(2) The guiding values and principles of low carbon climate change, resilience and sustainable development in this Clause shall bind the County Government and all persons when—

- (a) enacting, applying or interpreting any provisions of this Act; and
- (b) making or implementing public policy decisions on climate change.

PART II—COORDINATION AND OVERSIGHT

Establishment of the Committee

5. There is established a Steering Committee appointed by the Governor to be known as the Nairobi City County Climate Change Steering Committee.

Composition of the Steering Committee

6. (1) The County Steering Committee shall comprise of—
- (a) the Governor, who shall be the Chairperson;
 - (b) the Deputy Governor, who shall be the Vice-chairperson;

- (c) the Executive Committee member (CECM) for the time being responsible for matters of Environment and Climate Change who shall be the Secretary;
- (d) the Executive Committee Member for the time being responsible for matters of the County Treasury;
- (e) the Executive Committee Member for the time being responsible for matters of Agriculture, Livestock and Fisheries;
- (f) the County Commissioner or his representative;
- (g) a representative of the private sector nominated by the body representing the largest number of institutions in the private sector;
- (h) a representative of the civil society organizations nominated by the most representative registered national umbrella association of civil societies whose activities are related to climate change; and
- (i) a representative of the academia, nominated by the Commission for University Education.

(2) In making these appointments to the County Steering Committee, consideration has to be made to the two-thirds gender rule and the provisions of Article 27 of the Constitution shall apply.

(3) In making the appointments under Sub-section (1) (g), (h) and (i) the Governor shall forward the names of the nominated members for approval by the County Assembly.

(4) A person shall be qualified for appointment under section 6 (g), (h) and (i) respectively if the person—

- (a) is a resident of Nairobi City County; and
- (b) has knowledge and experience in any of the following fields: climate change, natural resource management and/or environmental conservation and has actively and publicly engaged with these issues in the County.

Secretariat to the County Steering Committee

7. In there is hereby established a secretariat for the county Climate Change Steering which shall be drawn from the staff of the directorate of environment within the County.

Tenure of the County Steering Committee

8. A member of the County Climate Change Steering Committee under section 6 (i) (j) and (k) shall hold office for three years and shall be eligible for reappointment for a further term of three years only.

Functions of the County Steering Committee

9. (1) The County Climate Change Steering Committee shall—
- (a) mainstream climate change projects, programs and activities in County planning and budgeting and ensure their approval and inclusion in the County Integrated Development Plan;
 - (b) approve the County climate change funding proposals as recommended by the County planning Climate Change Planning Committee;
 - (c) approve all payments of climate change funded projects and programs;
 - (d) receive and approve project proposals for funding;
 - (e) receive and consider progress reports from the County Planning Committee;
 - (f) approve capacity building activities for the Steering Committee, County Planning Committee and the Ward Climate Change Planning Committees;
 - (g) ensure coordination among institutions implementing climate change programs so as to minimize duplication of effort;
 - (h) receive and consider reports on challenges and disputes identify obstacles on the implementation of climate change programs and make proposals for resolving the obstacles;
 - (i) monitor disbursement; oversee budget execution;
 - (j) advice on partners' collaboration and domestication and implementation of the five-year National Climate Change Action Plan through the Council of Governors;
 - (k) ensure smooth flow of information across the lead agencies;
 - (l) mobilize resources for climate change actions in the County; and
 - (m) perform any other function that may be necessary to ensure attainment of the object and purpose of this Act.

(2) The Steering Committee shall in the performance of its functions be responsible for Policy on climate change.

Meetings of the Committee

10. The meetings of the County Climate Change Steering Committee shall be conducted as follows—

- (a) the County Climate Change Steering Committee shall meet at least once in a quartering each financial year;
- (b) the quorum for meetings of the County Climate Change Steering Committee shall be at least half of the membership; and
- (c) in the absence of the chairperson, the vice-chairperson shall chair meetings of the County Climate Change Steering Committee, and in the absence of both the vice-chairperson members in attendance shall elect one of them to chair the meeting.

Remuneration

11. The County Climate Change Steering Committee shall draw sitting allowance or any such remuneration at a rate recommended by the Salaries and Remuneration Commission (SRC) for committees of such mandates.

PART III—MEASURES AND ACTIONS FOR RESPONDING TO CLIMATE CHANGE

County Climate Change Action Plan

12. (1)The process of development of a Climate Change Action Plan shall entail the following—

- (a) the Executive Committee Member shall in consultation with the County Climate Change Steering Committee and relevant sectors and through a participatory process involving relevant stakeholders, formulate a County Climate Change Action Plan;
- (b) the County Climate Change Action Plan shall be for a period of five years; and
- (c) without prejudice to the provisions of paragraph (a), the Executive Committee Member shall within one year of the coming into force of this Act coordinate development of an interim County Climate Change Action Plan for the remainder of the period of the current National Climate Change Action Plan.

(2) The County Climate Change Action Plan shall be reviewed and updated every five years through the same participatory process as the one followed in its formulation.

Contents of the County Climate Change Action Plan

13. (1) The County Climate Change Action Plan shall—

- (a) be aligned to the National Climate Change Action Plan and respond to the specific needs and circumstances of the County;
- (b) contain a climate change needs and response assessment for the County;
- (c) articulate acclimate change response implementation plan informed by the climate change needs and response assessment, and specifying measures and mechanisms for—
 - (i) guiding the County toward the achievement of low carbon climate-resilient sustainable development;
 - (ii) mainstreaming climate change into County development plans, programmes, strategies and projects;
 - (iii) adaptation to and mitigation of climate change;
 - (iv) enhancing research, capacity building and knowledge management on climate change and climate change response; and
 - (v) enhancing public awareness for effective participation in climate change response.

(2) Monitoring, evaluation and periodic review to integrate learning and best practice in the implementation of the County Climate Change Action Plan.

Approval of County Climate Change Action Plan

14. The County Climate Change Action Plan shall be published by the County Climate Change Steering Committee and forwarded to the County Assembly for approval.

Review of County Climate Change Action Plan

15. The County Climate Change Planning Committee shall undertake a biennial review of the implementation of the County Climate Change Action Plan and report to the Steering Committee.

PART IV—DUTIES RELATING TO CLIMATE CHANGE**Climate change duties of public entities**

16. (1) The Steering Committee may, on the recommendation of the Executive Committee Member and in consultation with relevant Executive Committee Members, impose duties relating to climate change on any public entity operating within the County.

(2) The imposition of climate change duties under sub-section (1) shall be effected through regulations and preceded by public sensitization and consultations.

(3) Any public entity on which a climate change duty has been imposed shall in performing the said duty act in a manner best suited to the successful implementation of this Act and the County Climate Change Action Plan.

(4) Without prejudice to the provisions of sub-section (1), every public entity operating in the County shall have the duty to—

- (a) mainstream climate change into sectorial strategies, plans and other frameworks for implementing its statutory functions;
- (b) perform its statutory functions in a manner that contributes to the implementation of the County Climate Change Action Plan;
- (c) support the Steering Committee and the County Government in its planning, programming, implementation and monitoring of climate change response in the County; and
- (d) report annually to the Steering Committee on the status and progress of performance and implementation of all assigned climate change duties and functions.

Climate change duties of Private entities

17. The Steering Committee may, on their commendation of the Executive Committee Member and in consultation with relevant Executive Committee Members, impose duties relating to climate change on any private entity operating within the County.

(2) The Steering Committee shall make regulations governing the nature and procedure for reporting on performance of climate change duties by private entities, including monitoring and evaluation of Monitoring and reporting on Compliance.

Monitoring and reporting on compliance

18. The County Climate Change Director shall with the assistance of the representative of the National Environment Management Authority and on behalf of the Steering Committee, monitor, investigate and report on whether public and private entities are in compliance with the assigned climate change duties, and in performance of this function he or she shall—

- (a) have all powers necessary for purposes of monitoring and investigation including the power to enter premises of any private entity and make an enquiry; and
- (b) at a reasonable hour, for the purposes of monitoring and investigation, enter any private land or premises to make an inspection or other task related to this function.

Potential Role of Private Entity in Reporting on Performance

19. Notwithstanding the provisions of section 14, the County Climate Change Steering Committee may—

- (a) require a private entity that is subject to climate change obligations to prepare reports on the status of its performance thereof and prescribe the period for reporting; and
- (b) require any private entity that fails to perform its climate change duties to prepare a report within a specified time, on the actions it has taken, is taking or intends to take to ensure future performance of those duties.

Annual County Climate Change Response Report

20. (1) The County Climate Change Steering Committee shall, within three months after the end of every financial year, publish and submit a report on implementation of the County Climate Change Action Plan and other climate change response actions and impacts to the County Assembly for consideration.

(2) The County Assembly shall, within three months of receiving the report, provide recommendations and propose actions to the Steering Committee.

(3) A copy of the report issued under sub-section (1) shall be forwarded to the Directorate for information purposes.

PART V—PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

Values and principles to Apply to planning and implementation

21. The planning and implementation of climate change response in the County shall be informed by the values and principles specified in section 4 of this Act.

County strategy for climate change education and public awareness

22. (1) Within one year of this Act coming into force, the Planning Committee shall develop a comprehensive county strategy for public education and awareness creation on climate change.

(2) The strategy shall be developed through a participatory process involving all stakeholders in the County and validated at public meetings organized by Zonal Planning Sub-Committees in every Zone.

(3) The strategy shall be approved by the Steering Committee and its implementation mainstreamed into the County Climate Change Action Plan.

Public sensitization to precede formulation of Climate Change response plans

23. (1) The Climate Change Steering Committee shall ensure that the development of any climate change response programme, plan, project or activity in the County is preceded by comprehensive campaign of public sensitization and awareness creation to facilitate informed public participation.

(2) The Steering Committee shall report on public sensitization campaigns undertaken with reference to every climate change response programme, plan, project or activity in the County to the County Assembly and shall demonstrate how the sensitization has made an impact on the threshold of decision making.

(3) The report on public sensitization and awareness creation on climate change programs, plans, projects and activities shall be included in the reports of the Steering Committee under sections 18 and 19 of this Act.

Capacity building for effective public participation

24. (1) The County Climate Change Steering Committee shall implement comprehensive programmes of capacity building to equip individual citizens and communities in the County for effective participation in Climate Change Governance and Response.

(2) The Steering Committee shall support and facilitate communities to establish Community Based Organizations and other frameworks for mobilization and engagement with climate governance and response issues in the County.

Access to information

25. (1) The County Climate Change Steering Committee shall publish, publicize and ensure access to all important climate change information in their possession in inappropriate format to make it useable by different actors.

(2) The Steering Committee, shall partner with Kenya Department of Meteorology to develop Climate Information Services to package and disseminate climate information through appropriate channels.

PART VI—COUNTY CLIMATE CHANGE FUND

Establishment of Climate Change Fund

26. (1) There is hereby established a fund to be known as County Climate Change Fund to provide funding for priority climate change actions and interventions identified by communities and other stakeholders and approved by the Steering Committee.

(2) The Fund shall be domicile in the Department responsible for Climate Change Affairs, administered by the Steering Committee and managed by the Fund Administrator designated by the Executive Committee Member for the time being responsible for matters of the County Treasury.

Sources of the Fund

27. The Fund shall be financed through—

- (a) money appropriated annually by the County Assembly in every financial year;
- (b) money received from the National Climate Change Fund;
- (c) International Climate Change Finance received by the County directly or through the National Designated Authority, National Implementing Entity or other agency;
- (d) donations, endowments, bequests, grants and gifts from individuals, public and private entities local or foreign;
- (e) charges, fees, levies or fines received by the county government in connection with activities that adversely impact on climate in the County; and,

- (f) interest and any other money that may lawfully accrue to the Fund in any form.

County Climate Change Fund Regulations

28. (1) The Executive Committee Member for the time being responsible for matters of the County Treasury shall, in consultation with the Executive Committee, and with the approval of the County Assembly develop Regulations for administration and management of the Fund

(2) The Regulations made under sub-section (1) shall provide for the following, among other matters—

- (a) formulation of the County Climate Finance Framework;
- (b) appointment and removal of the Fund Administrator;
- (c) operation of the Fund;
- (d) eligibility criteria for accessing money from the Fund;
- (e) development of project proposals, application for and disbursement of money from the Fund; and
- (f) complaints mechanism; and, monitoring, evaluation, reporting and learning.

PART VII—FINANCIAL PROVISIONS

Funding of County Climate Steering Committee

29. (1) Functions of the County Climate Change Steering Committee shall be financed through a vote in the estimates of revenue and expenditure of the relevant Department of the Executive Committee Member.

(2) Participation of representatives of State and County Executive Departments in the Steering Committee, the Planning Committee and Zonal Planning Sub-Committees shall be financed by the Fund in accordance with Guidelines from the Salaries and Remuneration Commission.

(3) Finances and accounts of the Steering Committee, the Planning Committee and Zonal Planning Sub-Committees shall be administered and managed in accordance with the provisions of the Public Finance Management Act, 2012 and the Public Finance Management (County Governments) Regulations.

Annual estimates for the County Climate Change Steering Committee

30. At least three months prior to the commencement of each financial year, the Executive Committee Member shall cause to be prepared the estimates of revenue and expenditure of the County Climate Change Steering Committee for the year.

Financial year of the County Climate Change Steering Committee

31. The financial year of the County Climate Change Steering Committee shall be the period of twelve-months ending the thirtieth of June in each year.

Accounts and audit of the County Climate Change Steering

32. The County Climate Change Steering Committee, shall cause to be kept all proper books and records of account and income, expenditure and assets, and shall cause the accounts to be audited within a period of three months after the end of each financial year.

PART VIII—MISCELLANEOUS PROVISIONS

Protection from personal liability

33. (1) No civil or criminal proceedings shall be brought against a member, officer or agent of the County Climate Change Steering Committee pursuant to actions arising in the performance of their duties in good faith.

(2) The provisions of sub-Clause (1) shall not relieve the County Climate Change Steering Committee of liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by negligence in the exercise of any power conferred by this Act or any other written law or by failure wholly or partially of any works.

Offences and Penalties

34. Any person who—

- (a) without any lawful cause ignores or fails to do any instructions issued by any member or officer or agent of the County Climate Change Steering Committee in exercise of the power so performance of the functions of the Committees under this Act; or
- (b) wilfully obstructs any member or officer or agent of the County Climate Change Steering Committee in the discharge of their lawful duties; or misrepresents, knowingly submits false or

misleading information to any member or officer or agent of the County Climate Change Steering Committee, in exercise of powers or the performance of the functions of the said Committee under this Act, commits an offence and shall upon conviction be liable to the punishment provided for under section 33(1) of the Climate Change Act, 2016.

Transitional Provision

35. The County Climate Change Steering Committee and the County Planning Committee shall be constituted within two months of coming into force of this Act.

Regulations

36. The Executive Committee Member shall make Regulations for the proper administration of this Act.

**MEMORANDUM OF THE OBJECTS OF THE NAIROBI CITY
COUNTY CLIMATE CHANGE MANAGEMENT BILL, 2023**

PURPOSE OF BILL

The Bill seeks to provide a framework for Climate Change management by establishing structures and systems for climate change adaptation, mitigation and financing of programs and projects in the county.

OBJECTS OF BILL

PART 1 (Clauses 1- 4) of the Bill provides for preliminary provisions. These include the title of the bill, interpretation of terms and a statement of objects and purpose of the Bill. Clause 4 provides for the guiding principles which are the national values and principles of governance as set out in Articles 10 and 232 of the Constitution and Article 42 which are the environmental rights and obligations in respect of the environment.

PART II (Clauses 5-11) of the Bill provides for coordination and oversight it establishes the County Climate Change Steering Committee enumerating their functions and conduct of business affairs of the Committee.

PART III (Clauses 12-15) of the Bill provides for the measures and actions for responding to climate change and provides for the formulation of contents, approval and review of the County Climate Change Action Plan.

PART IV (Clauses 16-20) of the Bill provides for the duties and responsibilities relating to climate change apportioned to public and private entities and further delves into the monitoring and reporting on compliance and the annual Climate Change Response Report.

PART V (Clauses 21-25) of the Bill provides for public participation and access to information, the values and principles to be applied in planning and implementation, the county strategy for climate education and public awareness, and public sensitization that precedes the formulation of climate change response plans.

PART VI (Clauses 26-28) of the Bill provides for the establishment of the County Climate Change Fund, the sources of the fund and County Climate Change Fund Regulations.

PART VII (Clause 29-32) of the Bill provides for the Financial Provisions for the funding and the operations, annual estimates, accounts and audit of the steering and planning committees.

PART VIII (Clause 33-36) of the Bill sets out the miscellaneous provisions these include the protection from personal liability, offences and penalties, Transitional provisions and regulations.

FINANCIAL CONSIDERATION

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the annual estimates. The Bill therefore, is a money Bill within the meaning of Article 114 of the Constitution.

STATEMENT ON DELEGATED POWERS TO LEGISTATE

The Executive Committee member responsible for matters related to environment management to make necessary regulations for the better functioning of various provisions of this Act.

Dated the 3rd August, 2023.

WAITHERA CHEGE,
Deputy Minority Leader.