

SPECIAL ISSUE

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**NAIROBI CITY COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

NAIROBI, 30th May, 2014

CONTENT

Bill for Introduction into the Nairobi City County Assembly—	PAGE
The Nairobi City County Plastic Carry Bags Control Bill, 2014.....	1

**THE NAIROBI CITY COUNTY PLASTIC CARRY BAGS
CONTROL BILL, 2014**

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 to manufacture carry bags from virgin plastic.
- 6—Prohibition to manufacture carry bags from recycled plastic.
- 7—Particulars to be printed on carry particulars.
- 8—Exemption.

PART III—USAGE OF PLASTIC CARRY BAGS

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

PART IV—DISPOSAL OF PLASTIC CARRY BAGS

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

PART V—ENFORCEMENT

- 16—Functions of the relevant Department.
- 17—Public Analyst.
- 18—Authorised officers.
- 19—Places authorised officers may enter.
- 20—Powers of officers.
- 21—Entry of dwelling place.
- 22—Inspection report.

**THE NAIROBI CITY COUNTY PLASTIC CARRY
BAGS CONTROL BILL, 2014**

A BILL for

AN ACT of Nairobi City County Assembly to provide for the 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

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

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

“authorised officer” means an officer appointed under section 18;

“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;

“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.

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-

Object and purposes of Act.

- (a) controlling the manufacture of plastic carry bags and other plastic products from the recycled plastic and pigmented carry bags;
- (b) controlling the use of such bags;
- (c) prohibiting the disposal of non-biodegradable plastic waste in public places, drains and sewers, for restoring and maintaining clean environment;
- (d) such other measures as outlined in this Act.

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.

Application.

PART II—MANUFACTURE OF PLASTIC CARRY BAGS

5. (1) No person shall manufacture or cause to be manufactured any carry bags from virgin plastic of thickness of not less than 30 micron and of a size, not less than 8”x12” and of a colour, other than the specified colour in the Kenyan Standard.

Prohibition to manufacture carry bags from virgin plastic.

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

10. (1) A retailer must not provide to a person any recycled non-biodegradable plastic carry bag or container for the purpose of enabling goods sold, or to be sold, by the retailer, to be carried from the retailer's premises.

Retailer not to use recycled plastic

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

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

Explicit pricing of plastic bags.

(2) The relevant Department shall 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

12. (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, which may—

Prohibition on disposal of plastic carry bags

- (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

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

16. (1) The relevant Department shall—

Functions of the relevant Department.

- (a) carry out and sponsor investigation and research relating to the problem of plastic waste;
- (b) plan and organize the training to persons engaged in manufacture, use and disposal of plastics;
- (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) 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

- (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.

21. In carrying out an inspection in a place, an authorised officer may— Use of records.

- (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.

22. (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). Entry of dwelling place.

(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—

26. (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. ^{Seizure.}

(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 alcohol, 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 Board within the prescribed time and in the prescribed manner.

27. (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— ^{Order for restoration.}

- (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.

28. (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 ^{Offences by partnership or bodies corporate.}

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.

30. 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.

Protection of actions taken in good faith.

31. (1) A person who contravenes the provisions of this Act for which no penalty is specified or fails to comply with any order or direction given under this Act, shall be punishable with imprisonment for a term not exceeding one year or with fine not exceeding five hundred thousand shillings or with both.

General penalty

(2) A person who having been convicted of an offence under this Act, is again found guilty and is convicted of an offence under this Act, shall be punishable with double the penalty provided for the offence.

PART VI—PROVISIONS ON DELEGATED POWERS

32. (1) Non-biodegradable garbage for purposes of this Act refers to the waste garbage or material, which is not bio-degradable 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.

Non-biodegradable garbage

SCHEDULE (s. 20)

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.

PART V contains provisions relating to enforcement

Clause 16 outlines the functions of the relevant Department in the control of the manufacture, use and disposal of plastics carry bags and empowers them to carry out public education campaigns aimed at achieving the objectives of the proposed Act. Clause 17 deals with the designation of the Public Analyst for purposes of tasting samples under the proposed Act while clause 18 deals with the designation of authorised officers for the purposes of inspections under the proposed Act. Clauses 19, 20, 21,22,23,24,25,26,27 and 28 contain provisions relating to inspection of premises for compliance with this Act and the powers and mode of exercise of those powers during such inspections.

PART VI contains provisions on delegated powers.

Clause 31 defines non-biodegradable garbage while clause 32 empowers the Member of the County Executive Committee, with the prior approval of the County Assembly, to make for the better operationalization of the proposed law.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 14th May, 2014.

ABDI I. HASSAN,
Leader of Minority Party,
Member of the County Assembly.