



NAIROBI CITY COUNTY ASSEMBLY
FIRST ASSEMBLY – THIRD SESSION

**FOURTEENTH REPORT OF THE SECTORAL
COMMITTEE ON AGRICULTURE, ENVIRONMENT AND NATURAL
RESOURCES ON THE CONSIDERATION OF THE NAIROBI CITY
COUNTY SOLID WASTE MANAGEMENT BILL, 2015**

**Clerk's Chambers,
Nairobi City County Assembly
City Hall Buildings
Nairobi**

June, 2015

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1.0 PREFACE

Mr. Speaker Sir,

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

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

The Committee comprises the following Members:-

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

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

Mr. Speaker Sir,

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

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

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

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

Mr. Speaker Sir,

The Nairobi City County Solid Waste Management Bill, 2015 was read a First Time on Wednesday, 1st April, 2015 and thereafter committed to the Sectoral Committee on Agriculture, Environment and Natural Resources for consideration pursuant to Standing Order 121. This follows the re-introduction of the said Bill in the same form pursuant to the provisions of Standing Order 134(3) since the Bill had lapsed during the previous Session before undergoing Second Reading.

Mr. Speaker Sir,

The Committee placed a notice in the local dailies on **3rd April, 2015** calling for any representations and amendments from the public on the Bill Pursuant to Article 196(b) of the Constitution of Kenya and Standing Order 121(3) which require public participation in the legislative and other business of the Assembly and its Committees. Following the notice, the Committee received written memoranda from the following stakeholders;

- i) Waste and Environment Management Association of Kenya(WEMAK)
- ii) Kenya Alliance of Resident Associations(KARA)
- iii) Nairobi City County Environment, Sanitation and Hygiene Movement

In addition, before the Bill lapsed, the Committee had received written memoranda from the National Environment Management Authority (NEMA). Similarly, the Committee also held a total of eight (8) meetings and a retreat to consider the Bill and all representations received. The meetings included a meeting held with the **Chief Officer responsible for Environment and Forestry** and a meeting with the Kenya Alliance of Resident Associations (KARA.)

The stakeholders who presented memoranda were agreeable in principle with the Bill although they proposed amendments to various clauses. Only WEMAK were against the Bill.

Mr. Speaker Sir,

While examining the Bill, the Committee noted the following:

1. That the principle objective of the Bill is to put in place a legal framework for solid waste management within Nairobi City County. The proposed law also aims at harmonizing existing legislations governing solid waste management in order to improve in combating increasing threats to environmental management.

The Committee took note that Part 2 of the Fourth Schedule of the Constitution devolves to the County Governments the role of controlling pollution and other public nuisance within the County. Solid waste contribute immensely towards environmental pollution in the County and therefore the Committee is in support of any legislative measures aimed at protecting environmental pollution as long as such legislative measures doesn't infringe on the fundamental rights of Nairobi residents. Further, the Committee is cognizant with the fact that formulation of environment policy has been preserved as a national government function and therefore all laws enacted by the County must conform to the existing national policy.

2. **Part I** of the Bill provides for the preliminary matters with respect to the Bill. Clause 1 provides for the short title of the Bill and commencement date. Clause 2 sets out the definition and interpretation of terms used in the Bill.

Of concern to the Committee is that Clause 1 of the Bill leaves the commencement date at the discretion of the County Executive Committee Member acting in consultation with the Governor. The Committee opines that the Bill should be definite on the commencement date to avoid situations whereby the Executive may delay its implementation. To this end, the Committee has proposed a six (6) months transition period. KARA in their submissions to the

Committee commented that under clause 2, appointment of authorized officers should be elaborate, participatory and that when performing their duties, they should have proof of identification. The Committee resolved that whereas the issues raised by KARA are substantive, they can be handled through regulations approved by the County Assembly.

3. **Part II** of the Bill contains the general provisions of the Bill. Clause 3 sets out the objectives of the proposed law. Clause 4 provides for the shared responsibilities among the actors involved in waste generation. Clause 6 deals with public-private sector partnerships with respect to waste management. Clause 7 allows the CEC Member in consultation with the Governor to impose a charge on generators of waste. Clause 8 empowers the CEC Member responsible for finance in consultation with the Governor to impose an environmental levy as a percentage of property rates. Clause 9 and 10 recognizes the need for waste recycling and categorization respectively. Clause 11 allows for zoning of the County for the purposes of convenient management of waste. Clause 12 allows an authorized officer to order any person to cease operation involved in waste generation which in the opinion of the officer may lead to harmful effects. Clause 13 operationalizes the provisions of Clause 12 by allowing an authorized officer to enter any premises at any hour. Clause 14 lists conditions that must be fulfilled by a person seeking a license to carry out business that generates waste. Clause 15 prohibits manufacture and distribution of carry bags from virgin plastic of thickness of less than 30 micron and of a size not less than “8x12” and as specified in the Kenyan Standard.

The Committee finds this part crucial since it carries the substance of the proposed law. However, the Committee raises pertinent issues which require either amendment or consensus building among all stakeholders before the Bill is passed. For instance, Clause 6 gives powers to the CEC Member and the Governor to establish mechanisms

of involving various actors in solid waste management in the County. One of the mechanism proposed is the use of franchise within a zoned area. The Committee opines that the franchise system will create monopolies within the business of waste collection yet members are aware that waste collection creates job opportunities for many youth within the County. To address this concern, the Committee proposes that any mechanism to be adopted must be elaborated in regulations to be passed by the Assembly. This may include categorically stating that the franchisee allocated a zone must work with Community Based Organizations (CBOs) within the zones in a structured manner.

In addition, Clauses 7 and 8 gives powers to the CEC Member and the Governor to impose charges and environmental levies. The Committee noted that any levy or charge imposed should be arrived at through a participatory approach and must be approved by the County Assembly. This was also the position of all stakeholders who submitted their memoranda to the Committee.

Furthermore, Clause 11 contemplates the creation of waste collection zones by the CEC Member. The Committee argued that since zones will be focal points in waste collection, their creation should not be left at the discretion of the CEC Member. In fact, the Committee is already aware that seven (7) zones have already been created without any legal backing and that one of the zone has already been exclusively allocated to a single franchisee. To this end the Committee has proposed that the Zones should be created based on the sub-counties and must be enlisted in the Schedule of the Bill.

Lastly, the Committee supports the prohibition of manufacturing of plastic carry bags from virgin plastic of thickness of less than 30

micron and size of not less than “8x12”. Indeed, the Committee had a similar proposal in the withdrawn Plastic Carry bags Bill, 2014.

4. **Part III** of the Bill concerns with waste collection within the County. Clause 16 allows the County Government to directly collect waste. Clause 17 places on the owner or agent of a house/premise with the duty of cleaning the environment within ten (10) meters around his premise/house but excludes the main road or street. It also prohibits placing of waste in front of a house other than for purposes of convenient collection. Clause 18 bestows upon the County Government with the responsibility of providing waste disposal containers within the streets and public places. The Clause also prescribes offences related to non-compliance to the provision. Clause 19 provides for the specifications of waste containers. Clause 20 provides for the coding of waste containers with their respective colours signifying which waste is supposed to be disposed in the containers. Clause 22 requires every owner or occupier of a building to provide appropriate waste containers as provided for by the proposed law. Clause 23 provides for the requirements of any person/firm must fulfil prior to the collection of waste. Clause 24 prohibits willful destruction of waste containers and further provides remedial measures in the event a person destroys the waste containers. Clause 25 requires separation of waste by waste generators for convenient disposal.

The Committee noted that since the part deals with issues of waste collection, it holds the key to the fulfilment of the objectives of the proposed law. While KARA proposed the deferment of the implementation of clause 18, specifically sub-clause 18(2), the Committee argued that the transition period of six (6) months would allow for the County Executive to ensure all that is required for effective implementation of the Bill is in place. In addition, the argument by KARA that the County Government should list all

approved waste collection service providers is valid although this may be explained in regulations. The regulations should categorically state that the County Government shall gazette and popularize all approved waste collection service providers.

5. **Part IV** of the Bill deals with transportation of solid waste within the County and makes it mandatory for anyone who transports waste within the county to have a license. Clause 26 gives power to the Chief Officer to issue licenses to collectors and transporters. Clause 28 requires owners or occupier of any premises where waste is generated to register tenants for waste collection

Under this part, NEMA had proposed that it should be the body responsible for licensing of waste collection vehicles. However, the Committee noted that despite the fact that environmental conservation is a concurrent function, issues to deal with collection, transportation and disposal of waste should be left to counties. The Committee has also proposed amendments in clauses 27 and 28 aimed at curing the inconsistencies in the structure of the Bill.

6. **Part V** of the Bill contains provisions related to the treatment of waste. Clause 29 provides that any person wishing to install an incinerator, recycling facility and a composting facility to apply to the Chief Officer for a permit.

The Committee proposes that all incinerators approved by the Chief Officer must meet national standards.

7. **Part VI** of the Bill deals with the disposal of waste within the County. Clause 30 assigns the County Government with the responsibility of disposing waste either by controlled tipping, sanitary landfills, recycling, and composting, incineration. Clause 31 makes entering into a County Government disposal site without permission an offence. Clause 31 prohibits owners or occupiers from keeping junk waste in public and private premises.

The Committee noted that disposal of waste is crucial in the whole process of environmental management. To this end, the Committee notes that the County Government must provide a disposal site (facility) that meets internationally recognized standards. In addition, the site should be well managed, demarcated and fenced by the County. The Committee is against restriction of the time of entering the site since Nairobi is moving towards a twenty four hour economy.

8. **Part VI** of the Bill contains the miscellaneous provisions including provision on public education on matters dealing with solid waste management and general penalties of offences committed under the proposed law. Clause 38 allows the CEC to make regulations necessary for the better operationalization of the Bill.

Under this part, the Committee is of the view that the regulations contemplated in Clause 38 must be approved by the County Assembly.

Mr. Speaker Sir,

The Committee agrees with the fact that indeed Nairobi City County urgently require a solid waste management law since the County is in a deplorable environmental state. One of the reason of this deplorable state is the lack of a proper legal framework. Continued dependence on fragmented by-laws on waste management has proved to be ineffective. However, according to the Committee, the proposed solid waste management bill may not cure the inefficiencies in the current legal frame work. In fact, it may create unending conflicts among stakeholders within the solid waste management sector.

Mr. Speaker Sir,

Some of the provisions of the proposed law requires amendments and/or consensus building among all stakeholders before it's passed. For instance, creation of zones and subsequent adoption of the franchise system, as a strategy of waste collection, require greater attention when implementing the

strategy to avoid backlash from members of the public particularly the youth involved in waste collection. Other areas that the Committee feels that require amendment and/or consensus before the Bill is passed include;

- i) Commencement date of the Bill;***
- ii) Imposition of charges and environmental levies without the approval of the County Assembly;***
- iii) Leaving the discretion of determining mechanism of waste collection and guidelines of waste recycling to the Executive (particularly zones and franchise system)***
- iv) Harsh penalties especially to the urban poor; and***
- v) Formulation of regulations without the approval of the Assembly.***

Mr. Speaker, Sir,

Going by the number and the substance of the proposed amendments, it is in the opinion of the Committee that the bill be **put on hold** for consensus building among all stakeholders before the Bill is passed. In the event that the Bill proceeds to the Committee of the Whole House, the Committee shall propose amendments to the Bill in clauses **1, 6, 7, 8, 9, 11, 16, 18, 27, 28, 29, 30, 31, 36** and **38**.

Mr. Speaker Sir;

The Committee thanks the Offices of the Speaker and the Clerk of the County Assembly for the support and services extended to Members of the Committee to enable complete the exercise of considering the Bill. I am grateful to the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the secretariat, all stakeholders who presented their views and the County Executive.

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

Thank You.

SIGNED

BENSON L AMUTAVI, MCA
(CHAIRMAN)

DATE.....

2.0 COMMITTEE CONSIDERATION OF THE NAIROBI CITY COUNTY SOLID WASTE MANAGEMENT BILL, 2015

The Committee deliberated on the Bill as follows;

- Clause 1** - proposed amendments
- Clause 2** - proposed amendments.
- Clause 3** - agreed to
- Clause 4** - agreed to
- Clause 5** - agreed to
- Clause 6** - proposed amendments
- Clause 7** - proposed amendments
- Clause 9** - proposed amendments
- Clause 10** - proposed amendments
- Clause 11** - proposed amendments
- Clause 12** - agreed to
- Clause 13** - agreed to
- Clause 14** - agreed to
- Clause 15** - agreed to
- Clause 16** - proposed amendments
- Clause 17** - agreed to
- Clause 18** - agreed to
- Clause 19** - agreed to
- Clause 20** - agreed to
- Clause 21** - agreed to
- Clause 22** - agreed to
- Clause 23** - agreed to
- Clause 24** - agreed to
- Clause 25** - agreed to
- Clause 26** - agreed to
- Clause 27** - proposed amendments
- Clause 28** - proposed amendments
- Clause 29** - proposed amendments

- Clause 30** - proposed amendments
 - Clause 31** - proposed amendments
 - Clause 32** - agreed to
 - Clause 33** - agreed to
 - Clause 34** - agreed to
 - Clause 35** - agreed to
 - Clause 36** - agreed to
 - Clause 38** - proposed amendments
- Proposed inclusion of a new Schedule**

3.0 COMMITTEE STAGE AMMENDMENTS

NOTICE is given that the Chairperson of the Sectoral Committee on Agriculture, Environment and Natural Resources, Hon. Benson Amutavi, M.C.A, intends to move the following amendments to the Nairobi City County Solid Waste Management Bill, 2015 —

CLAUSE 1

THAT, clause 1 of the Bill be amended by deleting all words appearing after the word ‘effect’ and inserting with the words – “six months after assent by the governor”.

CLAUSE 6

THAT, clause 6 of the Bill be amended by deleting part (c) of subsection 6(2).

CLAUSE 7

THAT, Clause 7 of the Bill be amended by inserting the following words “and with the approval of the County Assembly” immediately after the word governor appearing in Clause 7.

CLAUSE 8

THAT, clause 8 of the Bill be amended by inserting the following words “and with the approval of the County Assembly” immediately after the word governor appearing in clause 8.

CLAUSE 9

THAT Clause 9 of the Bill be amended by inserting the following words immediately after the word guidelines “through regulations”

CLAUSE 11

THAT clause 11 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following subclause-

“11 (1) The County shall be divided into zones specified in the Schedule”

CLAUSE 16

THAT, Clause 16 be amended by inserting the word “and” immediately after the word “streets”.

CLAUSE 27

THAT, Clause 27 of the Bill be amended by inserting a new sub-clause immediately after subclause 2-

‘22’ “An authorized officer shall have the power to revoke any approval of vehicle if such vehicle does not meet the set operational guidelines.

CLAUSE 28

THAT, Clause 28 of the Bill be amended by deleting sub-clause 28(2).

CLAUSE 29

THAT, Clause 29 of the Bill be amended by inserting new sub-clause immediately after subclause (2) –

“(22) An incinerator approved in sub-Clause (2) above shall be inconformity with set national standards”.

CLAUSE 30

THAT, clause 30 of the Bill be amended by inserting a new sub-clause immediately after subclause (1)-

“(11) The County Government shall establish a waste disposal site conforming to internationally recognized standards and such facility shall be clearly demarcated and fenced”.

CLAUSE 31

THAT, clause 31 of the Bill be amended by deleting sub-clause (2).

CLAUSE 36

THAT Clause 36 of the Bill be amended by deleting Sub-clause 36(1) and substituting therefor the following sub clause-

“36(1) Any person convicted of an offence under this Act for which no penalty is specifically provided shall, in the case of a first offence, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred thousand shillings or to both such imprisonment and fine and, in the case of a second or subsequent offence, to imprisonment for a term not exceeding three years or to a fine not exceeding two hundred thousand or to both imprisonment and fine, and, where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding three hundred thousand shillings for each day or part thereof during which the offence continues”.

CLAUSE 38

THAT, Clause 38 of the Bill be amended by deleting the word “governor” appearing in sub-clause (2) and replacing thereof with the words “County Assembly”

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new Schedule —

SCHEDULE
(section 11)

(s. 11)

ZONES

1. Dagoretti North
2. Dagoretti South
3. Embakasi Central
4. Embakasi East
5. Embakasi North
6. Embakasi South
7. Embakasi West
8. Kamukunji

9. Kasarani
10. Kibra
11. Langata
12. Makadara
13. Mathare
14. Roysambu
15. Ruaraka
16. Starehe
17. Westlands