

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)

P. O. Box 73552 - 00200,

NAIROBI, KENYA

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***KISII COUNTY GAZETTE
SUPPLEMENT***

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COUNTY ASSEMBLIES FORUM (CAF)
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THE KISII COUNTY POLYTHENE BAGS AND GARBAGE (CONTROL) BILL, 2015

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THE KISII COUNTY POLYTHENE BAGS AND GARBAGE (CONTROL) BILL, 2015

A Bill for

AN ACT of the County Assembly of Kisiito provide for a controlled use of polythene bags and disposal of non-biodegradable garbage and connected purposes

ENACTED by the County Assembly of Kisii as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Polythene bags and Garbage (Control) Act, 2015 Short title

2. The Act shall apply throughout the area of jurisdiction of Kisii County. Application

3. In this Act, unless the context otherwise requires— Interpretation

“bio-degradable garbage” means garbage that can be degraded by micro-organisms;

“County” means the Kisii County;

“degradable garbage” means a plastic bag designed to undergo a significant change in its chemical structure under specific environmental conditions, resulting in a loss of some properties that may be measured by standard methods appropriate to the plastic and the application in a period of time that determines its classification, as prescribed;

“Department” means the County Department of Environment.

“Executive Committee member” means the county committee executive member in charge of environment matters;

“foodstuff” means ready to eat food and food products, fast food, processed and cooked food in liquid, powder, solid or semi-solid form;

“market” includes any place where persons assemble for sale of meat, fish, fruits, vegetables, food, or any other articles for human use or consumption with or without the consent of the owner of such place, notwithstanding that there may be not common regulation for the concourse of the buyers and the sellers and whether or not any control is

exercised over the business of, or the person frequenting, the market by the owner of the place or by any other person;

“non-biodegradable garbage” means garbage that cannot be degraded by micro-organisms and are more specifically included in the Schedule of this Act;

“occupier” includes -

- (a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;
- (b) an owner who is in occupation of or otherwise using his or her land or building;
- (c) a rent free tenant of any land or building;
- (d) an owner or tenant of any temporary structure or land or building in any unauthorized area;
- (e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;

“owner” includes a person who for the time being is receiving or is entitled to receive, the rent of any land or building, whether on his or her own account or on account of himself or herself and others or as an agent, trustee, guardian or receiver for any other or who should so receive the rent or be titled to receive it if the land or building or part thereof were let to a tenant;

“pigments” means inorganic and organic chemical substances used in manufacturing of recycled, coloured plastic bags;

“place” means any land or building or part of a building and includes the garden, ground and out-houses, if any, pertaining to a building or part of a building;

“place open to public view” includes any place or building, monument, fence or balcony visible to a person being in, or passing along, any public place;

“Polythene carry bag” means any plastic bag used for packaging storing, carrying or dispensing any article or commodity.

“prescribed” means prescribed by rules made under this Act;

“public Analyst” means the person appointed or recognized to be the Government Analyst, in relation to any environment laboratory established or recognized in Kenya or under any law;

“public place” means any place which is open to use and enjoyment of the public whether it is actually used or enjoyed by the public or not and includes a road, street, market, house-gully or way, whether a thoroughfare or not, and landing place to which public are granted access or have a right to resort or over which they have a right to pass;

“Recommended thickness” means a thickness of not less than 30 microns;

“Vendor” means any person who sells articles or commodities packed or stored in polythene carry bags.

4. The object of this Act is discourage usage of non-biodegradable polythene bags in favour of reusable bags.

Object

PART II—ADMINISTRATION

5. (1) This Act shall be administered by the Department.

Administration of the Act

(2) The Department shall for the purposes of this Act establish a Pollution Control Committee.

6. (1) The Executive Committee Member shall, by notification in the *Gazette*, appoint such number of qualified public officers as may be necessary to be members of the Pollution Control Committee for the proper administration of this Act.

Pollution Control Committee

(2) The Pollution Control Committee shall consider application from applicants and may grant authorization to any person manufacturing degradable polythene bags and perform such other functions as may be assigned to it by the County Executive committee member pursuant to the provisions of this Act.

PART III— PROHIBITION**7. No person shall—**

Prohibition of
manufacture, sale and
usage of non bio-
degradables

- (a) sell, import, manufacture, produce or store non bio degradable polythene carry bags of less than the recommended thickness within the jurisdiction of the County;
- (b) being a vendor, use such polythene carry bag for storing, carrying, dispensing or packaging of any articles or commodity;
- (c) manufacture for sale, sell and use any polythene bag other than degradable polythene bag; and
- (d) manufacture for sale, sell and use any polythene bag or other plastic material other than degradable polythene bag within the jurisdiction of the County.

8. (1) No person shall manufacture for sale, sell and use any recycled polythene bags or containers for storing, carrying or packing of foodstuff within the jurisdiction of the County.

Prohibition of
manufacture, sale and
usage of recycled
polythene bags for
food

(2) No license, for the manufacture, sale of recycled plastic bags referred in subsection (1) granted or received under any law before the date of commencement of this Act, shall entitle the holder thereof or any other person on this behalf to commence or carry on such business in contravention of the provisions of this Act.

**PART IV—MANAGEMENT OF NON-
BIODEGRADABLE GARBAGE AND BIO-
DEGRADABLE GARBAGE**

9. (1) No person shall knowingly or otherwise, throw or cause to be thrown in any drain, ventilation shaft, pipe and fittings, connected with the private or public drainage works and in river and river beds, any garbage which is likely to—

Prohibition of
throwing garbage in
river bed, river, public
places, drains, sewer

- (a) impair proper functioning of the drainage, sewage system and river;
- (b) interfere with the free flow or affect the treatment and disposal of the drain, sewage contents and river;

- (c) be dangerous or cause a nuisance or be prejudicial to public health;
- (d) be ingested by stray animals leading to serious health hazards.

(2) No person shall, knowingly or otherwise, place or permit to be placed, except in accordance with such procedure and after complying with such safeguards as may be prescribed, any garbage in any public place, river or river bed or in place open to public view, unless –

- (a) the garbage is placed in a garbage receptacle; or
- (b) ii) the garbage is deposited in a location designated by the relevant county department having jurisdiction on an area for the disposal of the garbage.

10. The County Government, or any officer authorized by it, shall –

Provision for placement of receptacles and places for deposit of garbage

- (a) provide separate receptacles or dustbins for non-biodegradable garbage and bio-degradable garbage for their temporary deposit, collection, and transportation up to their final disposal;
- (b) provide designated enclosures for placing of garbage;
- (c) ensure timely and regular removal of the contents of receptacles at all places provided by it; and
- (d) make adequate provision of the receptacles or dustbins whether authorized or not, to ensure that they do not become a source of nuisance and are not easily approachable by stray animals.

11. Every owner and occupier of all lands and building has a duty—

Duties of occupier of land and building

- (a) to collect or to cause to be collected from their respective land and buildings the non-biodegradable garbage and to deposit, or cause to be deposited, in public receptacles, deposits or places provided for temporary deposit or collection of the non-biodegradable garbage by the relevant County department in the area;

- (b) to provide separate receptacles or dustbins, other than those kept and maintained for deposit of biodegradable garbage of the type and in the manner prescribed by the local authority for collection therein of all the non-biodegradable waste from such land and building and to keep such receptacles/dustbins in good condition and repair.

12. The County Government may by notice in writing, require the owner or occupier or part-owner, or person claiming to be the owner or part owner of any land or building, which has become a place of unauthorized stacking or deposit of non-biodegradable garbage and likely to occasion a nuisance, remove or cause to be removed the said garbage so stacked or collected or thrown into the river and if, in its opinion, such stacking or collection or throwing of non-biodegradable waste is likely to harm the river, river bed, drainage and sewage system or is likely to be dangerous to life and health of human beings, it shall forthwith take such steps as may be necessary at the cost of such person or persons.

Power to order
removal of non-
biodegradable
garbage

PARTV — AUTHORIZATION AND APPEAL

13. (1) Any person manufacturing degradable polythene bags shall, apply in the prescribed form and seek authorization from the Pollution Control Committee which may grant authorization provided that following conditions are satisfied by person applying or reject the application as the case may be—

Authorization

(a) that the recycled bags would be colored and pigmented and dyes used in manufacturing of the plastic bags shall be in accordance with the approved pigments and dyes and shall be marked—

- (i) degradable recycled plastic bags;
- (ii) unsafe for carrying food;
- (iii) name and address of the manufacturer;

(b) that the minimum thickness of recycled bags & virgin bags shall not be less than 30 microns or any minimum thickness as specified by the Government;

- (c) polythene carry bags or containers manufactured out of virgin plastic shall be of white colour.

(2) The degradable polythene bags shall meet the international and national quality standards and to be certified by a government or government approved laboratory in the manner prescribed under the rules.

14. (1) Any person, aggrieved by an order or direction of the Pollution Control Committee, may appeal within thirty days from the date of such order or direction to the Executive Committee Member who may vary, set aside or confirm the said order or direction.

Appeal

(2) Any person, aggrieved by the appellate decision may file a reference against the appellate decision in court.

PART VI—MISCELLANEOUS

15. No suit, prosecution or other legal proceedings shall lie against the Government or any officer or other employees of the Government or of other government entity or any other person authorized by the Government for anything done in good faith or intended to be done under this Act or the regulations made hereunder.

Protection from
personal liability

16. (1) The Executive Committee member may make regulations for the purposes of carrying out the provision of this Act.

Power to make
Regulations

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely—

- (a) prescribing the standard methods of measurement of degradability of polythene bags;
- (b) prescribing the procedure and safeguards to be compiled with for placing or permitting to be placed any biodegradable garbage in any public place or in a place open to public view;
- (c) prescription of the form of application for seeking authorization and the fee payable with the application for the grant of authorization;
- (d) prescribing the manner of certification of degradability of plastic bag by a government or government approved laboratory;
- (e) provide for the delegation of the powers and

functions conferred by this Act on the Government to subordinate officers or authorities;

- (f) provide for the delegation of the powers and functions regarding compounding of offences by the Government to subordinate officers or authorities.

(3) The Regulations made under subsection (1) shall be approved by the County Assembly before taking effect.

17. Any person who contravenes the provisions Part II and III of this Act shall be guilty of an offence and liable on conviction to—

Penalty

- (a) a fine not exceeding Kenya Shillings ten thousand or imprisonment for a term not exceeding six months for first offenders;
- (b) a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding two years for repeat offenders.

18. All penalties imposed by this Act are recoverable in a summary manner and any person who commits an offence not specifically provided for commits an offence against this Act and is liable on conviction to a fine not exceeding one hundred thousand shillings imprisonment for a term not exceeding ten years or both.

General Penalty

19. The provisions of this Act are in addition to, and not in derogation of the provisions of any other law for the time being in force.

Other laws not
affected

20. Where it is expedient to do so, the Executive Committee Member may, in the public interest and in consultation with the Public Analyst, by notification in the official Gazette, add to, or omit from the Schedule any item of non-biodegradable waste and thereafter the Schedule shall be deemed to be amended accordingly.

Power to amend
Schedule

SCHEDULE

(Non-Biodegradable Garbage)

Non-Biodegradable Garbage

- (1) Polyethylene (2) Nylon (3) P.V.C. (4) Polypropylene (5) Polystyrene

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objective of this Bill is to provide for a controlled use of polythene bags and disposal of non-biodegradable garbage and connected purposes.

Part I of the Bill provides for preliminary matters including the short title to the Bill, application, the interpretation of words and expressions used in the Bill and objective of the Bill.

Part II of the Bill provides for the administration of the Bill by the Department and establishes the Pollution Control Committee.

Part III provides for prohibitions and specifically prohibits the manufacture, sale or use of non-biodegradable plastics and manufacture, sale or use of recycled polythene bags for carrying food.

Part IV of the Bill provides for management of non-biodegradable and biodegradable garbage and prohibits the throwing of garbage into rivers and open places and imposes certain duties to occupiers of land and buildings.

Part V deals with authorizations and appeals

Part VI contains miscellaneous provisions which include protection from personal liability, offences and penalties and power to make regulations and amend schedule.

The enactment of this Bill will occasion some additional expenditure of public funds which will be provided for through estimates in the county budget.

Statement on Delegated Powers to Legislate

The Executive Committee member is empowered to make necessary regulations for the effective operation of the Act.

Dated the 28th April, 2015.

RONALD ONDUSO,
Chairman, Energy, Water, Environment and Natural Resources.