

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

**SECOND ASSEMBLY
(SIXTH SESSION)**

NCCA/TJ/PL/2022(11)

3rd March, 2022

PAPER LAID

Pursuant to Standing Order 131(4), I beg to lay the following Paper on the Table of the Assembly, today Thursday 3rd March, 2022:

— THE REPORT OF THE SECTORAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY AIR QUALITY BILL, 2021 (ASSEMBLY BILL NO.12 OF 2021).

(The Chairperson, Sectoral Committee on Environment and Natural Resources)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

*Paper laid on 3rd March, 2022
by Hon. Thamerden Jemial, MCx
[Signature]
3/3/22*



**NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY - SIXTH SESSION**

**THE REPORT OF THE SECTORAL
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY AIR
QUALITY BILL, 2021**

Clerks Chambers
Nairobi City County Assembly
City Hall Buildings
Nairobi

*Paper laid on 3rd March 2022
by Hon. Jeremiah Themburi, MP*

[Signature]
3/3/22

MARCH, 2022

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 - i. County Executive Committee Member responsible for Environment, Water, Natural Resources, Energy and Climate Change Sector;
 - ii. Code for Africa;
 - iii. Deo Okure, Air Quality Scientist and Program Manager, Makerere University; and
 - iv. C40 Cities.
2. Matrix containing proposed amendments of stakeholders and the justifications
3. Minutes

1.0. PREFACE

1.1. Committee Mandates

Mr. Speaker Sir,

The Sectoral Committee on Environment and Natural Resources is established under Standing Order No. 203. Its mandate pursuant to Standing Order 203(6) 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.*

Mr. Speaker Sir,

In accordance with the Second Schedule of the Standing Orders, the Sectoral Committee is mandated to consider all matters relating to:- *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 refuse removal, refuse dumps and solid waste disposal.*

1.2. Committee Members

The Committee comprises the following Members:-

- | | |
|--------------------------------------|-------------------------|
| 1. Hon. John Kamau, MCA | Chairperson |
| 2. Hon. Joseph Ndonji, MCA | Vice Chairperson |
| 3. Hon. Wanjiru Kariuki, MCA | |
| 4. Hon. Anthony Kimemia, MCA | |
| 5. Hon. Joseph Wambugu, MCA | |
| 6. Hon. Laura Mwende, MCA | |
| 7. Hon. James Mwangi, MCA | |
| 8. Hon. John Kamangu, MCA | |
| 9. Hon. Solomon Magembe, MCA | |
| 10. Hon. Joyce Muthoni, MCA | |
| 11. Hon. Margaret Mbote, MCA | |
| 12. Hon. Anthony Kiragu, MCA | |
| 13. Hon. Leah Supuko, MCA | |
| 14. Hon. Jacinta Wanjiru, MCA | |
| 15. Hon. Peter Imwatok, MCA | |
| 16. Hon. Francis Ngesa, MCA | |
| 17. Hon. Rose Masitsa, MCA | |
| 18. Hon. Millicent Okatch, MCA | |
| 19. Hon. Emily Waithaka Wanjiku, MCA | |
| 20. Hon. Redson Otieno Onyango, MCA | |
| 21. Hon. Michael Ogada MCA | |
| 22. Hon. Evans Otiso, MCA | |
| 23. Hon. Fuad Hussein, MCA | |
| 24. Hon. Wahinya Njau Peter, MCA | |
| 25. Hon. Eunice Wanjiku Maribe, MCA | |
| 26. Hon. Jeremiah Themendu, MCA | |
| 27. Hon. Wilson Ochola, MCA | |

2.0. EXECUTIVE SUMMARY

2.1. Background

Mr. Speaker Sir,

Nairobi like many other cities around the globe has to grapple with the challenges of air pollution. A number of experts agree that Air Pollution Air pollution is contamination of the indoor or outdoor environment by any chemical, physical or biological agent that modifies the natural characteristics of the atmosphere. Nairobi County being the headquarter of most manufacturing plants is the leading county where most air pollution occurs.

Mr. Speaker Sir,

Air Pollution is directly proportional to infrastructural development particularly the establishment of manufacturing plants and construction of roads. Nairobi has experienced rapid infrastructural development in the last 30 years. This growth trend has led to decline of the city's air quality posing a threat to the environment and the health and wellbeing of Nairobi City County residents, visitors and its neighbors. Although air quality measurement conducted in Nairobi City County are inadequate and most are short-term and thus not comparable to WHO guidelines for ambient air quality, they clearly point to the need to address the serious impacts of air pollution. Air pollution has been linked to numerous illnesses including asthma, strokes, heart disease and dementia.

Mr. Speaker Sir,

The right to health is one of the most important rights for human condition without which the exercise of other rights is indispensable. This is explicitly provided for in the Kenya's Constitution in Article 43 (1) (a) "guarantees each Kenyan citizen the right to access the highest attainable standard of health including reproductive health care." The upsurge in children respiratory illnesses in parts of Nairobi City County is

also attributed to increasing levels of air pollution. Quite a number of Industries degrade our environment on daily basis through emissions of harmful gases into our atmosphere or dumping of toxic waste in Nairobi River. It is evident that emissions of gases such as carbon dioxide, nitrogen dioxide, methane, ozone and chlorofluorocarbons into the atmosphere do not only cause global warming and respiratory problems but also deplete the ozone layer that protects us from harmful ultra violet rays.

Mr. Speaker Sir,

Some of the worst pollution levels have been shown to be in economically disadvantaged communities where exposure to water, soil, noise and air pollution are a daily reality. United Nations Environment Programme has found out that exposure to fine particulate matter in Kenya contributes to over 18,000 premature deaths annually from both indoor and outdoor sources and was estimated to cost USD 2,244 million per year.

Mr. Speaker Sir,

Nairobi makes a large contribution to the national GDP generating over 60% of Kenya's GDP. Thus, although the social-economic impacts of air pollution to Nairobi City County have not yet been estimated, the County Government is cognizant that the biggest health and financial burden of air pollution in Kenya is borne by Nairobi. For this reason, taking steps to permanently address and resolve air pollution brought about by human activities is important.

Mr. Speaker Sir,

Aside from Noise Pollution, quite a number of Industries degrade our environment on daily basis whether through emissions of harmful gases into our atmosphere or dumping of toxic waste in Nairobi River. It is evident that emissions of gases such as carbon dioxide, nitrogen dioxide, methane, ozone and chlorofluorocarbons into the

atmosphere do not only cause global warming and respiratory problems but also deplete the ozone layer that protects us from harmful ultra violet rays.

Mr. Speaker Sir,

Hon. Waithera Chege, Member of County Assembly (MCA) for Nairobi South Ward played an instrumental role on development of the both Air Quality Policy and Nairobi City County Air Bill, 2021. She was the sole innovator and mover of the motion on Air Pollution that was consequently adopted in the Assembly on **29th September, 2020**. In her motion she pointed out how the Capital City is undergoing environmental degradation and how this has caused numerous illnesses including asthma, strokes, heart disease and dementia.

Mr. Speaker Sir,

Thus, to counter these challenges, Hon. Waithera Chege urged the Government of Nairobi City County to come up with sound legal framework to address the problems in order to provide institutional and legal framework as well as cure the gaps experienced in similar pieces of legislations to provide panacea to the endemic problem caused by air pollution.

Mr. Speaker Sir,

Hon. Waithera Chege further advised that development of an Air Quality Policy and an Air Quality Bill would promote the Nairobi Beatification Initiative (NBI). This initiative has been one of the leading agenda in the Nairobi Recovery Plan (NRP) aimed to uplift the Nairobi City to the International standards.

2.2. Prepublication Scrutiny

Mr. Speaker Sir,

In view of the foregoing therefore, the Draft Nairobi City County Air Quality Bill was forwarded to the Speaker for noting stating the key objects and reasons pursuant to standing Orders 121. The Draft Nairobi City County Air Quality Bill was then

forwarded to the Sectoral Committee on Environment and Natural Resources for pre-publication scrutiny pursuant to standing Orders 121(3).

2.3. Introduction of the Bill in the Assembly

Mr. Speaker Sir,

The Nairobi City County Air Quality Bill, 2021 was read a First Time on **Thursday, 2nd December, 2021** and thereafter committed to the Sectoral Committee on Environment and Natural Resources for consideration pursuant to Standing Order 131. Hon. Waithera Chege sponsored the Bill.

2.4. Legislative powers of the County Assembly

Mr. Speaker Sir,

Article 185 of the Kenya's Constitution state that:-

- 1) The legislative authority of a county is vested in, and exercised by, its county assembly;
- 2) A county assembly may make any laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule; and
- 3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.

Mr. Speaker Sir,

Further, the County Governments Act, 2012 provides that:-

- 1) A county assembly shall exercise its legislative power through Bills passed by the county assembly and assented to by the governor; and
- 2) A Bill may be introduced by any member or committee of the county assembly, but a money Bill may be introduced only in accordance with subsection (4).

2.5. Public participation and the legal Underpinning

Mr. Speaker Sir,

Article 196(b) of the Constitution of Kenya states that;

- *'The County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees'.*

Mr. Speaker Sir,

Further, Standing Order 131(3) provides that;-

- *'The sectoral Committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its report to the County Assembly'*

In view of the above, **Mr. Speaker Sir**, the Assembly placed a notice in the local dailies on **Tuesday, 11th January, 2022** calling for any representations and amendments from the public on the Bill. Further, the Assembly placed the second notice in the local dailies on **Tuesday, 11th January, 2022**. In the second notice, the members of the Public were notified of the physical public forum held on **Wednesday, 2nd February, 2022 at Charter Hall, City Hall Buildings at 11:00a.m.**

Mr. Speaker Sir,

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. County Executive Committee Member responsible for Environment, Water, Natural Resources, Energy and Climate Change Sector;
- II. Code for Africa;
- III. Deo Okure, Air Quality Scientist and Program Manager, Makerere University; and
- IV. C40 Cities.

Mr. Speaker,

The Committee together with the sector held a-two (2) day workshop and a number of meetings to deliberate on the contents of the said Bill where Members were briefed on the content and objectives of the Bill. It is worth noting therefore, that the County Executive and the Committee have since met severally to discuss the contents of this crucial Bill.

Mr. Speaker, Sir,

The Committee proposed amendments to the Bill in Clauses 2, 3, 30 and 36. The proposed amendments are aimed at ensuring that all aspects of Air Quality in the County are covered, execution of the Bill is easily attained and the concerns of the stakeholders are catered for.

Mr. Speaker Sir,

This report contains committee observations, proposed amendments by key stakeholders and the committee as outlined in the attached Bill Matrix. The Committee report also contains sound and actionable recommendations.

Mr. Speaker Sir,

Further, pursuant to Standing Order 131(4) of the Nairobi City County Standing Orders, the Committee is required to submit its report to the County Assembly within twenty (20) Calendar days of the committal of the Bill to the Committee.

Mr. Speaker Sir,

However, due to unforeseen circumstances the Committee sought for an extension of time so that the Committee makes adequate consideration of the provisions of the aforementioned Bill.

2.6. Acknowledgement

Mr. Speaker Sir,

I wish to acknowledge with gratitude the offices of the Speaker and the Clerk of the County Assembly for the support extended to the Committee in the consideration of this crucial Bill.

Mr. Speaker Sir,

I also wish to extend my gratitude to members of the Public and the Key stakeholders who had submitted their views on this piece of legislation in order to enrich it in line with the spirit of Public Participation.

Mr. Speaker Sir,

Finally, much thanks to the Members of the Committee, and the Secretariat in charge of the Committee and the Legal Counsel for their dedication, untiring commitment and valuable contributions during the consideration of this Bill.

Mr. Speaker Sir,

On behalf of the Committee, I now have the honour and pleasure to present the Report of the Committee on Consideration of the Nairobi City County Air Quality Bill, 2021 for consideration and adoption.

Sign 

Hon. John Kamau Muthiga, MCA Chairperson

Date 03/03/2022

3.0. THE CONTENTS OF THE NAIROBI CITY COUNTY AIR QUALITY BILL, 2021

3.1. The Summary of the provisions and the Salient features of the Bill

3.1.1. Object and purpose of the Bill

Mr. Speaker Sir,

01. The Nairobi City County Air Quality Bill, 2021 seeks to establish a legal and institutional framework for:-
 - i) Protection of the environment by providing reasonable measures to enhance the quality of air in Nairobi City County; prevention of air pollution and ecological degradation; and securing ecologically sustainable development;
 - ii) Giving effect to Section 19 (4) of the Climate Change Act, 2016;
 - iii) Giving effect to provisions of Part 2 of the Fourth schedule of the Constitution; and
 - iv) Part VIII of the Environment and Coordination Act, Cap 387 to enhance quality of ambient air.

Mr. Speaker Sir,

02. In essence, therefore, the Nairobi City County Air Quality Bill, 2021 seeks to implement Paragraph 3 of Part 2 of the Fourth Schedule of the Constitution of Kenya, 2010. Specifically, the function of and power of the County government to control air pollution, noise pollution, other public nuisances and outdoor advertising.

3.1.2. Constitutional Provisions:-

Mr. Speaker Sir,

03. The Committee observed that legal authority of the Bill is premised in Article 185 of the Constitution which provides that:-
 - a) The legislative authority of a county is vested in, and exercised by, its county assembly; and
 - b) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.

Mr. Speaker Sir,

04. Article 185 of the Constitution provides that the power to make county laws vests exclusively in the county assemblies. However, it is a well-established principle in law making that a legislature may be unable to enact a law that would be responsive to every present and future circumstance. It is in this context that the implementers of legislation such as the Executive arm of government are usually given the power to make subsidiary legislation. The legislature delegates its law making power to the Executive or any other body charged with implementing the law.

3.1.3. Provisions in each Clause

Mr. Speaker Sir,

05. The Bill is composed of 46 clauses;-
06. Part 1 covers short title, interpretation and objects of the Act

Mr. Speaker Sir,

Part ii- covers on Application and Prohibition and contains six clauses

07. **Clause 4** of the Bill provides for Application of the legislation once enacted. That the Bill applies to any premises used for any industrial or trade purposes or on which matter is burnt; any premises that discharges air pollutants; industrial plants; fuel burning equipment including vehicles; quarry and mining activities; and any appliances or activity that may by order be specified.
08. **Clause 5** imposes an obligation to the owner or occupier of premises to comply with the limit values and technical standards specified in the Act and proposes the evidence of such compliance shall be in a form of a license issued by the department (environment).
09. **Clause 6**, imposes an obligation to the owner or occupier of premises to notify the Chief Officer when: carrying out any change in licensed operation of the

premises; carrying out any work that may result to air pollution; constructing any land, building or premises designed or used for purposes that may result in air pollution; making or permitting any change of machine or equipment used or installed at the premises that causes a material change in the quantity or quality of emission from an existing source; and changing or modifying an existing air pollution control system.

The written notification should be submitted to the Chief Officer not less than 14 days before commencement of such work. The C.O has discretion for approval.

10. **Clause 7** provides the general duty of the county government to protect and enhance the quality of air within its boundaries as a means to progressive realization of the right under Article 42 of the Constitution (*the right to clean environment*).
11. **Clause 8** imposes an obligation on the owner or occupier of premises involved in industrial activity to incorporate measures to reduce the emission of air pollutants to the atmosphere
12. **Clause 9** grants a general prohibition for anyone not to discharge a contaminant into the air from any source without a license.
13. **Clause 10** provides for determination of ambient air contaminant level.

Mr. Speaker Sir, Part III of the Bill provides for establishment and management of the Air Pollution Control System

14. **Clause 11** proposes that every premises be equipped with an Air Pollution Control System with the responsibility imposed on the owner or occupier of the premises to ensure they install this system. It also proposes that such system shall be supervised by a competent person who shall be on duty at all times during the operation of the system.

15. **Clause 12** proposes that such air control system should have or caused to conduct performance monitoring of Air Pollution Control System.
16. **Clause 13** grants an obligation of the owner or occupier of such premises to maintain records of manufacturing processes and performance of monitoring of the Air Pollution Control System.
17. Under **clause 14**, it is proposed that there need be limit values and technical standards.
18. **Clause 15** prohibits emission dilution before being emitted to the atmosphere.
19. **Clause 16** obliges the owner or occupier of a premises to use the best practicable means to prevent the emission of hazardous substances and to render harmless and inoffensive substances necessarily discharged.
20. **Clause 17** obliges the owner of premises to conduct periodic monitoring of emissions to ascertain no harm to the occupants of the premises.
21. **Clause 18** gives an obligation to the owner or occupier of a premises to carry out continuous emission monitoring.
22. **Clause 19** gives an obligation to an owner or occupier of a premises to carry out any of the activities that lead to emissions shall for every calendar year submit to the Chief Officer an emission declaration in such form as determined by the regulation.
23. **Clause 20** provides that an owner of a premise being inspected by the authorized officer shall provide access every reasonable assistance and facility available at the premises, including labor, equipment and instruments that the officer may require.
24. **Clause 22** where there is failure in the operations of any equipment causing accumulation of air pollutants to such level so as to threaten public health, the Chief officer may by notice in writing require the owner to submit a comprehensive response plan detailing out the equipment as well as measures and steps to be taken by parties concerned in the event of an emergency.

25. **Clause 23** provides for instances when any accidental, emergency or unauthorized release of discharge of a contaminant. The owner is required to inform the Chief Officer immediately or report to the nearest police station within 24 hours. Failure to notify the Chief Officer is an offence.

Mr. Speaker Sir, Part IV provides for operations and licensing

26. **Clause 24** grants a duty to the Chief Officer to issue a notice in writing requiring the owner or occupier to measure, take samples and report any environmentally hazardous substances and to provide proof of installation of Air Pollution Control Systems.
27. **Clause 25** provides for sampling and analysis of pollutants in accordance with the appropriate Kenyan standards or any other standards as shall be specified by the Regulations.
28. **Clause 26** provides that in the event of any undesirable occurrence and in the opinion of the Chief Officer the continued operation of any premises should not be permitted the chief officer may issue an improvement order; prohibit further operation of the premises; and failure to comply with the order is an offence.
29. **Clause 27** provides that an owner or occupier of the premises shall apply for a license to operate an emission source every calendar year.
30. **Clause 28** makes it an offence by any person who provides any information which he knows to be false or misleading. Upon conviction, the person shall be liable to a fine not exceeding five hundred thousand or to imprisonment for a term not exceeding two years.
31. **Clause 29** the clause grants the power to Chief Officer to issue or refuse to issue a license.
32. **Clause 30** gives the Chief Officer power after issuing a license to revoke the license or impose additional terms where the Chief Officer believes on reasonable grounds that continued operation of the emitting facility is injurious

to the health of the public, obnoxious to the public; or a threat to environmental health.

33. **Clause 31** provides for the circumstances and procedure for renewal of licenses.
34. **Clause 32** prohibits burning of substances except where authorized by license.
35. **Clause 33** envisages the obligation to persons owning commercial vehicles to control production and emission of air pollutants and to comply with Kenya Standard prescribed by the Kenya Bureau of Standards.
36. **Clause 34** envisages the control of air pollutants from construction and quarries.
37. **Clause 35** provides that no person shall cause or allow stockpiling in a manner likely to cause ambient air quality levels to be contravened.
38. **Clause 36** imposes the duty to authorized officers to notify concerned persons requiring them to find a remedy where the officer notices any activity that causes emissions of air pollutants.
39. **Clause 37** imposes an obligation to the environment department to conduct air quality surveys every two years.
40. **Clause 38** stipulates that an owner who causes or allows the generation from any source any odour that unreasonably interferes with the lawful use or enjoyment of the property shall use recognized good practices to reduce such odour to a level determined by the Committee.
41. **Clause 39** provides for control of pollution for air that is outside the Nairobi City County's jurisdiction.
42. **Clause 40** prohibits discharge of visible air pollutants.

Mr. Speaker Sir, Part V provides for the Administration of the Act

43. **Clause 41** establishes the Nairobi City County Environment Committee.
44. **Clause 42** stipulates the functions of the Committee.
45. **Clause 43** provides the composition of the Committee.

Mr. Speaker Sir, Part VI gives miscellaneous provisions

46. **Clause 44** provides for offences, penalty and Appeals.

47. **Clause 45** provides for exemptions in the Act
48. **Clause 46** delegates the power to make regulations to the CECM responsible for matters relating to environment management

3.1.4. Consequences of the Bill

Mr. Speaker Sir, the legislation thereunder will enable the county government to discharge its function as set out under Paragraph 3 of Part 2 of the Fourth Schedule to the Constitution.

Mr. Speaker Sir, this Bill seeks to control air pollution and thus grant to the resident ambient air quality. This will ensure that the environment and regulation of fumes into the air is controlled within Nairobi City County.

4.0. COMMITTEE CONSIDERATION OF THE NAIROBI CITY COUNTY AIR QUALITY BILL, 2021

4.1. Introduction

01. The Nairobi City County Air Quality Bill, 2021 was read a First Time on **Thursday, 2nd December, 2021** and thereafter committed to the Sectoral Committee on Environment and Natural Resources for consideration pursuant to Standing Order 131. Hon. Waithera Chege sponsored the Bill.

4.2. Public Participation

02. In view of the above, **Mr. Speaker Sir**, the Assembly placed a notice in the local dailies on **Tuesday, 11th January, 2022** calling for any representations and amendments from the public on the Bill. Further, the Assembly placed the second notice in the local dailies on **Tuesday, 11th January, 2022**. In the second notice, the members of the Public were notified of the physical public forum held on **Wednesday, 2nd February, 2022 at Charter Hall, City Hall Buildings at 11:00a.m.** During the said physical forum, the members of the Public submitted their views.
03. The Committee received and considered at least four (4) written views from various stakeholders with regards to the Bill.
04. **Mr. Speaker Sir**, in consideration of the aforementioned Bill, the Committee was taken through the provisions of each clause whereby the Members were expected to outline whether to agree or to propose amendments on any given provisions. As such, the Committee was further advised to look into written submissions from a few stakeholders who forwarded their considered proposed amendments

5.0. KEY COMMITTEE OBSERVATIONS

My speaker Sir, while examining the said Bill, the Committee observed the following amongst others;

That,

- i. Implementation of Air Quality Act priorities and other actions will require significant planning, including detailing the full cost to determine budgetary and other economic implications. This legislation will be implemented through specifically developed and fully priced Air Quality Action Plans commencing with the Nairobi City County Action Plan 2021 - 2025 and continuing through new and amended action plans developed in at least five-year intervals. In addition, the Nairobi City County Air Quality Legislation will be implemented through operationalization of Nairobi City County Air Quality Regulations;
- ii. The legislation was developed as a response to various persistent challenges facing the Members of the Public in particular that threaten the health, safety, comfort, convenience;
- iii. The legislation is essential in ensuring that the Nairobi Beautification Initiative is achieved. That Nairobi was once a clean and green city and it is through such effort and perhaps enactment of consequent legislation that it regain its lost glory;
- iv. Air quality communication involves understanding the status of air quality, the emission sources and impact on environment and human health. It is dependent on other components of air quality management. This information can be used to raise awareness of air pollution issues and foster voluntary behavioral change among key stakeholders. This means that in Nairobi County, there is a low level of awareness among various stakeholders. Hence, the County Government of

Nairobi should emphasize community ownership of air quality issues in order for its citizens to understand the effects;

- v. Research and technology may provide sustainable solutions to the air pollution challenges faced by the county. Air quality monitoring networks using emerging technologies have provided innovative, efficient and effective ways of measuring the levels of particulate matter, sulphur dioxide, nitrogen dioxide and carbon monoxide in the air. These measurements have been used to establish whether the city's air quality meets the WHO guidelines;
- vi. There is urgent need to put in place governance mechanisms and regulations to promote cleaner air in Nairobi City and will do so in close collaboration with the National Government and counties within the Nairobi Metropolitan Region; and
- vii. It is further observed that multi-sectoral approach is recommended in mitigation of the air pollution within the County and beyond. For instance the Committee observed that the risks posed by air pollution are systemic and interlinked, with major effects on human health, education, finance, urban planning and the general environment.

6.0. KEY COMMITTEE RECOMMENDATIONS

Mr. Speaker sir,

The Committee recommends that in accordance with provisions of Standing Order 191(6): -

That;

This Assembly approves the Nairobi City County Air Quality Bill, 2021 with the following recommendations; -

1. That past, present and future undertakings in regards to Air Quality be done within the framework of the **Nairobi City County Air Quality Bill, 2021** and the recommendations of this report.
2. That the County government submits to the Assembly within 60 days of adopting this report, Regulations on the same, amongst other proposal contained in the Bill.
3. That the Bill be enacted with the amendments as proposed by various stakeholders captured above and adopted by the Committee.

ANNEXE 1: PROPOSED COMMITTEE STAGE AMENDMENTS

NOTICE is given that the Chairperson of the Sectorial Committee on Environment and Natural Resources intends to move the following amendments to the Nairobi City County Air Quality Bill, 2021, at the Committee Stage.

CLAUSE 2

THAT, Clause 2 of the Bill be amended as follows;

- By deleting the definition of the word "Greenhouse gas" in its entirety.

CLAUSE 3

THAT, Clause 3 of the Bill be amended as follows;

- In paragraph (d) by inserting the words "**and The Public Health Act Cap 242**" to appear immediately after the words "**Cap. 387**"

CLAUSE 30

THAT, Clause 30 of the Bill be amended as follows;

- In Sub-clause (3) by deleting the entire sub-clause and substituting thereof "**A license issued under this section shall be valid for one year and shall thereafter be renewed annually**"

CLAUSE 36

THAT, Clause 36 of the Bill be amended by inserting the words "**in line with the World Health Organisation's standards**" immediately after the words "**in the Regulations**".

CLAUSE 46

THAT, Clause 46 of the Bill be amended as follows; -

- (i) In sub-clause (1) paragraph (g) by deleting the words "**other minorities**" and substituting thereof "**other special groups**".

28th February, 2022

The Ag. Clerk
Nairobi City County Assembly
NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE NAIROBI CITY COUNTY AIR
QUALITY BILL, 2021

NOTICE is given that the Chairperson of the Sectoral Committee on Environment and Natural Resources intends to move the following amendments to the Nairobi City County Air Quality Bill, 2021, at the Committee Stage.

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- (i) By deleting the definition of the word “Greenhouse gas” in its entirety.

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THAT Clause 30 of the Bill be amended as follows;

- (i) In Sub-clause (3) by deleting the entire sub-clause and substituting thereof “A license issued under this section shall be valid for one year and shall thereafter be renewed annually”

CLAUSE 36

THAT Clause 36 of the Bill be amended by inserting the words “in line with the World Health Organisation’s standards” immediately after the words “in the Regulations”.

CLAUSE 46

THAT Clause 46 of the Bill be amended as follows; -

- (i) In sub-clause (1) paragraph (g) by deleting the words “other minorities” and substituting thereof “other special groups”.

Dated this 2/03/2022 day of Wednesday 2022.

Signed For Kerani

Chairperson, Environment and Natural Resources

**MINUTES OF THE 8TH (VIRTUAL) SITTING OF THE NAIROBI CITY COUNTY
ASSEMBLY SECTORAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES ON 2ND MARCH, 2022 AT VIRTUALLY AT 1:30PM**

PRESENT

1. Hon. Leah Supuko, MCA
2. Hon. James Mwangi, MCA
3. Hon. Francis Ngesa, MCA
4. Hon. John Kamangu, MCA
5. Hon. Solomon Magembe, MCA
6. Hon. Peter Imwatok, MCA
7. Hon. Michael Ogada, MCA
8. Hon. Wahinya Njau Peter, MCA
9. Hon. Jeremiah Themendu, MCA
10. Hon. Rose Masitsa, MCA
11. Hon. Eunice Wanjiku, MCA
12. Hon. Margaret Mbote, MCA
13. Hon. Emily Waithaka Wanjiku
14. Hon. Jacinta Wanjiru, MCA
15. Hon. Millicent Okatch, MCA
16. Hon. Redson Onyango, MCA
17. Hon. Anthony Kiragu, MCA
18. Hon. Wanjiru Kariuki, MCA
19. Hon. Laura Mwende, MCA Chairing

ABSENT

1. Hon. John Kamau, MCA Chairperson
2. Hon. Joseph Ndonji, MCA Vice Chairperson
3. Hon. Evans Otiso, MCA
4. Hon. Joyce Muthoni, MCA
5. Hon. Joseph Wambugu, MCA
6. Hon. Wilson Ochola, MCA
7. Hon. Fuad Hussein, MCA
8. Hon. Anthony Kimemia, MCA

SECRETARIAT

- 1) Mr. Guyo Sankala – Snr. Clerk Assistant

AGENDA

- 1) Preliminaries (prayers & adoption of the Agenda)

- 2) Adoption of the report on the Consideration of Nairobi City County Air Quality Bill, 2021
- 3) Any Other Business
- 4) Adjournment

MIN.48/MAR/2022 - PRELIMINARIES

The Committee Chairing Member called the meeting to order at 1:33pm after leading the members in a word of prayer. She welcomed and thanked everyone for taking his or her time to attend the Meeting. She then took the members through the agenda of the sitting.

Agenda was confirmed after being proposed by Hon. Leah Supuko and Hon. Hon. Rosemary Masitsa.

MIN.49/MAR/2022 - REPORT ON THE CONSIDERATION OF NAIROBI CITY COUNTY AIR QUALITY BILL, 2022

The Committee having been taken through the contents of the aforementioned report, resolved that the report be adopted and laid on the table of the Assembly on Thursday, 3rd March, 2022. Thus, the Committee adopted the said report after having been proposed and seconded by Hon. Leah Supuko and Hon. Anthony Kiragu respectively.

MIN.50/MAR/2022 - ANY OTHER BUSINESS

The Committee was reminded that on Thursday, 3rd March, 2022 at 12:00Noon there would be briefings on County Fiscal Strategy Paper for FY 2022.

MIN.51/MAR/2022 -ADJOURNMENT

There being no other business considered by the Committee the meeting was adjourned at 1:56pm

CONFIRMED AS TRUE COPY OF THE PROCEEDINGS

CHAIRPERSON.....

DATE..... 8/3/2022

SNR. CLERK ASSISTANT.....

DATE..... 8/3/2022

NAIROBI CITY COUNTY

Telephone: 020 344194
www.nairobi.go.ke



City Hall,
P. O. Box 30075-00100,
Nairobi,
KENYA.

ENVIRONMENT, WATER, ENERGY, NATURAL RESOURCES & CLIMATE CHANGE

NCC/CECM/EEW&NR/LMW/01/2022

27th January, 2022

The Ag. Clerk
Nairobi City County Assembly
P.O Box 45844-00100
NAIROBI.



PCA (C)
Pls deal
B. Clerk
21/1/22

RE: SUBMISSION OF MEMORANDA ON THE NAIROBI COUNTY AIR QUALITY BILL, 2021

Reference is made to your letter Ref: NCCA/E&NR/BILL/055/2022' dated 25th January, 2022 on the above subject matter.

Please find the highlighted views of the Environment, Water, Energy, Natural Resources and Climate Change Sector as requested for your considerations.

Part I : Preliminary

Objects of the Act

3 (d) Consider including the Public Health Act Cap 242 Part IX Section 115.

Part IV : Operations and Licensing

Issuance or refusal of license

30 (3) Consider changing the annual licence for a year to count from date of issuance instead of calendar year. This is in the spirit of ease of doing business in the City and to enhance compliance irrespective of the time of the year.

Part V : Administration

Composition of the Committee

46 (1) (g) Consider replacing 'other minorities' - (as placed, it implies that the other mentioned persons are minorities); with 'other special groups'.

The Bill is comprehensive enough and other details will be captured in the regulations.

PP
Signature
LARRY M. WAMBUA
COUNTY EXECUTIVE COMMITTEE MEMBER
ENVIRONMENT, WATER, ENERGY, NATURAL RESOURCES & CLIMATE CHANGE

NAIROBI CITY COUNTY ASSEMBLY

Telegraphic Address
Tel: +254 20 221 6151/0700330846
Email: clerk@nairobiassembly.go.ke
Web: www.nairobiassembly.go.ke

Nº 004032

County Assembly
City Hall Buildings
P O Box 45844-00100
Nairobi, Kenya

OFFICE OF THE CLERK

NCCA/E&NR/BILL/055/2022

25th January, 2022

The County Secretary
Nairobi City County
Nairobi

Att:
County Executive Committee Member,
Environment, Energy, Natural Resources & Climate Change
Nairobi City County
Nairobi.

RE: SUBMISSION OF MEMORANDA ON THE NAIROBI CITY COUNTY AIR QUALITY BILL, 2021

The Sectoral Committee on Environment and Natural Resources is established under the provisions of Standing Order 203(6) and is mandated, among others, "to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments."

The Committee is further mandated to make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

The Nairobi City County Air Quality Bill 2021 underwent First Reading on 2nd December, 2021. The Bill was thereafter committed to the Sectoral Committee on Environment and Natural Resources for scrutiny and report to the Assembly. The Committee is further required to facilitate public participation and take into account the views and recommendations of the public and the stakeholders.

It is on this basis that your attention is drawn to the Bill as published and an invitation extended to you to submit your views to the Committee.

Written Memoranda may be emailed to the office of the Clerk of the County Assembly, Email: clerk@nairobiassembly.go.ke or hand delivered to the office of the Clerk, first Floor, Assembly Wing, City Hall Buildings. To be received on or before Monday, 31st January, 2022.

Further, you are invited to attend a physical public participation forum to be held on Wednesday, 2nd February, 2022 at Charter Hall from 10:00a.m. Kindly feel free to contact Mr. Guyo Sankala (Clerk Assistant in charge of the Committee), Cellphone No: 0713159153 for any further clarifications.

Please find a copy of the said Bill by clicking on the link; <http://nairobiassembly.go.ke/ncca/wp-content/uploads/bill/2022/Air-Quality-Bill-2021.pdf>



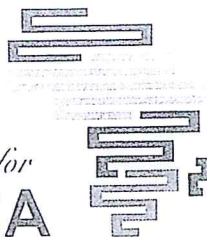
GAVIN R. CASTRO

AG. CLERK, NAIROBI CITY COUNTY ASSEMBLY

Cc:

Chief Officer
Environment, Energy, Natural Resources & Climate Change
Nairobi City County
NAIROBI

CODE for
AFRICA



To: Mr. Rome C Garvin,
Ag Clerk,
Nairobi City County Assembly,
Nairobi County.

From: Code For Africa
112 Loop Street
Cape Town, South Africa

20 January 2022

**Public Participation in the matter of consideration by the Nairobi City County Assembly, of the
Nairobi City County Air Quality Bill, 2021**

General Remarks

Air pollution forms through a complex mixture of gases and particles from a variety of spatial and temporal sources and composition. It can be man-made or may occur naturally. Human beings are exposed to air pollution both outdoors, known as ambient air pollution and indoors, household air pollution.

The main causes of air pollution are exposure to: 1) ground level ozone, 2) carbon monoxide, 3) lead, 4) sulphur dioxide, 5) nitrogen dioxide, and 6) PM10 (particle size $<10\ \mu\text{m}$), PM2.5 (particle size $<2.5\ \mu\text{m}$) and ultrafine PM (particle size $<0.1\ \mu\text{m}$). PM refers to 'particulate matter, which are fine particles found in the air from various sources. PM10 is roughly one-seventh the diameter of a human hair. It consists of sulphate, nitrates, ammonia, sodium chloride, and black carbon while PM2.5 is often considered even more dangerous to human health because of its ultrafine size (about 1/30th the average width of a human hair).

These pollutants are produced by polluting fuels and technologies, and are known to exceed WHO-recommended levels by a factor of 100 in poorly ventilated dwellings. Fine particles like particulate matter and gases like carbon monoxide penetrate the lungs and bloodstream thus both short and long-term exposure raises high concern.

The Environmental Management and coordination Acts and The Nairobi Air Quality Action Plan provide legislative guidance for acting on Air Pollution. However, monitoring and measurement remains a big challenge, and it is slowly coming out that this gap can be filled in through the use of low-cost sensors, which also assist in raising awareness and educating citizens on the necessity of this being addressed.

Exposure to Air pollution has health, economic, environmental, and social effects. Air pollution also hampers the attainment of Sustainable Development Goals. Women and children in particular are most vulnerable to the impacts of air pollution.



Code for Africa is the continent's largest federation of civic technology and data journalism labs, with full-time staff and affiliate civic tech labs in: Burkina Faso, Burundi, Cameroon, Central African Republic, Côte d'Ivoire, Ethiopia, Ghana, Guinea, Kenya, Mali, Morocco, Niger, Nigeria, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Uganda & Zimbabwe

CfA Secretariat: 112 Loop Street, Cape Town, Western Cape, 8000, South Africa.
South Africa NPO Number 168-092 | Kenya NPO Number CPR/2016/220101 | Nigeria NPO Number: RC-1503312
Kenya Lab: Nairobi Garage, 8th Floor, Pinetree Plaza, Kaburu Drive, Nairobi, Kenya.
Nigeria (Abuja) Lab: Ventures Park, 29, Mambilla Street, Aso Drive, Abuja, Nigeria.
Nigeria (Lagos) Lab: Workstation, No 7, Ibiyinka Olorunbe street, off saka tinubu, Victoria Island, Lagos, Nigeria.
Tanzania Lab: 7th Floor, 38 Tanzania Park, New Bagamoyo Road, Dar es Salaam, Tanzania.
Uganda Lab: Outbox, 4th Floor, Soliz House, Lumumba Avenue, Nakasero, Kampala, Uganda.
www.CodeForAfrica.org

Gaps Identified in the Air Quality Bill 2021 and Recommendations

We laud the County Assembly for its efforts to align air quality legislation in line with the Constitution 2010. The Fourth Schedule of the Constitution 2010 devolves the function of controlling Air Pollution to the respective County Governments:

3. *Control of air pollution, noise pollution, other public nuisances and outdoor advertising.*

However, we wish to point out the following gaps:

1. The Bill indicates that *'the owners of the premises shall carry out continuous monitoring.'* This implies that the owner of the premise will be required to mount Air Quality monitors/sensors. The bill is not clear on how the calibration and quality control of the monitors will be managed which could lead to erroneous results, unintended irregularities or manipulation of output by the owner of the premises.

We suggest that Government accredited labs do quarterly assessment and Air Quality reports.

2. Section 6.1.(b) *An owner or occupier of a premise shall not, without giving prior written notification to the Chief officer carry out any work that may result in Air Pollution.*

It needs to be clear that even if one gives notification, it does not permit one to carry out an activity that may result in some form of air pollution. As per the clause, it may leave room for manipulation.

3. Section 18 (2): *For continuous emissions monitoring, the limit values are complied with if the evaluation of the results for the operating period within one year shows that no daily average exceeds the emission standard, and no half hour average exceeds the emission standard more than two times.*

The bill is not clear on whether these standards shall be in line with those established by NEMA or whether the county shall develop their own standards. The World Health Organisation standards can be used as a base.

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

It is our belief that air quality monitoring should be a continuous process and not limited to two year intervals.

Common emission sources like industries, mobility and construction are already well known and documented and need to be constantly monitored.

Sporadic surveys in cases where there are sudden sources of pollutants (as has been the case where emissions are reported at night in some neighbourhoods) should also be allowed by the law.

Air pollution surveys should also be done on a continuous basis in conjunction with community groups, residents associations and other non-state actors who tend to be the ones reporting air pollution cases many times. These can also be part of the County Integrated Development Plan (CIDP) and Annual Development Plan (ADP) process.

This can also help in climate change mitigation measures.

5. 36 - *The Standards and limits of Air pollution shall be set out in the regulations*

- a. We suggest that it be explicit that these are in line with the World Health Organisation's standards.

6. 46. *Composition of the Committee*

- a. The law mentions the establishment of the Nairobi Air Quality Control Committee but does not explicitly indicate the powers and limitations of the committee.

7. Other areas

- a. There is opportunity for linkage between air quality and other devolved functions including but not limited to:
 - i. Public Transport;
 - ii. Development Control (related to physical and land use planning and the construction sector);
 - iii. Solid Waste Management;
 - iv. Vehicle standards within certain areas e.g. the development of emission free zones in line with what other countries are doing;
 - v. Public space.

These can also help prevent all forms of air pollution in public spaces, residential areas and sporting facilities.

b. Sensor Standards

- i. It is important that clear standards for air quality monitors are properly defined in the bill (or the regulations) to ensure proper calibration of sensors and lack of manipulation.

c. Ambient Air Pollution vs Household Air Pollution (HAP)

- i. Though not easy to monitor, HAP is a major cause of mortality and morbidity especially among the urban poor. There is a need for regulation on the kind of fuels that can be used within premises (e.g. non use of biomass or charcoal fuels indoors) as a way of mitigating this problem.

8. AQ monitoring system - This does not seem to be a unified system.

There also need to be prevention mechanisms. E.g. factories should have electrostatic precipitators in their vents. Installing sensors without them having mechanisms to prevent air pollution does not make sense.

9. The term '*Best Techniques Economically Available*'

This needs to be clarified and insist on approval by KEBS to prevent manipulation of monitors.

About Code for Africa

Code for Africa is the continent's largest federation of affiliated civic technology and data journalism laboratories. It works as a non-partisan 'change agent' that offers engineering and editorial support, skills development, seed-funding, and business development services designed to strengthen digital democracy by empowering citizens with actionable information and by amplifying citizens' voices, while also strengthening civic engagement for improved public governance and accountability. CfA works through a network of chapters and other affiliate organisations across the continent.

sensors.AFRICA is a pan-African open data and civic technology initiative that supports citizen science networks across the continent monitor the quality of air, water, and sound in communities. sensors.AFRICA supports grassroots partners by offering hardware / software solutions, and also assists with data analysis and public engagement that ranges from school-focused science clubs to media partnerships. The initiative currently supports pilot projects in Kenya, Nigeria, South Africa, Tanzania and Uganda with plans for additional countries once resources allow.

Sincerely,



Constant Cap
Senior Product Manager; Sensors.AFRICA
Code for Africa

Cc:

Hon John Kamau Muthiga (MCA Komarock Ward)
Chairperson,
Departmental Committee on Environment,
Nairobi City County Assembly,
Nairobi County

Hon. Esther Waithera Chege,
Member of the County Assembly,
Nairobi South Ward,
Nairobi County

But, even after being freed on bond, Ms Wambui was not released by the DCI. Yesterday, Ms Wambui, through lawyer Mahugu Mbarire, told Ms Angima that she ought to be out on bond following

acquired bond for the associated application file opened by the DCI on December 23. But, since the file had already been closed as the police had finalised their in-

before February 2022
memwende@ke.nationmedia.com

DAILY NATION 11/JAN/2022

NAIROBI CITY COUNTY ASSEMBLY

Telegraphic Address
Email: clerk@nairobiassembly.go.ke



Tel: +254 700 330 486
Web: www.nairobiassembly.go.ke

In the Matter of consideration by the Nairobi City County Assembly, of the Nairobi City County Air Quality Bill, 2021

Article 196(1) (b) of the Constitution provides that "a County Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees." Standing order 121(3) states that "the Sectoral Committee to which a Bill is Committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the Assembly."

SUBMISSION OF MEMORANDA/PUBLIC PARTICIPATION

The Nairobi City County Air Quality Bill, 2021 was read for a first time on Thursday, 2nd December, 2021 and committed to the Sectoral Committee on Environment and Natural Resources for consideration and thereafter submission of a report to the Assembly.

Pursuant to Article 196(1) (b) and Standing Order 121(3), the Environment and Natural Resources Committee invites interested members of the public to submit any representations they may have on the **Nairobi City County Air Quality Bill, 2021**. The representations may be hand delivered to the **office of the Clerk, Nairobi City County Assembly, P.O BOX 45844 - 00100, City Hall Building, Assembly Wing, 2nd Floor, Nairobi** or by email clerk@nairobiassembly.go.ke to be received on or before **Thursday, 20th January, 2022**.

Copies of the **Nairobi City County Air Quality Bill, 2021** can be accessed from "www.nairobiassembly.go.ke"

MR. ROMEO C. GARVIN
Ag. CLERK, NAIROBI CITY COUNTY ASSEMBLY

1/21/22, 10:42 AM

Roundcube Webmail :: Nairobi City County Air Quality Bill, 2021

Nairobi City County Air Quality Bill, 2021
From: Constant Cap <constant@codeforafrica.org>
To: <clerk@nairobiassembly.go.ke>
Cc: <John.Muthiga@nairobiassembly.go.ke>,
<Esther.Waithera@nairobiassembly.go.ke>
Date: 2022-01-20 17:37



- Air Quality Bill.jpeg(~184 KB)
- CFA _ Programmes _ Sensors _ Nairobi AQ Bill Feedback.pdf(~332 KB)

Good evening Mr. Garvin,

Kindly find attached feedback on the Nairobi City County Air Quality Bill, 2021 from Code for Africa.

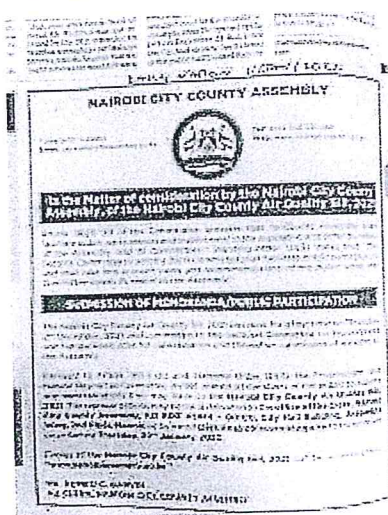
Code for Africa runs sensors.AFRICA, a citizen science programme that does air quality monitoring in Nairobi City County.

Sincerely,

Constant Cap

Constant Cap
Senior Product Manager
sensors.AFRICA
Mob: 254 721 976 972

Air Quality Bill.jpeg
~184 KB



Nairobi City County Air Quality Bill, Input from AirQo

Deo Okure <dokure@airqo.net>

Margaret Kariuki <margaretk91@gmail.com>

<clerk@nairobiassembly.go.ke>, Angela Nshimye
<angela@airqo.net>, Engineer Bainomugisha
<baino@airqo.net>

Date 2022-01-20 14:06

- Nairobi County Bill_Input from AirQo, Uganda.pdf(~126 KB)

Dear Margaret, thanks again for sending through the Bill.

It is a great piece of legislation and we believe this is a good step for air quality in Nairobi and African cities.

See attached input from AirQo, these are just suggestions and comments and we also welcome any further queries on the same**Let me know if you have any questions.**

Regards

Deo Okure

Air Quality Scientist & Programme Manager

dokure@airqo.net

Software Centre, Level 3, Block B
College of Computing and Information Sciences
Makerere University
Kampala, Uganda
www.airqo.net

PEACE
Pk deal
B Clerk
20/1/22

Clean air for all African cities

On Wed, 12 Jan 2022 at 13:44, Deo Okure <dokure@airqo.net> wrote:

Dear Margaret, hope you are doing well and hope you had a restful holiday.

We are excited to learn of the progress regarding the air quality bill, this is great news for air quality in Nairobi and East Africa, congratulations on this great milestone and thanks for contributing to the evolution of air quality regulations in Africa.

Could you please share a copy of the bill with us? As AirQo, we are keen to share some thoughts on the same, including identifying any learning points for other cities in Africa.

Thanks and looking forward to hearing from you

(Clerk Environment)
Please deal.
14/1/22
24/1/2022
Clerk

...ed by the DCL yesterday. Ms
Wambui, through lawyer Mahugu
Mburire, told Ms Angima that she
ought to be out on bond following

...DCL on December 23, 2021. The
the file had already been closed
as the police had finalised their in-
com

...mail, please go to airqo@nairobiassembly.go.ke

DAILY NATION 11/JAN/2022

NAIROBI CITY COUNTY ASSEMBLY

Telegraphic Address
Email: clerk@nairobiassembly.go.ke



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In the Matter of consideration by the Nairobi City County Assembly, of the Nairobi City County Air Quality Bill, 2021

Article 196(1) (b) of the Constitution provides that "a County Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees." Standing order 121(3) states that "the Sectoral Committee to which a Bill is Committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the Assembly."

SUBMISSION OF MEMORANDA/PUBLIC PARTICIPATION

The Nairobi City County Air Quality Bill, 2021 was read for a first time on Thursday, 2nd December, 2021 and committed to the Sectoral Committee on Environment and Natural Resources for consideration and thereafter submission of a report to the Assembly.

Pursuant to Article 196(1) (b) and Standing Order 121(3), the Environment and Natural Resources Committee invites interested members of the public to submit any representations they may have on the Nairobi City County Air Quality Bill, 2021. The representations may be hand delivered to the office of the Clerk, Nairobi City County Assembly, P.O BOX 45844 - 00100, City Hall Building, Assembly Wing, 2nd Floor, Nairobi or by email clerk@nairobiassembly.go.ke to be received on or before Thursday, 20th January, 2022.

Copies of the Nairobi City County Air Quality Bill, 2021 can be accessed from "www.nairobiassembly.go.ke"

MR. ROMEO C. GARVIN
Ag. CLERK, NAIROBI CITY COUNTY ASSEMBLY

Deo Okure

Air Quality Scientist & Programme Manager

dokure@airqo.net

Software Centre, Level 3, Block B
College of Computing and Information Sciences
Makerere University
Kampala, Uganda
www.airqo.net

Clean air for all African cities

Dear Colleagues,

thank you for the work you are doing in t and congratulations upon this milestone. Having a city air quality regulations for a city like Nairobi is great news for Africa. This is great news for air quality in Nairobi and East Africa, and we are particularly excited about this means for achieving a *clean air for all African cities* (*AirQo's vision*).

We commend the efforts that went into developing this piece of legislation, this is near perfect and we can tell from the output that the team did an incredible work.

AirQo has only provided specific comments and suggestions, largely drawing from our experience in contributing to i quality policy and regulation development. Our input has been consolidated in the **table below (next page)**.

These are not instructive and we welcome any counter feedback and queries on the same.

Thank you and looking forward to seeing this move to the next stage

All comments can be sent to dokure@airqo.net

Table: Consolidated comments and suggestions

Section	Comments and suggestions
<i>PART I-PRELIMINARY</i>	
<p><i>Ambient air” means the atmosphere surrounding the earth and does not include the atmosphere within a structure or within any underground space</i></p>	<p>Comment In order to provide explicit guidance on the monitoring protocol, it might be of value to qualify the extent of atmosphere, especially since ambient air emphasises exposure of receptors (humans, animals, etc.) within the lower parts of the atmosphere. Great to see that in the subsequent sections, ground level has been concretely defined to include above 1m from the surface upto 10m from ground surface. In it's current form, the atmosphere could mean 9 km from the ground.</p> <p>Suggestion Include a reference to ground-level in the definition of ambient air..</p>
<p><i>"Air pollution" means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances and any other pollutant that exceed ambient Air Quality Standards for that particular pollutant,</i></p>	<p>Comment In this context, air pollution appears to have been restricted to ambient air and corresponding standards. Ambient air pollutants are usually refer to pollutants with adverse impacts to human health. This is also consistent with the definition in the Kenya Air quality regulations 2014. The key ambient pollutants (about 5-7/8) are the ones usually explicitly referred to as classical (e.g. <u>WHO</u>), or criteria (e.g. <u>US-EPA</u>),</p> <p>Suggestion Explore broadening the definition beyond 'ambient' to include all other pollutants with potential to focus the definition on the sources and impacts to health and environment, as oposed to specific pollutants.</p>

<p><i>"Authorised Officer" means an inspector and or any other officer of the Department, duly authorized by the County Executive Committee Member, in writing, to ensure compliance of this Act</i></p>	<p>Comment Restricting Authorisation to 'in writing' could render the inspectors vulnerable and susceptible to being challenged. Wonder whether authorisation in writing is practical in the implementation/enforcement framework especially where circumstances require immediate action e.g. during emergency situations such as when a facility is suspected to be carrying out polluting activities within their enclosure that might warrant urgent inspection</p> <p>Suggestion Explore possibility to include other forms of authorisation in addition to written authorisations</p>
<p><i>"Greenhouse gas" means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and includes carbon dioxide, methane and nitrous oxide;</i></p>	<p>Comment GHG emission is a global phenomenon and perhaps there could there a value in acknowledging that in the Act. It would also demonstrate the County Government Commitment and contribution towards mitigating Greenhouse Gases</p> <p>Suggestion <i>"Greenhouse gas" means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and includes all GHGs stipulated by the United Nations Framework Convention on Climate Change.</i></p>
<p><i>"Inspector" means a gazetted officer of the County Executive responsible for 5 enforcement of the provisions of this Act;</i></p>	<p>What is the difference between authorised person and an inspector? Are these two being used interchangeably?</p>
<p>PART II—APPLICATION AND PROHIBITION</p>	
<p><i>(d) any fuel burning equipment including vehicular, industrial and domestic sources.</i></p>	<p>Comment The Act appears to be heavy on industrial and regulated activities and</p>

	<p>less emphasis on public areas and ambient air quality. 1(d) attempts to address that but it is rather specific to pollution sources. It is great to see that (Clause/section?) 7, General Duty of the County Government addresses this very explicitly.</p> <p>Suggestions</p> <ul style="list-style-type: none"> Consider the implications of widening the scope to explicitly include ambient air quality Rather than attempting to list emission sources e.g. fuel burning, quarry, etc., explore a safer option of clustering e.g. all regulated sources of emissions, non-regulated point and diffuse sources, etc.
<p><i>PART III—AIR POLLUTION CONTROL SYSTEM</i></p>	
<p><i>Defining Emergency Situation</i></p>	<p>Comment</p> <p>Large and spontaneous releases and emissions can often be synonymous with industrial settings. In such instances, we do not want deliberate acts of omission and commission to be considered emergency and accidents.</p> <p>Suggestion</p> <p>Consider the possibility of stipulating what constitute "emergency situations"</p>

Re: SUBMISSION OF MEMORANDA- AIR QUALITY

Tibebu Assefa <tassefa@c40.org>

<clerk@nairobiassembly.go.ke>

Date 2022-01-31 21:40

- Nairobi City County Air Quality Bill Feedback.docx(~118 KB)

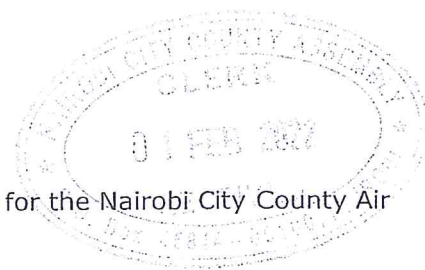
Dear Gavin,

I hope this email finds you well.

Here is attached a doc that includes some points that may be used as input for the Nairobi City County Air Quality Bill.

Best regards,

Tibebu



C40.org
@c40cities

Tibebu Assefa| Regional Technical Advisor, Air Quality, East Africa
- Africa (based in Addis Ababa)
Regions & Mayoral Engagement (RME)

Email tassefa@c40.org
+ 251 911938391

C40 is supporting cities to implement a green and just recovery from the COVID-19 pandemic. Learn more at our dedicated portal on the [Knowledge Hub](#).

At C40 we work flexibly and across multiple time zones. It suits me to email you at this time (I am based in Addis Ababa), but I don't expect a reply outside your working hours.

On Tue, 25 Jan 2022 at 15:50, Office of the Clerk <clerk@nairobiassembly.go.ke> wrote:

Good afternoon,

I trust this mail finds you well.

Kindly find the attached letter. Your input will be highly appreciated.

Regards

GAVIN R. CASTRO
AG. CLERK, NAIROBI CITY COUNTY ASSEMBLY
P.O. BOX 45844-00100
NAIROBI KENYA
www.nairobiassembly.go.ke

PCA (C)
Pls deal.
J. Clerk
2/2/22
A. Jashus

When you interact with C40, you are interacting with C40 Cities Climate Leadership Group Inc. or one of our affiliate organisations who help us fulfill our charitable mission.

CA Environment
table before
committee
12/1/22



Feedback on the Nairobi City County Air Quality Bill, 2021

The bill has six parts: i) Preliminary, ii) application and prohibition, iii) air pollution control system, iv) operation and licensing, v) administration, and vi) miscellaneous. It has 50 clauses that have sub-clauses within it. It included a lot of things that the air quality bill needs to have. It is very inclusive.

These are some of the feedback that the bill may consider:

1. General feedback

If we can include

- A specific clause on “conflict with other legislation” (See Example 1)
- A clause that specifies to achieve a particular act e.g. “ Application of Environment management and coordination (Air Quality) regulation, 2014” (See Example 2)

2. Emission source information

If we can include:

- A clause that shows when the responsible department should prepare air quality inventory (source apportionment) to monitor the city air quality regularly
 - How does the city inform citizens through data collection, analysis, reports of the ambient air quality and air quality impacts on resident health.
3. **Bill relation to national and local standards:** the possibilities that city can develop more stringent air pollution limits than the national regulation
 4. **City Air Quality Plan:** Issues related to the city air quality plan implementation administratively
 5. **Health issues:** The principal objective of the bill is to form a clean and healthy environment if include additional terms on how the bill is important to achieve the city residents health.

Example 1:

Conflicts with other legislation

6. (1) In the event of any conflict between a section of this Act and—
 - (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;
 - (b) a municipal by-law, the section of this Act prevails.
- (2) In the event of any conflict between subordinate legislation issued in terms of this Act and—
 - (a) an Act of Parliament, the Act of Parliament prevails;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.
- (3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146(6) of the Constitution, submit all subordinate legislation issued in terms of this Act and which affects provinces to the National Council of Provinces for approval.

Example 2:

Application of National Environmental Management Act

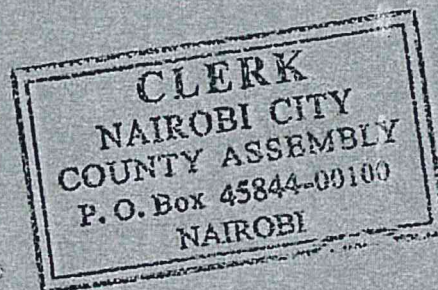
5. (1) This Act must be read with any applicable provisions of the National Environmental Management Act.
- (2) The interpretation and application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

SPECIAL ISSUE

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



REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY BILLS, 2021

NAIROBI, 1st December, 2021

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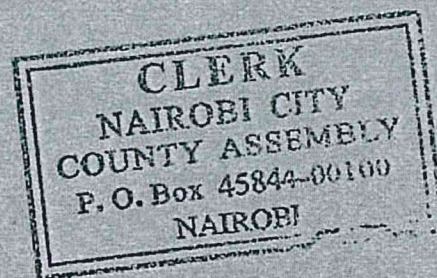
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THE NAIROBI CITY COUNTY AIR QUALITY BILL, 2021

A Bill for

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

ENACTED by the Nairobi City County Assembly, as follows—

PART I—PRELIMINARY

Short title and Commencement

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

Interpretation

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

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

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

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

“Air pollutant” means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

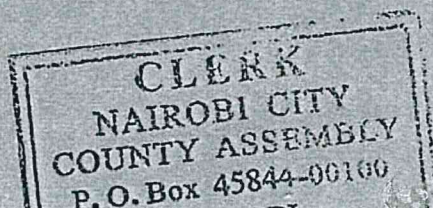
“Non-point sources” means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes bush, forest and open fires, mining activities, agricultural activities and stockpiles;

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

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

“Owner” in relation to any premises means—

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



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

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

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

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

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

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

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

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

Objects of the Act

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

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

PART II—APPLICATION AND PROHIBITION

Application of this Act

4. (1) This Act shall apply to—

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

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

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

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

Obligation to Comply

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

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

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

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

Obligation to notify

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

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

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

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

General duty of the County Government

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

Measures to reduce emissions

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

General Prohibition

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

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

Determination of ambient air pollution level

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

PART III—AIR POLLUTION CONTROL SYSTEM

Air pollution control system

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

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

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

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

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

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

Performance monitoring of air pollution control systems

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

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

Maintenance of records

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

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

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

Limit Values and Technical Standards

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

(2) Unless otherwise specified, the emission shall be calculated in terms of mass of pollutant per volume of the waste gases (expressed as mg/m³), assuming standard conditions for temperature and pressure for dry gas (volume at 273 K, 101.3 kPa).

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

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

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

Prohibition of emission dilution

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

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

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

Hazardous substances

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

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

Periodic Monitoring and inspection

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

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

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

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

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

Continuous emission monitoring

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

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

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

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

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

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

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

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

Emissions declarations

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

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

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

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

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

Duty to render assistance

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

Limit values and technical standards

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

Failure of control equipment and emergency requirement

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

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

Accidental or emergency release or discharge

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

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

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

PART IV—OPERATIONS AND LICENSING

Installation and operations

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

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

Sampling and analysis of pollutants

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

Improvement order and prohibition order

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

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

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

License required to operate emission source

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

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

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

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

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

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

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

Consideration of an application

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

False or misleading information

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

Issuance or refusal of license

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

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

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

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

Revocation of a license

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

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

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

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

Renewal

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

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

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

Prohibited burning

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

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

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

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

Inspection of pollutants from transport means

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

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

Inspectors of air pollution

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

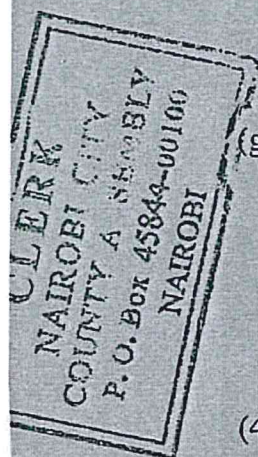
(2) An inspector shall—

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

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

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

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



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

Standards and limits of Air Pollution

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

Air pollutants from construction and quarries

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

Air pollutants from other sources

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

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

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

Duty of the authorized officer to notify

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

Air quality survey

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

Oduor guidelines

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

Trans-boundary pollution

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

Visible air Pollutants

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

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

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

PART V—ADMINISTRATION

Establishment of the Nairobi City County Air Pollution Control Committee

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

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

Functions of the Committee

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

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

Composition of the Committee

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

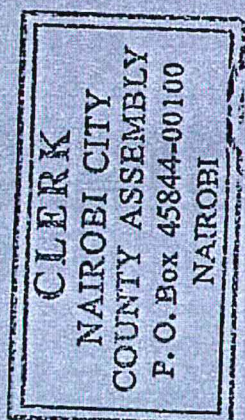
- (a) the Chief Officer responsible for environmental matters within Nairobi City County who shall be the chairperson;
- (b) the County Director for Environment matters who shall be the Secretary;
- (c) a representative of manufacturers, business community and industrialists operating within Nairobi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

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

PART VI—MISCELLANEOUS**General penalty**

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

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



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

Exemption

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

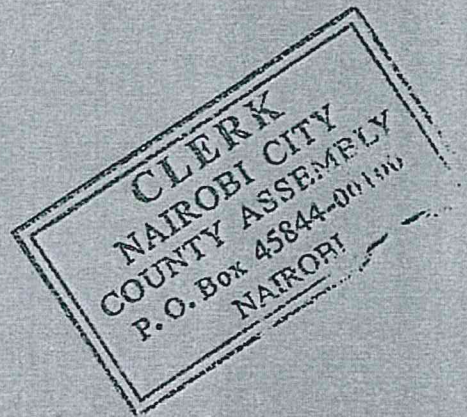
(2) Nothing in this Act affects any requirements for a license under the Environmental Management and Coordination Act, No.8 of 1999 or any other written law within the Republic of Kenya.

Incentives

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

Regulations

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



MEMORANDUM OF OBJECTS AND REASONS

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

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

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

Establishment of local emission standards

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

Motor Vehicle Emissions, Small Boilers and controlled activities

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

Establishment of general provisions for enforcement of the law

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

Establishment of mechanisms for implementation of the National Regulations

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

Statement of delegation of legislative powers

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

Statement of financial implication

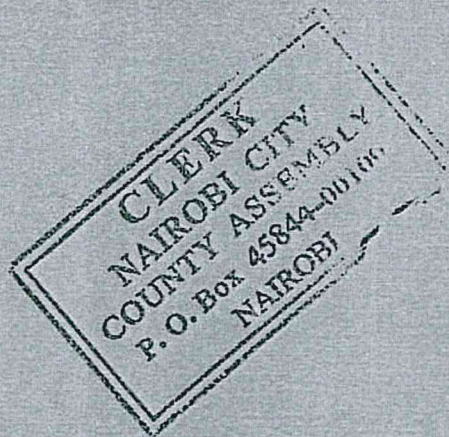
After a thorough understanding of the objects, the Bill will have financial implications to the county. However, it is worth noting that the County will benefit in the long run.

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

Dated the 1st December, 2021.

ESTHER WAITHERA CHEGE,

Member of County Assembly.



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COUNTY ASSEMBLY
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NAIROBI