

paper laid by
Hon. P. Kotieno on 16/2/17

PCA Chf P)

16/2/2017



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

5TH SESSION

NBI CA. PLC. 2017 / (004)

16th February, 2017

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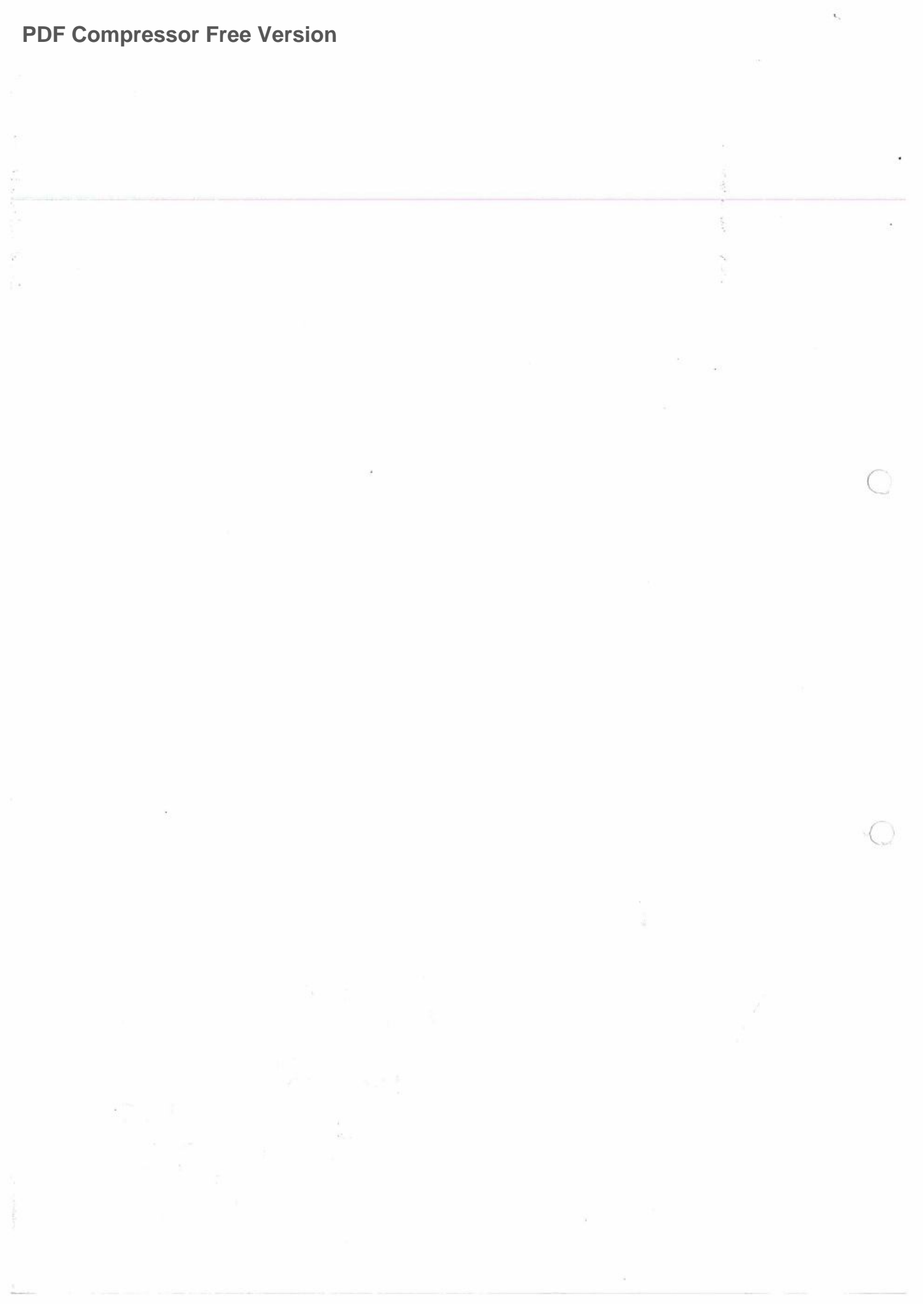
Pursuant to Section 116 of the Public Finance Management Act, 2012 I beg to lay the following Paper on the Table of the Assembly, today Thursday 16th February, 2017.

**THE REPORT OF THE SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION
ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY EMERGENCY FUND
REGULATIONS, 2017**

(Chairperson, Select Committee on Delegated County Legislation)

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

Approved.
Hon Speaker
16/2/17



Notice
Hon. ~~Pius~~ Kothari
on 16/2/2017

(T&J/RM/002/2017)

P. CA CL (P)
H. for
16/2/17

GOVERNMENT OF NAIROBI CITY COUNTY



NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

(5TH SESSION)

NOTICE OF MOTION – (Chairperson, Select Committee on Delegated
County Legislation)

Hon. Speaker, I beg to give notice of the following motion:-

THAT, this Assembly adopts THE REPORT OF THE SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION ON THE CONSIDERATION OF THE NAIROBI CITY COUNTY EMERGENCY FUND REGULATIONS, 2017, laid on the Table of the Assembly today Thursday, 16th February, 2017.

(Chairperson, Select Committee on Delegated County Legislation)

Admud.
Hon. Speaker
[Signature]
16/2/17

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Report laid by
Hon. Dius Kotieno
on 16/2/2017
PCA Clerk
N/A

REPUBLIC OF KENYA

COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY – FIFTH SESSION

REPORT OF THE
SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION ON THE CONSIDERATION OF
THE NAIROBI CITY COUNTY EMERGENCY FUND REGULATIONS, 2017.

CLERK'S CHAMBERS
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL BUILDINGS
NAIROBI

FEBRUARY, 2017

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- Annex 1 - Minutes
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1.0 PREFACE

Mr. Speaker Sir,

It's my Pleasure to present to this Assembly the report as scrutinized and recommended by the Select Committee on Delegated County Legislation. This Committee is established under Standing Order 190 to among other functions, consider in respect of any statutory instrument whether it-

- a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
- b) infringes on fundamental rights and freedoms of the public;
- c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- d) contains imposition of taxation;
- e) directly or indirectly bars the jurisdiction of the Courts;
- f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- g) involves expenditure from the Consolidated Fund or other public revenues;
- h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
- i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

It is important to understand the clarification of a statutory instrument pursuant to Standing Order 190 (5) which states that: -

“Statutory instrument” means any rule, order, regulation ,direction, form, tariff of costs or fees, letter patent, commission, warrant ,proclamation, by-law, resolution, guideline or other instrument issued, made or established in the execution of a power conferred by or under an Act of the County Assembly under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

1.1 Committee Membership

The Select Committee on Delegated County Legislation was constituted by the Assembly on Tuesday 30th April, 2013 comprising of the following Members:-

- | | | |
|---------------------------------|---|--------------------|
| 1. Hon. Pius O. Otieno | - | (Chairperson) |
| 2. Hon. Shadrack Juma | - | (Vice-Chairperson) |
| 3. Hon. Kennedy Oduru, MCA | | |
| 4. Hon. Fredrick Njogu, MCA | | |
| 5. Hon. Samuel N Njoroge, MCA | | |
| 6. Hon. Daniel M Mari, MCA | | |
| 7. Hon Samuel Mwangi, MCA | | |
| 8. Hon. Jaffer Kassam, MCA | | |
| 9. Hon. Elkana Mauti, MCA | | |
| 10. Hon Wilfred Odalo, MCA | | |
| 11. Hon. Erastus Mburu, MCA | | |
| 12. Hon. Petronilla Nafula, MCA | | |
| 13. Hon. Joyce Bocha, MCA | | |
| 14. Hon. Alexina Mudi, MCA | | |
| 15. Hon. Martin King'ethu, MCA | | |
| 16. Hon. Christine Abuto, MCA | | |
| 17. Hon. Amina Mohammed, MCA | | |
| 18. Hon. Monica Ndegwa, MCA | | |
| 19. Hon. Hawa Dafala, MCA | | |

1.2 Acknowledgement

Mr. Speaker Sir,

I wish to sincerely thank Members of the Committee for their patience, sacrifice and hard work despite their other commitments and tight schedules, in their endeavors to deliberate on the said Regulations. The Committee also wishes to sincerely thank the Offices of the Speaker, the Clerk of the County Assembly and to the secretariat for their support to the committee that enabled Members execute their work.

It is my honour and pleasure on behalf of the Committee on Delegated County Legislation, to present this Report of the Select Committee on Delegated County Legislation on the Nairobi City County Emergency Fund Regulations, 2017 with recommendations to the Assembly for consideration and adoption pursuant to the provisions of Section 116 of the Public Finance Management Act, 2012.

Thank You.


SIGNED.....

 Alexina Mudi Dindira

Hon. Pius Owino, MCA

(Chairperson, Select Committee on Delegated County Legislation)

DATE:.....


15/02/2017

2.0 THE NAIROBI CITY COUNTY EMERGENCY FUND REGULATIONS, 2017.

2.1 Legal Basis of the Nairobi City County Emergency Fund Regulations, 2017

Section 111 of the of the Public Finance Management Act, 2012 provides for the County Executive Committee Member for Finance to administer the County Government Emergency Fund for the county government in accordance with a framework and criteria approved by the County Assembly.

2.2 Objects of the Nairobi City County Emergency Fund Regulations, 2017.

The objects and purpose of the Nairobi City County Emergency Fund Regulations, 2017 is to enable payments to be made in respect to the County when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises”.

3.0 COMMITTEE OBSERVATIONS

The Nairobi City County Emergency Fund Regulations, 2017 were laid on the floor of Assembly on Tuesday, 27th September, 2016. Pursuant to Section 111(1) of the Public Finance Management Act, 2012, the Regulations were thereafter committed to the Select Committee on Delegated County Legislation for scrutiny and report to the Assembly.

The Committee identified and resolved to meet the following parties to the Regulations before making appropriate recommendations;

- a) **Executive Committee Member for Finance and Economic Planning;**
- b) **The Chief Officer for Security, Compliance & Disaster Management;**
- c) **Director, Fire and Rescue Services;**
- d) **The County Attorney; and**
- e) **The Select Committee on Finance, Budget & Appropriations**

The Committee further resolved that a retreat of the Committee be organized to enable Committee Members to scrutinize and provide their input on the said Regulations. Members further resolved that the retreat be held at Masada Hotel in Naivasha as from 2nd – 5th October, 2016, and be attended by the County Executive Committee Member for Finance & Economic Planning, the Chairperson, Select Committee on Finance, Budget & Appropriations, the County Attorney, and the County Assembly Legal Counsel.

The Committee managed to meet all the parties other than the CEC for Finance and Economic Planning and the County Attorney. An accountant Ms. Monica Mureithi from the Department of Security, Compliance and Disaster Management represented the Chief Officer for Security, Compliance & Disaster Management who gave her views on the said regulations. The County Attorney was represented by the Legal Counsel, Mr. Evans Mogire. The officers gave the views of their Departments and proposed amendments to some paragraphs in the Regulations as contained in this report.

The Chairperson of the Select Committee on Finance and Appropriation presented the views of the said Committee gathered during pre-scrutiny of the said Regulations which were invaluable during our deliberations.

4.0 COMMITTEE RECOMENDATIONS

That this assembly adopts the report of the Delegated County Legislation Committee on the Nairobi City County Emergency Fund Regulations, 2017 as amended with the following annexes:

LONG TITLE

THAT, the long title be amended by deleting the expression '2015' appearing immediately after the expression 'Regulations' and substituting thereof with the expression '2017'.

PREAMBLE

THAT, the preamble be amended by deleting the expression "section 110" appearing immediately after the expressions "*given by*" and substituting thereof with the expression "*section 111*".

SHORT TITLE

THAT, the short title be amended by deleting the expression '2015' appearing immediately after the expression 'Regulations' and substituting thereof with the expression '2017'.

PARAGRAPH 1

THAT, paragraph 1 be amended by deleting the expression "2015" appearing immediately after the expressions "*Emergency Fund Regulations*" and substituting thereof with the expression "2017".

PARAGRAPH 2

THAT, Paragraph 2 be amended –

- a) In paragraph 2 by defining the expression "unforeseen need" and "disaster"
- b) In Paragraph 2 a (iii) by deleting the expression "*ship*" appearing immediately after the expressions "*safety of a*" and substituting thereof with the expression "*motor vessel*".

- c) In Sub-paragraph 2 c by deleting the expressions “section 116” appearing immediately after the expression “*under*” and substituting thereof with the expressions “section 110”.
- d) In paragraph 2 c by deleting the expressions “Chief officer Security and Head of Disaster Management” appearing immediately after the expression “*means the*” and substituting thereof with the expressions “*County Executive Committee Member for Finance and Economic Planning*”.

PARAGRAPH 3

THAT, Paragraph 3, 4 and 5 be amended by merging them all together to read as paragraph 3.

PARAGRAPH 4

THAT, Paragraph 4(b) be amended by expounding it to keep it more clear, transparent and accountable.

PARAGRAPH 5

THAT, Paragraph 5 be amended by deleting the expressions “the event an unforeseen calamity, accident or natural disaster which would result either cause loss of life, harmful effects on human and environmental health as well as disruption of livelihoods” appearing immediately after the expression “to be made in” and substituting thereof with the expressions “in respect to the County when an urgent and unforeseen need for expenditure arises”.

PARAGRAPH 6

THAT, Paragraph 6 be amended by deleting the expression “*Chief Officer*” appearing immediately after the expression “*the*” and substituting thereof with the expressions “*the County Executive Committee Member for Finance and Economic Planning*”.

PARAGRAPH 7

THAT, Paragraph 7(2) be amended by deleting the expression “*Chief Officer*” appearing immediately after the expression “*the*” and substituting thereof with the

expressions "*the County Executive Committee Member for Finance and Economic Planning*".

PARAGRAPH 8

THAT, Paragraph 8 be amended by deleting the expressions "*section 10*" appearing immediately after the expressions "*accordance with*" and substituting thereof with the expression "*section 110*".

PARAGRAPH 9

THAT, Paragraph 9 be amended by deleting the expression "*notify*" appearing immediately after the expressions "*administrator shall*" and substituting thereof with the expression "*seek approval of*".

NEW PARAGRAPH 10

THAT, new Paragraph 10 be added to read as follows, "*Any unutilized balances in the Emergency Fund shall not lapse at the end of the financial year, but shall be retained for use for the purposes for which the Emergency Fund was established.*"

NEW PARAGRAPH 11

THAT, new Paragraph 11 be added to read as '*County Executive Committee Member for Finance and Economic Planning means the member of a County Executive Committee responsible for the Financial affairs of the County and for the County Treasury*'.