

First reading

SPECIAL ISSUE

Nairobi City County Gazette Supplement No. 11 (Bills No. 7)

NAIROBI CITY COUNTY ASSEMBLY
OFFICE OF THE CLERK
TABLES & JOURNALS
BILLS FIRST READING
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REPUBLIC OF KENYA

**NAIROBI CITY COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2016

NAIROBI, 30th August, 2016

CONTENT

Bill for Introduction into the Nairobi City County Assembly –

The Nairobi City County

CLERK
NAIROBI CITY
COUNTY ASSEMBLY
P. O. Box 45844-00100
NAIROBI

Public Nuisance Bill, 2016

PAGE

1

THE NAIROBI CITY COUNTY PUBLIC NUISANCE, 2016
ARRANGEMENT OF CLAUSES

Clauses

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object of the Act.
- 4—Application No 8 of 1999.

PART II—PUBLIC NUISANCES

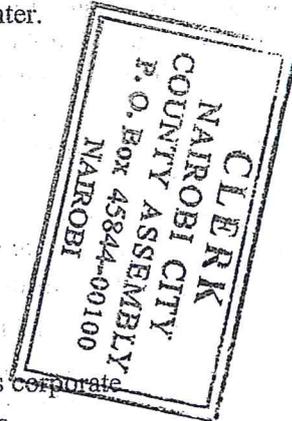
- 5— Powers of the Member of the County Executive Committee.
- 6— Responsibilities of the Department to control public nuisances.
- 7— Impounding of certain animals.
- 8— Street offences.

PART III—ENFORCEMENT

- 9— Authorised officers.
- 10— Places authorised officers may enter.
- 11— Powers of officers.
- 12— Use of records.
- 13— Entry of dwelling place.
- 14— Inspection report.
- 15— Assistance of officers.
- 16— Obstruction.
- 17— Seizure during inspections.
- 18— Order for restoration.
- 19— Offences by partnership or bodies corporate.
- 20— Nature of evidence in proceedings.
- 21— Protection of actions taken in good faith.
- 22— General penalty.

PART IV—DELEGATED POWERS

- 23— Rules.



**THE NAIROBI CITY COUNTY PUBLIC
NUISANCE BILL, 2016**

A Bill for

**AN ACT of the Nairobi City County to give effect to the
Fourth Schedule of the Constitution to control
public nuisances and for connected purposes**

ENACTED by the Assembly of Nairobi City County as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nairobi City County
Public Nuisances Act, 2016

Short title.

2. In this Act—

Interpretation.

“authorized officer” means an authorized officer
appointed under section 9;

“Department” means the Nairobi City County
department responsible for matters relating to environment;

“Member of the County Executive Committee” means
the Member of the Nairobi City County Executive
Committee responsible for matters relating to environment;

“protected area” means an area declared by the
Nairobi City County government to be a protected area for
grazing of animals;

“public place” means any square, building, park,
recreation ground or open space which—

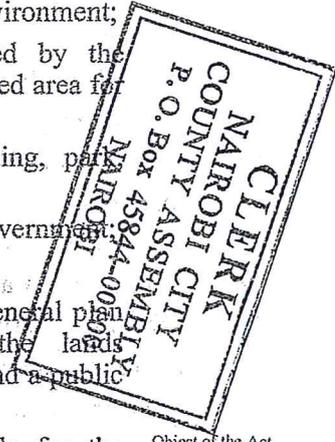
- (a) is vested in the Nairobi City County government;
- (b) the public has the right to use; or
- (c) is shown as a public place on a the general plan
of the Nairobi City County filed in the lands
registry, and it includes a workplace and a public
conveyance;

3. The objective of this Act is to provide for the
control of public nuisances, including waste and disease
causing pests; and in order to ensure a clean and healthy
environment.

Object of the Act.

4. The provisions of this Act shall be in addition to the
Environmental Management and Co-ordination Act, 1999,
or any other written law.

Application
No 8 of 1999.



PART II – PUBLIC NUISANCES

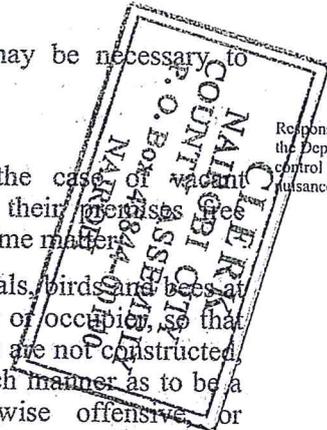
5. Notwithstanding the provisions of any other written law for the time being in force, the Member of the County Executive Committee, may—

Powers of the Member of the County Executive Committee.

- (a) prescribe measures for the control public nuisances, including waste, pests and insects;
- (b) establish and manage pounds, and determine the circumstances and conditions under which any article, vehicle, animal or bird found to be abandoned may be impounded and, if necessary, be sold or destroyed;
- (c) establish sufficient number of cemeteries and crematoriums, and provide for the burial of all destitute persons who die within the Nairobi City County, and maintain the cemeteries and crematoriums in such manner as to ensure they are not offensive, dangerous to health or attractive to pests or other nuisance; and
- (d) take all measures possible to ensure activities within the Nairobi City County to conform with I and Nairobi City County legislation on health, safety, environmental and other relevant standards;
- (e) take any other step that may be necessary to implement this Act.

6. (1) The Department shall—

- (a) compel occupiers or, in the case of vacant premises, owners, to keep their premises free from offensive or unwholesome matter;
- (b) monitor the keeping of animals, birds and bees at their premises by any owner or occupier, so that their keeping or the premises are not constructed, situated, used or kept in such manner as to be a public nuisance, or otherwise offensive or injurious to public health;
- (c) take such steps and measures as may be necessary for securing the prevention and destruction of insects, fungi and any other pests



Responsibilities of the Department to control public nuisances.

which attack timber in buildings and felled timber; and for preventing and eradicating the infestation of any such timber;

- (d) take measures for the destruction and suppression of rats and vermin within the Nairobi City County, and to set traps or take other measures necessary for the purpose on any land whether within or, with the consent of the government of the Nairobi City County concerned, without its area;
- (e) establish and maintain sanitary services for the removal and destruction of, or otherwise dealing with, all kinds of refuse and effluent;
- (f) take such measures as may be necessary for preventing or stemming the flow of any noxious matter or waste water flowing or discharged from any premises, into the street, any water course, irrigation canal or other places not approved for the reception of such discharge; and
- (g) take other necessary steps under the Act.

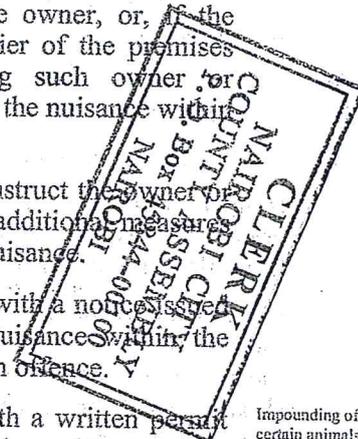
(2) The Department shall, if satisfied that a public nuisance exists, serve a notice on the owner, or, if the owner cannot be found, on the occupier of the premises where the nuisance exists, requiring such owner or occupier, as the case may be, to remove the nuisance within the period specified in the notice.

(3) The Department may further instruct the owner or occupier under sub-section (2) to take additional measures in order to prevent a recurrence of the nuisance.

(4) A person who fails to comply with a notice served under subsection (1) to remove the nuisance within the period specified in the notice commits an offence.

7. (1) Any person who, except with a written permit from the Department, and subject to such conditions as the Department may impose in this regard under this Act, keeps within an urban area of the Nairobi City County a game animal or reptile other than a lizard, or any ass, mule, ox, bull, or cow, goat, sheep or pig commits an offence.

Impounding of
certain animals.



(2) The Department may remove any of the species of animals referred to in subsection (1) which has been kept or left in a street in contravention of this Act, and impound the same.

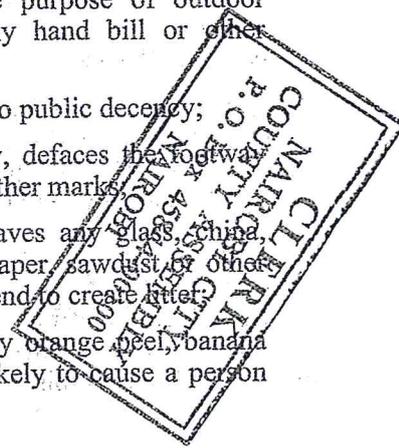
(3) The keeper of any of the species of animals which has been removed in pursuance of sub-section (2) shall not be entitled to recover the same until he or she pays such fees and expenses as may be prescribe by the Department for the upkeep of the animal.

(4) If a keeper fails to pay the fees and expenses under subsection (3), the Department may sell or otherwise dispose of the animal, by auction or any other means, and the proceeds of such disposal shall be set off against the outstanding fees and expenses incurred by the Department in the removal or disposal of the animal.

8. Any person who, on any street—

Street offences.

- (a) ignites any firework;
- (b) without a permit for the purpose of hawking, selling, distributing or otherwise outdoor advertising any article or event, shouts or uses any bell, gong, or other noisy instrument or loudspeaker;
- (c) without a permit, draws, wheels or drives any vehicles or carries any board or placard used solely or chiefly for the purpose of exhibiting advertisements;
- (d) without a permit for the purpose of outdoor advertising, distributes any hand bill or other paper;
- (e) performs any act contrary to public decency;
- (e) without statutory authority, defaces the footway or roadway by writing or other marks;
- (f) places or deposits and leaves any glass, china, earthenware, tin, carton, paper, sawdust, or other rubbish so as to create or tend to create litter;
- (g) throws down or leaves any orange peel, banana skin, or other substance likely to cause a person to fall down;



- (h) to the inconvenience or danger of any person, carries or conveys any bag of lime, charcoal, or other offensive material, timber or any pointed or edged tools or implements not properly guarded;
- (j) plays any game in such a manner as to cause the likelihood of damage to any property, or danger to any person;
- (k) while being in charge of any dog, allows such dog to foul any path and fails to remove the stool;
- (l) without a permit, lights or maintains, or suffers to be lit or maintained, any fire or brazier in the protected area;
- (m) rides or drives any animal on a footpath;
- (n) defecates or urinates;
- (o) touts for passengers; or
- (p) fails to observe traffic lights or the zebra crossing or any other public directional signs, commits an offence.

PART III—ENFORCEMENT

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

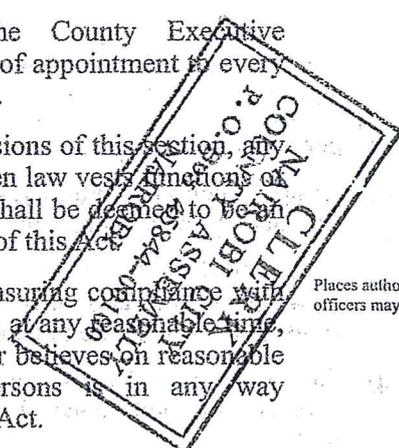
Authorised officers.

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

(3) Notwithstanding the provisions of this section, any other person upon whom any written law vests functions of the maintenance of law and order shall be deemed to be an authorized officer for the purposes of this Act.

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

Places authorised officers may enter.



(2) An authorised officer entering any premises under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 9(2).

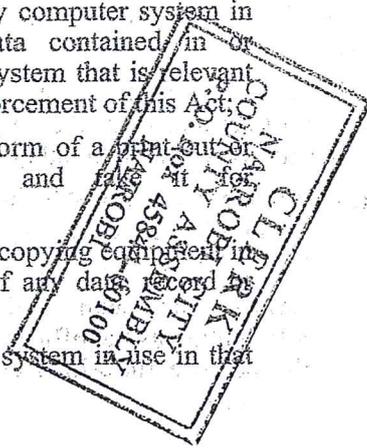
(3) The right to privacy enshrined in Article 31 of the Constitution and the right to property enshrined in Article 40 of the Constitution are limited as specified in this section for the purpose of ensuring the health and safety of the public.

11. In carrying out an inspection in any place pursuant to section 10 an authorised officer may— Powers of officers.

- (a) examine 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 thing;
- (c) open or require any person in the place to open any place of abode, kennel, container or thing found in the place that the officer believes on reasonable grounds contains the 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.

12. 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.



13. (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, may issue a warrant authorising the authorised officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—

- (a) the dwelling place is a place referred to in section 10;
 - (b) entry to the dwelling place is necessary for the administration or enforcement of this Act; and
 - (c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.
- (3) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

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

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

Inspection report.

15. (1) The owner of a place inspected by an authorised officer under this Act or the person in charge of the place and every person found in the place shall—

assistance of officers.

- (a) provide all reasonable assistance to enable the authorised officer to carry out his duties under this Act; and
- (b) furnish the authorised officer with such information as the officer reasonably requires for the purpose for which entry into the place has been made.

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

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

Obstruction.

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

17. (1) During an inspection under this Act, an authorised officer may, in addition to the avenues provided for in this Part, seize any 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 during inspections.

(2) The authorised officer may direct that any 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 other thing seized.

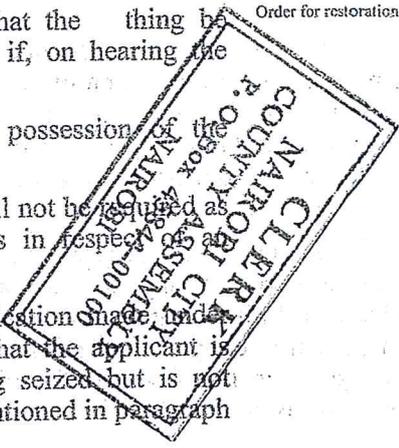
(4) Any person from whom thing was seized may, within thirty days after the date of seizure, apply to Court for an order of restoration, and shall send notice containing the prescribed information to the relevant Department within the prescribed time and in the prescribed manner.

18. (1) The Court may order that the 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 thing seized; and
- (b) the 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 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 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.

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

Offences by
partnership or
bodies corporate.

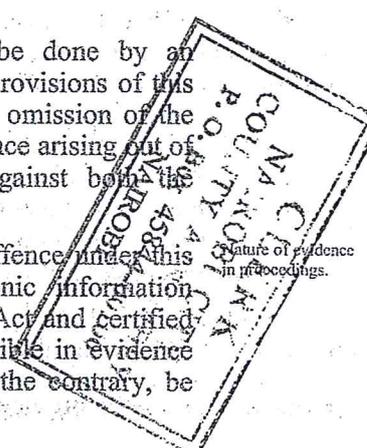
(2) If an offence under this Act or any rules made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence unless there is proof that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

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.

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

20. (1) In any prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall, in the absence of evidence to the contrary, be proof of its contents.

Signature of evidence
in proceedings.



(2) Subject to this Part, a certificate or report purporting to be signed by an officer stating that the officer analyzed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

(3) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced notice of not less than seven days of that intention together with a copy of the certificate or report.

(4) The party against whom the certificate or report provided for under sub-section (3) is produced may, with leave of the court, require the attendance of the officer for purposes of cross examination.

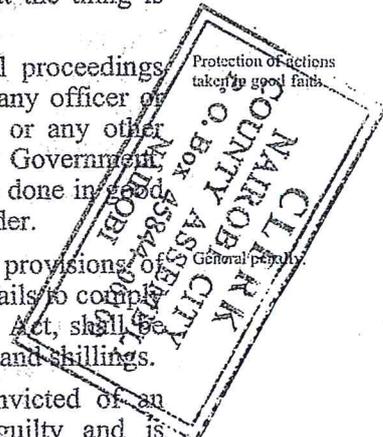
(5) In a prosecution for a contravention of this Act—

- (a) information on an identification tag indicating that the thing is licensed is, in the absence of evidence to the contrary, proof that the thing is licensed; and
- (b) a name or address on an identification tag purporting to be the name or address of the person who owns the thing is, in the absence of evidence to the contrary, proof that the thing is owned by that person.

21. 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.

22. (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 fine not exceeding fifty thousand shillings.

(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 IV—DELEGATED POWERS

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

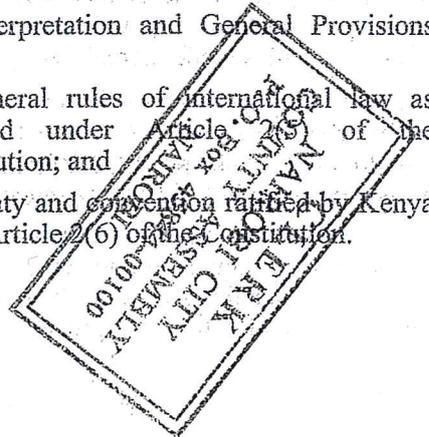
(2) Without prejudice to the generality of subsection (1), the rules made may provide for—

- (a) the matters specified under section 5;
- (b) the prescribing of anything required to be prescribed in this Act.

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

(4) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Member of the County Executive Committee to make rules for better carrying into effect the provisions of this Act;
- (b) the authority of the Member of the County Executive Committee to make rules under this Act will be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;
- (c) the principles and standards applicable to the delegated power referred to under section 46 are those found in—
 - (i) the Statutory Instruments Act, 2013;
 - (ii) the Interpretation and General Provisions Act;
 - (iii) the general rules of international law as specified under Article 2 of the Constitution; and
 - (iv) any treaty and convention ratified by Kenya under Article 2 (6) of the Constitution.



MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to outline legislative measures for the control of public nuisances within the precincts of Nairobi City County pursuant to functions vested on the county government by Part II of the Fourth Schedule to the Constitution

Part I of the Bill sets out the preliminary matters.

Clause 1 sets out the short title. Clause 2 sets out the definition of various terms used in the Bill, while clause 3 outlines the object and purposes of proposed law. Clause 4 sets out the scope of application of the proposed law which will be in addition to and not in derogation of the existing national laws on the subject.

Part II of the Bill outlines the conduct that comprises public nuisances

Clause 5 sets out the powers of the Member of the County Executive Committee while clause 6 outlines the responsibilities of the Department to control public nuisances. Clause 7 deals with the impounding of certain animals while clause 8 sets out the street offences relating to public nuisances.

PART III contains provisions relating to enforcement

Clause 9 deals with the designation of authorised officers for the purposes of inspections under the proposed Act. Clauses 10 to 22 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 IV contains provisions on delegated powers.

Clause 23 empowers the Members of the County Executive Committee, with the prior approval of the County Assembly, to make rules for the better operationalization of the proposed Law.

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

Dated the 15th June, 2016

SAMUEL NYAGERI NYANGWARA,
Member of the County Assembly.

