

THE NAIROBI CITY COUNTY GOVERNMENT



NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY - (FIFTH SESSION)

INTERNAL MEMO

TO : PRINCIPAL CLERK ASSISTANT (L&P)
FROM : PRINCIPAL CLERK ASSISTANT (C)
DATE : 10TH MARCH, 2021

*Reviewed for
Town action
DLS
10/3/2021*

RE: THE FINAL REPORT OF THE SECTORAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020


The above subject refers

The Sectoral Committee on Environment and Natural Resources at its physical sitting held on Thursday, 18th February, 2021 at Committee room 5 at 10:00am unanimously resolved to review the recommendations of the laid Report on the table of the Assembly on Tuesday, 16th February, 2021. The Committee also resolved to request Assembly for more time. The Committee's resolutions was informed by the need to look into proposed amendments submitted by Environmental Health Division, a department that was transferred to the Nairobi Metropolitan Services. The Committee noted that the said submissions were comprehensive thus needed more time for consideration.

Further, the Committee noted that some of the provisions contained in the said Bill are not only contentious but also ambiguous and would perhaps pose challenges in the implementation if the Bill would be enacted into a law.

At its meeting held on **Monday 8th March, 2021** the Committee considered and adopted its Final report on the Consideration of the said Bill. The Speaker would thus be requested to communicate to the House of the second laying of the report.

Herewith attached, kindly find the Final Committee report, committee amendments, proposed stakeholders' comments as contained in the matrix and the signed minutes for the adoption.


Mr. Castro Garvin

Ag. Principal Clerk Assistant (C)



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

**THE REPORT OF THE SECTORAL
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY PUBLIC
NUISANCE BILL, 2020**

*Paper laid by
the Chairman
Environment Committee
on Thu. 11th March 2021
On the floor of the
Assembly.
AA...*

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

MARCH, 2021

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- i) Memoranda from the stakeholders
 - a. Kileleshwa Ward Neighborhood Association (Kiwana);
 - b. Kilimani Project Foundation; and
 - c. Environmental Health Division a department within Nairobi Metropolitan Services (NMS).
- ii) Matrix containing proposed amendments of stakeholders and the justifications
- iii) Minutes

ABBREVIATIONS

NEMA	: National Environment Management Authority
KARA	: The Kenya Alliance of Resident Associations
KESWA	: Kenya Sex Workers Alliance
NCCK	: The National Council of Churches of Kenya
PERAK	: The Pubs, Entertainment and Restaurants Association of Kenya
CECM	: County Executive Committee Member
NMS	: Nairobi Metropolitan Services
MCA	: Member of the County Assembly

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 | |

2.0. EXECUTIVE SUMMARY

2.1. Background

Mr. Speaker Sir,

What is considered as a public Nuisance in Kenya and more so in Nairobi City County has various connotations. The term public Nuisance cover a wide variety of both minor and major crimes that threaten the health, morals, safety, comfort, convenience or even welfare of a community. For instance Public Nuisance involve such activities as obstructing public road, polluting air and water, operating a house of prostitution to name but a just a few.

Mr. Speaker Sir,

A Public Nuisance is not only a local phenomenon but also an aspect that over centuries affected our surroundings and people across the globe. It is also important to note that what is perceived to as a public nuisance vary across the sections of a given population. For instance while loud music is considered as a form of Public Nuisance, the younger section of the society sees it as a form of entertainment. On the same breath, it has frequently been observed in Nairobi City County that various Churches of various denominations and *Matatus* in the Transport Industry are major contributors to Noise Pollution.

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.

Public Nuisance is a very broad concept with multiple challenges ranging from health, morals, safety, comfort, convenience or even welfare of a community. Thus, to counter these challenges the Government of Nairobi City County has 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 and further to promote the Nairobi Beatification Initiative which has been one of the agenda in the Nairobi Recovery Plan aimed to uplift the Nairobi City to the International standards.

Mr. Speaker Sir,

In view of the foregoing therefore, the Nairobi City County Public Nuisance Bill, 2020 was introduced in the Assembly. The primary idea behind the development of the said proposed legislation was conceived out of the realization that hitherto there has been a dearth of a law with respect to the Public Nuisance. While at it, it is also pertinent to note that in 2016, an effort was made by the Assembly to develop legislation on Public Nuisance but it never underwent publication.

Mr. Speaker Sir,

Nairobi City County Public Nuisance Bill, 2016 which was then sponsored by a former MCA, Hon. Samuel Nyangwara was defeated. At the time, the members of the Assembly rejected to approve the motion on the Bill citing that the proposed law was not only ambiguous but also contentious on the general terms.

Mr. Speaker Sir,

The Sectoral Committee is therefore mandated to critically consider the provisions of the said Bill taking into account the provisions of Article 196 (b) of the Constitution and standing orders 131(3) before submitting its report to the Assembly for enactment into a law. The Committee hopes that the enacted law would provide panacea to the entire gamut of challenges as elicited by Public Nuisance.

2.2. Introduction of the Bill in the Assembly

Mr. Speaker Sir,

The Nairobi City County Public Nuisance Bill, 2020 was read a First Time on Thursday 17th September, 2020 and thereafter committed to the Sectoral Committee on Environment and Natural Resources for consideration pursuant to Standing Order 131. Hon. James Kiriba Kariuki sponsored the Bill.

2.3. 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.
- (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.
- (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).

2.4. 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 Saturday, 26th September, 2020 calling for any representations and amendments from the public on the Bill. The Committee also identified key stakeholders to the Bill and invited them to either submit their comments or attend Committee meetings where they could give their views on the Bill.

Following the notice and the invitations, the Committee received written memoranda from the following stakeholders;

- i. Environmental Health Division a department within Nairobi Metropolitan Services (NMS)
- ii. Kileleshwa Ward Neighborhood Association (Kiwana); and
- iii. Kilimani Project Foundation.

Mr. Speaker,

The Committee together with the sector held two (2) workshops and a number of meetings in deliberation 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 7, 8, 9-20, 23 and 31. The proposed amendments are aimed at ensuring that all aspects of Public

Nuisances 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. 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.

2.5. 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 particularly the Senior Clerk Assistant 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 Public Nuisance Bill, 2020 for consideration and adoption.

Signature 

Hon. John Kamau Muthiga, MCA Chairperson

Date ... 

3.0. THE CONTENTS OF THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020

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 main purpose of the Bill when enacted will give effect to the Fourth Schedule of the Constitution to control public nuisances and for connected purposes. The primary Object of the Bill is to control public nuisances within the Nairobi City County.

3.1.2. Constitutional Provisions:-

Mr. Speaker Sir,

02. 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.
 - 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,

03. 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. Standard Framework:-

Mr. Speaker Sir,

04. The Nairobi City County Public Nuisance Bill, 2020 seeks to provide a standard framework for-
- a) The legislative measures for the control of public nuisances; and
 - b) Empowering the county to take all lawful necessary and reasonably practicable measures for;-
 - ✚ The maintenance of the county, at all times in a clean and sanitary condition;
 - ✚ The abatement and prevention of public nuisances; and
 - ✚ The remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health.

Mr. Speaker Sir,

05. In essence, therefore, the Nairobi City County Public Nuisance Bill, 2020 seeks to implement the 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 which is to control air pollution, noise pollution, other public nuisances and outdoor advertising.

3.1.4. Provisions in each Clause

Mr. Speaker Sir,

06. The Bill is composed of 35 clauses;-

Mr. Speaker Sir,

07. Clause 1; Provides the short title of the Bill.
08. Clause 2; Provides the interpretations of various words used in the Bill.
09. Clause 3; Provides the objects of the Bill.

10. Clause 4; Provides the Application of Related Laws to the provisions of this Bill.

3.1.5. Part II- Administrative Provision

11. **Mr. Speaker Sir**, the Committee observed that Salient provisions of the Bill are contained in Part II where clauses 5, 6 and 7 generally provide on administrative matters
12. **Mr. Speaker Sir**, in Clause 5; The Bill provides for its own administration, specifically that the Bill shall be administered by the departments responsible for matters relating to environment and public nuisances. The Bill grants the CECM for matters on environment to appoint persons as authorized officers for implementation of the Act.
13. **Mr. Speaker Sir**, Clause 6; Grants the County Secretary power to declare an act to be a nuisance and to make regulations on any nuisances he has declared.
14. **Mr. Speaker Sir**, Clause 7; Indicates that the department responsible for matters relating to environment is granted functions to compel occupiers, monitor the keeping of animals, prevent destruction of insects, fungi and other pests, establish and maintain sanitary services, and taking measures for preventing the flow of noxious matter or waste water. The Clause gives the public the procedure; the department should follow in case of a person being a public nuisance. Specifically, that the department should serve a notice to the owner requiring such owner to remove the nuisance within the period specified in the notice and where applicable to take additional measures to prevent a recurrence. Any persons who fails to comply with the notice commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months or fine of Kshs. 10,000.

3.1.6. Part III- General Public Nuisance

15. **Mr. Speaker Sir, Clause 8**; Provides for public nuisance relating to public roads and street offences and punishment for offenders- the offences include: hawking without statutory authority; plays a game in such a manner as to cause damage to property; rides a motorcycle on a footpath; spits on any footpath; lives on the earnings of prostitution; allows their dog to foul streets; dismantles vehicles except in emergencies; without consent lights a fire; animals in the CBD; defecates or urinates on the street; smokes cigarettes in public; or touts for passengers. Any person who commits this offence is liable to 6 months' incarceration or 10000 fine.
16. **Mr. Speaker Sir, Clause 9**; Provides for public nuisance in relation to encroachment and offences for breach- any hedge, tree or other growth so placed in such a manner as to be a danger to street users- the C.S may serve a notice to the person to the owner or occupier of the land in not less than 14 days to cause the hedge, tree or other growth to be chopped or trimmed. Failure commits an offence.
17. **Mr. Speaker Sir, Clause 10**; Provides for Public nuisance related to obstruction and damages
18. **Mr. Speaker Sir, Clause 11**; Envisages the public nuisance related to obstruction and damages.
19. **Mr. Speaker Sir, Clause 12**; States that no person is allowed to use any premises for purposes of selling, preparing, packaging, storing or displaying for sale any food unless they have a valid food hygiene license.
20. **Mr. Speaker Sir, Clause 13**; Confirms that no person is allowed to use a premise as a food plant unless adequate sanitary conveniences are provided, has adequate water supply and has adequate facilities for hand washing.
21. **Mr. Speaker Sir, Clause 14**; Provides for health measures in a food plant.

22. **Mr. Speaker Sir, Clause 15;** Prohibits persons from residing in any kitchen or room in which foodstuff are prepared or stored.
23. **Mr. Speaker Sir, Clause 16;** Prohibits selling of unwholesome, poisonous and unadulterated food.
24. **Mr. Speaker Sir, Clause 17;** Prohibits the sale of uninspected meat.
25. **Mr. Speaker Sir, Clause 18;** Prohibits the sell food under unsanitary conditions.
26. **Mr. Speaker Sir, Clause 19;** Provides the penalty which is a fine not exceeding 50,000 or to imprisonment not exceeding 6 months.
27. **Mr. Speaker Sir, Clause 20;** Provides for offences related to noise- A person shall not in any shop, street, business premises or any other place to which the public are admitted, play or cause to be played instruments, gramophones or amplifiers causing noise to be made which is loud and continuous as to constitute a nuisance to the occupants.
28. **Mr. Speaker Sir, Clause 21;** Envisages the offenses related to pollution- This means that any person that discharges any pollutant into the environment contrary to the provisions of this Act commits an offence and upon conviction will be liable to a fine of Kshs. 500,000, offender may also be ordered to pay full cost of cleaning up the environment and removing the pollutant.

3.1.7. Part IV- Enforcement

29. **Mr. Speaker Sir, Clause 22;** Authorizes CECM to appoint persons to be authorized officers for enforcement of the Act. He shall issue a certificate of appointment. All persons under law tasked to maintain law and order are also recognized as authorized officers.
30. **Mr. Speaker Sir, Clause 23;** Envisages the places authorized offers may enter
31. **Mr. Speaker Sir, Clause 24;** Provides for powers granted to the authorized officers.

32. **Mr. Speaker Sir, Clause 25**; Indicates ways of use of records.
33. **Mr. Speaker Sir, Clause 26**; Provides on when and how an authorized officer may enter into a dwelling place.
34. **Mr. Speaker Sir, Clause 27**; Specifics of such inspection, the authorized officer is required to make a preliminary report immediately after completion and a copy is to be retained in the premises. All necessary assistance is to be given to the authorized officer while inspecting the premises.
35. **Mr. Speaker Sir, Clause 28**; Provides that no person is allowed to obstruct inspection
36. **Mr. Speaker Sir, Clause 29**; Provides for obstruction of inspection authorized officers as an offence
37. **Mr. Speaker Sir, Clause 30**; Proposes that upon inspection the authorized officer is allowed to seize anything in relation to contravening the Act. He may direct on where such thing is to be stored and whoever interferes shall be guilty of an offence. However, the owner of the thing that is seized may file to court for an order of restoration within 30 days.
38. **Mr. Speaker Sir, Clause 31**; Proposes that the court may order for the restoration if the court is satisfied that the applicant is entitled to possession.
39. **Mr. Speaker Sir, Clause 32**; Proposes removing of the veil and charging the Directors unless proved that the offence was committed without consent.
40. **Mr. Speaker Sir, Clause 33**; Proposes that evidence gathered during inspection shall be prima facie evidence unless the contrary is proven. The clause also confirms that report of the authorized officer is admissible as evidence without proof of the signature or official character of the person appearing to have signed the report (without examination in chief). However, the report is not admissible if the officer does not inform the accused of such reliance in evidence for the report in a notice of not less than 7 days. Clause 33(4) states that the accused person can require the authorized officer to attend court for

cross-examination. As for the Accused, evidence of a license to transact in such a manner is sufficient evidence of cause for doing the thing.

41. **Mr. Speaker Sir, Clause 34;** Provides that action taken in good faith by authorized officers will not hold them liable.

3.1.8. Part V- Delegated Powers

42. **Mr. Speaker Sir, Clause 35;** Delegates powers to the County Executive Committee Member to make Rules for conducting business under the Act, this shall however only be in operation upon approval of the Assembly.

4.0. COMMITTEE CONSIDERATION OF THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020

4.1. Introduction

01. **Mr. Speaker Sir**, the Nairobi City County Public Nuisance Bill, 2020 was read a First Time on Thursday 17th September, 2020 and thereafter committed to the Sectoral Committee on Environment and Natural Resources for consideration pursuant to Standing Order 131. Further, it is important to note that Hon. James Kiriba Kariuki sponsored the Bill.

4.2. Methodology applied in consideration of the Bill and submissions from various stakeholders

02. **Mr. Speaker Sir**, in processing the Bill, the Committee invited comments from the public and the stakeholders by placing advertisement in Star Newspaper on Saturday, 26th September, 2020. The Committee received and considered at least Three (3) written views from various stakeholders with regards to the Bill.
03. **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. Here, the Committee was further advised to look into written submissions from a few stakeholders who forwarded their considered proposed amendments. Therefore in summary Committee deliberated on the Bill as follows;

Clause 1	- agreed to
Clause 2	- proposed amendments
Clause 3	- agreed to
Clause 4, 5, 6, 7&8	- proposed amendments
Clause 9	- agreed to
Clause 10	- agreed to
Clause 11	- proposed amendments
Clause 12	- proposed amendments
Clause 13, 14, 15,16,17,18 and 19	-agreed to

Clause 20	- proposed amendments
Clause 21&22	- agreed to
Clause 23	- proposed amendments
Clause 24	- proposed amendments
Clause 25, 26, 27, 28, 29, 30	-agreed to
Clause 31	- proposed amendments

5.0. KEY COMIITTEE OBSERVATIONS

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

That,

- a) The Bill was developed as a response to various persistent challenges facing the Members of the Public in particular that threaten the health, morals, safety, comfort, convenience or even welfare of Nairobians;
- b) The Public Nuisance is a broad concept that affect various sectors in Nairobi City County and the Nairobi Metropolitan Services and as such needed concerted efforts particularly in the aspect of the enforcement;
- c) The Bill is essential on ensuring that the Nairobi Beautification Initiative is achieved. That Nairobi was once a clean and green city and it is through such enactment of such legislation that it regain its lost glory;
- d) The Bill was developed through a comprehensive stakeholder participation and therefore most concerns of the stakeholders are addressed; and
- e) The Bill will help develop a workable framework to bridge the perceived gap between legislation, regulation and industry realities within Nairobi County.

5.1. Challenges observed during the consideration of the Bill

02. **Mr. Speaker Sir**, the Committee is fully aware legal requirement of having public participation as enshrined the Article 196(b) of the Constitution of Kenya which expressly states that; *'The County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees'*.
03. **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'*
04. **Mr. Speaker Sir**, the Committee is also alive to the realities and challenges that for instance due to social restrictions placed on movements and social contacts as occasioned by the noble Covid-19 Pandemic, the public participation on the proposed legislation would not be fully achieved.
05. **Mr. Speaker Sir**, in the previous Assembly sessions, before Covid-19 Pandemic became a global menace and before Ministry of Health issued advisory and guidelines on social gatherings, the Assembly conducts physical public gatherings in the seventeen (17) sub-counties. In such, physical public participation, Committee coordinates and with support of the legal counsels take the members of the public through the provisions of the aforementioned Bill.
06. **Mr. Speaker Sir**, upon presenting the salient provisions of the proposed law, members of the Public participate in interactive plenary sessions where they give out their comments, opinions, recommendations, questions and answers with regard to the Bill. During such public plenary sessions, the members of the Public are encouraged to give out their oral and written submissions.

07. **Mr. Speaker Sir**, in the case of this Bill however, the Committee thus noted that physical public participation would not be possible. It would be very difficult controlling group (s) of people from various sections of society and would definitely risk the lives of more people getting exposed to the dangers posed by the global pandemic of Covid-19 rather than assisting flattening of the curve. The Committee expected therefore to receive written views on the Bill from members of the Public and Stakeholders. However, this was not very successful as only a few submissions were received notably from;-

- a. Environmental Health Division a department within Nairobi Metropolitan Services (NMS);
- b. Kileleshwa Ward Neighborhood Association (Kiwana); and
- c. Kilimani Project Foundation.

08. **Mr. Speaker Sir**, the Committee noted that some County Sectors particularly the County Department submitted their inputs during the scrutiny of the previous Bill introduced to the Assembly in the year 2016. For instance, the Department of Security and Compliance which is domiciled under the office of the Governor wrote to the Committee vide letter ref: DCI/6/19/VOL.1/21/20 dated 17th November, 2020 stating that they had gone through the Nairobi City County Public Nuisance Bill, 2020 and noted that it was replica of the Nairobi City County Public Nuisance Bill, 2016 to which they presented a memorandum.

09. **Mr. Speaker Sir**, the Committee Members were very concerned about why only a few stakeholders responded to the Bill. The Committee during its Quarterly workshop held in Mombasa County for instance noted National Environment Management Authority (NEMA) was yet to submit its comments or proposed amendments on the said Bill. The Committee further noted that National Environment Management Authority (NEMA) is a key stakeholder since it is a

regulatory body which was established under Environmental Management and Coordination Act, 1999 (EMCA) as the principal instrument of Kenya Government for the implementation of all policies relating to environment.

10. **Mr. Speaker Sir**, in view of the above, the Committee identified the following key stakeholders to the Bill and resolved to request written submissions;-

- i. The Kenya Alliance of Resident Associations (KARA);
- ii. Kenya Sex Workers Alliance (KESWA);
- iii. Matatu Welfare Association;
- iv. The National Council of Churches of Kenya (NCCCK);
- v. The Pubs, Entertainment and Restaurants Association of Kenya (PERAK);
- vi. The County Attorney, Nairobi City County;
- vii. African Council of Religious Leaders;
- viii. Planning and Housing Sector, Nairobi Metropolitan Services (NMS);
- ix. Nairobi City Inspectorate, Nairobi Metropolitan Services (NMS);
- x. Nairobi City Inspectorate, Nairobi City County Government; and
- xi. National Environment Management Authority (NEMA)

11. By the time of compiling the report, the said key stakeholders had not submitted their views and had to be requested again to submit their considered views on the aforementioned Bill. Despite of all these efforts, the said stakeholders never submitted their views.

6.0. KEY COMMITTEE RECOMMENDATIONS

Mr. Speaker sir,

The Committee recommends that in accordance with Section 8(1) (e) of the County Governments Act, 2012 and provisions of Standing Order 191(6): - that;

This Assembly approves the Nairobi City County Public Nuisance Bill, 2020 with the following recommendations; -

1. That past, present and future undertakings in regards to Public Nuisance be done within the framework of the **Nairobi City County Public Nuisance Bill, 2020** 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 Public Nuisance Bill, 2020, at the Committee Stage.

CLAUSE 2

THAT Clause 2 of the Bill in the Interpretations be amended as follows: -

- (i) "Department" by deleting the word environment and thereof replacing with the word public nuisance.
- (ii) "Protected area" by deleting the word for grazing animals.
- (iii) "Public Place" by inserting the words public roads and any open space to which the public has access to.
- (iv) By introducing the word "permit" and its interpretation, "means a document issued by the county to an entity to conduct business within Nairobi City County.
- (v) By introducing the word "permit holder" and its interpretation, "means a business entity authorized to conduct business within Nairobi City County.

CLAUSE 4

THAT Clause 4 of the Bill be amended by deleting the words, "Application of related laws and replacing with "Savings of cap 242, 254, 387,245A and Land Use Act.

CLAUSE 5

THAT Clause 5 sub clause (2) of the Bill be amended by deleting the word "County Gazette" and replacing with the word "Kenya Gazette".

CLAUSE 6

THAT Clause 6 (g) of the Bill be deleted in its entirety.

CLAUSE 7

THAT Clause 7 of the Bill be amended as follows: -

- (i) By introducing a new sub clause immediately under sub clause (4) as follows;

NEW SUB CLAUSE

(5) The County Assembly shall play an oversight role over the administrative provisions and functions of this Act.

CLAUSE 8

THAT Clause 8 (1) of the Bill be amended as follows: -

- (i) by deleting sub clause (a) in its entirety
- (ii) by deleting sub clause (e) in its entirety
- (iii) by adding the words, “without cleaning up after the dog” immediately after the word street
- (iv) by deleting sub clause (g) in its entirety
- (v) by deleting sub clause (i) in its entirety

CLAUSE 11

THAT Clause 11 (1) (f) of the Bill be amended by inserting the following words “and shall upon conviction be liable upon conviction”, immediately after the word offence.

CLAUSE 12

THAT Clause 12 sub clause (2) of the Bill be amended by inserting a new sub clause 12 (3), “no license shall be issued unless the health authority is satisfied that the

provision of the law has been complied with and the prescribed fee has been paid to the county.

CLAUSE 20

THAT Clause 20 of the bill be amended as follows: -

- i) In sub clause (1) (b) in the eighth paragraph by deleting the word “inmates” and thereof substituting it with the word “dwellers”.
- ii) By introducing a new sub clause immediately under sub clause (1) (b) as follows;

NEW SUB CLAUSE

- (1) (c) “in any street or designated public service vehicle terminus or stage within the Central Business District hoot a public service vehicle and or matatu loudly and continuously as for the hooting to constitute noise”.
- iii) In sub clause (5) by adding the expression “or to an impounding or forceful removal of the equipment causing noise” immediately after the expression “6 months or both”.

CLAUSE 23

THAT Clause 23 of the Bill be amended as follows: -

- (i) By deleting sub clause (3) in its entirety.

CLAUSE 24

THAT Clause 24 of the Bill be amended by deleting the word “section” and thereof replacing it with the word “clause”.

CLAUSE 30

THAT Clause 30 sub clause (4) of the Bill be amended by deleting the words, “Within thirty days” and replacing it thereof with the word twenty-four hours”.

CLAUSE 31

THAT Clause 31 of the Bill be amended as follows: -

- (i) By deleting the expression “one hundred and eighty days” in the sixth paragraph and replacing it thereof with the expression “twenty-four hours”.



Kilimanjaro Memorandum on Nairobi City County Public Nuisance Bill 2020, October 2020

To: Office of the Clerk,
Nairobi City County Assembly
P.O.BOX 45844-00100,
Nairobi City Hall Building

7th October 2020

Kilimanjaro Project Foundation Submission to the Proposed Nairobi County Public Nuisance Bill.

We make reference to the above. By way of introduction, the Kilimanjaro Project Foundation was created as a community foundation in Dagoretti North sub-county, Nairobi County in 2013. It was established to respond to the establishment of devolved governance and public services after promulgation of Kenya's 2010 constitution.

The Foundation is committed to transforming the relationship of businesses and residents to public spaces, enforcing compliance of bylaws and expanding the voice and agency of our members to influence county and national policy and implementation.

We are now recognised by both National and Nairobi county government and non-governmental agencies including the Nairobi County Government, the National Police Service and the National Environmental Management Agency. Our work has led to a number of recognition awards and the Foundation being known as one of the most vibrant residents led community foundations in the country.

We offer these fourteen considerations to the Nairobi County Government, in relation to the Public Nuisance Bill:

1. Provide clarity in the Bill on what is the acceptable noise decibels within 500 meters of any existing residential or school building
2. Forbid/revoke permits for nightclub/lounges/bars/brothels/massage spas within 500 meters of any existing residential or school building
3. Forbid outdoor use of loudspeakers after 4.00 pm on weekdays or anytime on weekends within 500 meters of a residential building or school. No permits to be issued and this includes places of worship.
4. Neighbours of noise polluters should be entitled to Police support on site as the offence is taking place particularly at night.
5. Restaurants must operate within their regulated opening hours and may play music but it should not be audible beyond their compound.
6. Wines and spirits shops may not operate bars or eateries within the same premises.
7. Liquor licence applications must be published and approved by the local resident's association.
8. At least 5 property owner neighbours must approve and can revoke a liquor licence.
9. No nightclub licence to be issued in a premises that is not fully enclosed within a fully roofed stone walled space with sealable windows and doors.
10. No nightclub licence to be issued to a premises without a fully functional and regularly inspected air conditioning system.
11. Local resident's associations to approve the soundproofing.
12. Local residents' associations to be issued with official approved noise measuring devices.
13. Forbid issuance of liquor licenses or change of user to bar/nightclub in buildings originally designed as residences that sit on less than One (1) acre.
14. Forbid licences to locations that cannot provide adequate customer parking as per their stated capacity.

For further information, please contact us at:

Wanjiru Kanyiha
info@kilimani.co.ke
P.O. Box 52861-00514
Valley Arcade, Nairobi
Tel: + (254) 780 197 197
www.kilimani.co.ke



KILELESHWA WARD NEIGHBORHOOD ASSOCIATION (KIWANA)

Kileleshwa Covenant Community Church Building,
Durham road,
Kileleshwa

P.O BOX 21096 -00505,
TEL: 0720637164
EMAIL: secretariat@kiwa.co.ke

Memorandum for Nairobi City County Public Nuisance Bill, 2020

KIWANA is a neighborhood Association for the community of the entire Kileleshwa ward and this memorandum is submitted on their behalf.

1. We propose that a provision be included prohibiting licensing of night clubs, lounges and bars within 500 meters of any existing residential or school building and that any of these businesses that may already be in operation should have their license revoked.
2. Prohibit outdoor use of loud speakers after 4pm on weekdays or anytime on weekends within 500metres of residential or school building and no permits should be issued to such operators including religious organizations.
3. Noise pollution is one of the major concerns of Kileleshwa community and the bill should have provisions similar to those of NEMA /AMCA Acts and regulations. In particular the bill should specify the maximum legal noise levels similar to those of NEMA.
4. Noise pollution mainly occurs at night and after the official hours for the enforcement department of the county government. The police are not always willing to assist and we propose that a provision be made requiring members of the enforcement department to respond to emergency calls by the community outside the official hours for serious noise pollution cases.
5. Wines and spirits shops should be prohibited from operating bars or eateries within the same premises.
6. Restaurants must operate within the regulated opening and closing hours and any music they play must be within the legal maximum allowable noise levels.

C-A - J. F. Mwangi
Kilili Inform
the Committee
10/10/2020

PCAC
Kindly facilitate the
Committee on the consideration
of the issues raised in the letter.
10/10/2020

I DLS
PCAC
Kindly note & deal
12/10/2020

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7. Licensing of liquor operators should be subject to strict public participation where the neighborhood association of the area represents the community if it exists and the meeting in either case attended by a minimum of 30 community members including property owners in the immediate neighborhood and official minutes created and circulated to the attendees. An adequate notice in the main print media should be given regarding such meetings.
 8. No night club license should be issued for premises that are not fully enclosed with a fully roofed stone walled space with sealable windows and doors.
 9. No night club should be licensed for premises without proper sound proofing and a fully functional air conditioning system which should be regularly inspected. The community should be involved from drawing up of the specifications for the sound proofing and air conditioning to installation.
 10. Before the night club is issued with occupation certificate the local neighborhood association and or at least 30 community representatives should inspect the premises and approve the sound proofing and air conditioning.
 11. The noise measuring devices and operators should be made readily available to the community.
 12. Liquor license or change of user of residential premises to bar/night club should not be issued for buildings originally designed as residential if they sit on a compound of less than 1 acre.
 13. Premises that cannot provide adequate customer parking per the stated capacity inside the compound should not be licensed for selling of liquor.
-

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Telephone: 020 344194
web: www.nairobi.go.ke

NAIROBI CITY COUNTY



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



SECURITY & COMPLIANCE

M E M O

TO : AG. CLERK, NAIROBI CITY COUNTY ASSEMBLY

REF : DCI/6/19/VOL. I/21/20

DATE: 17TH NOVEMBER 2020

RE : SUBMISSION OF MEMORANDA ON NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020

The above matter vide memo Ref: NCCA/E&NR/BILL/12/2020 from your office dated 12th November 2020 refers:

We have gone through the Nairobi City County Public Nuisance Bill, 2020 and noted that it is almost a replica of the Nairobi City County Public Nuisance Bill, 2016 to which we had presented a memorandum.

We have no reservations whatsoever in its currently composition as at 2020.

A handwritten signature in black ink, appearing to be "Kipsang Kosgei".

KIPSANG KOSGEI
AG. CHIEF OFFICER, SECURITY & COMPLIANCE

II C-A Environment
Kindly Inform
The Committee

PCA(C)
17/11/2020

I DLS
PCA(C)
Kindly deal
Per. Cleve
18/11/2020

MINUTES OF THE 7TH SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY
SECTORAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
ON MONDAY, 8TH MARCH, 2021 VIRTUALLY AT 1:30PM

PRESENT

- | | |
|---------------------------------|------------------|
| 1) Hon. John Kamau, MCA | Chairperson |
| 2) Hon. Joseph Ndonji, MCA | Vice Chairperson |
| 3) Hon. Millicent Okatch, MCA | |
| 4) Hon. Anthony Kiragu, MCA | |
| 5) Hon. Rose Masitsa, MCA | |
| 6) Hon. Evans Otiso, MCA | |
| 7) Hon. John Kamangu, MCA | |
| 8) Hon. Wahinya Njau Peter, MCA | |
| 9) Hon. Joyce Muthoni, MCA | |
| 10) Hon. Eunice Wanjiku, MCA | |
| 11) Hon. Solomon Magembe, MCA | |
| 12) Hon. Jacinta Wanjiru, MCA | |
| 13) Hon. Wanjiru Kariuki, MCA | |
| 14) Hon. Leah Supuko, MCA | |
| 15) Hon. Emily Waithaka Wanjiku | |

ABSENT

- 1) Hon. Fuad Hussein, MCA
- 2) Hon. Francis Ngesa, MCA
- 3) Hon. Redson Onyango, MCA
- 4) Hon. Joseph Wambugu, MCA
- 5) Hon. Peter Imwatok, MCA
- 6) Hon. Anthony Kimemia, MCA
- 7) Hon. James Mwangi, MCA
- 8) Hon. Laura Mwendu, MCA
- 9) Hon. Margaret Mbote, MCA
- 10) Hon. Michael Ogada, MCA

SECRETARIAT

Mr. Guyo Sankala – Snr. Clerk Assistant

AGENDA

1. Preliminaries (prayers & adoption of the Agenda)
2. Adoption of the Committee Report on the consideration of the Nairobi City County Public Nuisance Bill, 2020

3. Any Other Business

4. Adjournment

MIN.026/MAR/2021 - PRELIMINARIES

The Committee Chairing Member Hon. Jacinta called the meeting to order at 1:30pm 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. Mbote Margaret and Hon. Eunice Wanjiku.

MIN.027/MAR/2021- ADOPTION OF THE COMMITTEE REPORT ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020

While, examining the said Bill, the Committee observed the following amongst others;

That,

- a) The Bill was developed as a response to various persistent challenges facing the Members of the Public in particular that threaten the health, morals, safety, comfort, convenience or even welfare of Nairobians;
- b) The Public Nuisance is a broad concept that affect various sectors in Nairobi City County and the Nairobi Metropolitan Services and as such needed concerted efforts particularly in the aspect of the enforcement;
- c) The Bill is essential on ensuring that the Nairobi Beautification Initiative is achieved. That Nairobi was once a clean and green city and it is through such enactment of such legislation that it regain its lost glory;
- d) The Bill was developed through a comprehensive stakeholder participation and therefore most concerns of the stakeholders are addressed; and
- e) The Bill will help develop a workable framework to bridge the perceived gap between legislation, regulation and industry realities within Nairobi County.

The Committee thus resolved as follows concerning the said Bill;

- i. That past, present and future undertakings in regards to Public Nuisance be done within the framework of the **Nairobi City County Public Nuisance Bill, 2020** and the recommendations of this report.
- ii. 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.
- iii. That the Bill be enacted with the amendments as proposed by various stakeholders captured above and adopted by the Committee.

Adoption of the Committee Report

The Majority of the members finally adopted the Report having been proposed and seconded by Hon. Leah Supuko and Hon. Millicent Okatch respectively.

MIN.028/MAR/2021 – ANY OTHER BUSINESS

There was no any other business considered by the Committee.

MIN.029/ MAR/2021 -ADJOURNMENT

There being no other business considered by the Committee the meeting was adjourned at 1:48pm.

CONFIRMED AS TRUE COPY OF THE PROCEEDINGS

CHAIRPERSON.....

DATE.....

SNR. ASSISTANT.....

DATE.....

10/03/2021
10/03/2021



REPUBLIC OF KENYA
EXECUTIVE OFFICE OF THE PRESIDENT
NAIROBI METROPOLITAN SERVICES
COUNTY HEALTH SERVICES
ENVIRONMENTAL HEALTH DIVISION

THE CHAIRMAN
ENVIRONMENT COMMITTEE
NAIROBI CITY COUNTY ASSEMBLY
P.O BOX 45844 - OO100
NAIROBI, KENYA

REF:

12TH NOVEMBER, 2020

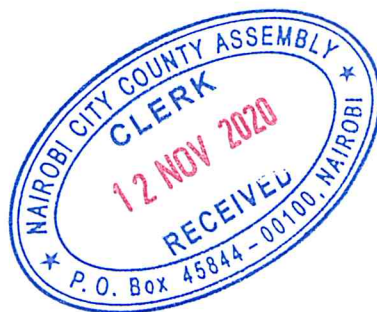
Dear Sir, madam

RE; SUBMISSION OF MEMORANDAM ON NAIROBI CITY COUTY PUBLIC NUISANCE BILL, 2020

The above matters refer

Environmental division which is a sub-sector (division) of health services in Nairobi City County and which is under Nairobi metropolitan services is established under article 187 of the constitution of Kenya 2010, with specific mandate as outline in the fourth schedule of the constitution. The authority is charged with provision of public health services.

Herein, find our recommendation to the proposed NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020. We look forward to the public participation forum.




MARGARET SUNGUTI


HEAD, ENVIRONMEALTAL DIVISION

NAIROBI METROPOLITAN SERVICES



1 | Page

LCTI (IRENE)
Kindly deal
S/LC
16/11/20

Snr. Legal Counsel
T.N.A

for PCA (c)
16/11/2020
C-A
Environment
Committee

DLS
PCA (c)
Kindly deal
Ag. clare
12/11/2020

PART	SECTION <i>CLAUSE</i>	PROPOSED AMMENDEMENTS	JUSTIFICATION, RATIONAL	
I	Section			
	1. Short title	Insert 'BILL' after the word nuisance		
	Sec 2- definition of			
	1. Department	1. delete the word environment and replace with public nuisance	1. At times, the inspection may be by somebody appointed by the council	<i>Agree</i>
	2. county executive committee member	2. delete CEC member responsible for environment and replace with CEC member devolution and public service	2. The administration of this law cross-cut more than one sector (environment) and its fair to domicile it in a broader CEC sector thus CEC devolution and public service	<i>Agree Reasonable Devolu Manda</i>
	3. protected area	3. delete the word for grazing animals	3. Protected area not meant for grazing animals	<i>Agree</i>
	4. public place	4. insert the words public <i>already there</i> roads and any <u>open space</u> to which the public has access after the word public conveyance	4. Holistic definition of public place	
	5. define :			
	1. permit or license	5. 1. permit means a document issued by the county to an entity to conduct business within Nairobi city county		<i>Agree</i>
	2. permit holder	2.means a business entity authorized to conduct business within Nairobi city county		
	sec 4 application of the related laws	Delete application of related laws	<i>?</i>	

		and replace with savings of cap 242, 254, 387, 245A and land use Act <i>put in saving provisions of the Act.</i>	?	<i>Agreed</i>
II	PART II – administration provision			
	5.2	delete the word county executive committee and replace with the word county secretary	The county secretary is the only authority authorized to gazette appointed officers	<i>person Agreed</i>
	5.2	delete county gazette and replace with Kenya gazette	✓	<i>OK through</i>
	6.1	<ol style="list-style-type: none"> 1. Amend sec 6(1) to be section 5(3) 2. Amend section 6(3) to 5(4) and delete (1) and replace with section 5(3) above 	The county secretary is the only authority authorized to gazette county decisions, declaration	
	Sec 6	<ol style="list-style-type: none"> 1. Delete county secretary and replace with CEC Devolution and public service so that you remain with the powers and function of the CEC member for Devolution and public service and departments responsible for control of public nuisance 2. Amend sec 6(2) to be 6(1) and delete sub-sec (g)-not function of CEC member or department responsible 3. 	✓ ✓	
	Section 7	<ol style="list-style-type: none"> 1. Delete the entire of section 7(1) - its captured in proposed 6(1) above. 2. Amend 7(2)- 7(4) to be 7(1), 		<i>Not captured in details there</i>

		repetition.	
	Section 10. Section 10(4)	insert damages so as to read damages and obstruction Introduce sub-section g to read (g) digs, ploughs, tills or cultivate any public street without the written permission of the county secretary	
	Section 11 Section 11(1)	Insert the following words immediately after an offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
	Section 12(2)	Introduce section 12(3) – no license shall be issued unless- (a) The health authority is satisfied that the provision of the law have been complied with ; and (b) The prescribed has been paid to the county	
	Section 13(2)	Insert the following words immediately after an offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
	Section 14 (2)	Delete the word twelve months and twelve months and replace with twelve (12) months and ksh 100,000 Insert the following words immediately after an offence- and	

Section 15(2)	shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
Section 16(1)	Introduce 16(1)and Delete the word any and who and substitute with the word no and shall and the statement shall read- No person shall sell food:- Introduce 16(2) that provides penalty- any person who contravenes this section is guilty of an offence - and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
Section 17	Insert the following words immediately after an offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
Section 18	Insert the following words immediately after an offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
18A Provide an offence on layout, construction, process and controls in food premises	18A (1) All food plants shall be of suitable design, layout and construction to facilitate easy maintenance and sanitary food production. (2) The food plant and the facilities	

		<p>installed therein shall have—</p> <p>(a) sufficient space for such placement of equipment and storage of materials as is necessary for sanitary operations;</p> <p>(b) separate areas, either by partition, location or other effective means, for those operations which may cause the contamination of food or food contact surfaces with undesirable micro-organisms, chemicals, filth or other extraneous materials shall be provided;</p> <p>(3) The floors, walls and ceiling of a food plant shall be of such construction as to be adequately cleanable and maintained in a clean and good state of repair</p> <p>(4) Every utensil and equipment used in a food plant shall be—</p> <p>(a) suitable for their intended use;</p> <p>(b) so designed and of such materials and workmanship as to be adequately cleanable;</p> <p>(5) Any person who contravenes or fails to comply with the section is guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both</p>	
	18B provide for notice to serve	<p>18B</p> <p>(1) Where any food plant, by reason of its situation, construction or disrepair, is in such a condition that any food in the premises may be exposed to contamination or deterioration or become dirty, an authorized officer may serve a notice in writing on the person who</p>	

		<p>owns or operates the food plant requiring him—</p> <p>(a) to clean, reconstruct or repair the premises in the specified manner and period; or</p> <p>(b) Not to use the plant until the conditions stated in such notice have been fulfilled.</p> <p>(2) It shall be sufficient compliance with a notice served under this law if the person on whom such notice is served complies with notice or ceases to use the premises as a food plant.</p> <p>(3) Any person who fails to comply with the requirements of a notice served in accordance with subsection (1) above is guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both</p>		
	Section 19- penalties relating to section 12-19 of the Act	<p>19(a) delete 50,000 and six months with 100,000 and 12 months</p> <p>19(b) delete 100,000 and twelve months with 200,000 and 24 months</p>		
	Section 20(1) public nuisance relating to noise	<p>Establish section 20(1)(c) and ward as follows-Any person who contravenes this section is guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both</p>		
		Section 20(2) Insert the following word immediately after the word		

PART IV	Section 20(2) building operation and construction of work noise	offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
	Section 20(3) neighborhood noise	Section 20(3)) Insert the following word immediately after the word offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
	Section 20(4) Noise related to animal	Section 20(4)- delete the word which <u>is a nuisance</u> and replace with the word which is <u>likely to be</u> And Insert the following word immediately after the word offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	
	Section 21 public nuisance relating to pollution	Section 21(1) insert the following words immediately after the word shilling- or to imprisonment for a term not exceeding thirty six months or both	
	ENFORCEMENT	Section 22(1) delete the word <u>county executive committee</u> and replace with the word <u>county secretary</u>	
	Section 22	Section 22(2) delete the word <u>member of the county executive member</u> and replace with the word <u>county secretary</u> Create new section 22(3) and word	

		<p>as follows:-</p> <p>(3) In addition to authorized officers appointed under subsection (1) —</p> <p>(a) public health officers appointed under the Public Health Act; and</p> <p>(b) environment officers appointed under the environmental management and coordination Act</p> <p>Current section 22(3) renamed section 22(4)</p> <p>Section 24 – delete the word <u>section 10</u> and replace with <u>this Act</u></p> <p>Section 26 delete 10 and replace with 26</p> <p>Section 34A- General penalty</p> <p>A person who commits an offence for which no penalty has been specifically provided for, shall on conviction be liable to a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding twelve months, or to both</p>	
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MATRIX OF COMMENTS BY NAIROBI METROPOLITAN SERVICES ON THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	LEGAL COUNSEL'S COMMENT	COMMITTEE COMMENTS
1.Short title	Insert 'BILL' after the word nuisance.		-Agreed. (Typo)	-Agreed
2.Interpretation; definitions;				
Department	-delete the word environment and replace with public nuisance.	-At times, the inspection may be by somebody appointed by the council*	-Agreed.	-Agreed
County executive committee member	-delete CEC member responsible for environment and replace with CEC member devolution and public service	-The administration of this law cross-cut more than one sector (environment) and its fair to domicile it in a broader CEC sector thus CEC devolution and public service	-Disagreed. Not related with mandate of devolution.	-Agreed
Protected area	- delete the word for grazing animals	- Protected area not meant for grazing animals	-Agreed.	-Agreed
Public place		- Holistic definition of public place	-Agreed.	-Agreed

Define: permit or license	- insert the words public roads and any open space to which the public has access after the word public conveyance - permit means a document issued by the county to an entity to conduct business within Nairobi city county	- NONE	-Agreed.	-Agreed
Permit holder	- means a business entity authorized to conduct business within Nairobi city county	-NONE	-Agreed	-Agreed
4. Application of Related laws	- Delete application of related laws and replace with savings of cap 242, 254, 387, 245A and land use Act	-NONE	-Agreed	-Agreed
PART II – Administrative Provision				
5(2)	-delete the word county executive committee and replace with the word county secretary	- The county secretary is the only authority authorized to gazette appointed officers.	-Disagreed CECM responsibility	-Disagreed
5(2)	- delete county gazette and replace with Kenya gazette		-Agreed	-Agreed

6(1)	<ul style="list-style-type: none"> - Amend clause 6(1) to be 5(3) - Amend clause 6(3) to 5(4) and delete (1) and replace with 5(3) above 	- The county secretary is the only authority authorized to gazette county decisions, declaration	-Agreed	-Agreed
Clause 6 Powers and Functions of the County Secretary and Departments responsible	<ul style="list-style-type: none"> - (1) Delete county secretary and replace with CEC Devolution and public service so that you remain with the powers and function of the CEC member for Devolution and public service and departments responsible for control of public nuisance (2) Amend clause 6(2) to be 6(1) and delete sub-clause (g) 	-not a function of CEC member or department responsible	-Agreed	-Agreed
Clause 7	<ul style="list-style-type: none"> - Delete the entire clause 7(1) - Amend 7(2)- 7(4) to be 7(1), 7(2) and 7(3) respectively -Amend penalty proposed under 7(4) by deleting six(months) and ksh. 10,000 and replace with twelve (12) months and fifty (50,000) 	<ul style="list-style-type: none"> - it's captured in proposed 6(1) above <p>-NONE</p>	<p>-Disagreed</p> <p>-Punitive? Deterrent?</p>	DISCREED

Part III- General Public Nuisance Public nuisance relating to public roads and street offence				
Clause 8(1)	<ul style="list-style-type: none"> - create more offences -(m) distribute any bill or any other paper for the purpose of advertisement without permit -(n) commits any act contrary to public decency -(o) place or deposit any object so as to create or tend to create litter -(p) tout for passengers (q) fail to observe traffic lights or the zebra crossing or any other directional signs -(r) loiters or importunes for the purpose of prostitution -(s) procure or attempt to procure a male or female for the purpose of prostitution -(t) to the inconvenience of any person carries or convey any luggage, offensive 	NONE	<ul style="list-style-type: none"> -Outdoor Advertising Signage Control -Vague 	AGREED
		NONE	<ul style="list-style-type: none"> -Vague 	DISAGREED
		NONE	<ul style="list-style-type: none"> -Included -NTSA function (not a suittance) 	DISAGREED
			<ul style="list-style-type: none"> -Disagreed Penal Code 	DISAGREED

	material or implements not properly guarded		-Vague	
8 (2) _	- Amend by deleting six (6) months and replace with Ksh. 10,000 and twelve (12) months and ksh 100,000 - delete encroachment and substitute with an authorized construction	NONE	-Too punitive -Misplaced	DISAGREED
9(3)	- Amend the Clause by deleting six (6) months and Ksh. 10,000 and replace with twelve (12) months and ksh 100,000	NONE	-Too punitive	DISAGREED
Clause 10.	-insert damages so as to read damages and obstruction - Introduce sub-Clause g to read (g) digs, ploughs, tills or cultivate any public street without the written permission of the county secretary -delete	NONE	-Okay	DISAGREED
10(4)		NONE	-What is the justification	DISAGREED
10(5)		- repetition	-Not the same	

Clause 11 (1)	-Insert the following words immediately after an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both		-Agreed -Too punitive	AGREED DISAGREED
Clause 12 (2)	- Introduce clause 12(3) – no license shall be issued unless- (a) The health authority is satisfied that the provision of the law has been complied with; and (b) The prescribed has been paid to the county	NONE	-Agreed	AGREED
Clause 13(2)	-Insert the following words immediately after an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both		-Agreed	DSAGREED
Clause 14 (2)	-Delete the word twelve months and twelve months and replace with twelve (12) months and ksh 100,000	NONE	-Too punitive -Too punitive	DISAGREED
Clause 15(2)	-Insert the following words immediately after an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve	NONE	-Too punitive	DISAGREED

	months or to a fine not exceeding 100,000 or both			
Clause 16	-Introduce 16(1) and Delete the word any and who and substitute with the word no and shall and the statement shall read- No person shall sell food:- Introduce 16(2) that provides penalty- any person who contravenes this Clause is guilty of an offence - and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both		-Too punitive	DISAGREED
Clause 17	-Insert the following words immediately after an offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both		-Taken care of in other legislation (Public health Meat Control Act) -Food Safety & Sanitation Legislative proposal	DISAGREED
Clause 18	-Insert the following words immediately after an offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both		-Food Safety & Sanitation Legislative Proposal - Too punitive	DISAGREED
18A Provide an offence on layout,	18A	NONE	-DISAGREED	DISAGREED

<p>construction, process and controls in food premises</p>	<p>(1) All food plants shall be of suitable design, layout and construction to facilitate easy maintenance and sanitary food production.</p> <p>(2) The food plant and the facilities installed therein shall have—</p> <p>(a) sufficient space for such placement of equipment and storage of materials as is necessary for sanitary operations;</p> <p>(b) separate areas, either by partition, location or other effective means, for those operations which may cause the contamination of food or food contact surfaces with undesirable micro-organisms, chemicals, filth or other extraneous materials shall be provided;</p> <p>(3) The floors, walls and ceiling of a food plant shall be of such construction as to be adequately cleanable and maintained in a clean and good state of repair</p> <p>(4) Every utensil and equipment used in a food plant shall be—</p> <p>(a) suitable for their intended use;</p>		<p>- Not a nuisance matter</p>	
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	<p>(b) so designed and of such materials and workmanship as to be adequately cleanable;</p> <p>(5) Any person who contravenes or fails to comply with the Clause is guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both</p>			
18B provide for notice to serve	<p>18B</p> <p>(1) Where any food plant, by reason of its situation, construction or disrepair, is in such a condition that any food in the premises may be exposed to contamination or deterioration or become dirty, an authorized officer may serve a notice in writing on the person who owns or operates the food plant requiring him—</p> <p>(a) to clean, reconstruct or repair the premises in the specified manner and period; or</p> <p>(b) Not to use the plant until the conditions stated in such notice have been fulfilled.</p> <p>(2) It shall be sufficient compliance with a notice</p>		-Food Safety & Sanitation Policy /Legislative Proposal	DISAGREED

	served under this law if the person on whom such notice is served complies with notice or ceases to use the premises as a food plant. (3) Any person who fails to comply with the requirements of a notice served in accordance with subClause (1) above is guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both		-Too punitive	
Clause 19 – offences and penalties	-19(a) delete 50,000 and six months with 100,000 and 12 months 19(b) delete 100,000 and twelve months with 200,000 and 24 months	NONE	-Fines and Penalties have to be reasonable and commensurate with the offense.	DISAGREED
Clause 20(1) public nuisance relating to noise	-Establish Clause 20(1)(c) and word as follows-Any person who contravenes this Clause is guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	NONE	-Too punitive Unrealistic A nuisance is a misdemeanour	DISAGREED
Clause 20(2) building operation and construction of work noise	-Clause 20(2) Insert the following word immediately after the word offence- and shall upon conviction be	NONE	-Too punitive (Misdemeanour)	DISAGREED

	liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both			
Clause 20(3) neigh hood noise	-Clause 20(3)) Insert the following word immediately after the word offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both	DISAGREED	-Same reasons as above	DISAGREED
Clause 20(4) Noise related to animal	-Clause 20(4)- delete the word which is a nuisance and replace with the word which is likely to be And Insert the following word immediately after the word offence- and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding 100,000 or both		-Agreed	AGREED
			-Too punitive	DISAGREED
Clause 21 public nuisance relating to pollution	-Clause 21(1) insert the following words immediately after the word shilling- or to imprisonment for a term not exceeding thirty six months or both	-NONE	-DISAGREED	DISAGREED
PART IV Enforcement		-?	-Addressed	DISAGREED

Clause 22	<p>- Clause 22(1) delete the word county executive committee and replace with the word county secretary</p> <p>Clause 22(2) delete the word member of the county executive member and replace with the word county secretary</p> <p>Create new Clause 22(3) and word as follows: -</p> <p>(3) In addition to authorized officers appointed under sub clause (1) —</p> <p>(a) public health officers appointed under the Public Health Act; and</p> <p>(b) environment officers appointed under the environmental management and coordination Act</p> <p>Current Clause 22(3) renamed Clause 22(4)</p> <p>– delete the word Clause 10 and replace with this Act</p>	?		-DISAGREED	
Clause 24	<p>Clause 26 delete 10 and replace with 26</p> <p>Clause 34A- General penalty A person who commits an offence for which no penalty</p>			-Okay	

	has been specifically provided for, shall on conviction be liable to a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding twelve months, or to both		-? -Agreed Save for the fine and penalty proposed.	
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FINAL MATRIX OF STAKEHOLDER COMMENTS ON THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020

CLAUSE OF THE BILL	STAKE HOLDER COMMENTS	JUSTIFICATION	COMMITTEE COMMENTS	LEGAL COUNSELS COMMENT
<p><u>KILELESHWA WARD NEIGHBORHOOD ASSOCIATION (KIWANA)</u></p> <p>AND</p> <p><u>KILIMANI PROJECT FOUNDATION</u></p>	<p>-A provision be included prohibiting licensing of night clubs, lounges and bars within 500 meters of any existing residential or school building and revocation of licenses of related businesses already in operation.</p> <p>-Prohibit outdoor use of loudspeakers within 500 meters of residential or school building after 4pm on weekdays,</p>	<p>-Should be in line with the NEMA ACT.</p>	<p>-Agreed</p>	<p>-Agreed</p>
			<p>-Agreed</p>	<p>-Agreed</p>

	<p>weekends and no issuance of permits to such operators including religious organizations.</p> <p>-Noise pollution provisions should be similar to those of NEMA and a specificity of maximum legal noise levels similar to those of NEMA and noise measuring devices be made readily available to the community.</p> <p>-Provision be made requiring members of the enforcement department to respond to emergency calls by the community outside of official hours for serious noise pollution cases, as it occurs mainly at night and the police are not always willing to assist.</p> <p>-Wines and spirits be prohibited from operating bars or</p>			<p>-Agreed</p> <p>-Agreed</p>
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	<p>eateries within the same premises.</p> <p>-Restaurants must operate within the regulated opening and closing hours.</p> <p>-Licensing of liquor operators to be subjected to strict public participation wherein the neighborhood association of the area represents the community and the meeting be represented by a minimum of thirty community members including property owners in the immediate neighborhood, official minutes created and circulated to the attendees. An adequate notice in the main print media be given regarding such meetings.</p> <p>-Night club license should be issued to, only premises enclosed with a fully</p>		<p>-Agreed</p> <p>-Agreed</p> <p>-Disagreed</p>	<p>-Agreed</p> <p>-Agreed</p> <p>-Disagreed as there is a body and an Act already in place that mandates the Licensing of liquor operators.</p>
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	<p>roofed stone walled space with sealable windows and doors, proper sound proofing, fully functional air conditioning which should be regularly inspected.</p> <p>-Occupation certificate for the club to be issued only after the neighborhood association, or at least 30 community representatives have inspected the premises and have approved the sound proofing and air conditioning.</p> <p>-Liquor license or change of user of residential premises to a bar or night club should not be issued for buildings originally designed as residential if they sit on a compound of less than an acre.</p> <p>-Premises that cannot provide for adequate customer parking per stated</p>		<p>-Agreed</p>	-Agreed
			-Agreed	-Agreed with committee
			<p>-Disagreed on inclusion of the neighborhood association, or at least 30 community representatives to inspect and issue approval.</p>	-Agreed with committee

capacity inside the compound should not be licensed for selling of liquor.		-Disagreed	-Agreed with committee
		-Agreed	

