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COUNTY GOVERNMENT OF NAIROBI



**NAIROBI CITY COUNTY ASSEMBLY
FIRST ASSEMBLY – THIRD SESSION**

**FOURTEENTH REPORT OF THE SECTORAL
COMMITTEE ON AGRICULTURE, ENVIRONMENT AND NATURAL
RESOURCES ON THE CONSIDERATION OF THE NAIROBI CITY
COUNTY DOG CONTROL AND WELFARE BILL, 2015**

**CLERK
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**Clerks Chambers
Nairobi City County Assembly
City Hall Buildings
Nairobi**

November 2015

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1.0 PREFACE

Mr. Speaker Sir,

The Sectoral Committee on Agriculture, Environment and Natural Resources is established under Standing Order No. 191. Its mandate pursuant to Standing Order 191(5) is to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- b) study the programme and policy objectives of departments and the effectiveness of the implementation;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyse the relative success of the departments as measured by the results obtained as compared with its stated objectives;*
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 185(Committee on Appointments); and*
- g) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

The Committee comprises the following Members:-

- | | | |
|---|----------|-------------------------|
| 1. Hon. Benson L Amutavi, MCA | - | Chairperson |
| 2. Hon. Alhad Ahmed Adam, MCA | - | Vice Chairperson |
| 3. Hon. Michael Wainaina Wanjiku, MCA | | |
| 4. Hon. Hellen Katangie, MCA | | |
| 5. Hon. Alexander Mutisya Mulatya, MCA | | |
| 6. Hon. Dorcas Njoroge, MCA | | |

7. Hon. Peter Wahinya Njau, MCA
8. Hon. Catherine Okoth, MCA
9. Hon. Samuel Kagiri Mwangi, MCA
10. Hon. Petronilla Nafula, MCA
11. Hon. Rosemary Macharia, MCA
12. Hon. Samwel Ndung'u Njoroge, MCA
13. Hon. Zulfa Hakim, MCA
14. Hon. Janet Wala Ayako, MCA
15. Hon. Peter Anyule Imwatok, MCA
16. Hon. Mike O Guoro, MCA
17. Hon. Margaret Sewe, MCA

Mr. Speaker Sir,

The Committee exercises oversight role on the work and administration of the following two Sectors:-

- i) Agriculture, Livestock Development & Fisheries
- ii) Water, Energy, Forestry and Natural Resources

In accordance with the Second Schedule of the Standing Orders, the Sectoral Committee is mandated to consider all matters relating to:-

- a) agriculture, including crop and animal husbandry, livestock sale yards, county abattoirs, plant and animal disease control and fisheries;*
- b) Animal control and welfare, including licensing of dogs and facilities for accommodation, care and burial of animals;*
- c) implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation and forestry and control of air pollution, noise pollution, other public nuisances and outdoor advertising; and*
- d) Refuse removal, refuse dumps and solid waste disposal.*

Mr. Speaker Sir,

The Nairobi City County Dog Control and Welfare Bill, 2015 was read a First Time on Tuesday 6th October, 2015 and thereafter committed to the Sectoral Committee on Agriculture, Environment and Natural Resources for consideration pursuant to Standing Order 121.

Mr. Speaker Sir,

Pursuant to Article 196(b) of the Constitution of Kenya and Standing Order 121(3) which require public participation in the legislative and other business of the Assembly and its Committees, the Committee placed a notice in the local dailies on 9th October, 2015 calling for any representations and amendments from the public on the Bill. The Committee also identified key stakeholders to the Bill and invited them to either submit their comments or attend Committee meetings where they could give their views on the Bill. Following the notice and the invitations, the Committee received written memoranda from the following stakeholders;

- i) Kenya Veterinary Association(KVA), Nairobi branch;
- ii) The East Africa Kennel Club(EAKC); and
- iii) The Kenya Society for the Protection & Care of Animals (KSPCA).

The Committee also held a total of six (6) meetings and a **retreat** to consider the Bill and all representations received. The meetings included meetings held with the **County Executive Committee Member responsible for Agriculture, Livestock Development and Fisheries**, the sponsor of the Bill **Hon. Elizabeth Manyala, MCA** and representatives of the Kenya Society for the Protection & Care of Animals and the Kenya Veterinary Association, Nairobi branch. The stakeholders who presented memoranda were agreeable in principle with the Bill although they proposed amendments to various clauses.

Mr. Speaker Sir,

While examining the Bill, the Committee noted the following:

1. The principle objective of the Bill is to provide for a legislative framework for the control and welfare of dogs within Nairobi City County.

The Committee acknowledges that Paragraph Six (6)(of part two (2) of the Fourth Schedule to the Constitution gives County Governments powers to control animals and to advance their welfare. Subsection (a) of the said paragraph specifically confers the power of licensing dogs to County Governments. The Committee concedes that in as much as dogs are man's best friend, they have almost become a menace in the city due to lack of a proper regulatory frame work. Presently, the County Government relies on the pre-independence Legal Notice Number 120 of 1962 of the defunct City Council of Nairobi on dog control and licensing. This is in all rights an obsolete law which the County can no longer depend on considering the transformation the city has undergone over time. Indeed, cases of dogs injuring both their owners and other residents are frequently reported. The number of stray dogs has drastically increased and the threat of contagious diseases such as rabies is real. Consequently, many dogs have been denied internationally recognized freedoms. In this regard, the Committee is in full support of any legislative measures aimed at controlling dogs and advancing their welfare while preventing any harm they may cause to residents. The County also stands to benefit from the revenues generated from the licensing of dogs.

2. **Part I** of the Bill provides for the preliminary matters with respect to the Bill. Clause 1 sets out the short title of the Bill and commencement date. Clause 2 provides for the definition and interpretation of terms as used in the Bill. Clause 3 outlines the objectives of the Bill while Clause 4 stipulates the scope of application of the proposed law.

In Clause 2, several stakeholders who commented on the Bill raised concerns on the interpretation of a 'recognized society' and 'relevant department'. For instance, KSPCA, EAKC and KVA argued that the Bill in its text should specifically identify all recognized associations with a proposal that recognized societies should only be the ones concerned

with animal welfare. However, in the opinion of the Committee, it is not prudent to list recognized societies in the Bill since this may change from time to time. In any case, the Bill has given the CEC Member, with the approval of the County Assembly, powers to identify and gazette recognized societies. With respect to the "relevant department", the County Executive argued that the Bill should expressly provide that the relevant department shall be the department of the County Executive for the time being responsible for veterinary services. The Committee agreed with the proposal since issues to deal with dogs ought to be handled by qualified veterinary surgeons. In addition, the Executive opined that the objectives of the Bill are narrow arguing that the Bill ought to have addressed all animals and not just dogs. The Committee's position on the matter is that nothing stops the Executive to proceed with a Bill that covers other animals excluding aspects that relates to dogs. The Committee also observed that dogs are peculiar animals that can be both friendly and harmful to human beings hence the need for their urgent regulation. Indeed, the Constitution at subsection (a) of paragraph six (6) of part two (2) of the Fourth Schedule recognizes this peculiarity and expressly provides that dogs should be licensed.

3. **Part II** of the Bill contains provisions relating to the licensing of dogs. Clause 5 makes licensing of all dogs above the age of six months within the County a mandatory i.e. whether owned by an individual in his/her private capacity or a corporate. Clause 6 deals with the procedure of applying for a dog license which must be issued by a veterinary surgeon upon payment of a specified fee. The Clause exempts payment of fees with respect to dogs kept for guiding a visually impaired person. Clause 8 demands that a licensed dog shall be issued with an identification tag with details of the owner. Clause 9 requires the relevant department to keep a register of dog licenses.

The Committee finds this part crucial in realizing the objectives of the Bill. However, the Committee and the Executive noted that the Bill doesn't expressly provide the conditions that must be fulfilled by dog owners/keepers before a license is issued. Similarly, the Committee was of the view that a procedure for cancelling a license ought to be provided for in the Bill in order to address cases where successful applicants violates conditions which enabled them to acquire the licenses. In addition, the Executive proposed that all dogs irrespective of age should be licensed. The Committee found the proposition valid since one of the reason for licensing is to ensure that dog's welfare is catered for irrespective of their age. On the other hand, KVA argued that it's not justifiable for liscences to expire on 31st of December even when it had been acquired say in November of the same year. The Committee disagreed with KVA's arguments noting that all licenses are renewed annually upon fulfilling laid down conditions. With respect to exemptions of payment, EAKC noted that the requirement for exemption should be applicable to all dogs used by all disabled persons and not just the visually impaired. The Committee agreed with their proposal. Similarly, EAKC, argued that it will be an infringe on personal privacy of individuals by displaying their personal details on dog tags vividly. To this end, they proposed the use of microchips with electronically stored data. The Committee while agreeing with their concern, raised the issue of costs and health risks of such devices.

4. **Part III** of the Bill concerns with the welfare of dogs. Clause 10 obligates owners of dogs to keep dogs in a fenced premise provided that the confinement is not inhumane to the dog. Clause 11 provides for the conditions that a dog must be availed whenever it's left alone in a premise. Clause 12 and 13 outlines prohibited public nuisances that may be caused by a dog which the owner of a dog must prevent.

The Committee also considered this part as critical since it concerns with the welfare of dogs. However, all stakeholders averred that the Bill fails to recognize the welfare of dogs within the confines of the internationally recognized freedoms of animals i.e. freedom from hunger or thirst, freedom from discomfort, freedom from pain, injury or disease, freedom to express (most) normal behaviour, and freedom from fear and distress. As such, the Committee proposed an amendment to Clause 11 to provide for the freedoms by cross-referencing to the international legal regime on animal freedoms. The KSPCA proposed that Clause 11 ought to be categorical on a period a dog should not be left without access to the five freedoms. The Committee proposed that dogs should at all times be availed with the freedoms to avoid their discomfort. KVA argued that it should not be an offence for a dog and a bitch to approach each other for mating since it's a natural occurrence. The Committee noted that what should be deterred is to allow the mating to happen in public and therefore it should be the responsibility of dog owners to provide control measures. In addition, all the stakeholders argued that the provisions of Clause 13(e) on controlling the barking of dogs are difficult to enforce and doesn't take into account the natural behavior of dogs. However, the Committee opined that it has become a habit for certain residents to allow dogs to bark amounting to public nuisance. In this regard, while acknowledging the difficulty in enforcing the provisions of the clause as drafted, the Committee proposed an amendment that it shall be unlawful to keep any dog whose barking constitutes to public nuisance as determined by a court of law.

5. **Part IV** of the Bill contains provisions related to the disposal of dogs. Clause 15 identifies places where disposal of any dead dog carcass is prohibited. Clause 16 obligates the relevant department to establish a dog pound while clauses 17 and 18 deals with seizer of dogs. Clauses 19 and 20 provides for the destruction of unclaimed dogs and prevention of trespass by dogs.

Clause 21 provides for the roles of the relevant department with respect to the enforcement of the proposed law.

The Committee concedes that one of the challenges affecting the County is the manner of disposal of dog carcasses. For instance, many a times decomposing carcasses are left on roads after dogs have been killed by speeding motorists. This part attempts to cure this problem. However, the Bill doesn't obligate the County Government to provide for a disposal facility for instance an incinerator and the duty to collect carcasses. The Committee has therefore proposed an amendment to address this gap. Further, KSPCA in their submissions claimed that it was not clear how the owner of a seized dog would be notified. The Committee proposed that an authorized officer seizing a dog shall have to leave a prescribed legal document at the premises of the owner notifying him/her of the seizer. KVA argued that the period which a seized dog may stay in a dog pound or else be sold or destroyed be increased from eleven (11) days to fourteen (14) days. In addition KVA claimed that there should be no provision for re-homing or even selling any captured dogs whatsoever as this is bound to be subject for creation of a 'black market' trading in captured dogs by unscrupulous county officials. The Committee agreed with the proposal to increase the time frame but disagreed with the second proposal noting that County officials being public servants are bound by the law and are expected to act in good faith or otherwise face prosecution for contravening any provision of the proposed Act. KSPCA were concerned with the provision providing immunity to a person injuring a dog found trespassing. In their opinion, trespass should not be a reason for the destruction of a dog. The Committee concurred with their concern and proposed that liability should be on the owner of the dog. The Committee also proposed the creation of a County Dog control and welfare forum comprising of the Executive officials, dog welfare societies and representatives of county residents. This will be a

forum where all issues affecting residents and the welfare of dogs shall be deliberated for better control and advancement of dogs' welfare.

6. **Part V** of the Bill contains provisions on enforcement of the proposed law. Clause 22 identifies authorized officers under the Bill. Clause 23 gives authorized officers powers to enter any place within a reasonable time any place the officer believes on reasonable grounds a contravention of the proposed law may be occurring. Clause 24 provides for the powers of authorized officers while 26 provides procedure of entering a dwelling place by an authorized officer. Clauses 27, 28, 29, 30, 31, 32, 33, and 34 deal with provisions regarding the manner authorized officer ought to carry out inspection and how to carry out legal proceeding under the proposed law. Clause 35 provides for a general penalty of five thousand on an offence which has no specific penalty under the Bill.

The Committee finds this part as the backbone of the Bill, since despite the existence of the Legal Notice Number 120 of 1962 of the defunct City Council of Nairobi on dog control and licensing, challenges relating to dogs are prevalent. As already indicated, all stakeholders who commented on the bill proposed amendments to Clause 22(3a) which had identified public health officers as authorized officers. Instead, the stakeholders argued that authorized officers ought to be qualified veterinary surgeons appointed under the Veterinary Surgeons and Veterinary Para-Professionals Act of the Laws of Kenya. The Committee concurred with the proposals. In addition, the Executive and EAKC raised reservations with subclause 22(3a) which explicitly identified persons responsible for maintenance of law and order as authorized officers. Their argument was that such persons are not qualified veterinary surgeons to be designated as authorized officers. While agreeing with their line of argument, the Committee noted persons such as police officers are critical in enforcing laws hence they ought to work together with authorized officers. KSPCA opined that the procedure of acquiring a warrant before entering a

dwelling place might be tedious and time consuming hence undermine evidence necessary to enforce the Act. The Committee agreed with the concern but appreciates that there exists a Constitutional requirement of individual's privacy which must be upheld by the state at all levels of government.

7. **Part VI** of the Bill contains provisions on delegated powers. The part empowers the Member of the County Executive Committee to make regulations for purposes of implementing the proposed Act and such regulations shall become effective upon approval by the County Assembly.

The Committee is cognizant of the fact that for successful implementation of some of the provisions of the Bill, enactment of regulations/rules is essential. The Committee agrees with all the areas the Bill proposes for development of rules but in addition proposes the inclusion of the forms for application of license and form for licenses issued under the proposed Act and instruments to notify the destruction of a dog as additional areas to be covered. The Committee also proposes in mandatory terms that the regulations should be developed within the 90 days transition period after publication of the proposed Act.

8. The Schedule gives effect to the provisions of Clause 6 by providing fees for various licenses.

The Committee found the decision to anchor various license fees in the Bill noble since any fees charged by the County Government should be based on a particular policy. The Committee disagreed with the position of the Executive that license fees should be determined by the Finance Act. The right position is that the Finance Act should be anchored on policies of various sectors and whenever such fees are varied, the Finance Act should be amending the various Sector Acts.

Mr. Speaker Sir,

Wherever there have been humans, there have been dogs. It is in this spirit that the Committee admits that animal welfare policy and legislation are the overarching instruments for implementation of practices in animal use and care that avoid animal neglect and cruelty and at the same time averting human-animal conflicts. Indeed, the drafters of the Constitution of Kenya, 2010 rightfully identified dogs as one of the animals that required licensing and regulation.

Mr. Speaker Sir,

The increased cases of injuries caused by dogs to human beings, the proliferation of stray dogs within the city and all kinds of public nuisance caused by dogs is a manifestation of a legal gap that this Bill seeks to address. As already indicated, the current legislation that the County depends on might have been well intended but has failed to effectively address issues pertaining to dog control and welfare due to the transformation the city has undergone. However, the realization of the objectives of the Bill shall depend on the effectiveness of those charged with its enforcement.

Mr. Speaker, Sir,

The Committee will propose amendments to the Bill in Clauses 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 17, 18, 19, 21, 22, 30, 31, 35 and 36. The amendments are aimed at ensuring that all aspects of dog control and welfare are covered, enforceability of the Bill is easily attained, the concerns of the stakeholders are catered for and editorial/drafting errors are corrected.

Mr. Speaker Sir;

The Committee thanks the Offices of the Speaker and the Clerk of the County Assembly for the support and services extended to Members of the Committee while considering the Bill. I am grateful to the Members of the Committee whose support and commitment enabled the Committee to accomplish this task. The Committee also extends its appreciations to all stakeholders who

submitted their views on the Bill. Special thanks to the County Executive for their valuable contributions and the Secretariat for the technical support provided whenever they were called upon.

On behalf of the Committee, I now have the honor and pleasure to present this report of the Committee on the consideration of the Nairobi City County Dog Control and Welfare Bill, 2015 for adoption.

Thank You.

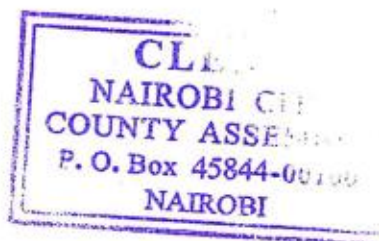
SIGNED



BENSON L AMUTAVI, MCA
(CHAIRMAN)

DATE.....

17/11/2015



2.0 COMMITTEE CONSIDERATION OF THE NAIROBI CITY COUNTY DOG CONTROL AND WELFARE BILL, 2015

The Committee deliberated on the Bill as follows;

Clause 1	- agreed to
Clause 2	- proposed amendments.
Clause 3 to 4	- agreed to
Clause 5 to 9	- proposed amendments
Clause 10	- agreed to
Clause 11 to 14	- proposed amendments
Clause 15 to 16	- agreed to
Clause 17 to 19	- proposed amendments
Clause 20	- agreed to
Clause 21 to 22	- proposed amendments
Clause 23 to 29	- agreed to
Clause 30 to 31	- proposed amendments
Clause 32 to 34	- agreed to
Clause 35 to 36	- proposed amendments
Schedule	- agreed to

3.0 COMMITTEE STAGE AMMENDMENTS

NOTICE is given that the chairperson of the Sectoral Committee on Agriculture, Environment and Natural Resources, Hon. Benson Amutavi, MCA intends to move the following amendments to the Nairobi City County Dog Control and Welfare Bill, 2015 at the Committee Stage—

CLAUSE 2

THAT Clause 2 of the Bill be amended-

- (a) in the definition of “relevant Department” by deleting the words “dog control and welfare” and substituting therefor the words “veterinary services”;
- (b) by inserting the following new definition in its proper alphabetical sequence-

“Veterinary surgeon’ has the meaning assigned to it by section 2 of the Veterinary Surgeons and Veterinary Para-professionals Act, 2011.”

CLAUSE 5

THAT Clause 5 of the Bill be amended-in sub clause (2) by deleting the words “above the age of six months”

CLAUSE 6

THAT Clause 6 of the Bill be amended-

- (a) in sub clause (2) by deleting the words “or veterinary officer” appearing in paragraph (b).
- (b) in sub clause (3) by deleting the words “a visually impaired person” whenever they appear in the sub clause and replacing with the words “a disabled person”

CLAUSE 7

THAT Clause 7 of the Bill be amended by inserting the following new sub clause (4) immediately after sub clause (3)-

- (4) A licensed issued under this section may be revoked by the licensing officer if the licensing officer is satisfied that-

- (a) the license was obtained by fraud or misrepresentation or without fulfilling the provisions of this Act; or
- (b) the licensee has breached the provisions of this Act or the conditions under which the license was issued

CLAUSE 8

THAT Clause 8 of the Bill be amended by deleting sub clause (4).

CLAUSE 9

THAT Clause 9 of the Bill be amended in sub clause (2) by deleting the words "so long as the recording"

CLAUSE 11

THAT Clause 11 of the Bill be amended by inserting the following new sub clause (3) immediately after sub clause (2)-

(3) An owner of a dog or any person other person who has the custody of a dog shall ensure that the welfare of the dog is safeguarded at all times in line with the recognized freedoms of animals and in accordance with section 3 of the Prevention of Cruelty to Animals Act.

CLAUSE 12

THAT Clause 12 of the Bill be amended by inserting the word "public" immediately before the word "place".

CLAUSE 13

THAT Clause 13 of the Bill be amended-

- (a) by deleting "(1)" appearing in Clause 13
- (b) by deleting sub clause (e) and substituting therefor the following new sub clause-
 - (e) Keep any dog whose barking, yelping, howling or whining constitutes to a public nuisance

CLAUSE 14

THAT Clause 14 of the Bill be amended by deleting the word "contravention" and substituting therefor the word "contravenes".

CLAUSE 17

THAT Clause 17 of the Bill be amended-

- (a) in sub clause (2) by deleting the words "within twelve hours of the seizure, notify the fact to the keeper of the dog pound" and substituting therefor the words "place such notification as may be prescribed at the premises of the owner of the dog being seized notifying the owner of the dog of the seizure."
- (b) in sub clause (3) by deleting the words "a license therefor, and upon payment of a fee of two thousand shillings if the date of such license be prior to the capture of the dog, and upon payment of a fee of five thousand shillings if the date of such license be subsequent to the capture of such dog" and substituting therefor the words "a valid license and payment of a fee of two thousand shillings or, in the event that the dog was unlicensed during seizure, payment of a fee of five thousand shillings".

CLAUSE 18

THAT Clause 18 of the Bill be amended in sub clause (3) by deleting the word "five" and substituting therefor the word "two".

CLAUSE 19

THAT Clause 19 of the Bill be amended in sub clause (3) by deleting the words "eleven(11) days of having been received in the pound may either be sold, given away painlessly, destroyed" and substituting therefor the words "fourteen(14) days of having been received in the pound may either be sold, given away or destroyed painlessly".

CLAUSE 21

THAT Clause 21 of the Bill be amended in sub clause (1) by inserting the following paragraphs immediately after paragraph (b)-

(ba) establish a dog disposal facility;

(bb) in such manner and within such timelines as may be prescribed-

(i) remove all dog carcasses in public places; and

(ii) pick up stray dogs

(bc) establish and convene at least once in every year a county dog control and welfare forum comprising of representatives of

government officials, dog welfare societies and residents associations where issues relating to the residents and welfare of dogs will be discussed.

CLAUSE 22

THAT Clause 22 of the Bill be amended by deleting sub clause (3) and substituting therefor the following new sub clause-

(3) A person appointed under subsection (1) shall be a person who is a veterinary surgeon.

CLAUSE 30

THAT Clause 30 of the Bill be amended by inserting the following new sub clause (5) immediately after sub clause (4)-

(5) The provisions of subsection (4) shall not apply where the owner of the dog produces a valid license in respect of the seized dog.

NEW CLAUSE 35A

THAT the Bill be amended by inserting a new clause immediately after clause 35 as follows-

35A. For purposes of this Part, reference to a "thing" means reference to any item related to dog control and welfare.

CLAUSE 36

THAT Clause 36 of the Bill be amended-

(a) in sub clause (2) by inserting the following paragraphs immediately after paragraph (j)-

(ja) the destruction of dogs;

(jb) the removal of dog carcasses in public places;

(jc) the picking up of stray dogs;

(jd) establishment and convening of county dog control and welfare forum;

(je) the forms for application of license and form for licenses issued under this Act;

(b) by inserting the following new sub clause immediately after sub clause (3)-

(4) For purposes of enabling the effective operationalization of this Act, the Member of the County Executive Committee shall ensure that the rules referred to in this section are made within ninety days from the date of publication of this Act.



.....
Chairperson, Sectoral Committee on Agriculture, Environment and Natural Resources.

